
(2007) 01 GAU CK 0087
In the Gauhati High Court

Manipur Human Rights Commission

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 21

Protection of Human Rights Act, 1993 — Section 10, 12, 13, 14, 15

Citation : (2007) 2 GLT 199

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—Heard Mr. A. Nilamani Singh, learned senior counsel assisted by Mr. A. Bimol, learned Counsel for the petitioner, Mr. N. Ibotombi, learned CGSC for respondent Nos. 3 and 4 as well as Mr. Th. Ibohal, learned GA for respondent nos. 1 and 2.

2. The core question involved in the present writ petition is; whether the Human Rights Commission can file the present Writ Petition for issuing a writ of mandamus directing the State respondents to discharge their duties contemplated in Section 18 of the Protection of Human Rights Act, 1993.

3. The short facts which will suffice for deciding the core question formulated above are that: "The Manipur Human Rights Commission" was constituted by the State Government of Manipur in exercising the power conferred by Section 21 of the Protection of Human Rights Act, 1993. By virtue of Section 29 of the Protection of Human Rights Act, 1993, provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall also be applicable to the State Human Rights Commission, i.e., Manipur State Human Rights Commission subject to certain modifications. For easy reference, Section 29 of the Manipur Human Rights Act, 1993 is quoted hereunder:

29. Application of certain provisions relating to National Human Rights

Commission to State Commission.- The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:

(a) Reference to "Commission" shall be construed as references to "State Commission."

(b) In Section 10. in sub-Section (3), for the words "Secretary-General", the word "Secretary" shall be substituted;

(c) In Section 12, Clause (f) shall be omitted;

(d) in Section 17, in Clause (i), the words "Central Government or any" shall be omitted.

Under Section 10 of the Protection of Human Rights Act, 1993, the Commission, i.e., Manipur State Human Rights Commission, shall meet at such time and place as the Chairperson may think fit; and the commission shall regulate its own procedure and all orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorized by the Chairperson in this behalf. For better appreciation of the present case, Sub-sections (2) and (3) of Section 10 of the Protection of Human Rights Act, 1993 are quoted hereunder:

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

4. The power and functions of the Manipur Human Rights Commission are more fully prescribed and mentioned in Section 12 of the Protection of Human Rights Act, 1993 which reads as follows:

12. Functions of the Commission--The Commission shall perform all or any of the following functions, namely:

(a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf, into complaint of--

(i) Violation of human rights or abetment thereof ;or

(ii) Negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

(c) visit, under intimation to the State Government any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; (i) encourage the efforts of non-governmental organization and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.

As contemplated in Sub-section (a)(ii) of Section 12 of the Protection of Human Rights Act, 1993, the Manipur Human Rights Commission inquires, suo motu, or on a petition presented to it by a victim or any person on his behalf. In the event of filing a complaint contemplated in Sub-section (a)(ii) of Section 12 of the Protection of Human Rights Act, 1993, by a victim complaining violation of human rights or abetment thereof or negligence in the prevention of such violation, by a public servant, the Commission by following the procedures prescribed in Section 17 of the Act of 1993 has to inquire into the complaint.

5. While inquiring into the complaint the Commission may call for the information or report from the State Government or any other authorities or Organization subordinate thereto within such time as may be prescribed by it. For easy reference, Section 17 of the Protection of Human Rights Act, 1993 is quoted hereunder:

17. Inquiry into complaints-- The commission while inquiring into the complaints of violation of human rights may--

(i) call for the information from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it: Provided that--

(a) If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) If, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in Clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

6. Upon a complaint dated 04.06.1999 made to the Petitioner/Commission by Smt M. Memnoubi Devi, wife of late Maibam Joykumar Singh of Thiyam Leishangkhong village, it is said that, her husband aged about 43 years died on 12.05.1999 at about 8.30 P.M. by falling down with his cycle into a ditch made for construction of Jamuna Bridge at Irong Chesaba Mathak, while trying to cross the incomplete bridge for which no safety measures were provided. It is also alleged that on 12.05.1999, late Shri Maibam Joykumar Singh, a Police Constable, from Thiyam Leishangkhong left his house with his wife (the complainant) riding his bicycle to a marriage ceremony at her parental house at Thoubal Leishangthem. After attending the marriage ceremony, late Maibam Joykumar Singh also visited his father-in-law who was ailing at the relevant time and as such, his wife who was also accompanying with him, as an advance party of the bridegroom upto Mayang Imphal Chabung Company where she would wait till his arrival to reach home together. But, M. Joykumar was returning alone by his bicycle along Thoubal Mayang Imphal road after sunset. On the way he fell into the steep fall at the broken unguarded Jamuna bridge and he died on the spot due to fault of the PWD, Manipur.

7. After receiving the said complaint, the Manipur Human Rights Commission also called for report from the Commissioner (Works), Government of Manipur and the Chief Engineer-I, PWD for giving them opportunity to show cause as to why they should not compensate to the dependents of the deceased and also report was called from the Officer-in-charge of the Mayang Imphal P.S. In response thereof, the Commissioner (Works) Government of Manipur and the Chief Engineer-I, PWS also submitted their report after the Chief Engineer- I PWD, called the necessary report from the Addl. Chief Engineer- II. The Officer-in-charge of the M.I.P.S. also submitted report. The Commission, after perusal of the report/statement of the Commissioner, Works, Government of Manipur and the Chief Engineer-I, PWD, Government of Manipur and report of the Officer-in-charge of the M.I.P.S. formulated the following points for inquiry.

(1) Whether Shri Maibani Joykumar Singh died by falling down into the ditch over which there had been formerly Jamuna bridge along Mayang Imphal Thoubal road on 12.05.1999 at around 8.00 P.M.

(2) Whether there was no barricade, sign board/signal or any other visible mark to warn the public about the presence of uncovered ditch along the said road following the breaking down and removal of Jamuna bridge ?

(3) Whether the death of Shri Maibam Joykumar Singh was due to the negligence of concerned authority/officers of the PWD, Manipur in not putting up barricade, mark, sign board/signal or any other visible mark at the said spot about the removal of the bridge and presence of uncovered ditch along the said road ? If so, who are responsible for that ?

(4) Whether there was violation of human rights and negligence on the part of the concerned public servants in prevention of such violation of human rights ?

(5) Whether the concerned authority/public servants are liable to pay compensation for the death of Shri Maibam Joykumar Singh and, if so the amount ?

(6) Recommendation of the Commission?

8. For deciding the said 6 (six) points formulated by the Manipur Human Rights Commission (for short the Commission), had examined 8 PWs for the complainant namely, PW-1 Shri Kh. Thaba Singh, PW-2 Shri Th. Mema Devi, PW-3 Shri Th. Janeshwar Singh, PW-4 Md. Tomba alias Hafix-ud-din, PW-5 Shri K. Joykumar Singh, S.I. of Police, PW-7 Dy. S.P. Md. Abdul Jalil and PW-8 Smt Memnoubi Devi, the complainant and also 8 DWs for the officers of the PWD, Manipur namely, DW-1 Shri Kh. Mohori Singh, EE, DW- 2 Shri Chanam Biren Singh, DW-3 Shri Ksh Sanajaoba Singh, DW-4 Shri N. Rabi Singh, DW-5 Shri Th. Joychandra Singh, DW-6 Shri Th. Brojen, DW-7 Shri L. Jayanta Singh and DW-8 Shri Th. Shyamtombi Singh. After completion of the inquiry following the procedures contemplated in Section 17 of the Protection of Human Rights Act, 1993 the Commission prepared a report and recommendation dated 21.03.2001.

9. The Commission in its report made a finding in respect of point No. 1 that the evidence have thus proved that M. Joykumar Singh fell into the ditch which was left uncovered after removal of the broken bridge slab while he was travelling riding bicycle along the road from the direction of Thoubal towards Mayang Imphal at around 8 P.M. of 12.05.1999 and he died on the spot. Regarding the point No. 2, the Commission made a finding as thus, since the broken bridge-slab had been dismantled and removed till the fall of M. Joykumar, there was no fence, barricade, signal of sign board or any other visible mark to warn the public about the presence of steep fall between the abutments of the removed bridge. The finding of the Commission regarding point nos. 5 and 6 are that it was due to the negligence of the concerned officers of the PWD by not taking up adequate safety measures for the public regarding the broken bridge that an innocent member of the public M. Joykumar Singh died in the tragic incident by falling into the uncovered bridge spot. They are, therefore, responsible for the fatal incident and also that the then Chief Engineer-I, PWD, Manipur, Shri E. Binoy kurnar Singh, Addl. Chief Engineer-II, PWD, Manipur (Shri L. Lokendra Singh) and Executive Engineer, Thoubal Division, PWD, Manipur (Shri K. Mohori Singh) are responsible for the fatal accident and they are equally liable to compensate the loss and as such, the State is vicariously liable to pay compensation. The said report/recommendation dated 21.03.2001 prepared by the Manipur Human Rights Commission, after holding inquiry was forwarded to the Commissioner/ Secretary, Works, Government of Manipur under letter of the Assistant Registrar of the Manipur Human Rights Commission dated 02.04.2001 for information and for taking necessary action. After the said letter dated 02.04.2001, the Deputy Secretary, Manipur Human Rights Commission under his letter dated 19.10.2001

furnished the said report or report and recommendation dated 21.03.2001 to the Addl. Chief Secretary, Government of Manipur for perusal and also for taking necessary action. As the Government fail to take necessary actions on the report dated 21.03.2001 submitted by the Manipur Human Rights Commission, the Manipur Human Rights Commission filed the present writ petition for issuing a writ of mandamus compelling the respondents, i.e., State respondents to perform their public duties by forwarding their comment on the inquiry report made on 21.03.2001 including the action taken or proposed to be taken thereon to the petitioner/commission as expeditiously as possible, and also for issuing a writ or direction to the respondents to carry out the recommendation of the petitioner/commission made in its report dated 21.03.2001 at an early date.

10. Respondent Nos. 3 and 4 also filed their Affidavit-in-opposition in the present writ petition. In their Affidavit-in-opposition respondent Nos. 3 and 4 had taken a specific stand that the present writ petition is not maintainable inasmuch as the Manipur Human Rights Commission cannot be represented by one Shri R.K. Nara Singh, who is said to be the Private Secretary to the Members of the Manipur Human Rights Commission on the, inter alia, reasons that u/s 21(3) of the Protection of Human Rights Act, 1993 read with Section 27(i)(a) there should be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such power and discharge such functions of the State Commission as it may delegate to him but Shri R.K. Nara Singh is not the Secretary of the Petitioner/Commission.

11. Mr. A. Nilamani Singh, learned senior counsel appearing for the petitioner submits that till today the State Government in exercise of its powers under Sub-section (3) of Section 21 of the Protection of Human Rights Act, 1993 has not yet appointed Secretary of the Manipur Human Rights Commission. It is also further case of the learned Counsel for the petitioner that by an order of the Manipur Human Rights Commission being No. 4/2/2002-MHRC dated 11.12.2002 authorized Shri R.K. Nara Singh, Private Secretary (MHRC) to swear affidavit on behalf of the Commission in filing a writ petition in the Gauhati High Court in respect of MHRC Case No. 57 of 1999 (complaint of Smt. M. Memnoubi Devi) and to represent the Commission and to do whatsoever necessary for the purpose of the writ petition. Mr. N. Ibotombi, learned Counsel for respondent Nos. 3 and 4 submits that the Deputy Secretary, Manipur Human Rights Commission cannot issue the said order dated 11.12.2002 for authorizing Shri R.K. Nara Singh, Private Secretary to swear the affidavit on behalf of the Commission in the present writ petition and also to represent the Commission to do whatsoever for the purpose of the writ petition and it is not the order of the Manipur Human Rights Commission inasmuch as it is very clear from the order itself. In this regard, Mr. A. Nilamani Singh, learned senior counsel for the petitioner has drawn attention of this Court to Sub-section (3) of Section 10 of the Protection of Human Rights Act, 1993 wherein and whereunder decision of the Human Rights Commission can be authenticated by any officer duly authorized by the Chairman himself in this regard. It appears that under the said order dated 11.12.2002 the

Manipur State Human Rights Commission authorized Shri R.K. Nara Singh, Private Secretary (MHRC) to represent the Manipur State Human Rights Commission in the present writ petition and he had further been authorized to swear affidavit on behalf of the Commission and also that Y. Rameshchandra Singh, Deputy Secretary, can authenticate the order dated 11.12.2007 under Sub-section (3) of Section 10 as he had been authorized to do so by the Chairperson MHRC. From close perusal of the Protection of Human Rights Act, 1993, it is clear that there is no specific Section dealing with as to who shall represent the Human Rights Commission in filing Writ Petition.

12. From the above discussion, this Court is of the considered view that the present writ petition is maintainable.

13. Mr. N. Ibotombi, learned Counsel for the respondent Nos. 3 and 4 has seriously contended that the nature of relief sought for the Complaint Case No. 57 of 1999 before the Manipur Human Rights Commission as well as the relief sought for the present writ petition cannot be entertained in the present forum inasmuch as proper forum for the reliefs in the complaint would be the Civil Suit. In this regard, Mr. A. Nilamani, learned senior counsel for the petitioner referred to the decision of the Apex Court in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, wherein the Apex Court had held that though initially a petition under Article 226 relating to commercial matters was held not to lie, but the law has undergone a change by subsequent decisions and now even contractual matters are amenable to writ jurisdiction of the High Court under Article 226. The public law remedies have also been extended to the realm of tort and the Court can award compensation to petitioners who suffer personal injuries amounting to tortuous acts at the hand of officers of the Government. (emphasis supplied). For easy reference para 9 of the SCC in *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors.* (supra) is quoted hereunder:

9. Various aspects of the public law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Government. The causing of injuries, which amounted to tortuous act, was compensated by this Court in many of its decisions beginning from *Rudul Sah v. State of Bihar?*

14. The meaning of "human right" and "life" under the Universal Declaration of Human Rights, 1948 and also under Article 21 of the Indian Constitution had been discussed by the Apex Court in *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs.) and Ors.* (supra). It is admitted fact that India is also one of the signatories in the Universal Declaration of Human Rights, 1948. Para 28,

32 and 34 of the SCC in *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors.* (supra) read as follows:

28. The fundamental rights are available to all the "citizens" of the country but a few of them are also available to "persons". While Article 14 which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to "person" which would also include the "citizen" of the country and "non-citizen", both, Article 15 speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort on the aforesaid grounds. Fundamental right guaranteed under Article 15 is, therefore, restricted to "citizens". So also, Article 16 which guarantees equality of opportunity in matters of public employment is applicable only to "citizens". The fundamental rights contained in Article 19, which contains the right to "basic freedoms", namely, freedom of speech and expression, freedom to assemble peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of territory of India and freedom to practice any profession, or to carry on any occupation trade or business are available only to "citizens" of the country.

** ** * 32. The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. (See Article 3 quoted above.) The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as set out by this Court in *Kubic Darusz v. Union of India*. That being so, since "LIFE" is also recognized as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.

** ** * 34. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons

who are not citizens.

15. From the above discussion, this Court is of the considered view that relegating the claim for damages to file civil suit in a Civil Court is no more a good law in view of the ratio laid down by the Apex Court in *D.K. Basu Vs. State of West Bengal*, . The writ petition which is undoubtedly a public law remedy has also been extended to the realm of torts. The words coined as "constitutional tort" had been developing right from *Bhim Singh v. State of J & K* (1985) 4 SCC 577 and developed clearly in *D.K. Basu Vs. State of West Bengal*, and *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors.* (supra).

16. From bare perusal of Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993, it is clear that a duty is cast on the concerned State Government, on the report or recommendation by the State Human Rights Commission to consider and forward its comments on the report including action taken or proposed to be taken thereon to the Commission. Mr. A. Nilamani Singh, learned senior counsel by pressing Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993 into service had submitted that the State Government has failed to discharge their duties contemplated in Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993. According to him, a writ of mandamus can be issued directing the state respondents to discharge their duties. In order to substantiate his submission, learned senior counsel appearing for the petitioner had referred to the decision of the Apex Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, wherein the Apex Court held that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and it is available against a body or person performing a public law function and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. By referring the ratio laid down by the Apex Court in *Binny Ltd. and Anr. v. V. Sdasivan and Ors.* (Supra) learned senior counsel for the petitioner strenuously submits that since the writ of mandamus under Article 226 is pre-eminently a public law remedy it would be available to the present writ petitioner for compelling the State Government to discharge their duties within the ambit of Section 18 of the Protection of Human Rights Act, 1993. Para 29 of the SCC in *Binny Ltd. and Anr. v. V. Sdasivan and Ors.* (supra) reads as follows:

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to

enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed and the denial of any right is in connection with the public duty imposed on such body, the public law remedy or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn. Vol. 30, P. 682.

17. From the above discussion, this Court is of the considered view that the present writ petition filed by the writ petitioner for a writ of mandamus for a direction mentioned above is maintainable.

18. Having regard to the above discussion and peculiar facts and circumstances of the case and also keeping in view of the ratio laid down by the Apex Court in the above cases, the core question formulated above is answered in the positive.

19. The Writ Petition is accordingly allowed. The respondents are directed to discharge their statutory duties mentioned in Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993 on the said report/recommendation dated 21.03.2001 made by the Manipur Human Rights Commission in Complaint Case No. 57 of 1999. Parties are to bear their own costs.

20. It is made clear that the period of one month mentioned in Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993, because of the peculiar facts and circumstances of the present case, shall be reckoned from the date of receipt of the judgment and order of this case.