

(2013) 03 KL CK 0107

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 26027 of 2009 (W)

DR. Balagopal "Indeevaram", P.O. Mangalam, Lekkidi
Koottupatha, Palappuram and Ottapalam

APPELLANT

Vs

The Director General of Police, The Superintendent of Police,
The Kerala State Human Rights Commission and Sri. P.V.
Chandrasekharan

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Protection of Human Rights Act, 1993 — Section 12, 14, 14(5), 16, 17

Citation : (2013) CriLJ 2812 : (2013) 2 ILR (Ker) 316 : (2013) 2 KHC 238 :
(2013) 2 KLJ 398 : (2013) 2 KLT 208 : (2013) 3 RCR(Criminal) 54

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : K. Ramakumar, Sri. S.M. Prasanth and Smt. Smitha George, for the Appellant; Sebastian Davis, R3, Sri. P.S. Sreedharan Pillai, R4 and Smt. C.G. Preetha, Sri. T.K. Sandeep, Sri. Arjun Sreedhar, Sri. Joseph George (Mullakkariyil) and Sri. K. Rathish Kumar, R1 and R2, Government Pleader, for the Respondent

Judgement

C.K. Abdul Rehim, J.—The petitioner, a Medical practitioner claiming repute in the Profession, is challenging Ext. P2 order of the 3rd respondent Commission issued on a petition filed by the 4th respondent. Son of the 4th respondent Sri. P.V. Jayachandran, died at Al-Shifa Hosptial, Perinthalmanna on 22-01-2005 while undergoing treatment as in-patient, admitted of consuming large quantity of sleeping pills, on 14-01-2005. It is averred in the writ petition that the police authorities having jurisdiction had conducted a detailed enquiry with respect to the circumstances resulted in suicide of Sri. Jayachandran. Exhibit P1 is a report submitted by the Deputy Superintendent of Police to the District Superintendent of police, Palakkad, as early as in July 2005. In Ext. P1 it is mentioned that the allegations levelled against the petitioner through complaint submitted by wife of the 4th respondent that the petitioner had mis-utilized her son for illegal money transaction causing heavy financial liabilities and threatened and abated him to

commit suicide etc; were found to be not true. Conclusions in Ext. P1 is that the petitioner is known to be a well known Doctor having private practise and his financial position is known to be very sound. It is further stated that the enquiry could not collect any piece of evidence to prove that there was abetment or threatening or to show that the petitioner was engaged in money lending activities through the deceased, as alleged. It is mentioned in Ext. P1 that the allegations were fabricated with a view to harass the petitioner, who is leading a peaceful life, and hence no further action is required. It is also revealed in Ext. P1 report that, a crime registered with respect to unnatural death of Sri. Jayachandran as Crime No. 44/2005 of Pattambi Police Station, was investigated by the Additional Sub Inspector of Police and a final report was submitted closing the case as one of suicide consuming excess sleeping pills.

2. The 4th respondent filed a petition before the 3rd respondent Commission alleging violation of human rights with respect to the suspicious circumstances leading to suicide of his son. From Ext. P2 order of the Commission it is revealed that the said petition was taken on file and the "Chief Investigation officer (CIO)" attached to the 3rd respondent Commission was asked to file a report. On receipt of report from the CIO the matter was disposed of without issuing notice to the petitioner. After enumerating report submitted by the CIO, the Commission observed that it is revealed from the report that the deceased and the petitioner were engaged in money transactions which are not transparent, which both of them had suppressed from the 4th respondent. It is also stated that the report had revealed that the petitioner had caused a notice to the deceased and filed complaint before the Magistrate Court with respect to dishonour of cheques. The Commission found that, according to the CIO there existed some suspicion with respect of the monetary transactions between the petitioner and the deceased and the dubious financial transactions between parties may be the reason for the suicide. Therefore, as concluded in the report, with a view to get a clear picture it is desirable that an investigation is conducted in the matter by an officer not below the rank of Superintendent of Police, Crime Branch, CID. Hence the State Government was requested to direct an investigation with a view to secure ends of justice.

3. Challenge against Ext. P2 order is mainly on the ground that it was issued in violation of principles of natural justice and in total violation of procedure contemplated by the statute. The 3rd respondent Commission had exceeded its powers in issuing such a direction and hence it is necessary to restrain the respondents 1 and 2 from taking any steps based on Ext. P2 order, is the prayer made.

4. Heard; Sri. K. Ramakumar, Senior Counsel appearing for the petitioner, Sri. P.S. Sreedharan Pillai, counsel appearing for the 4th respondent and Government Pleader appearing for respondents 1 to 3.

5. Apart from challenges raised on merits of the impugned order, learned Senior Counsel had attributed violation of substantive procedure in passing Ext. P2

order. It is pointed out that the Commission had failed in arriving any satisfaction about correctness of the facts stated or conclusions arrived in the report of investigation submitted by the CIO, as required u/s 14(5) of the Protection of Human Rights Act, 1993 (herein after referred to as "the Act"). The impugned order does not reflect any application of mind by the Commission to the contents of the report. It is further contended that before passing Ext. P2 order the Commission had not issued any notice to the petitioner, nor the petitioner was afforded with any opportunity of hearing or opportunity to produce evidence of his defence. Therefore the impugned order is violative of Section 16 of the Act, because the Commission ought to have found that the petitioner is likely to be affected prejudicially. According to the Senior counsel, compliance of Section 16 was mandatory in a proceedings of inquiry undertaken by the Commission. It is pointed out that the recommendations of the Commission, if implemented, will definitely cause prejudice to the petitioner because the investigation will be aimed at him and there is every likelihood of he being implicated in a criminal case.

6. The above contentions were resisted by learned counsel for the 4th respondent, Sri. P.S. Sreedharan Pillai. According to him the Commission had never ordered any investigation as part of the inquiry. Therefore the requirements u/s 14(5) was not mandatory. It is submitted that the Commission had only recommended for an investigation to be conducted by a competent authority. Since no investigation was conducted either by the Commission or by utilizing service of any investigating agency, the Commission was not at an obligation to provide any opportunity to the petitioner as required u/s 16, is the contention.

7. Fact situation prevailing in the case is that, the 4th respondent had filed another writ petition as W.P. (c) No. 19578/2009 seeking direction for entrustment of the investigation of Crime No. 44/2005 of Pattambi Police Station to a specialised investigating agency, on the basis of Ext. P2 order. In the meanwhile, the Director General of Police had already issued an order on 26-10-2009 entrusting investigation of the case to the Crime Branch, Palakkad (CB CID, Palakkad) on the basis of directions contained in Ext. P2 order. But the said agency has not proceeded with further steps of investigation because of interim stay granted by this court in the present writ petition.

8. Question posed for consideration is as to whether Ext. P2 order is vitiated for violation of Section 14(5) and Section 16 of the Act. Learned counsel for the 4th respondent had placed reliance on a decision of the High Court of Jharkhand in Shiv Chandra Prasad Singh Vs. The State of Jharkhand, The National Human Rights Commission and Sri Anant Kumar, . It is held therein that Section 14(5) and Section 16 of the Act will apply only when the Commission decides to investigate or inquire into allegations. But, in that case the Commission had only acted on the basis of an action taken report called for from the State police authorities. The Commission on receipt of the complaint had only forwarded it to

the Superintendent of Police concerned for disposal and called for an action taken report from that authority. The Commission had issued direction to institute FIR and to conduct investigation, on the basis of the report submitted by the police authorities. The High Court observed that the petitioner was already afforded with reasonable opportunity during the enquiry conducted by the police authorities. Therefore lack of notice or non-affording of opportunity to the petitioner prior to issuance of the letter by the Commission was not found as illegal. Therefore the court declined to quash the FIR. Contentions raised on behalf of Commission in that case was that no inquiry was conducted by the Commission and the aggrieved party was given appropriate opportunity in the enquiry conducted by the Senior Superintendent of Police. Hence it was held that there is no violation of the procedure contained in the Act.

9. Learned Senior counsel submitted that there are clear distinguishing facts from the case cited as above. In the case at hand, the Commission has not called for any information or any action taken report from any authority as contemplated u/s 17(1). In the case decided by the High Court of Jharkhand, the Commission was restoring to a procedure contemplated u/s 17(1). In that case the State agency from whom an action taken report was called for had taken a stand about guilt of the petitioner. Hence on receipt of the report the Commission decided that no further enquiry is required, except to direct the State agency to proceed with the matter after registering an F.I.R. But in the case at hand, as part of its inquiry into the complaint, the Commission had directed the CIO to conduct an investigation, as contemplated u/s 14. The service of the CIO was utilized for the purpose of investigating into the allegations, as part of the inquiry. The CIO had investigated the allegations and submitted a report. In such case arriving at a satisfaction with respect to correctness of the facts stated and conclusions arrived in the report is mandatory, as contemplated u/s 14(5). Further, while evaluating the report of investigation, the Commission ought to have issued notice to the petitioner considering the fact that the imputations against the petitioner contained therein would affect his reputation prejudicially.

Compliance of Section 16 was mandatory if the Commission felt that any further action would affect the petitioner prejudicially. Any procedure violating the mandatory requirements under Sections 14(5) and 16 will vitiate the order and will affect its sustainability, is the contention.

10. Learned Senior Counsel had placed reliance on the decision of the hon''ble Supreme Court in Director, ESI Scheme, Orissa and Another Vs. Dr Sabita Mohanty (Smt), . With respect to adherence of principles of natural justice in procedure before the Central Administrative Tribunals, the hon''ble Supreme Court observed as follows;

We are afraid, this perception of the tribunal as to the ends of justice and their expeditious attainment prevailing over the delays inherent in what the tribunal assumes to be a dispensable formality of the filing of a counter and hearing of the other side is wholly erroneous and entirely insupportable. Indeed, these

words of Lord Wright in *General Medical Council V. Spackman* (1943) 2 All ER 337 are worth recalling:

If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.

The appellants are justified in their grievance that the Tribunal went off the mark in its perception of the procedural imperatives in this case. We have no hesitation in holding that the reasoning of the tribunal in justification of the denial to the appellants of a opportunity of being heard is unsupportable.

On the basis of the dictum it is contended that the impugned order cannot be sustained since it had violated principles of natural justice.

11. On an evaluation of the provisions in the Act, it is revealed that Chapter III deals with functions and powers of the Commission. Section 12 therein provides that on a petition presented to it by a victim or any person on his behalf, complaining of violation of human rights or abetment thereof, the Commission shall conduct an inquiry. In Section 14 dealing with powers of investigation, it is provided that the Commission, for the purpose of conducting any investigation pertaining to an inquiry can utilise service of any officer or any investigating agency of the Central Government or State Government. Sub section 4 of Section 14 provides that the officer or agency whose service is utilised by the Commission shall investigate into the matter as part of the inquiry and shall submit a report to the Commission. Chapter IV of the Act enumerates the procedure to be followed by the Commission. Section 17 therein provides that the Commission while inquiring into complaint of violation of human rights may call for information or reports from the Central Government or any State Government or any authority or organisation. Sub section (i) (b) of Section 17 provides that on receipt of such information or report if the commission is satisfied that no further inquiry is required or that the required actions have already been initiated by the concerned authority, it may not proceed with the complaint and shall inform the complainant accordingly. Section 18 of the Act enumerates about the steps which may be taken up on completion of inquiry held under the Act.

12. On an adjudication about the procedure adopted in passing Ext. P2 order, it is clear that the Commission was not calling for any information or report from any authorities of the Government concerned. But, the Commission had utilized service of the CIO attached to the Commission to have an investigation conducted with respect to the allegations, as part of its inquiry contemplated u/s 14. In such cases when the report of investigation was received, the Commission ought to have adverted to it and applied its mind, in order to satisfy itself about correctness of the facts stated and the conclusions arrived in the report. Exhibit P2 does not reveal about any such satisfaction being arrived by the Commission.

Hence there is violation of sub section 5 of Section 14.

13. It is evident from Ext. P2 order that the report submitted by the CIO was to the effect that, there exist some suspicion with respect to monetary transactions between the petitioner and the deceased. Conclusions of the investigation is that the dubious financial transactions between the petitioner and the deceased may be the reason for the suicide. Hence it is recommended that a detailed investigation by police agency is necessary to clear the suspicion. The Commission had recommended for an investigation solely on the basis of the said report. The Commission had not issued any notice to the petitioner nor had afforded any opportunity before making any such recommendation. The Commission had also failed in considering as to whether acceptance of the report will affect the petitioner prejudicially. The recommendations made in Ext. P2 order without resorting to such a course is violative of Section 16 of the Act.

14. It is further pertinent to note that the petitioner is raising contentions that the complaint filed before the 3rd respondent Commission was not maintainable, in view of Section 36(2) of the Act. A complaint alleging violation of human rights, if instituted after expiry of one year period from the instances of violation, cannot be entertained. There is a bar u/s 36(2) of the Act in the Commission entertaining such complaint. Further contention is that the averments and allegations contained in the petition filed before the Commission will not constitute violation of any human rights, as defined u/s 2(d) of the Act. According to him the denial of opportunity to participate in the inquiry had resulted in depriving his right to take such defences. Hence there is clear violation of principles of natural justice. On the facts, I am of the opinion that contentions in this regard deserve merit.

15. Under the above mentioned circumstances, I am of the opinion that Ext. P2 order cannot withstand the test of legality. Hence the writ petition is allowed. Exhibit P2 order is hereby quashed. The 3rd respondent Commission will restore HRMP No. 1304/2005 on its files and dispose of the same afresh, after issuing notice to both parties, and after affording a reasonable opportunity to the petitioner to contest the matter.

16. Needless to observe that being a case of the year, 2005, the Commission will take all earnest efforts for an early disposal of the matter.

17. In view of the fact that the investigation of Crime No. 44/2005 of Pattambi Police Station was handed over to the CB CID only on the basis the directions contained in Ext. P2 order, the said investigation cannot be permitted to proceed. However, in case the 3rd respondent Commission confirms the directions afresh, the said investigation shall be proceeded without any further orders from the DGP or from any other officials of the State Government. It is also made clear that, despite the above judgment, the State Government will be always at liberty to consider on its own about necessity to order any further investigation in the crime in question, and to pass appropriate orders if it is satisfied that any

circumstances warranting such investigation is prevailing, as permissible under law.