
(2009) 05 SC CK 0066

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 457 of 2005

Bani Kanta Das and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Constitution of India, 1950 — Article 32

Protection of Human Rights Act, 1993 — Section 12, 13, 17, 18, 2

Citation : (2009) 3 ACR 2709 : (2009) AIRSCW 3608 : (2009) 3 AWC 2662

Supp : (2009) 7 JT 562 : (2009) 8 SCALE 65 : (2009) 15 SCC 206 : (2009) 8

SCR 499 : (2009) 4 Supreme 708

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Manish Goswami, for Map and Co, for the Appellant; Avijit Roy, for Corporate Law Group, Vijay Panjwani, Shobha, J.B. Prakash and Puja Sharma, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—This petition under Article 32 of the Constitution of India, 1950 has been filed by Smt. Jayanti Das w/o Late Jay Ram Das and Shri Bani Kanta Das S/o Late Jay Ram Das. Challenge in the writ petition is to the legality of the order passed by the Governor of Assam, conveyed by the Secretary, Judicial Department, Government of Assam. By the said order the Governor of Assam had directed to commute the sentence of death awarded to one Rajnath Chauhan @ Ramdeo Chauhan (hereinafter referred to as the 'accused') to that of life imprisonment. The death sentence awarded to the convict by the trial Court was confirmed by the Guwahati High Court and was upheld by this Court.

2. It is basically submitted that no reason has been indicated to direct such commutation and apparently the order of commutation had its foundation on recommendations made by the National Human Rights Commission (in short the 'NHRC').

3. It is basically stated that no reason was indicated as to why the Governor decided to commute the death sentence to that of life imprisonment when the accused was guilty of heinous, abominable crime where a family was massacred, and considering the nature of crime the death sentence as awarded by the trial Court came to be confirmed by this Court and a review petition filed was dismissed. Four persons of a family were brutally murdered by the accused.

4. It is submitted that the accused has taken various dilatory steps to undo effects of this Court's judgment. It is submitted that NHRC had no role to play but it went beyond its jurisdiction to recommend purportedly on the basis of a complaint made by Prof. Ved Kumari.

5. Before we come to the merits of the case as regards requirement to record reasons, considering the important issue raised relating to the jurisdiction of the NHRC, learned Counsel for the NHRC was directed to file copy of the entire record of the case. Notice was also issued to Prof. Ved Kumari to have her say in the matter. Certain important aspects are there which need to be gone into some detail. In her affidavit Prof. Ved Kumari has stated that she was not the complainant and the proceedings were initiated suo motu by NHRC. Though the records point to the contrary, learned Counsel for the NHRC stated that actually the proceedings were initiated suo motu by NHRC. The other question which then arises is did NHRC have any jurisdiction to make recommendation in the manner done? To substantiate her stand that the proceedings were initiated suo motu, Prof. Ved Kumari has annexed to her affidavit a copy of the Article "Has child been executed in India" and copies of certain correspondences. One of them is a letter dated 20.9.2000. The same reads as follows:

National Human Rights Commission Sardar Patel Bhawan, Sansad Marg, New Delhi-110001

20.9.2000

M.L. Aneja Joint Registrar (Law) Dr. Ved Kumari G3/47 Model Town 3rd Stop, Opp. Chhatrasal Stadium, New Delhi.

Madam,

Apropos my telephonic talk with you regarding handing over of copy of the record of the Sessions Court in Criminal Appeal No. 4 of 2000 decided by the Supreme Court on 31.7.2000- Ram Deo Chauhan alias Raj Nath Chauhan v. State of Assam, kindly hand over the same to the bearer of this letter.

As already informed you on telephone that the matter will be listed before the Full Commission on Monday the 25.9.2000 at 3.00 p.m. I am directly to request you to kindly appear before the Commission in the Conference Room at Sardar Patel Bhawan on the date and time mentioned above for further consideration of the matter.

(M.L. Aneja)

6. Strangely this letter does not form part of copy of the records submitted by NHRC. Though Prof. Ved Kumari's stand was that the proceedings before NHRC were initiated suo motu, the verification of the records points to the contrary. In Form No. 1 under Regulation 12 in para 3 it has been stated that "Is it a public interest complaint". The name and address of the complainant is that of Prof. Ved Kumari. The name of the "victim" is stated to be Ramdeo Chauhan. In the order dated 25.9.2000 the name of the complainant is stated to be Prof. Ved Kumari. In the said order there is reference that on 20.9.2000 a direction was given by the Chairperson to list the matter. This direction does not form part of the record. In the proceeding dated 27.9.2000 it is noted by the NHRC that mercy petition is pending consideration of the Government of Assam. Prof. Ved Kumari stated that would also get in touch with an advocate and steps would be taken to move this Court also through a lawyer in the matter. In the order dated 16.10.2000 the name of the complainant is stated to be that of Prof. Ved Kumari. In the letter addressed to Dr. Ved Kumari dated 20th October, 2000 the subject is "Your complaint dated 20.9.2000". Similarly, in the order dated 27.11.2000 the name of the complainant is stated to be Dr. Ved Kumari. Similar is the position in the letter dated 16.5.2001 where it is clearly stated regarding complaint of Dr. Ved Kumari. Then comes the order of 21.5.2001 where it refers to the complaint made by Dr. Ved Kumari and the NHRC referred to the order passed by this Court in review petition and ultimately made the following recommendations:

Accordingly this Commission makes the above recommendation in terms of the opinion of Thomas J for due consideration by the Governor of Assam and/or the President of India, as the case may be in the event of a mercy petition being filed for the purpose.

7. The basic question raised is whether NHRC could have entertained any complaint either suo motu or on the basis of an application filed by any person in respect of a judicial order. In the documents filed before this Court by NHRC as noted above the name of victim has been stated and cause of action is stated to be the date of judgment of this Court i.e. 31.7.2000. The Protection of Human Rights Act, 1993 (in short the 'Act') was enacted for constitution of NHRC for better protection of human rights and for matters connected therewith or incidental thereto. The expression 'human rights' is defined in Section 2(d) which reads as follows:

(d) 'human rights' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

8. Section 17 in Chapter IV deals with inquiry into complaints regarding violation of human rights. Obviously, there have to be atleast two persons individual. One whose human rights have been violated and the other who has violated the human rights. It was pointedly asked to learned Counsel for the NHRC who has violated the human rights of the accused. An evasive reply was given that when any action violated the human rights, there can be violation of the human rights.

This situation is not conceivable in law. Since the date of cause of action was indicated to be the date of this Court's judgment, it was pointedly asked to learned Counsel for the NHRC as to whether the Judges of the Supreme Court or the court itself had violated the human rights. Here again an evasive reply was given stating that u/s 13 i.e. "powers relating to inquiries" there is power of requisitioning any public record or copy thereof from any court or office. This is not the same thing saying that by an order of this Court there has been violation of human rights. Such a position can never be countenanced.

9. Learned Counsel for the NHRC also referred to Section 18(a) dealing with steps during and after inquiry.

10. Specific stress is led on the recommendation to the concerned government or authority. That clause has absolutely no application to a case of the present nature.

11. Reference was also made to Section 12 (Functions of the Commission); more particularly clauses (a) and (b). The provisions do not provide any answer to the questions involved.

12. Clause (a) authorizes action to be taken on the basis of a direction or any order of any Court. In the instant case there was no such direction. Clause (b) permits intervention in any proceeding "with approval of such Court". That also is not the situation here.

13. Learned Counsel for the NHRC also referred to Section 12(j) of the Act contending the Commission shall perform all or any of the functions i.e. such other functions as it may consider necessary for the protection of human rights. According to learned Counsel since there were certain observations by one of the Hon'ble Judges in the review petition, therefore the Commission had the rights to do it. Here again, the submission is without substance because the proceedings itself before the NHRC were without sanction of law.

14. Therefore, the NHRC proceedings were not in line with the procedure prescribed under the Act. That being so, the recommendations, if any, by the NHRC are non est.

15. The State of Assam has indicated that not only the recommendations of NHRC but several other aspects have been take note of. But the order directing commutation does not indicate any reason. This is contrary to what has been stated by this Court in *Epuru Sudhakar and Another Vs. Govt. of A.P. and Others*, . In para 38 it was observed as follows:

38. The same obviously means that the affected party need not be given the reasons. The question whether reasons can or cannot be disclosed to the Court when the same is challenged was not the subject-matter of consideration. In any event, the absence of any obligation to convey the reasons does not mean that there should not be legitimate or relevant reasons for passing the order.

16. Apparently, in the instant case that has not been done. We, therefore, set aside the impugned order of commutation of death sentence to life imprisonment and direct reconsideration of the application filed by the accused for commutation of sentence.

17. The writ petition is allowed to the aforesaid extent.