
(2008) 04 MAD CK 0191

In the Madras High Court

Case No : Writ Petition No. 716 of 2007 and M.P. No's. 1, 2, 3 and 4 of 2007

Coimbatore Bar Association

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2008) 04 MAD CK 0191

Hon'ble Judges : A.P. Shah, C.J.;Prabha Sridevan, J

Bench : Division Bench

Advocate : G. Masilamani, AG, assisted by, Raja Kalifulla, GP and V.R. Thangavelu, GA, for the Appellant; A.S. Vijayaraghavan, for R5 and N.A. Ravindran, for R6, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, C.J.—The first Petitioner is the Coimbatore Bar Association. The second Petitioner is a practising Advocate and a member of the first Petitioner Association. The Petitioners have moved this writ petition seeking for a mandamus directing the State of Tamil Nadu to pay compensation of Rs. 10 lakhs to the second Petitioner for the insult and assault and for the violation of human rights committed by Respondents 5 to 7 along with other police officials and to take appropriate action against the erring officials.

2. Briefly stated, the facts of the case are as follows:

On 14.12.2006 at about 9.20 p.m. the second Petitioner had entered the town bus stand to board a bus to reach his home. He and Miss Sathyabama, the fifth Respondent (Police Constable) dashed against each other. This resulted in a wordy altercation. According to the second Petitioner, he was abused and beaten up by the fifth Respondent and about four constables who had gathered there, pushed him down and kicked several times and dragged him to the nearby All Women Police Station (AWPS) and to B.3 Police Station few feet away and beaten

up again, even after he had revealed his identity as an Advocate. The police also refused to take up his complaint. Later the second Petitioner was taken to the Government Hospital only at 1.45 A.M. the following day and as he was not given proper treatment and there was also an attempt to falsely issue a Drunkenness Certificate (DC) as though he was drunk. The second Petitioner went to Kovai Medical Centre where he had earlier undertaken treatment and had undergone surgery for his brain tumor. According to the second Petitioner, as a result of this surgery, he has lost his vision in his right eye as well as hearing by his left ear. He had also suffered facial deformity due to paralysis. When he went to Kovai Medical Centre, after this incident a series of investigations was done, a CT scan was also taken, from which it was found that the second Petitioner had received multiple bruises and there was a tear in his left ear because of the assault. It is also alleged that in order to suit their convenience, the police also registered a complaint against the second Petitioner, as allegedly given by Sathyabama, as if he had outraged her modesty. The second Petitioner has alleged that because of the assault, he has been put to severe hardship, especially the artificial instrument implanted in the brain during the earlier surgery was also affected. He suffers severe pain in the spinal region due to the attack and is unable to sit continuously for more than 15 minutes. Even after discharge from the hospital, he was required to take treatment continuously and could not attend to his work for nearly three months. More than Rs. 1 lakh has been spent for his medical treatment so far because of this incident. In these circumstances, the second Petitioner has claimed compensation for a sum of Rs. 10 lakhs.

3. On behalf of the State Government, a counter affidavit has been filed by the Commissioner of Police, Coimbatore City and separate counter affidavits have been filed by Respondents 5, 6 and 7. According to the version of the Respondents, the second Petitioner was never beaten up by the police either at the bus stand or in the police station. They had not refused to receive any complaint and the giving of the complaint was delayed by the advocates themselves and at the hospital, drunkenness certificate had been written out by mistake by the doctors and was not at all issued. A very small incident had been blown out of proportion immediately after the entry of the Advocates Association and they indulged in provocative conduct and the Respondents were put to great disadvantage in not having an Association for themselves. The injuries sustained by the second Petitioner were allegedly due to the intervention of the public themselves after seeing his misbehaviour with a uniformed lady police officer. According to the Respondents, after the second Petitioner dashed against the woman constable, he stared against her and when questioned, he talked in an offensive tone and pulled her uniform after laying his hands on her left chest. The public who had gathered there were infuriated by his conduct and pushed the advocate aside. The claim for compensation was denied by the Respondents.

4. By order, dated 07.6.2007, this Court appointed K.P. Sivasubramaniam, J. (retired) as Commissioner to enquire into the alleged incident of assault on the second Petitioner on 14.5.2006. The Commissioner conducted hearings at

Coimbatore. On the side of the writ Petitioners, four witnesses were examined, while on the side of the Respondents, 16 witnesses were examined. Dr. K. Kesavamurthy attached to Kovai Medical Centre and Dr. Saravana Kumar attached to Government Coimbatore Medical College Hospital were examined as Commission Witnesses. Finally, the Commissioner submitted his report, dated 10.10.2007. The Commissioner has recorded a categorical finding that the second Petitioner was mercilessly beaten by the 5th Respondent and by other constables, who were four in number, who converged on him and beaten him up. The second Petitioner is not a normal, but a sickly person and the fifth Respondent ought to have shown some compassion to him when he dashed against her, even though her initial anger may be justified. In regard to the incident at the bus stand, the learned Commissioner observed in his report as follows:

21. In addition to the failure on the part of the Respondents to produce the duty roster of the striking force and the non-examination of Head Constable Palanisamy, certain glaring contradictions as between the counter affidavit of the 5th Respondent before the High Court and her proof affidavit before the enquiry, result in discrediting the Respondent's version of the incident. While Ijeing cross examined (R.W.14) she had admitted of several such contradictions. To mention a few:

(1) While in the affidavit she has stated that after wordy altercation P.W. 1 had put his right hand on her left breast, in the statement before this enquiry she has stated that her shirt on her left side-chest was pulled (2) In the affidavit she has not mentioned about both of them having been separated by the members of the public (3) In the affidavit she has not mentioned about P.W. I having abused and pushed down 7th Respondent and also beating him up. (4) In the affidavit she has not mentioned about taking the 7th Respondent with her to assist her in giving a complaint at the Police Station. (5) before this enquiry she admits that the facts stated in para No. 6 of the counter affidavit such as leaving for the home at 10. p.m. Etc. were not correct. (6) Non mention of herself being directed to go to B-4 Police Station to lodge the complaint in the affidavit before the High Court. (7) Non-mention of injuries sustained by P.W. 1.

22. Regarding all these contradictions and omissions, in the cross examination she would state that there are certain mistakes in her counter affidavit filed before the High Court and that she observed those mistakes only later. She admits that she can read and write English and she signed the counter affidavit only after having read over the same and understood the contents. But in the reexamination she would try to state that she is not very much conversant in English. Again in further cross examination, she would state that the counter affidavit filed by her before the High Court does not contain wrong particulars. Such prevaricating statement of facts cannot be appreciated. In fact as pointed out earlier all parties were agreed that the affidavits filed before the High Court shall be treated as pleadings before this enquiry. Even otherwise, parties cannot

say that in this enquiry their affidavits before the High Court should be ignored.

23. Such is the nature of the evidence given by R.W. 14 (5th Respondent) who is the most crucial and direct witness on the side of Respondents regarding the incident at the bus stop. Added to the untrustworthy evidence of R.W.1, 2 and 3, it is obvious that the version on the side of the Respondents that P.W. 1 attempted to outrage her modesty by laying his hands on her left breast, indulging in violent and abusive behaviour etc, cannot be believed. The attempt to explain the injuries sustained by P.W. 1 as though he might have sustained injuries due to the reaction by the members of public and that he had been pushed down, cannot be sustained. Non production of duty roster of the striking force and non examination of Head Constable Palanisamy probablises P.W. 1's version that the personnel belonging to the striking force, four in number, were available and had converged on him and had beaten him up.

5. The Commissioner also recorded a finding that after the incident at the Bus stop, the second Petitioner was dragged to the All Women Police Station, which was about 100 feet away and there he was again beaten up by Respondents Nos. 5, 6 & 7. The Commissioner noted that though the injuries received by the second Petitioner are characterised as simple injuries, it is clear that he has sustained multiple bruises and abrasions near his left ear, right of the neck, over the right forearm, bruises on the left mid back and over the nape of the neck on the left side and around the orbital region. In short there were multiple injuries positively suggesting beatings by several persons or by a single person repeatedly and not in the manner as attributed by the police, namely, that he was pushed down by the angry public and that is how he should have sustained injuries. The Commissioner also found that the records at the police station were manipulated with a view to show that the fifth Respondent's complaint was given earlier to second Petitioner's complaint and also to make it appear that they did not refuse to receive the complaint. The Commissioner concluded that the version of the police that the second Petitioner's complaint was recorded and registered only at B-4 Police Station is totally false. The Commissioner also found that a very unethical and nasty attempt had been made by the police to issue a certificate against the second Petitioner as if he was drunk which was averted at the last minute only due to the vigilance on the part of the advocates. The Commissioner gave summary of conclusions in para 106 of the report as follows:

(1) Though it is true that the incident was triggered off by P.W. 1 dashing against R.5 due to his low vision, there is no justification for the behaviour of the Police personnel in having beaten him mercilessly, especially R5, R6 and R7.

(2) The police ought not to have indulged in producing false witnesses to defend themselves.

(3) The Police ought not to have indulged in unethical practice of refusing to register the complaint as soon as it was lodged by P.W. 1., manipulate the records to make it appear as though the complaint by P.W. 1 was given very late

and only after R5's complaint, attempt to obtain a false drunkenness certificate against P.W. 1, delay in despatch of complaints to the Court and most important, impute false allegations as though P.W. 1 was an immoral person and tried to violate the modesty of R.5.

(4) As far as the quantum of compensation is concerned, it is for the Hon'ble Court to fix the appropriate amount. P.W. 1 has undoubtedly suffered great humiliation due to the incident as well as false accusation against him. He has also suffered physical assault requiring surgery and adding to his frail health conditions.

6. We have heard the learned Advocate General and the learned Counsel appearing for Respondents 5, 6 and 7 with regard to the objections raised by the Commissioner in his report.

7. We are inclined to accept the findings of the Commissioner about the incident at the bus stand and the alleged assault at the police station. It is clearly seen from the records that the second Petitioner is not a normal or healthy person and that he suffers from certain disabilities. Instead of leaving things at that, the fifth Respondent assumed an aggressive role and then the seventh Respondent and few other Constables entered the scene and thrashed him repeatedly at the bus stand and thereafter at the police station.

8. We are also satisfied that the story set up by the fifth Respondent that the second Petitioner had outraged her modesty by laying his hands on her chest is completely false and imaginary. In fact, as recorded by the Commissioner, it was her impulsive and uncontrolled behaviour which has landed her in problems and when other police personnel joined the fray, there was no place for human feelings and it became one way traffic. Though it was argued before us that there is no adverse material against the sixth Respondent, the learned Commissioner has clearly observed that there is no reason why the second Petitioner should have particularly chosen to implicate the sixth Respondent. There were other police personnel in All Women Police Station and B-3 Police Station, such as R.W.9, R.W. 10 and R.W. 11 against whom the second Petitioner has not made any accusation of assault. Both of them are not known to each other and no enmity is suggested so as to unnecessarily and falsely implicate the sixth Respondent. The Commissioner has further highlighted the manner in which the sixth Respondent tried to extricate herself by producing unconvincing witnesses, which only suggests that she has something to hide or to mislead the enquiry. While summing up the learned Commissioner has concluded inter alia that the second Petitioner has undoubtedly suffered great humiliation due to the incident as well as false accusation against him. He has also suffered physical assault requiring surgery and adding to his frail health condition. Once the fact of assault is established and nature and number of injuries do substantially support the version of assault on the second Petitioner, it is really not necessary to go into the role attributed to different police officers. We, therefore, have no hesitation to accept the conclusion of the learned Commissioner that the second Petitioner

has been physically assaulted by Respondents 5, 6 and 7 and that he sustained injuries as stated above.

9. In the instant case, it is an undeniable fact that as a result of the assault, the second Petitioner has sustained multiple injuries bruises, abrasions and contusions and his evidence implicating Respondents 5, 6 and 7 is found to be acceptable. Though the incident was triggered off by the second Petitioner dashing against the fifth Respondent due to his low vision, there is no justification for the behaviour of the police personnel in having beaten him mercilessly, especially Respondents 5, 6 and 7. The human rights of the second Petitioner were violated with impunity and he is entitled to be suitably and adequately compensated. The power of the Court to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of the Supreme Court in *Rudul Sah Vs. State of Bihar and Another*, ; *Sebastian M. Hongray v. Union of India* AIR 1984 SC 1026 ; *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, ; *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, and *State of Maharashtra and Others Vs. Ravikant S. Patil*, . In *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , the Supreme Court after examination of the earlier cases, clearly laid down that the award of compensation in a proceeding under Article 32 of the Constitution by the Supreme Court or under Article 226 by the High Court is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The same view was reiterated in *Consumer Education and Research center and others Vs. Union of India and others*, . In a recent judgment in *Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors.* (2002) 2 SCC 465, the Supreme Court observed where public functionaries are involved and the matter relates to violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law. In our opinion, the second Petitioner has made a strong prima facie case for award of compensation and having regard to the inhuman way in which the second Petitioner was mercilessly beaten, we feel that the ends of justice would be met, if we award Rs. 50,000/- as compensation to the second Petitioner. The second Petitioner has incurred an expenditure of more than a sum of Rs. 1,00,000/- (Rupees One lakh only) for his treatment and has also suffered mental agony. But on behalf of the Respondents 5 to 7, the learned Government Pleader pleaded for some indulgence. Therefore, we fix the compensation at a sum of Rs. 50,000/- taking into account the situation of the parties. It is needless to state that the State would be entitled to recover this amount of compensation from Respondents 5 to 7, who were found to be involved in the assault on the second Petitioner.

10. At this stage, we may also refer to the observations made by the learned Commissioner about the behavioural pattern of police personnel. The

Commissioner has observed that it is unfortunate that in our country even after 60 years of independence the Government has not taken steps to ensure that the police personnel undergo proper training to ensure cordial behaviour with the citizens. They are put in a cage with hard core criminals and thereby develop negative ethos, attitudes and hardened mental make up towards everyone they meet good or bad. Their uniform adds to the arrogance of power induced into their mind in course of time. The Commissioner has referred to the fact that in U.K. there is a periodical revision and updating of the Police Acts and the instructions thereon and much attention is devoted to make the police at home and friendly with the public and several Committees are constituted periodically to ensure proper feedback on the relationship with the public and steps to be taken to remove the thorns between the police and public and to make the police to develop a psychology to differentiate between hard core criminals and ordinary citizens.

11. The Commissioner has made the following recommendations in para 96 of his report.:

96. The Government should think of periodical courses, lectures programmes by eminent speakers like Suki Sivam, Thenkachi Swaminathan, Solomon Pappiah and other to deliver non religious lectures on human affairs. A committee consisting of eminent retired Police officers like Mr. V.R. Lakshminarayanan, Mr. K.R. Shenoy, Mr. C.L. Ramakrishnan and many such others of high standards can be constituted by the Government to go into such issues and to advise the Government accordingly. Even at the District level there are many senior and experienced retired police officers whose services can be utilised for infusing discipline and humanistic feelings among the police personnel. In fact I found that both Mr. N.K. Velu and Mr. M. Subramaniam, retired police officers who defended R6 and R7 and also Mr. K.C. Nandakumar, Assistant Commissioner now in service who defended the 5th Respondent are well equipped and sober enough to constitute a District level team of officers to provide proper counselling. The Police personnel of today deserve all sympathies as they are working under very great pressure, mental and physical strain and unless some such constructive approach is undertaken by the Department, it would soon lead to collapse of the system and it is not good for the society to alienate good relationship inter-se between the public and police.

12. The Government may consider the implementation of the suggestions made by the Commissioner and organise periodical courses and lecture programmes as recommended by the Commissioner.

13. Before we part with this judgment, it is necessary to deal with the role played by the Coimbatore Bar Association in the entire matter. It appears that as a result of the incident the Bar for a number of days indulged in road blocks inconveniencing the public, boycott of courts, paralysing the normal life and traffic. The Commissioner has observed that the issue was not with reference to the second Petitioner's performance of his professional duties and it was only a

clash between two individuals resulting in the Bar Association holding the public to ransom. The Commissioner has also noted the extreme level to which the Bar Association has gone in this case in passing a resolution that no one should appear in defence of the police personnel. The question posed to the Bar Association as to when the advocates can appear for hard core criminals and enemies of the society at large, why cannot a lady who had only reacted on somebody dashing against her be not defended by advocates and whether it was not unprofessional to refuse to render legal assistance, went unanswered by the representatives of the Bar.

The Commissioner has further observed thus:

100. It is high time that the younger members of the Bar do some introspection about involving the Association on individual matters which had reached the stage even protesting against police action even where an advocate violates traffic regulations. During last week I came across a news item in "Makkal T.V" in which members of public were interviewed (at Chennai) regarding road block and hold up of traffic by advocates. At least two or three members of the public made very scathing and unpleasant remarks about Bar members and one of them asked whether they cannot also have an association for themselves and cause inconvenience to the public. Let the members of the Bar be alive to the public opinion which is slowly building up against them and whether there is any moral or legal justification to involve their association when the issue has nothing to do with the discharge of his professional duties.

101. Time has come for the younger members of the Bar to decide as to whether their actions reflect the dignity of the profession. Who stands to lose by boycott of courts on issues which do not pertain to the discharge of advocates professional duties? I have always held the opinion that boycott of courts for whatever reason is detrimental only to the advocates and the litigants who is his pay master. If courts are boycotted, the Government and the police are happy because there will be no orders of stay or injunction or bail orders. I have also held the opinion that the only occasion when boycott would be justified is when a presiding officer behaves like a dictator and in a reprehensible or corrupt manner and would not correct himself even after due complaints to higher authorities. Even then, boycott can be only of that court and not other courts. There are various other ways of fighting for justice when a member of the Bar is involved in a clash with any other person.

102. It is certainly open to the members of the Bar to help and aid an advocate in distress in any manner. In this very case the helping hand extended by the members of the Bar to Mr. Mohammed Rafi cannot be objected to. The officer bearers can certainly take care of the situation and do all the needful. If the expectations are not fulfilled, Bar can certainly take up the matter with higher authorities or complain to the Committee which has been formed by the High Court to go into clashes between police and advocates, even in cases where the clash relates to the performance of professional duty by the advocates. In this

case it was not done. But no right thinking citizen will endorse the involvement of the association vis-a-vis an advocate as an ordinary citizen and the issue has nothing to do with performance of his professional duties, and the Association indulging in road block and boycott of courts etc.

...

104. Whatever I have said above in the context of involvement of Association is as a person who always felt proud to have been a member of a noble profession and at the same time feel sad and disturbed by the criticism of the public against the profession. Let the conscience of each member of the bar go into these issues and whether Association could be involved in matters unconnected with the discharge of professional duties of a lawyer and I would feel happy if my words have the desired effect at least on handful of members of the Bar. It is for this Hon'ble Court to deal with this issue in an appropriate manner.

The Commissioners anguish express our feelings exactly.

14. We had issued notices to the Chairman, Bar Council of Tamil Nadu and Puducherry; the Chairman, Federation of District and Subordinate Courts Bar Associations of Tamil Nadu and Puducherry at Salem; the President, Madras High Court Advocates' Association; the President Madras Bar Association; 5) the President, Women Lawyers' Association, Chennai and 6) the President, Law Association, Chennai, but we failed to get any positive response from the leaders of the Bar.

15. There are judgments of the Supreme Court that boycotts are to be avoided at any cost. Rare exception is a situation where the independence of the Bar or of the Judiciary or the rule of law is under jeopardy. But, unmindful of all these guidelines, boycotts go on. There are certain issues between the Government or Police on the one hand and the lawyers on the other, and there can be some causes for friction. But strikes are not the remedy. By going on strike, the Bar is paralysing the administration of justice and preventing justice to be rendered to the litigants and the cases which are listed on those particular days have to be simply adjourned. When there is a strike, thousands of litigants who are expecting some result to come out go home disappointed. It is, therefore, imperative that the Bar should not resort to strikes and boycotts except under very special and exceptional circumstances as laid down by the Supreme Court. The strikes and boycotts on minor or trivial issues should be avoided and the Bar should consider of availing the alternative remedy of holding talks, instead of going on prolonged strike on one account or the other. Unfortunately, in recent times, Tamil Nadu State judiciary is affected by the frequent strikes and boycotts by lawyers and their Associations. Practically, every other day, one Bar Association or the other goes on strike and on most occasions, the strikes are totally unjustified. If this trend is not stopped, the time will come when practically the Courts in the State will be paralysed by frequent strikes and boycotts.

16. We appeal to the Bar Council of Tamil Nadu and Puducherry, as well as the other Bar Associations to do some introspection to avoid the repeated strikes and boycotts on the Court. We may quote the observations of Justice J.S. Verma made during the course of Justice Shankar Prasad Bhargava Memorial Lecture:

It is necessary to refer to some disturbing recent trends which affect proper administration of justice in the country. In any orderly society, the mode of protest against any decision must be in accord with the rule of law. The recent trend of the Bar to agitate against an unpalatable decision is by resort to extrajudicial and extra-legal methods, one of which is a strike resulting in closure of Courts. Rule of law requires solution of every problem and redressal of every grievance in the manner provided by law. For proper administration of Justice, it is necessary that there should be easy access to the Courts without any hindrance. If there be any hindrance to the hearing and adjudication of causes pending in the courts by causes other than those which are natural, it is a matter of grave concern....

We are the torchbearers of the present generation. Let us handover to the next generation a brighter torch providing better illumination so that posterity does not condemn us as persons who could not rise to the occasion in the performance of our primary duty to the nation. Let us resolve to rededicate ourselves to work with full vigour to ensure continued governance of the nation by "Rule of Law" which catalyses the nation's progress by accelerating the march towards attainment of complete social justice.

Redressal for any grievance, must be only in accordance with law. This is what any lawyer will advise his client. The same advice applies when lawyers are aggrieved too. Then too, redressal must be sought only in accordance with law, not by paralyzing the legal machinery. The frustration and fury of the lawyers cannot be expressed by boycotting the Court. For by abstaining from Court, the lawyers are punishing neither the judges nor police nor the State but the defenseless innocent citizens who have engaged them and paid them their fees. We again reiterate that lawyers must hereinafter abandon this pernicious practice of boycotts, strikes and demonstration, and must discharge their duties in an exemplary manner. We hope the lawyers of this State will in future set a shining example for others to follow.

17. In the result, the petition is allowed and the following order is made:

(i) The State Government is directed to pay to the second Petitioner a compensation of Rs. 50,000/- for violation of his human rights by the police officers.

(ii) The State is at liberty to recover this amount from the erring officials.

(iii) In the present case, the Commissioner has taken special efforts to record.

the evidence of the witnesses and held as many as nine sittings and submitted a very exhaustive report. We fix the fees of the Commissioner at Rs. 1 lakh. The

State Government is directed to pay the fees of the Commissioner within four weeks from today. We record our appreciation for the efforts taken by the Commissioner in finishing the assignment in a short duration and submitting an extensive report on the matter.