

(2010) 05 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 2557 of 2008 and M.P. No. 1 of 2008

M. Mahendran and Others

APPELLANT

Vs

K.A. Anthony, Madalaimuthu @ Mariasundaram, The
Assistant Registrar, State Human Rights Commission and The
Secretary, State Human Rights Commission

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Consumer Protection Act, 1986 — Section 13(3A)
Criminal Procedure Code, 1973 (CrPC) — Section 473
Protection of Human Rights Act, 1993 — Section 13, 18, 36(2)

Citation : (2011) 1 CTC 320 : (2011) 2 MLJ 701 : (2011) 3 RCR(Civil) 462 :
(2011) 3 RCR(Civil) 462

Hon'ble Judges : Elipe Dharmarao, Acting C.J.; M. Venugopal, J

Bench : Division Bench

Advocate : T.T. Ravichandran, for Satish Parasaran, for the Appellant; R. Singaravelan, for V. Ambika, for R. 1 and R. 2 and R. Srinivas, for R. 3 and R. 4, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharmarao, A.C.J.

1. The interpretation of Section 36(2) of the Protection of Human Rights Act, 1993 (hereinafter referred to as the "Act") is the subject matter involved in this writ petition.

2. The brief facts are that the respondents 1 and 2 herein have lodged a complaint before the State Human Rights Commission, as against the petitioners 1 to 5, alleging certain violations of the human rights by the petitioners 1 to 5, who are the officials of the Forest Department of Tamil Nadu. From the affidavit filed in support of this writ petition, it is seen that the Krishnagiri-Hosur stretch of National Highways was widened about 5 to 10 years back and there was a proposal to raise avenue plantation along National Highways 78 and 46 by the

Tamil Nadu Forest Department, Hosur Division in the year 2004. During the months of August and September, 2004, a stretch of about 3.20 kms. was planted with saplings in Sundampatti village and in one stretch alone from 6.490 km. to 7.31 km. the Forest Department planted about 200 saplings. It has been submitted in the affidavit that the above saplings were planted in the Poramboke land adjoining the Highway which belongs to the State Government and it appears that the land adjoining the Highway after the Government poramboke belongs to the respondents 1 and 2; that the first respondent is a retired Forest Ranger and the second respondent is a retired military man. It has also been averred in the affidavit that on 13.9.2004, when the petitioners 2 to 5 were overseeing the work done by local workers in the Sundampatti village in National Highways 47, the respondents 1 and 2 had clandestinely removed about 63 saplings which were planted along Sundampatti village, which were about 2 meters in height. A complaint was preferred by the 5th petitioner on the very same date before the Kandikuppam police Station, alleging that the respondents 1 and 2 have removed 63 saplings, which caused damage and monetary loss to the Government to the tune of Rs. 14,112/=, on which a complaint was registered by the police and the respondents 1 and 2 were brought to the police station for an enquiry and on enquiry, the respondents 1 and 2 undertook to compensate the loss due to Government and assured future good behaviour. It has further been submitted by the petitioners that they did not want to precipitate the issue further and taking into account the fact that the first respondent himself was a retired forest Ranger, they withdrew the aforesaid complaint after the Police recorded their undertaking and a joint memo. was filed before the Police at Kandikuppam Station, to which the petitioners 2 to 4 and the respondents 1 and 2 were the parties. It has further been submitted on the part of the petitioners that after a lapse of nearly three years of the above incident, the petitioners received summons from the third respondent herein, directing them to appear before the State Human Rights Commission, Chennai on 12.9.2007. Aggrieved, they have filed this writ petition contending that Section 36(2) of the Act specifically created a bar on the State Commission not to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

3. For better understanding, Section 36(2) of the Act is extracted hereunder:

36. Matters not subject to jurisdiction of the Commission:

(1)

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

4. Placing reliance on the said Section, during the course of arguments, the learned Counsel appearing for the petitioners would strenuously argue that the alleged incident of violation of human rights took place on 13.9.2004 and within

one year i.e. by 13.9.2005, the Commission ought to have instituted the enquiry, but the Commission has chosen to issue summons only on 16.8.2007 and therefore, the enquiry, said to be conducted by the Human Rights Commission, is wholly without jurisdiction and void ab-initio. It has further been argued by the learned Counsel for the petitioners that u/s 18 of the Act, the Commission has powers to recommend to the concerned Government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons and the petitioners are public servants and were on duty at the relevant point of time when the alleged violation of human rights is purported to have been taken place and the Commission is also invested with powers to conduct an investigation before the institution of enquiry and the said recommendations have serious consequences and hence the provisions of Section 36(2) of the Act will have to be construed strictly and the Commission does not have plenary powers to substitute statutory restrictions.

5. In support of such arguments, the learned Counsel for the petitioners would rely on the following judgments:

1. N.C. Dhoundial Vs. Union of India (UOI) and Others, ;
2. Jatt Ram Vs. Punjab State Human Rights Commission and Another, ;
3. State of Maharashtra Vs. Shobha Vitthal Kolte and Others, and
4. Regional Cancer Centre Vs. Gopalan, .

6. In the first judgment cited above, before the Human Rights Commission an objection has been taken on the part of the respondents that the Commission is debarred from enquiring into the matter after the expiry of one year from the date on which the alleged illegal detention took place as per the mandate of Section 36(2) and the Commission held that the violation of human rights is a "continuing wrong" unless due reparation is made and it gives rise to recurring cause of action till redressal of the grievance and the Protection of Human Rights Act, 1993 has been enacted with the object of providing better protection of human rights and it cannot be assumed that the mere lapse of a certain period would be sufficient to render the violation immune from the remedy of redressal of the grievance. Dealing with this aspect, a Three Judge bench of the Honourable Apex Court has held:

14. We cannot endorse the view of the Commission. The Commission which is a "unique expert body" is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers

confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies....

15. ...Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations.

17. ...Just as in the case of Section 473 Cr.P.C., there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(a) inter alia lays down that "ordinarily" a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable.

18. Irrespective of the validity of the prefacing expression "ordinarily", let us examine the issue from the point of view of the regulation itself. The regulation implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. Are there any extraordinary circumstances made out in this case? We find none in the impugned order of the Commission. As already noticed, the petition filed by the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4 = years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2). The Commission, thus, tried to clutch at the jurisdiction by invoking the theory of continuing wrong which, as we held earlier, cannot be invoked at all. In this view of the matter, the direction given by the Commission to the Director of CBI, which has an undoubted effected on the service career of the writ petitioner, is violative of Article 14 of the Constitution.

7. In the second judgment cited above reported in (2005) 141 PLR 2907, a Division Bench of the Punjab and Haryana High Court also, relying on the above judgment of the Honourable Apex Court, has held that "the Commission can only enjoy such powers which have been provided to it specifically under the Statute and powers of judicial review have not been conferred upon the Commission and

power of holding parallel proceedings, where the matter is already pending in the competent court (civil or criminal) have also not been envisaged under the Scheme of the Act".

8. In the third and fourth judgments cited above also reported in *State of Maharashtra Vs. Shobha Vitthal Kolte and Others*, and *Regional Cancer Centre Vs. Gopalan*, , the Division Benches of the Bombay and Kerala High Courts have followed the above above judgment of the Honourable Apex Court in *N.C. Dhoundial*'s case.

9. There cannot be any dispute with regard to the proposition laid down by the Honourable Apex Court in *N.C. Dhoundial*'s case and followed by the Division Benches of various High Courts. In view of the specific bar created of jurisdiction regarding limitation created u/s 36(2) of the Act, we must now see as to whether the impugned action has been initiated within the prescribed period of limitation in the case on hand.

10. On the part of the writ petitioners, it has been argued that in view of Section 36(2) of the Act, the Commission cannot proceed with the enquiry after a period of one year and since in the case on hand, the impugned action of proceeding with the enquiry has been initiated by the Commission well after a period of one year, the same is liable to be set aside by this Court.

11. On the other hand, on the part of the respondents 3 and 4, a counter affidavit has been filed wherein it has been stated that the Commission received the complaint dated 14.10.2004 from the respondents 1 and 2 on 18.11.2004 and the complainant alleged harassment and torture of the respondents by the petitioners and such allegations, prima facie, made out a case of Human Rights violation. It has further been submitted that for the alleged occurrence dated 13.9.2004, the case was taken on file as Case No. 8776 of 2004; that the fourth respondent called for a report from the Principal Chief Conservator of Forest on 29.12.2004, but there was no response and the fourth respondent sent several reminders to the above officials in the years 2005, 2006 and 2007 and finally the report was received on 9.7.2007 and after receipt of the report, the fourth respondent deemed it fit to issue summons to the petitioners and the petitioners appeared before the 4th respondent and have also filed their counter and taken part in the enquiry; that the petitioners have suppressed the details in the counter filed by them before the 4th respondent in this writ petition for the reasons best known to them and they had not taken any plea regarding the bar u/s 36(2) of the Act; that the fourth respondent called upon the parties to adduce evidence and at this stage, the petitioners have filed this writ petition seeking to quash the proceedings in the case in SHRC. No. 8776 of 2004; that the fourth respondent has taken up the case on file after its receipt on 18.11.2004 and numbered the case as SHRC. No. 8776 of 2004 and the enquiry into the case has commenced immediately and calling for report from the superior officials is a part of the enquiry; that the summons were sent to the parties concerned after a report was received from the concerned officials. It has

further been submitted that the case on hand is not hit by Section 36(2) of the Act; that the fourth respondent has called for report regarding the complaint and only after receipt of the same summons were issued to the parties and thus the fourth respondent has exercised proper care and consideration in entertaining the case; that the public servants and officials cannot claim any immunity from the proceedings of the fourth respondent, when the case warrants enquiry; that the petitioners have been given a fair treatment and they have participated in the trial; that they have not expressed any grievance to the fourth respondent in respect of the case; that the evidence in the case is over and closed and the respondents 1 and 2 herein have completed their arguments before the fourth respondent in the case on 21.7.2009 and the case was posted for arguments of the petitioners herein on 11.8.2009. On such details and contentions, these respondents would pray to dismiss the writ petition.

12. It is to be pointed out that the above facts narrated by the respondents 3 and 4 in their counter affidavit not been denied by the writ petitioners. Therefore, from the factual matrix of the case, it is clear that for the incident in question dated 13.9.2004, a complaint was filed by the respondents 1 and 2 before the Commission on 14.10.2004, that is well within a period of one month and the same was taken on file by the Commission in Case No. 8776 of 2004. Thereupon, even though a report was called for from the Principal Chief Conservator of Forests on 29.12.2004 by the Commission, no report was sent by him till 2007 and after several reminders, the report was received by the Commission on 9.7.2007, whereupon the Commission issued summons to the petitioners.

13. After receipt of the summons, the writ petitioners have also filed their counter before the Commission. Significantly, the petitioners herein have not raised any objection or plea regarding Section 36(2) of the Act before the Tribunal, whereupon they are harping much before us. The petitioners have participated in the entire proceedings availing all the due opportunities afforded to them by the Commission and now the case is pending at the stage of arguments. No final orders would have been passed, since this Court, by the order dated 31.1.2008, required the Commission not to pass any final orders without the prior permission of this Court.

14. Therefore, one thing is crystal clear that there is no delay on the part of the complainants/respondents 1 and 2 herein in approaching the Commission, since within a short period of one month from the date of the alleged occurrence, they have filed their complaint before the Commission, whereupon the Commission has also taken up the same in SHRC. No. 8776 of 2004 and called for a report from the Principal Chief Conservator of Forest as early as on 29.12.2004. But, in N.C. Dhoundial's case, whereupon much reliance has been placed by the learned Counsel for the petitioners, the very complaint was filed after a long lapse of 4= years from the date of alleged occurrence, in which circumstances, the Honourable Apex Court has held in the manner extracted supra, holding that

there is no provision in the Act to extend the period of limitation, since the bar created u/s 36(2) is a jurisdictional bar, which has been followed in the other judgments delivered by the Division Benches of other High Courts, relied on by the learned counsel for the petitioners. Therefore, the ratio laid down by the upper forums of law, in the above judgments, relied upon by the learned Counsel for the petitioners is not applicable to the facts of the present case.

15. But, one more argument has been advanced on the part of the petitioners that the limitation prescribed u/s 36(2) of the Act is not with regard to the "filing of the complaint" before the Tribunal but with regard to the "completion of the inquiry" within one year and since in the case on hand, the inquiry has been contemplated after a period of three years from the date of the alleged occurrence, the Commission has no jurisdiction to proceed with the matter.

16. For this purpose, we shall once again look into the language used in Section 36(2), wherein it has been stated that "the Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

17. The words "shall not inquire into" used in this Section are sought to be interpreted in a different manner by the learned Counsel appearing for the petitioners, by arguing that the Commission should not proceed with the enquiry of the matter, since already one year has lapsed from the date of the alleged occurrence.

18. A reading of the Section would make it unambiguously clear that the intention of the Legislature is very clear that the Commission shall not take into cognizance any complaint after expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. The purport of the Section is not to restrain or refrain the Commission from proceeding with the enquiry in the matters already entertained by it after a period of one year, just for the simple reason that the matters have been entertained a year back. In the interpretation of statutes, the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. By an interpretative process, the Court cannot reach a conclusion which makes it impossible for remedies provided for under the law to be worked out. The purposive interpretation requires that any interpretation which is unjust or absurd must be eschewed and the Court must adopt principles of reasonable and harmonious construction in consonance with the avowed statutory purpose.

19. The Protection of Human Rights Act, 1993 has been enacted to provide for better protection of human rights. u/s 13 of the Act, the Commission, while inquiring into complaints under the Act, will have all the powers of a civil Court trying a suit under the Code of Civil Procedure, 1908. Therefore, when a

complaint is lodged before the Commission well within the limitation period contemplated under the Act, which constitutes a violation of human rights, the Commission is obliged to enquire into the allegations made therein by duly following the procedure contemplated under law and acting as a civil Court. In the process, there may be some delay in completing the enquiry and reaching a conclusion and delivering the order. Probably because of these reasons, the Legislature, in its wisdom, also has not fixed any outer time limit for the disposal of the complaints by the Commission. By this we do not mean to say that the complaints can be kept pending without any rhyme or reason by the Commission for years together. What we want to insist is that by giving the powers as that of a civil Court to the Commission u/s 13 of the Act and by not fixing any outer time limit, the Legislature, in its wisdom, understood the difficulties involved in such matters.

20. As a matter of fact, we want to point out that u/s 13(3A) of the Consumer Protection Act, 1986, it has been stated that "every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities." But, such a provision has not been made under the Protection of Human Rights Act, 1993. Had it been the intention of the Legislature to put a big full stop to the entire process of enquiry after a period of one year, as has been tried to be impressed upon by the learned Counsel for the petitioners, definitely, in our considered opinion, the Legislature, would have fixed an outer time limit for disposal of the case, as in the case of Consumer Protection Act. It has not been done so. Rather, the Commission has been given the powers of the civil Court u/s 13 of the Act, in order to afford all reasonable opportunities to both the parties and in which process, some delay is unavoidable. At this juncture, it is apt to quote a judgment of the Honourable Apex Court in *M. Rathinaswami and Others etc. Vs. State of Tamil Nadu and Others etc.*, , relied on by the learned Counsel for the respondents 1 and 2, wherein the Honourable Apex Court has held that "Court should make every effort to save a statute from becoming unconstitutional. A restricted or extended interpretation of the statute has to be given to save a statutory provision from the vice of unconstitutionality and of the available interpretations, Court to prefer the one which makes the statute constitutional."

21. If the argument advanced on the part of the learned Counsel for the petitioners that the Commission should not proceed with the enquiry in any matter, even though they are pending on the rolls of the Commission (having been filed within the period of limitation), which is not at all the intention of Section 36(2) of the Act, the very avowed object of protecting the human rights of the citizens, for which purpose the Commissions are established, is defeated. Therefore, this argument advanced on the part of the learned Counsel for the petitioners needs only to be rejected and is rejected accordingly.

22. In the case on hand, as could be seen from the counter affidavit filed by the respondents 3 and 4, the petitioners have not taken any plea regarding Section 36(2) of the Act before the Commission and they have also participated in the entire enquiry proceedings and the case is ripe for disposal.

Viewing from any angle, we find no reason to entertain and appreciate the contentions raised on the part of the petitioners and this writ petition is liable only to be rejected. Accordingly, this writ petition is dismissed. No costs. Consequently, M.P. No. 1 of 2008 is also closed. The Tamil Nadu State Human Rights Commission is directed to dispose of the SHRC. No. 8776 of 2004 within a period of two weeks from the date of receipt of a copy of this order.