

(2002) 02 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule (PIL) No. 199 of 1998

Bimal Kumar Chanda

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Protection of Human Rights Act, 1993 — Section 21, 3, 3(5), 30

Citation : (2002) 1 GLT 510

Hon'ble Judges : B.B. Deb, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : D.K. Biswas and A.L. Saha, for the Appellant; U.B. Saha, Sr. GA, T.D. Majumdar and S. Chakraborty, for the Respondent

Judgement

A.K. Patnaik, J.—This is a public interest litigation filed under Article 226 of the Constitution of India by the petitioner.

2. The petitioner, Sri Bimal Kumar Chanda, had been working as Principal in-charge of the Tripura Government Law College, Agartala, and after his superannuation from government service he is working for advancing the social interest. He has stated in the writ petition that in recent years, the peace in the State of Tripura has been disturbed, as many as 19 police station areas have been declared disturbed areas and are under the Armed Forces (Special Power) Act, 1958, 111 persons have been killed, 84 persons have been kidnapped, and since 1993 till 1997, 92 police personnel and security personnel have been killed by the extremists. But the State Government of Tripura has not established State Human Rights Commission. The petitioner has, therefore, prayed for an appropriate writ or direction to the State of Tripura to establish State Human Rights Commission for the State of Tripura within a specific period.

3. Mr. A.L. Sana, learned counsel for the petitioner, submitted that the preamble of the Protection of Human Rights Act, 1993, (hereinafter referred to as "the Act, 1993"), makes it clear that the Act, 1993, has been made for the Constitution of a National Human Rights Commission, State Human Rights Commissions in

States and Human Rights Courts for better protection of human rights and for matter connected therewith or incidental thereto. He referred to Section 3 of the Act, 1993, to show that the provision has been made in Sub-section (5) thereof for establishing offices of the National Human Rights Commission at places in India other than in Delhi with the previous approval of the Central Government. He submitted that despite the said provision no such office of the National Human Rights Commission has been established in the State of Tripura as a result, people in Tripura who suffer from human rights violation are not in a position to lodge their complaints easily and expeditiously. Nor is the investigation to the complaints against violation of human rights in the State of Tripura by the National Human Rights Commission in Delhi easy and quick. Considering these facts, according to Mr. Sana, a direction should be given to the State Government to constitute State Human Rights Commission u/s 21 of the Act, 1993. He produced before the court extracts from the Annual Report of the National Human Rights Commission for the year 1998-99 to show that even the National Human Rights Commission has emphasised the need for setting up of State Human Rights Commissions by different State Governments.

4. In reply to the aforesaid submission of the learned counsel for the petitioner, Mr. U.B. Sana learned Senior Government Advocate, Tripura, assisted by Mr. T.D. Mazumdar and Mr. S. Chakraborty, relying on the averments in the affidavit-in-opposition filed on behalf of respondents-1 and 2, submitted that the word "may" in Section 21 of the Act, 1993, indicates that a discretion has been vested in the State Government to constitute or not to constitute a State Human Rights Commission. He pointed out that in contrast to the said word "may", the word "shall" has been used in Section 3 of the Act, 1993, and it has been made mandatory for the Central Government to constitute the National Human Rights Commission. According to Mr. Sana, since the Legislature in one and the same Act has used two different expressions, viz., "shall" and "may", the court while considering the provisions of the Act must construe the said two words differently. Thus, the word "may" in Section 21 of the Act, 1993, would mean that the State Government may or may not constitute a State Human Rights Commission. Mr. Saha, learned State counsel, referring to the averments in para-6 of the affidavit-in-opposition, submitted that this discretion of the State Government whether to constitute or not to constitute a State Human Rights Commission will depend upon various exigencies, such as, number of cases of human rights violation in the State and other measures adopted by the State Government for protecting the human rights. He referred to the statements in para-6 of the affidavit-in-opposition and submitted that in Tripura the alleged violation of human rights is very rare and as soon as an incident of violation of human rights occurs, the State machinery takes appropriate prompt action in the matter. Mr. Saha also submitted relying on the averments in para-7 of the affidavit-in-opposition that for setting up of Human Rights Courts the State Government had already requested the Registrar of this court on 25.11.1994 that the Court of Sessions of each district of the State may be specified as

Human Rights Court, but no notification has yet been issued by the High Court.

5. It appears from the language used in Section 21 of the Act, 1993 as compared to that used in Section 3 of the Act, 1993, that setting up of State Human Rights Commission in every State is not a must. But the National Human Rights Commission in its Annual Report for 1998-99 has appealed to different State Governments to set up State Human Rights Commission, Paragraphs 15.8 and 15.9 of the said Annual Report of the National Human Rights Commission-1998-99 which are relevant for this case are quoted hereinbelow:

"15.8. The Commission believes that, in considering whether or not to set up State Human Rights Commissions, the concerned Governments should be guided by the view that individuals in a democracy should be helped to realize in full measure the rights conferred on them by the Constitution and have speedy recourse to justice when their rights are violated. The Commission therefore once again urges State Governments to establish Human Rights Commissions where they do not yet exist. For its part, the Commission will render its fullest support to such institutions once they are established. The Commission intends to pursue this matter with the State Governments.

It also recommends, however, that this issue received the attention of the Central Government and the leadership of political parties at the highest level.

15.9. The Chief Minister of Meghalaya has informed Commission that instances of violations in his State have been very few. He has also referred to the serious financial constraints being faced by small States in the North Eastern region and stated that the additional financial burden to set up State Human Rights Commissions is more than what such States can bear individually. He has therefore, concluded that it is not viable to set up a separate Human Rights Commission for each State alone. Instead, he had requested that the possibility be examined of setting up a joint Human Rights Commission for all the States of North-East India, including Assam, on the pattern of the Gauhati High Court. The Chairperson has requested the Chief Minister, Meghalaya to explore the possibility of utilising the services of the Chairperson of the Assam Human Rights Commission, as has been done in the case of the Manipur Human Rights Commission."

From the above-quoted paragraphs of the Annual Report-1993-99, it is clear that according to the National Human Rights Commission, the State Governments should be guided by the view that individuals in a democracy should be helped to realize in full measure the rights conferred on them by the Constitution and have speedy recourse to justice when their rights are violated. In the aforesaid paragraphs, the National Human Rights Commission has also taken note of the serious financial constraints being faced by the small States in the North-Eastern Region in setting up State Human Rights Commissions which obviously would entail an additional financial burden to the States. Since the State Government of Tripura has also taken a stand in its affidavit-in-opposition that it has got

financial constraints in setting up a State Human Rights Commission besides the stand that the complaints of human rights violation in the State are few, we do not think that an appropriate case has been made out for issuing a direction on the State to set up State Human Rights Commission u/s 21 of the Act, 1993. But the State Government should keep in mind the aforesaid recommendations of the National Human Rights Commission and take a decision as to whether or not it should set up a State Human Rights Commission for the purpose of ensuring speedy recourse to justice where human rights are violated in the State.

6. As indicated in the writ petition, some areas in the State of Tripura have been brought under the Armed Force (Special Powers) Act, 1959, and in these areas the Armed Force are operating for maintaining law and order and for preventing the violent activities of insurgents. There are thus likely to be some complaints of human rights violation in these areas and if persons who suffer such violation of human rights are made to lodge their complaints to the headquarters of the National Human Rights Commission in Delhi and await investigation by the Agency of the National Human Rights Commission in Delhi, speedy recourse to justice in case of human rights violation may not be achieved. For this reason we direct the respondent No. 3 to take up the question of establishing an office of the National Human Rights Commission in any place in the State of Tripura in accordance with the provision of Sub-section (5) of Section 3 of the Act, 1993. But we make it clear that as to whether or not such an office of the National Human Rights Commission in the State of Tripura should be established is the matter which is left open to be decided by the National Human Rights Commission and the Central Government after taking into consideration all relevant factors.

7. Further, Section 30 of the Act, 1993, provides that for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. It appears from the affidavit-in-opposition that the State Government had made a request to the Registrar of Gauhati High Court as far back as on 25.11.1994 to set up Human Rights Courts in accordance with Section 30 of the Act, 1993, but no notification has yet been issued by the High Court". We are of the considered opinion that the State Government should take up this matter for setting up of Human Rights Court in the State of Tripura in accordance with Section 30 of the Act, 1993, afresh. Accordingly, we direct that respondent No. 1. the Chief Secretary to the Government of Tripura will send a request to the Chief Justice of the Gauhati High Court along with a true copy of this judgment for specifying for each district the Court of Sessions as Human Rights Courts in accordance with Section 30 of the Act, 1993. Steps for complying with the directions to respondent-1 and respondent-3 in this judgment be initiated within three months from the date of receipt of true copy of this judgment. True copy of this judgment be sent by the Registrar, Gauhati High Court, Agartala Bench to the Secretary to the Government of India, Ministry of

Finance, Department of Expenditure, New Delhi, and the Chief Secretary to the Government of Tripurs, Agartala, forthwith.

8. With the aforesaid observations and directions, the writ petition stands disposed of. However, we make no order as to costs.