



W.P.Nos.17542 & 27164 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.17542 & 27164 of 2021
and WMP.Nos.18465, 18647, 28655 & 28658 of 2021

Shenbagavalli

...Petitioner in W.P.No.17542/2021

T.Vivekanandan

...Petitioner in W.P.No.27164/2021

Vs.

- 1.The Assistant Registrar (Law)
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
- 2.The Joint Registrar (Law),
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
- 3.The Additional Chief Secretary,
Home (Citizenship-II) Department,
Government of Tamil Nadu,
Chennai-09.
- 4.The Secretary,
The Public (HR) Department,
Government of Tamil Nadu,
Chennai-09.



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5.The Additional Chief Secretary
Home Prohibition & Excise Department,
Chennai - 09.

6.The Secretary,
Finance Department,
Government of Tamil Nadu,
Chennai-09.

7.The Accountant General,
Chennai.

8.The Pay and Accounts Officer,
Chennai.

9.The Director General of Police
Police Head Quarters,
Government of Tamil Nadu,
Chennai.

10.The Commissioner of Police
Greater Chennai City,
Vepery, Chennai- 07.

11.The Joint Commissioner of Police
South Zone, Greater Chennai Police,
Chennai - 600 016.

12.S.Sundaravadivelu

...Respondents in both WPs

Common Prayer :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the 1st respondent in National Human Rights Commission Case No.969/22/13/2017/OC dated 05.09.2019 and



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consequent Government Order in G.O.(D) No.1057 issued by Home (Citizenship II) Department/ 3rd respondent dated 15.09.2020 and to quash the same.

For Petitioner in both WPs : Mr.M.Purushothaman
For Respondents in both WPs : Mrs.M.P.Jaisha for R1 & R2
Mr.M.R.Gokul Krishnan
for R3 to R6, R9 to R11
: Mr.T.Ravi Kumar for R7
: R12 - No appearance

COMMON ORDER

N. SENTHILKUMAR, J

Both the writ petitions arise out of the common order passed in NHRC.No.969/22/13/2017/OC dated 05.09.2019.

2. These writ petitions are filed challenging the order passed by the first respondent/National Human Rights Commission in Case No.969/22/13/2017/OC dated 05.09.2019 and consequential Government Order in G.O.(D) No.1057 issued by Home (Citizenship II) Department/3rd respondent dated 15.09.2020.

3. Ms Shenbagavalli is the petitioner in W.P.No.17542/2021, who is



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the Sub-Inspector of Police, J12, Kanathur Police Station and Mr T. Vivekanandan is the petitioner in W.P.No.27164/2021, who is the Inspector of Police, R6 – Kumaran Nagar Police Station.

4. The brief facts are as follows:

4a. The complainant, one Mr. Sundaravelu, had preferred a complaint dated 14.03.2017 against the petitioners before the National Human Rights Commission/1st respondent herein. The allegation levelled against the petitioners is that on 13.01.2017, a few rowdy persons armed with knives, alleging that they were from the Police Department, threatened the complainant. At the instance of Ilayaraja and Jayaraman, the complainant was taken to the Police Station in an Indica car belonging to them. His further allegation is that the said persons had taken Rs.3,500/-, the complainant's Credit Card, Aadhar Card and also snatched Rs.45,000/- cash, which was kept in a travel bag. Articles worth Rs.1 lakh were also nicked from the complainant. The complainant stated that a case in Crime No.102 of 2017 for an offence under Section 294(b) IPC read with Section 4 of TNPWH Act was registered against him by Kannagi Nagar J11, Police Station at the instance of false complaint given by the said Ilayaraja.



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Consequently the complainant alleged that he was beaten up, forced to drink his urine and eat his faecal particles.

4b. As per the complaint, the Police informed the complainant that he had forwarded certain messages via SMS to Mobile numbers 9840983832 and 9500099100 between the dates 25.12.2016 to 31.01.2017, stating that the said Ilayaraja was selling illicit arrack and his wife had indulged in prostitution. The complainant further alleged that the Inspector T.Vivekanandan, i.e., the petitioner in W.P.No.27164 of 2021, had stated that since Ilayaraja and Jayaraman had bribed the Police Officers, no action could be taken against them and also went on to inform the complainant that he was willing to send his wife for prostitution and was interested in knowing what the complainant would pay as consideration for such activities.

4c. The complainant stated that Sub Inspector Shenbagavalli, i.e., the petitioner in W.P.No.17542 of 2021, had threatened that the complainant would be subjected to third degree treatment if he resists indulging in the promiscuous activities and as CCTVs were all fixed in front side of the



Police Station, none of these activities will be recorded.

4d. Based on the said Ilayaraja's false complaint, the petitioner in W.P.No.27164 of 2021 had handcuffed the complainant, beaten him up with pipe rods and the complainant was subjected to serious violations of human rights. He further made allegations against few others, namely, Udaya, Shajahan, Allaudin, Iyer, and Vinoth, who were constables and sub-inspectors in the said Police Station. He has also stated that these incidents were witnessed by others namely, Rathika, Arulmoris, Leenamon, Udayakumar, and Velu, who were Police Constables attached to the very same Police Station.

5. The report of the Assistant Commissioner of Police attached to Thoraipakkam Range, dated 19.06.2017, is also enclosed in the typed set of papers filed by the petitioners. It is an enquiry report on the complaint filed before the Commission/first respondent by the complainant against Ilayaraja and the petitioners herein. An Enquiry Officer, Mr.J.Aiyyappan, was appointed to conduct enquiry on the complaint and submit a report. The relevant portion of the aforesaid enquiry report is extracted hereunder:

Enquiry Report:



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According to the station records 1.FIR, 2.PSR, 3.Sentry relief book, 4. Arrest intimation, reveals that the petitioner was arrested at Karapakkam bus stop and brought to J11PS at 14.00hrs on 13.01.17, after making PSR, he was entrusted with station sentry Wpc 42752 Sivaranjini at 15.00hrs. And then he was taken to JM Alandhur by Escort Pcs at 18.00hrs. During this time between 15.00hrs and 18.00hrs non is assaulted in the PS as stated by the petitioner and his arrest intimation was also duly conveyed to his brother-in-law Tr.Ravi on 13.01.17 at 14.00hrs.

In this connection statements were recorded from the CPs 1 to 3. From the statements of CPs 1 to 3 and the connected station records are reveals that the accused Sundaravelu was arrested only on the complaint of CP 1 and he was arrested by CP 3 Tmt.Senbagavalli, SI of police L&O of J11 Kannagi nagar PS and taken all procedures till his remand on 13.01.17 and there is no illegal detention as alleged by the petitioner and also no personal belongings recovered at the time of



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prisoner search, similarly none is assaulted him in the police station, more over no one is forced to drink and eat the human wastage like urine and human wastage and there is no violations committed by police personnel against human rights.

No further action is need in this matter.

6. The enquiry report includes the statement of Rajasekaran, Ilayaraja, the complaint of Sundaravelu filed before the SHRC and two CSRs viz., C.S.R.No.12 of 2017 and C.S.R.No.172 of 2017. The crude and vulgar messages by the complainant dated 01.07.2017 and 09.01.2017 were also enclosed in the report. This court feels, it may not be appropriate to reproduce the distasteful messages sent by the complainant. The complaint given by Srividhya, which was treated as C.S.R.No.172 of 2017, would disclose that she is working as the Head of Human Resources in a private company which engaged the services of 'Ilayabharatham Cabs' for the transportation of their staff members. The complainant happened to be the cab driver, and thereby having access to her mobile number, began sending crude, indecent and vulgar messages to her. This harassment stood for consideration before the Police.



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7. Similarly, the complaint of the said Ilayaraja, which was treated as C.S.R.No.12 of 2017, would disclose that he was running the small tourist cab company in the name and style of 'Ilayabharatham', and the complainant was working as a driver, and had often misbehaved with clients. As the complainant was removed from service, he abused Ilayaraja and his wife by sending vulgar messages to his wife's mobile number. Under this pretext, a case was registered by Kannagi Nagar Police in Crime No.102 of 2017 for the offences under Section 294 (b) IPC read with Section 4 of the TNPWH Act.

8. The statement of the Police Officers enclosed in the report dated 19.06.2017 shows that the complainant was arrested and he was produced before the Judicial Magistrate. The complainant has not made any complaint before the learned Judicial Magistrate at the time of arrest and remand. Thereafter, he was produced before the Prison Authorities at Puzhal Central Prison. The statement of the Police Constable Vinothkumar, who took the complainant to Chrompet Government Hospital shows that the complainant was given a fit certificate for his health condition and when the complainant was produced before the Government Royapettah



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Hospital, he informed the doctor that he had some knee pain. Based on his request, an X-ray was done. The doctor enquired if he was willing to receive treatment at Government Royapettah Hospital, for which the complainant informed that he would receive treatment within the prison.

9. The statement of Police Constable Vairamuthu shows that when the complainant was produced before the learned Judicial Magistrate, the learned Judicial Magistrate posed three questions to him: (i) Was the accused aware of the allegations made against him? (ii) Did the Police commit torture? and (iii) Were there any injuries sustained by the complainant at the hands of the Police? After recording the negative statement from the accused, the learned Judicial Magistrate remanded the accused for 15 days.

10. The statement of Police Constable, Rathika, shows that when the complainant was brought to the Police Station, he was physically examined, and food was provided to him.



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11. It is seen from the records that the Police had also filed a charge sheet against the complainant Sundaravelu for offences under Section 294 (b) IPC read with Section 4 of the TNPWH Act. The Assistant Commissioner of Police, Thoraipakkam Range submitted the aforesaid report to the Commission/first respondent on 19.06.2017 for consideration.

12. The Commission/first respondent called for the report of the Commissioner of Police vide proceedings dated 05.06.2018 as a final reminder. On 17.07.2018, the Commissioner of Police submitted his report to the Commission/first respondent stating that there was no custodial torture in the present case and the allegations of the complainant are false and baseless.

13. In a proceeding dated 26.10.2018, the first respondent took note of the allegations in the complaint and directed the Commissioner of Police to furnish a copy of his report to the complainant and called for his reply. The Commission/first respondent, in its proceedings dated 11.04.2019, has considered the complainant's reply, which states that the report is faulty and evasive. In the said proceedings, the Commission has observed as follows:



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“Let the file be sent to Investigation Division for analysis and to do the spot enquiry if required & submit the report within six weeks.”

14. On 12.05.2019, the Inspector of Police attached to Kannagi Nagar, J11 Police Station, submitted a report to the Commission/ first respondent detailing the spot enquiry made by the Investigation Division of NHRC, which is extracted hereunder:

NHRC Team Spot Enquiry:

On 06.05.2019 at 09.00hrs, a team of officials from the National Human Rights Commission (New Delhi) arrived chennai airport, we arranged transport and the team went by roadways to PeriaKalakatoor Village, Thirutani Taluk, Thiruvallur District for conducting spot inquiry of Petitioner Tr. S.Sundaravelu s/o. Tr.C.Subramani. And the next day, on 07.05.2019 in chennai, the NHRC team verified the Station Records like 1) FIR, 2) PSR, 3) Sentry Relief Book, 4) GD entry and 5) Arrest Intimation in connection with case



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registered in J-11 Kannagi Nagar P.S Cr.No.102/2017 u/s 294(b) IPC r/w 4 of TNPWH ACT and also making inquiries with the complainant of Victim's husband Tr.Elayaraja A/47, S/O Shanmugam, who residing in No.1/355 Indira Gandhi Street, Karapakkam, Chennai – 600 097. Then, the third day and the fourth day, on 08.05.2019 and 09.05.2019, the NHRC team inquired with the Jail Superintendent of Central Prison, Puzhal, Government Royapettah Hospital Doctors, Police Officers who registered an FIR, Tr.Vivekanandan now working as an Inspector of Police in R1 Mambalam P.S (L&O), Tmt. Shenbagavalli, WSI of Police in J10 Semmenchery P.S (L&O) and the Enquiry officer of Thuraipakkam Range, Retired Assistant Commissioner of Police Tr. Iyappan, special teams of J11 Kannagi Nagar P.S and Escort Team who taken the petitioner to Central Prison, Puzhal. On 10.05.2019, the NHRC team completed his spot inquiries and went back to his Commission New Delhi.

15. The Investigation Division analysed the relevant records and



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submitted a report to the Commission/first respondent. In the proceedings dated 08.08.2019, the Commission/first respondent issued the following order:

The Commission has considered the report. Prima facie, the complainant was arrested by police on 13.1.2017 but no GD entry regarding his arrest, movement to hospital or to the jail was made in police record. Admittedly, there was no injury was found on the body of the victim at the time of arrest, the doctor of Chrompet Hospital had advised orthopedic examination but was not undertaken by police, the record of Royapettah Hospital as well as jail hospital reveal fracture on both knees of the complainant.

Let the Investigation Division conduct a spot enquiry and submit report within 10 weeks.

16. The Investigation Division had submitted an enquiry report dated 03.07.2019 before the Commission/first respondent. The adverse findings made against the petitioners in the report of the Investigation Division are extracted hereunder:



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Analysis of the GD entries reveals that there was no entry regarding arrest of complainant Sundaravelu, movement of police personnel while arresting or sending him to hospital/court etc.

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2E. The medical papers dated 13.01.2017 & 14.01.2017 of Chrompet hospital and Royapettah hospital:- This reveals that there was swelling & pain on both knees and fracture of both patellas.

2F. The initial health screening report of UTP S. Sundaravelu at Central Prison Puzhal:- This reveals that while admission in jail, victim S. Sundaravelu was found to be having injury over both knee and fracture both patellas.

Apart from the above adverse findings against the petitioners, the Investigation Division received reports on other under-trial prisoners admitted with fractures. The observations of Investigation Division are extracted hereinunder:



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3. The copy of initial health screening report of 91 prisoners (P 184-274):- The document of Central Prison Puzhal has been collected from jailer and the jail doctor. The report reveals that the under trial prisoners who has been admitted in Central Jail, Puzhal-2 suffered injuries/fracture on knees elbows etc at the time of admission in the jail due to police atrocities. The details of the initial health screening report of the 91 prisoners are as under:-

S. No.	Name	Injury	Page No.
1	Selvamani	Fracture at right Ulna	138
2	Naresh	Fracture at left 5 th metacarpal	139
3	Asith Kumar @ Sharma	Fracture at lateral mellealus	140
4	Ramachandran	Fracture at left forearm	141
5	Vellai @ Tamilarasan	Fracture at BB of left leg	142
6	Naveen Kumar	Fracture of left megelani sinus lateral wall of let orbit	143
7	Vijay @ Thalapathy	Fracture at left Tibia	144
8	Raj Kumar @ Ranjith	Fracture at left radius	145
9	Ajith Kumar @ Etta Ajith	Belalleloar fracture right ankle	145A
10	Vedamai	Fracture right leg	146
11	Madhan @ Madkumar	Fracture of BB right forearm	147
12	Vicky @ kallarai Viely	Fracture of BB right forearm	148



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S. No.	Name	Injury	Page No.
13	Udaya @ Uday Kumar	Fracture of BB right forearm	148A
14	Arun	Fracture of right 1 st proximal filling	149
15	Dilli Ganesh	Fracture right metacarpal	150
16	Sudhakar	Fracture right 2 nd metacarpal	151
17	Arun Kumar @ Arun	Fracture at Left clavicle	152
18	Guna @ Vasanthavel	Fracture at right forearm	153
19	Arvind kumar	Fracture at right leg	154
20	Balaji	Fracture at left leg	155
21	Karthikeyan	Fracture at 5 th metacarpal	156
22	Suresh @ Arcot Suresh	Fracture at left fibula	157
23	Sanjeev Kumar	Injury and fracture at right radius	158
24	Syed Sarparas Navas	Fracture at BB right leg	159
25	Ajai @ Ajith @ Ajith kumar	Fracture at BB right forearm	160
26	Muthuvel	Fracture at right forearm	161
27	Vijay Kumar	Fracture at D3 right Radius	162
28	Abdhul Khadhar	Fracture neck of right metacarpal and proximal filling of 5 th toe	163
29	Suman Raj	Fracture at BB of right foot	164
30	Karthik Viral karthik	Fracture on right forearm	165
31	Nijamathulla	Fracture on right forearm	166
32	Raise Raja	Fracture BB left forearm	167
33	Aribabu @ Babu	Fracture left leg right hand with active bleeding over left leg	168
34	Mutta @ Shiv Kumar	Fracture right forearm	169
35	Jaheer	Fracture right forearm	170



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S. No.	Name	Injury	Page No.
36	Dhayalan	Fracture right forearm with swelling both legs	171
37	AD Andhoni Raj	Fracture right radius	172
38	Pendu vikki @ Viknesh	Fracture M3 with right radius	173
39	Jamaluddin	Fracture at BB right forearm	174
40	Rasaiya	Fracture right subtrochanter	175
41	Vinathraj	Fracture right hand	176
42	Sathish @ S. Kumar	Fracture right forearm	177
43	Muniyan	Fracture right forearm	178
44	Moorthi @ Moosa	Fracture BB right forearm	179
45	Sathish Kumar	Fracture BB D3 right forearm	180
46	Rajesh	Fracture proximal filling right toe	181
47	Kuppa @ Kuppusamy	Fracture over right leg	182
48	Ranjith Kumar	Fracture with BB right forearm	183
49	Oova @ Vetrivel	Fracture right forearm	184
50	Manikandan	Fracture right forearm	185
51	Shanmugam	Fracture right hand	186
52	Palvadi Murugan	Fracture left thumb & with 2 nd distal filling	187
53	Prabhakaran @ Appu	Fracture with right forearm	188
54	Janaki raman @ Mani	Fracture with Right forearm right radius	189
55	Thirunavukkarsu	Fracture on right radius	190
56	Rajesh @ Sankili Rajesh	Fracture left shift of valua	191
57	Ramapwan Suresh	Fracture on left forearm	192
58	Rajesh	Fracture on right forearm and legs	193



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S. No.	Name	Injury	Page No.
59	Victor	Fracture over BB right forearm	194
60	Sadtham Hussain	Fracture right forearm	195
61	Rayasudeen	Fracture right forearm	196
62	Prabhakaran	Fracture right forearm	197
63	Suresh @ Sacchi	Fracture isolated right radius	198
64	Anand	Fracture BB left forearm	199
65	Santosh Kumar	Fracture at right forearm	200
66	Mohd. Ismail	Fracture BB Right forearm	201
67	Kannat	Fracture of forearm	202
68	Pascal Pasha	Fracture of forearm & right tibia	203
69	Karthik	Fracture of BB right forearm	204
70	Baharatham	Fracture of left leg	205
71	Dinesh	Fracture of left leg	206
72	Shivraman	Fracture of left hand	207
73	Pharrib	Fracture 1 st metacarpal and left hand	208
74	Vellai Prakash	Fracture of right Ulna	209
75	Chella	Fracture of BB left forearm	210
76	Kishore Kumar	Fracture of BB left leg and fracture of BB right forearm	211
77	City Babu	Fracture of both forearms	212
78	Jayakumar	Fracture and dislocation of left great toe	213
79	Kamal raj	Fracture of right forearm	214
80	Dinesh kumar	Fracture of left forearm	215
81	Surya raja	Fracture of BB right forearm	216



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S. No.	Name	Injury	Page No.
82	<i>Raja @ R @ Raja Bai</i>	<i>Fracture of BB right forearm</i>	<i>217</i>
83	<i>Pradeep Kulli</i>	<i>Fracture of right forearm</i>	<i>218</i>
84	<i>Shiva</i>	<i>Fracture of right radius & wrist joint dislocation</i>	<i>219</i>
85	<i>Netaji</i>	<i>Fracture of BB left forearm</i>	<i>220</i>
86	<i>Moses Sharak</i>	<i>Fracture of right forearm</i>	<i>221</i>
87	<i>Ahishek</i>	<i>Fracture in left leg</i>	<i>222</i>
88	<i>Prakash</i>	<i>Fracture of H3 radius left forearm</i>	<i>223</i>
89	<i>Michael</i>	<i>Fracture of shaft left radius</i>	<i>224</i>
90	<i>Ganesh</i>	<i>Fracture of middle finger & proximal phalanx of left hand</i>	<i>225</i>
91	<i>Sudhardran</i>	<i>Fracture PPX base of left index finger</i>	<i>226</i>

The Investigation Division has given its findings, conclusion and recommendations to the Commission/first respondent in the aforesaid report.

17. The proceedings of the Commission/first respondent dated 30.08.2019 is enclosed as Annexure R7 in the typed set of papers filed by the Commission/first respondent. In the said proceedings, the Commission/first respondent considered the report of the Investigation Division and directed as follows:

...The Commission got the matter examined



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and analyzed through its Investigation Division. The Investigation Division of the Commission also conducted a spot inquiry in order to verify the facts and allegations in the complaint and to find out truth in the matter.

The spot inquiry by the Investigation Team found holes in the story put forth by the State Police. It was found that GD entries regarding the movement of Police to arrest Sundaravelu, his arrest and accidental fall of Sundaravelu, his movement to the hospital or to the jail were not made. At the time of his arrest, no injury was found on the body of the complainant. However, after the arrest when he was taken to doctor at Chrompet Hospital for examination on 13.1.2017 – the day of arrest, the doctor found swelling on both the knees and advised orthopedic examination. But the police did not take him for any such examination. Sundaravelu was produced before the concerned Magistrate, who allegedly ignore the complainant's version of custodial torture and remanded him to police custody. When the police took him to the Central Jail, Puzhal, the Jail Authorities refused to



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accept Sundaravelu as he was having injuries and directed to re-examine him in the Royapettah Govt. Hospital. The medical treatment at Royapettah Hospital dated 13-14/1.2017 reveals fracture on both the knees of Sundaravelu. He was then again taken to the Central Jail, Puzhal on the night of 13/14.1.2017 where he was treated and was released on bail on 5.2.2017. The Jail Doctor stated before the NHRC Investigation team that the victim, Sundaravelu was diagnosed with fracture and this type of fracture might be due to torture during police interrogation. The x-ray produced by Sundaravelu also confirms fracture on the knee.

From the above, it is crystal clear that when the complainant, Sundaravelu was arrested on 13.1.2017, he was not having any injury, but after about four hours when he was produced before the doctor at Chrompet Hospital, he was having pain and swelling over both the knees, which were later confirmed to be fracture at Royapettah Hospital on the same day. Thus, there is no iota of doubt Sundaravelu's torture



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by the police in custody to the extent that they caused fracture on both his legs.

During the spot enquiry, the Commission's Investigation Team also came to know that there are 91 other under-trial prisoners in Puzhal Central Jail with fracture on different parts of the body such as forehead, forearm, knees etc. at the time of their admission in the jail. The Investigation Team has procured the Health Screening Reports of these 91 under-trial prisoners at the time of their entry into prison. These Health Screening Reports reinforce the reasonable suspicion that the kind of torture causing fracture on the limbs of the prisoners is rampant, which is extremely worrisome to say the least.

The Commission therefore, without any hesitation, -

(a) directs issuance of notice under Section 18 of the Protection of Human Rights Act to Government of Tamil Nadu through its Chief Secretary to show cause as to why the Commission should not recommend payment of compensation of Rs.....lakhs to be paid to



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the complainant/victim Sundaravelu for the custodial torture that he was subjected to in violation of his human rights.

(b) recommends that Director General of Police, Tamil Nadu ensures that criminal case is registered against the police officials, who are alleged to have caused above custodial torture and to take necessary action as per law.

(c) directs the Director General of Police, Tamil Nadu to procure the initial Health Screening Reports of the prisoners in other Central Jails in the State of Tamil Nadu, which indicate “fracture” along with the list of such prisoners.

The matter will be taken up at the CAMP SITTING/OPEN HEARING of the Commission at Chennai on 12th September, 2019 and the Director General of Police is directed to remain present along with the information sought as above.

The Chief Secretary and the Director General of Police, Tamil Nadu shall be present along with the above reports.

18. The first respondent, vide letter dated 05.09.2019, had forwarded



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a proceeding to the Director General of Police and requested for an additional/complete report for the commission's consideration during the camp sitting at Chennai.

19. The Commission/first respondent vide proceedings dated 05.09.2019 had given three directions:

a) Directing issuance of notice under Section 18 of the Protection of Human Rights Act to the Government of Tamil Nadu through its Chief Secretary, to show cause, as to why the Commission should not recommend payment of compensation of Rs.3 lakhs to the complainant/victim Sundaravelu for being subjected to custodial torture that resulted in human rights violations.

b) Recommends that Director General of Police, Tamil Nadu to ensure that criminal case is registered against the Police Officials, who are alleged to have caused the above custodial torture that he was subjected to in violation of human rights.

c) Direct the Director General of Police, Tamil Nadu to procure the initial Health Screening Reports of the prisoners in other Central Jails in the State of Tamil Nadu, which indicate 'fracture' along with the list of such



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prisoners.

20. On 12.09.2019, during camp sitting/Open hearing, the Commission/first respondent recommended for payment of compensation of Rs.3 lakhs to the complainant. According to the directions of the Commission/first respondent, the Government passed G.O.(D)No.1057 Home (Citizenship-II) Department dated 15.09.2020. Challenging the proceedings dated 05.09.2019 and the Government Order dated 15.09.2020, the present writ petitions are filed.

21. It is also seen from the proceedings dated 08.01.2020 that the Chief Secretary, Government of Tamil Nadu, and the Director General of Police, Tamil Nadu were directed to appear before the Commission for submission of proof of compensation paid to the complainant. The aforesaid proceedings resulted in the issuance of consequential orders of Respondents 9 to 11 on payment of compensation and recovery of the same from the petitioners.

22. Learned counsel for the petitioners contended that at no point in time, the petitioners were issued a show cause notice by the



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Commission/first respondent or by the Government. The next contention is that the enquiry report of the Investigation Division was not furnished to the petitioners enabling them to make their objection with regard to veracity of the findings, conclusion and recommendations. The Commission/first respondent and the Government have not provided an opportunity to the petitioners to submit their explanation or an opportunity to be heard before passing orders for payment of compensation of Rs.3 lakhs to the complainant and recovery of the same from the petitioners.

23. The petitioners had no knowledge about the proceedings of the first respondent. According to the petitioners, they were in shock & surprise to see the Government Order in G.O.(D)No.1057 Home (Citizenship-II) Department dated 15.09.2020 issued pursuant to the recommendation of the Commission/first respondent. The petitioners came to know about the entire proceedings only when the aforesaid Government Order was passed which came as a sudden and an unexpected turn of events.

24. Learned counsel appearing for the first respondent submitted



that the Commission has followed all the procedures at the time of enquiry and relied upon Section 18 of the Protection of Human Rights Act, 1993.

For better understanding, Section 18 is extracted hereunder:

18.Steps during and after inquiry.-

The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

25. The learned counsel for the first respondent submitted that the



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Commission/first respondent has jurisdiction to conduct an enquiry as contemplated as per Section 16 (b) of the Act. For better understanding, Section 16 (b) is extracted hereunder:

16. Persons likely to be prejudicially affected to be heard.-

...

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

26. It is pertinent to note the veracity of the complaint given by the complainant. The complainant stated that he was subjected to torture at the instance of a false complaint given by the said Ilayaraja. However, the complainant had not produced a semblance of material to show that he was harassed by the petitioners.

27. A plain reading of Section 16 (b) would clearly show that in the



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opinion of the Commission, if a person is likely to be prejudicially affected when a finding is made against him, then the first respondent has to issue a notice or a show cause notice to the concerned person asking for a reply on the allegations made against the said person.

28. Section 16 (b) is a mandatory provision for the Commission/first respondent to hold an enquiry. Before concluding the enquiry, it is incumbent on the first respondent to adhere to the procedures. While we concur with the powers of the Commission/first respondent in holding an enquiry as per Section 18, we also hold that any violation of Section 16(b) which would affect the reputation of a person against whom allegations are made is not only a violation of Section 16(b) but also a violation of principles of natural justice.

29. It is pertinent to note that the National Human Rights Commission had never issued any summons to the writ petitioners. The Commission/first respondent has made recommendation based on the enquiry report of the Investigation Division. The said enquiry report was not furnished to the petitioners before making the recommendation to the



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30. The typed set filed by the first respondent, though running to several pages with several proceedings, lacks material suggesting that the Investigation Division at the instance of the Commission/first respondent has followed necessary procedures in conducting the enquiry. There is no evidence to show that the petitioners were properly examined, allowed to mark documents and cross examine the witnesses. In the absence of any material produced before this Court to substantiate that the enquiry was conducted by following necessary procedures, this Court is unable to infer anything in concurrence with the findings rendered by the Commission/first respondent.

31. In violation of statutory provisions and principles of natural justice, the Commission/first respondent has made the recommendation for payment of compensation and the third respondent has passed an order for payment of compensation to the complainant. As a consequential order, the respondents 9 to 11 have passed an order to recover a sum of Rs.1,50,000/- from the petitioners, respectively.



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32. The Commission/first respondent ought to have considered the fact that the allegations made against the petitioners are serious in nature and there could be no orders passed behind the back of the petitioners. If, as contemplated by the statute, a show cause notice was issued to the petitioners, it would have accorded an opportunity to defend their case before the Commission/first respondent.

33. Conducting a roving enquiry without an opportunity to the persons against whom the recommendations are made would only show that the first respondent had flouted the principles of natural justice and not furnishing the enquiry report on the basis of which the recommendations were made, has resulted in serious prejudice against the petitioners.

34. The entire proceedings is vitiated as per the dictum of the Hon'ble Supreme Court in *Union of India and Others vs. Mohd. Ramzan Khan* reported in **(1991) 1 SCC 588**. The principle laid down in this case was affirmed by a Constitution Bench of the Hon'ble Supreme Court in *Managing Director, ECIL, Hyderabad vs. B. Karunakar and Others* reported in **(1993) 4 SCC 727**. The rationale behind the right to receive the



report of the enquiry officer was explained by the Hon'ble Supreme Court in the following terms:

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an



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opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity



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to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

Following the aforesaid judgments, the Hon'ble Supreme Court in ***Takano vs. Securities and Exchange Board of India and Ors.*** reported in **2022 8 SCC 162**, held that non-furnishing of enquiry report to the delinquent is a violation of principles of natural justice.

35. Apart from the above recommendations made against the petitioners herein, the Commission/first respondent also directed the Police Department to submit initial Health Screening Report of the prisoners in other prisons of the State which indicate fracture. It is relevant to extract Annexure R14, a letter addressed to the Additional Registrar (Law) NHRC, New Delhi, by the Director General of Police, Chennai, dated 31.07.2020.

...

2) As instructed a list of 329 prisoners admitted with fracture in Central Prisons were obtained from the Additional Director General of Police/Inspector General of Prisons, Chennai and a SIT (Special Investigation Team) was constituted



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comprising of 13 members to conduct an enquiry into each case of suspected fracture.

3) Hence, as per this office memorandum in even no dated: 07.10.2019 in the references 2nd cited, 13 Independent Officers in the rank of SP & DSsP were nominated in the Special Investigation Team formed under the Deputy Inspector General of Police, Social Justice & Human Rights headed by Additional Director General of Police, Social Justice & Human Rights, to enquire into the reasons for the suspected fractures of 329 convicts/prisoners in the Central Prison of Tamil Nadu.

4) In the list of 329 Prisoners with suspected fractures given for enquiry it was found that

(i) Sl.No.6 & 7 of the list of Central Prison, Trichy, who were remanded in Trichy Central Prison and later transferred to Central Prison, Salem had been repeated as Sl.No.13 & 16 in the list of Central Prison, Salem.

(ii) And in, the list of Central Prison, Salem, it was found that the names of prisoners in Sl.No.8 and 9 was repeated once again in Sl.No.29 and 30. Hence, the total number of 329 convicts/prisoners with suspected fracture to be enquired came down to



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325 (329-4=325).

5) Hence, a detailed enquiry was conducted by an independent 13 member SIT formed as per the memorandum of Director General of Police in the reference 2nd cited for 325 Remand Prisoners noticed with suspected fractures. The reports submitted by them have been categorized as shown below:

Sl. No.	Name of SIT enquiry officer & his Unit/District	Total Cases assigned	Cases without any allegations	Cases with allegations
1	Tmt.G.Nagajothi, DCP, CCB-I, Chennai City	13	13	0
2	Tr.Palaniselvam, DSP, DCB, Vellore	37	36	1
3	Tr.Rajan, DSP, IUCAW/CWC, Villupuram	30	25	5
4	Tr.R.Sundaram, DSP, DCB, Cuddalore	30	23	7
5	Tr.Saravanan, ACP, Salem City, i/c-CCB	30	30	0
6	Tr.Ravichandran, DSP DCB, Salem Dist.	28	23	5
7	Tmt.Anitha, ADSP, CWC, Coimbatore Dist.	25	12	13
8	Tr.Dinesh Kumar, DSP, ALGSC, i/c-DCB, Pudukkottai	13	6	7
9	Tr.P.Chandran, ACP, ALGSC, Trihcy City	16	12	4



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Sl. No.	Name of SIT enquiry officer & his Unit/District	Total Cases assigned	Cases without any allegations	Cases with allegations
10	Tr.R.Soundararajan, ACP, CCB, Coimbatore City	24	11	13
11	Tr.V.K.Dheepu, ACP, ALGSC, i/c-CCB, Tirunelveli City	29	29	0
12	Tr.Justin Prabhakaran ACP, CCB, Madurai City	24	18	6
13	Tr.Rajkumar, DSP CCB, Tirunelveli, Dist.	26	20	6
	TOTAL	325	258	67

The enquiry officers during the course of enquiry came across 67 allegations against the police which is furnished in column 5 of the above mentioned table by examining witnesses and documents such as the Magistrates Remand order, Accident Register in Govt., Hospitals, Prisoner's admission record, Prison Hospital record and Prisoner's present statement, when enquired.

36. Based on the enquiry reports on the said 67 cases, the Special Investigation Team has come to the conclusion that only in three cases allegations are proved, out of which, one case is pending before the Judicial Magistrate-II, Cuddalore, another before the State Human Rights



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Commission and the third case was recommended for initiation of departmental action against the erring Police Officer, by the Special Investigation Team. Based on the above recommendations of the Special Investigation Team, the Commission/first respondent recommended for payment of compensation of Rs.7.5 lakhs to the victim and the said recommendation was quashed by this Court by an order dated 14.03.2024 in W.P.No.12451 of 2023.

37. The recommendation made by the 1st respondent for payment of compensation to the complainant/12th respondent herein, is hereby set aside, and the consequential directions for initiating criminal proceedings and disciplinary proceedings against the petitioners are also set aside.

38. This Court is of the view that the following two grounds of digressions have embodied the soul of the violations of principles of natural justice and of mandatory statutory requirements, in the present case.

(i) Failure to issue show cause notice to the petitioners, has caused



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prejudice and damage to both, the persons and their service records.

(ii) Non-furnishing of enquiry report is detrimental to the writ petitioners, which also stands antithetical to the mandate of the principles laid down by the Hon'ble Supreme Court, in the precedents cited *supra*.

39. With the above observations, the Writ Petitions are allowed on the following terms:

(a) The impugned order passed by the first respondent/National Human Rights Commission (NHRC) in case No.969/22/13/2017/OC dated 05.09.2019 is quashed.

(b) The consequential Government Order in G.O. (D) No.1057 issued by Home (Citizenship II) Department/third respondent dated 15.09.2020 is also quashed.

(c) The Government shall return the compensation amount recovered from the petitioners within a period of 4 weeks.

(d) The Government is at liberty to recover the compensation amount paid to the complainant by following due process of law. No costs. Consequently, connected miscellaneous petitions are closed.



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[S.S.S.R., J] [N.S., J]
02.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
pam



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To
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- 1.The Assistant Registrar (Law)
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
- 2.The Joint Registrar (Law),
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
- 3.The Additional Chief Secretary,
Home (Citizenship-II) Department,
Government of Tamil Nadu,
Chennai-09.
- 4.The Secretary,
The Public (HR) Department,
Government of Tamil Nadu,
Chennai-09.
- 5.The Additional Chief Secretary
Home Prohibition & Excise Department,
Chennai - 09.
- 6.The Secretary,
Finance Department,
Government of Tamil Nadu,
Chennai-09.
- 7.The Accountant General,
Chennai.
- 8.The Pay and Accounts Officer,
Chennai.



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9. The Director General of Police
Police Head Quarters,
Government of Tamil Nadu,
Chennai.
10. The Commissioner of Police
Greater Chennai City,
Vepery, Chennai- 07.
11. The Joint Commissioner of Police
South Zone, Greater Chennai Police,
Chennai - 600 016.



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S.S.SUNDAR, J
and
N. SENTHILKUMAR, J

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02.08.2024