

(2014) 09 SC CK 0022

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 400 of 2010 (Under Article 32 of the Constitution of India)

K. Saravanan Karuppasamy

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 307, 324, 341
Protection of Human Rights Act, 1993 — Section 2(1), 21, 21(2), 22, 23
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1)

Citation : (2014) 3 ACR 3462 : AIR 2015 SC 214 : (2015) 1 CDR 82 : (2015) 2 CHN 205 : (2014) 10 SCALE 573 : (2014) 10 SCC 406 : (2014) 8 SCJ 396 : (2015) 1 WBLR 612

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

JUDGMENT

R. Banumathi, J.—This writ petition has been filed by the Petitioners seeking a writ of mandamus to initiate an independent investigation preferably by Central Bureau of Investigation (CBI) or Special Investigation Team (SIT) into the incident of alleged beating of students of Dr. Ambedkar Government Law College, Chennai on 12.11.2008 by some miscreants so that criminal proceedings could be initiated against the guilty police personnel as well as the other persons responsible for the said incident.

2. Brief facts which led to the filing of the writ petition are as follows: A group of students of Dr. Ambedkar Law College, Chennai belonging to Thevar Community is said to have pasted posters and pamphlets inside the college premises in connection with the birthday celebrations of Pasumpon Muthuramalingam Thevar

in which the name of the law college was printed as "Government Law College" instead of "Dr. Ambedkar Government Law College". Agitated Dalit Students questioned the Non-Dalit Students which led to wordy altercation between the two groups culminating in an untoward incident which occurred in the campus of Dr. Ambedkar Government Law College, Chennai on 12.11.2008 at about 2.20 P.M. Both the group of students attacked each other and it is alleged that Non-Dalit Students (Thevar Students) were brutally beaten by the other group. Regarding the incident, criminal cases were registered against both the groups. Few police personnel were suspended on the same day and a Commission of Enquiry headed by a retired High Court Judge was also appointed which filed its report and the same was accepted by the State Government and some follow up action was taken.

3. The Petitioners claim to be the President and Secretary of 'World Human Rights Commission & Rescue Centre' and main aim of their organisation is stated to be to instil a sense of public awareness about the human rights and take up cases of gross human rights violations. Grievance of the Petitioners is that though the occurrence was in front of the Law College in broad day light and a number of police personnel were present, they did not intervene to prevent the clashes and the police remained silent spectators. According to the Petitioners, the delinquent police officials deliberately did not intervene, only in order to appease their political bosses and the police personnel were negligent in preventing the incident. Since there was violation of human rights and dereliction of duty on the part of police personnel in preventing the incident, the Petitioners tried to lodge a complaint with the State Human Rights Commission ('SHRC'), but SHRC refused to entertain the same and the Petitioner No. 2 was left with no option, but to file a complaint before the National Human Rights Commission ('NHRC') and a case bearing No. 1492/22/13/08-09/UC was registered with NHRC. Case of Petitioners is that, since the Petitioners have filed complaints before NHRC about the law college incident, the Petitioners are facing considerable harassment at the hands of the Tamilnadu Police and frivolous cases are registered against the Petitioners and their Organisation since the Petitioners have refused to withdraw the complaint filed with the NHRC regarding the law college incident. All the accounts and properties of the Organisation have been seized by CB CID arbitrarily without following proper procedure. The Petitioners therefore allege that the investigation in the Law College incident has not been proceeded with all seriousness and the Petitioners seek independent investigation into the incident of brutal beating of students of Dr. Ambedkar Government Law College on 12.11.2008 by an independent agency either CBI or SIT.

4. Upon notice, the State of Tamilnadu and SHRC have filed their Status Report/ response.

5. Mr. Prashant Bhushan, learned Counsel appearing for the Petitioners submitted that since the Petitioners filed complaint against the erring police officials with NHRC and since Petitioners have refused to withdraw the complaint filed with

NHRC, the Petitioners are constantly being harassed by the State Police-Organized Crime Unit (OCU) and Crime Branch-Crime Investigation Department (CB CID) and false cases have been registered against the Petitioners. Learned Counsel further submitted that OCU and CB CID police used all kinds of third degree methods and the first Petitioner was brutally beaten not only by the police but also by rowdy elements and the Petitioner and his family members underwent a great deal of mental agony, pain and harassment. Drawing our attention to the Status Report filed by the State, learned Counsel submitted that in the departmental proceedings, the erring police officials have been let off either with 'censure' or nominal punishment and the matter has not been proceeded with all seriousness and urged that the investigation of the Law College incident on 12.11.2008 be handed over to CBI or SIT.

6. Mr. Subramaniam Prasad, learned Additional Advocate General appearing for the State of Tamilnadu had taken us through the Status Report filed by the State and submitted that criminal cases were registered against both the groups of students and accepting the report of One Man Commission, the State Government initiated departmental proceedings against the police personnel and punishments were also imposed on them. It was submitted that criminal cases are registered against the Petitioners and they are charge sheeted for the offence of cheating and other offences and Petitioners with malafide intention are linking the law college incident as the cause for registration of criminal cases against the Petitioners by the police and such an allegation is baseless.

7. We have also heard Mr. K. Subramanian, learned senior Counsel appearing for the intervener/impleaded Respondent - K. Armstrong and Mr. R. Balasubramanian, learned Senior Counsel appearing for SHRC.

8. Grievance of the Petitioners is two-fold: (i) alleged inaction or nominal action of the State and the police and SHRC on the Law College incident on 12.11.2008 and need for an investigation by an independent agency like CBI and (ii) alleged harassment of the Petitioners by the police and registration of false cases against the Petitioners.

9. As per the Status Report filed by the State, on the complaint of Mr. Ayyadurai (Thevar Community) one of the injured students, a case was registered as Crime No. 1371/2008 of B2 Esplanade Police Station Under Sections 147, 148, 341, 324, 307 & 506(ii) Indian Penal Code against one Mr. Chithiraiselvan and 40 other students. It is stated that 23 accused students were arrested and sent to judicial custody and some of the accused surrendered before the court and they were released on bail and remaining accused obtained anticipatory bail from the High Court Madras. Similarly, on the complaint of Chithiraiselvan (Dalit Student), a criminal case was registered in Crime No. 1372/2008 against two students in B2 Esplanade Police Station Under Sections 341, 324 and 506(ii) Indian Penal Code and the same was subsequently altered into Sections 341, 324, 307 and 506(ii) Indian Penal Code. Those two students who are accused were arrested and they were released on bail on the direction of the High Court on 12.1.2009.

For the alleged ransacking and damaging of furnitures and other properties of the Principal's Room on 13.11.2008 another case was registered in B2 Esplanade Police Station being Crime No. 1374/2008 Under Sections 147, 148 Indian Penal Code and Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act, 1992 and 14 accused were arrested who were subsequently released on bail on 23.12.2008 as per the order of the High Court.

10. As per Status Report filed in this Court on 8.9.2014, in Crime No. 1371/2008 charge-sheet was filed before VIIth Metropolitan Magistrate, George Town, Chennai on 10.3.2011 and the same was returned for rectification of certain errors and after rectification it was resubmitted on 19.5.2011 and the same is yet to be taken on file. In Crime No. 1372/2008, charge-sheet was filed and the same has been taken on file Case No. 29/2011 and the next date of hearing has been fixed for 9.9.2014. In Crime No. 1374/2008, some of the accused are yet to be apprehended and the charge-sheet has been filed on 22.3.2011 before VIIth Metropolitan Magistrate, George Town, Chennai which is also yet to be taken on file.

11. In the Status Report, it is stated that on 12.11.2008, on the same date of incident three officials namely, (1) Mr. K.K. Sridev, Principal of the Law College and (2) Mr. K. Narayanamoorthy, Assistant Commissioner of Police of the Jurisdiction Range and (3) Mr. M. Sekar Babu, Inspector of Police of B2 Esplanade Police Station were suspended and four Sub Inspectors of Police who were working in that area had been transferred to other districts. Government of Tamilnadu appointed a Commission of Inquiry headed by Justice P. Shanmugam, a former Judge of the Madras High Court to inquire into the incident and the issues referred to by the Government. The Commission submitted its report on 8.6.2009 to the Government and accepting the recommendations of the Commission, departmental action was initiated against three police personnel viz. (1) Mr. K. Narayanamoorthy, Assistant Commissioner of Police; (2) Mr. M. Sekar Babu, Inspector of Police and (3) Mr. E. Perumal, Sub Inspector of Police. After completing the inquiry against the police officers concerned, report was submitted to the Government and matter was pending before the Home Department for final decision for quite sometime. By Order dated 29.4.2011, this Court directed the Respondents to ensure that the final orders are passed before the next date and the State was directed to file Status Report with regard to the entire situation. In furtherance of direction of this Court, the State filed a further Status Report stating that Government accepted the findings of the Inquiry Officer and imposed punishment of 'censure' to Mr. Narayanamoorthy, Assistant Commissioner of Police in G.O. (2D) No. 217 Home (Police-2) Department dated 18.6.2013 and (2) Mr. Sekar Babu, Inspector of Police in G.O.(2D) No. 218 Home (Police-2) Department dated 18.6.2013. Insofar as Mr. E. Perumal, Sub Inspector of Police, the Government proposed to impose punishment of cut in pension at the rate of Rs. 200/- per month for two years Under Rule 9 of the Tamilnadu Police Rules and the said police officer has been called upon to show cause against the proposed punishment.

12. Mr. Prashant Bhushan, learned Counsel appearing for the Petitioners submitted that even though there was grave dereliction of duty on the part of the police personnel, there had been inconsequential departmental action and only nominal punishment of censure was imposed on two police officers and in case of another police officer Mr. E. Perumal, Sub Inspector of Police, the Government proposed to impose meagre punishment of cut in pension at the rate of Rs. 200/- per month for two years (Rs. 4,800/- in all) and thus in effect no punitive action has been taken against the police personnel commensurate with their grave dereliction of duty, which only shows the reluctance on the part of the State in pursuing the matter with all seriousness. Insofar as criminal cases registered regarding the incident, the learned Counsel submitted that in two cases charge-sheets are yet to be taken on file and urged that in order to have a fair investigation, the matter be entrusted to CBI/SIT for further investigation. Learned Counsel submitted that it is in this backdrop of the inaction on the part of State, Petitioners chose to move SHRC and since SHRC had not promptly responded, Petitioners moved NHRC for which, the Petitioners have been harassed and false cases have been registered against the Petitioners.

13. Mr. R. Balasubramanian, learned senior counsel appearing for SHRC submitted that the SHRC was then headed by a retired Chief Justice of the High Court and the Petitioners are not justified in making baseless allegation against SHRC for not taking immediate action. The learned Counsel submitted that since the State Government appointed Commission of Inquiry headed by a retired High Court Judge, SHRC did not vigorously pursue the matter, as it would have amounted to holding a parallel inquiry by SHRC.

14. We have perused few video clippings produced before us and report of the Commission of Inquiry. But we are refraining from entering into the details thereof, lest, it may prejudice any party. By a perusal of the Status Report and other materials, we feel that the matter was not proceeded with seriousness with which it ought to have been proceeded with. For instance, the main accused K. Armstrong in Crime No. 1371/2008 was not arrested for long time and was shown as an absconder in the final report though he is stated to be a practising advocate and also a contesting candidate in the election. On 8.2.2011, the matter was brought to the notice of this Court and only after the order was passed by this Court, accused K. Armstrong was arrested on 1.5.2011 who was subsequently released on bail on 4.5.2011. Likewise in two criminal cases charge-sheets are yet to be taken on file and some of the accused are yet to be apprehended and trial is yet to commence.

15. Insofar as contention of Mr. Bhushan to entrust the matter for further investigation to CBI/SIT is concerned, time and again, it has been reiterated by this Court that such an order to conduct investigation by CBI is not to be passed as a matter of routine merely because the party has levelled allegations against the local police. The extraordinary power in handing over investigation to CBI must be exercised cautiously and in exceptional circumstances. In State of West

Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, a Constitution Bench of this Court held as under:

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

16. Legal education has a direct impact on the prestige of the legal profession. It is a matter of concern that such an unfortunate incident should have happened within the precincts of Law College, Chennai which has produced many eminent lawyers and legal luminaries. We feel that the matter should have been addressed by the police and the State with great concern and promptitude. Though the matter was not proceeded in the way in which it should have been proceeded with, we feel that at this distant point of time, it is not necessary to hand over the investigation to CBI or to SIT. The reason being criminal cases have been registered and charge-sheets are also filed and departmental action was also initiated against the police personnel and punishment though may be nominal was imposed on those police personnel. Since charge-sheets in all three cases have already been filed before the VIIth Metropolitan Magistrate Court, George Town, Chennai, one of which is already taken on file, in our view, it would suffice if we direct the VIIth Metropolitan Magistrate Court, George Town, Chennai to proceed with the matter expeditiously.

17. Learned Counsel for Petitioners Mr. Prashant Bhushan laid scathing attack on SHRC and submitted that SHRC was impervious to the incident as well as harassment to the Petitioners and SHRC did not promptly take steps regarding Law College incident. Learned Counsel also submitted that the office of a Chairperson of Tamilnadu State Human Rights Commission has been remaining vacant for more than three years.

18. Insofar as the grievance of the Petitioners on the non-taking of action by SHRC, the learned Counsel for SHRC submitted that the office of Chairperson of

SHRC is lying vacant since August 2011 and SHRC was finding it difficult to take follow up action. Having regard to the said submissions, we have asked the State of Tamilnadu to file its response as to the non-filling up of the office of Chairperson of SHRC and the State has filed its Status Report on 8.9.2014 with regard to the appointment of Chairperson to SHRC.

19. In the Status Report, it is stated that office of Chairperson, Tamilnadu State Human Rights Commission has been lying vacant since 27.8.2011 due to non-availability of suitable candidates. It is stated that in response to the request of the State Government, High Court of Madras has sent the list of retired Chief Justices who were the Former Judges of the Madras High Court along with their date of birth and their present addresses. According to the State, in the list sent by the Registrar General, High Court of Madras most of the candidates are either already appointed to different Appellate Tribunals or equivalent post outside Tamilnadu or have attained the age limit of 70 years or not having any familiarity with the language and culture of Tamilnadu and it was almost impossible to find a suitable candidate for the post of Chairperson, SHRC, Tamilnadu. It is stated that in terms of Section 25(1) of the Protection of Human Rights Act 1993, Order dated 4.12.2013 was issued to Ms. Jayanthi, IAS (Retd.) Member to act as the Chairperson in State Human Rights Commission, Tamilnadu until the appointment of a new Chairperson to the Commission. It is further stated that in this regard Government of Tamilnadu has proposed to Government of India that a suitable amendment to Section 21(2)(a) of Protection of Human Rights Act, 1993 (for short 'the Act') could be made to make eligible retired Judges of High Court with a minimum experience of seven years as a Judge of the High Court for the post of Chairperson, SHRC, Tamilnadu and such proposal is under consideration of the Government of India. Status Report filed by the State refers to various letter correspondence by the State with Union of India in this regard.

20. We do not wish to go into the niceties of the proposal made by the State of Tamilnadu requesting for suitable amendment to Section 21(2)(a) of the Act. We confine our focus only with regard to the vacancy of office of Chairperson, SHRC remaining vacant for quite some time.

21. Protection of Human Rights Act 1993 has been enacted to provide for better protection of human rights by constituting a National Human Rights Commission and also State Human Rights Commission and Human Rights Courts. Section 2(1) (d) of the Act defines "human rights" as the rights relating to life, liberty, equality, dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The above rights are traceable to Part III of the Indian Constitution guaranteeing Fundamental Rights and particularly Articles 14, 19, 20, 21, and 22. Chapter V of the Act consisting of Sections 21 to 29 deals with the constitution of State Human Rights Commission and its functions thereto. State Commission consists of a Chairperson who has been a Chief Justice of a High Court and four Members. The Act has put in place various remedial measures for prevention of any human

rights violations and confers power upon the NHRC/SHRC to inquire suo motu or on a petition not only of violations of human rights or abetment thereof or even negligence exhibited by a public servant in preventing such violations. The statute has conferred wide range powers upon NHRC/SHRC. The Commission is therefore required to be constituted with persons who have held very high constitutional offices earlier so that all aspects of good and adjudicatory procedures would be familiar to them. Having regard to the benevolent objects of the Act and the effective mechanism for redressal of grievances of the citizens against human rights violations, the office of Chairperson of SHRC cannot be allowed to remain vacant for a long time. State of Tamilnadu has always shown zero tolerance towards human rights violations and has always sent clear message of its commitment towards protection of human rights. We see no reason as to why the post of Chairperson, SHRC which is to be headed by a person who has been the Chief Justice of a High Court should remain vacant for more than three years. In our view, pending the State Government's request for amendment to Section 21(2)(a) of the Act which process will take long time, it will be in order if the State of Tamilnadu takes steps to fill up the vacancy of the post of Chairperson, SHRC, Tamilnadu in terms of Section 21(2)(a) by constituting a Search Committee at an early date.

22. So far as the grievance of the Petitioners as regards registration of false cases against them is concerned, it is stated that on the complaint lodged by Reception Officer of the Circuit House Coimbatore, a criminal case has been registered against the first Petitioner in Crime No. 191/2009 in B4 Race Course Police Station, Coimbatore City u/s 420 Indian Penal Code. Organized Crime Unit (OCU) CB-CID has registered a case Crime No. 1/2009 against the Petitioners on the complaint of one Krishna Kumar for the alleged act of cheating. In both the cases, charge-sheets have been filed before the Chief Judicial Magistrate Court, Coimbatore which were taken on file in CC 84/2010 and 83/2010. Both the Petitioners have filed quash petitions u/s 482 Code of Criminal Procedure before the High Court of Madras to quash the charges against them in Criminal O.P. Nos. 14609 & 14610/2011 and 14611 & 14612/2011 and obtained interim stay and quash petitions are stated to be pending. Since the Petitioners have already filed petitions u/s 482 Code of Criminal Procedure, the Petitioners are at liberty to raise all contentions before the High Court in those petitions filed by them.

23. This writ petition is disposed of directing the VIIth Metropolitan Magistrate Court, George Town, Chennai to immediately take the cases on file relating to the Law College incident and expedite the trial and dispose of the cases expeditiously in accordance with law within a period of one year. The VIIth Metropolitan Magistrate shall file report regarding the progress of the cases to the High Court once in two months and we request the High Court to monitor the progress of the cases. In view of our discussion in para (21), the State of Tamilnadu would do well if it takes appropriate steps to fill up the vacancy of the Chairperson, SHRC, Tamilnadu expeditiously.