
(2012) 09 KL CK 0100
In the High Court Of Kerala
Case No : W.A. No. 422 of 2007

Nambinarayanan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Protection of Human Rights Act, 1993 — Section 18(3), 36(2)

Citation : (2012) 4 KLJ 448 : (2012) 4 KLT 221

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rehim, J

Bench : Division Bench

Advocate : C. Unnikrishnan Kollam, Varughese Oommen and D. Jayakrishnan, for the Appellant; Liju V. Stephen), Dr. S. Gopakumaran Nair (Sr. Advocate), M. Chandra Bose, A. Rajasimhan, Asst. Solicitor General of India (P. Parameswaran Nair) and C.G.C. (T. Sanjay), for the Respondent

Judgement

C.N. Ramachandran Nair, J.—These three connected Writ Appeals are filed against same judgment of the learned single Judge in a Writ Petition filed by the State challenging the order passed on 14.3.2001 by the National Human Rights Commission under S. 18(3) of the Human Rights Act, 1963 (hereinafter called "the Act") granting Rs. 10 lakhs interim compensation to the complainant before them who was a Senior Scientist in the Indian Space Research Organisation at Valiyamala for implicating him in a false criminal case of espionage and the consequent suffering he had. We have heard Government Pleader for State which filed one Writ Appeal and both the counsel appearing for the appellants in other two Writ Appeals and one filed by the victim, the complainant before N.H.R.C. and the other by the then D.I.G. of State Police who was heading the investigation team and also Additional Solicitor General for the Central Government Parties arrayed and the documents referred to in this judgment are those in W.A. No. 422/2007. The events that led to the filing of the complaint by the appellant before the N.H.R.C. and passing of orders under S. 18(3) of the Act by them are the following.

2. Appellant while working as Senior Scientist and Project Head of 5 projects in I.S.R.O. was implicated in a case of espionage by the Vanchiyoore Police which registered Crime No. 246/1992 on 30.11.1994. Within two days of registering crime, a Special Team of Kerala Police was constituted to investigate the case that was headed by the 3rd respondent who was then D.I.G. of Police (Crimes). Information leading to registration of crime for offences punishable under the Official Secrets Act emanated from a lady who was a Mali Citizen found overstaying in a hotel at Thiruvananthapuram beyond the period covered by the Visa issued to her. The appellant being one of the accused named in the crime case was arrested on 30.11.1994 and was produced before the Magistrate Court on the following day which led to his remand to police custody. The appellant was subjected to protracted questioning by the Kerala Police along with officials of the Intelligence Bureau and Research and Analysis Wing of the Central Government. Even though Special Investigation Team was constituted by the State Government for conducting investigation of the case based on recommendation made by the 3rd respondent, the State Government referred the case for investigation by Central Bureau of Investigation on 5.12.1994. Appellant was under detention for few days in police custody and later in judicial custody until 19.1.1995 when the High Court granted bail. Even though appellant along with another Scientist of I.S.R.O. and a Contractor having business with I.S.R.O. and two ladies from Mali were arrayed as accused in the crime registered by the State Police, the C.B.I. after elaborate investigation found that the case booked against the appellant and others was completely false and therefore liable to be closed. The closure report submitted by C.B.I. on 16.4.1996 was accepted by the Chief Judicial Magistrate Court, Ernakulam discharging the appellant and others on 2.5.1996.

3. Very strange events followed after closure of the case by the Chief Judicial Magistrate Court. The State Government on 27.6.1996 issued a notification recalling the consent given to the C.B.I. for investigation which was already over thereby giving way for another round of investigation by the State Police. The appellant challenged the notification issued by the Government permitting re-investigation by the police after closure of the same by the C.B.I. which was dismissed by the Division Bench of this court, though the challenge made by the State Police against the closure of the F.I.R. by the Chief Judicial Magistrate was rejected by this Court. Appellant and others challenged the Division Bench judgment of this court upholding re-investigation/further investigation permitted by the State Government after closure of C.B.I. investigation before the Hon'ble Supreme Court. The Supreme Court in the judgment reported in AIR 1998 SC 2010 allowed the appeals filed by the appellant and other accused by cancelling the Government order and condemned the attitude of the Government in ordering re-investigation or further investigation in a criminal case closed by the C.B.I. In fact the Hon'ble Supreme Court completely accepted the C.B.I.'s report and held that all proceedings were vitiated by mala fides and no responsible Government should act in the manner done by the Government. Consequently

Appeals filed by the appellant and others were allowed by granting cost @ of Rs. 1,00,000/- to each of the six accused persons including the appellant. Within 6 months from the date of rendering the judgment by the Supreme Court, the appellant on 14.10.1998 filed complaint before the N.H.R.C. for various reliefs such as compensation for the loss and suffering and also for direction to take action against the police officers concerned. The N.H.R.C. considered the complaint in the light of the report of the C.B.I. and the observations and findings of the Hon''ble Supreme Court in the judgment and considered it a fit case for orders under S. 18(3) granting an advance compensation of Rs. 10,00,000/- to the appellant. This order dated 14.3.2001 issued by the N.H.R.C. is challenged by the State in the Writ Petition filed in this court which was disposed of by learned Single Judge vide judgment impugned in all writ appeals setting aside the order issued by the N.H.R.C. under S. 18(3) and directing them to re-consider the maintainability of the complaint with specific reference to S. 36(2) of the Act in the light of judgments of the Apex Court particularly in the decision in N.C. Dhoundial Vs. Union of India (UOI) and Others, . In the very same order produced as Ext. P6 and challenged by the State in the Writ Petition filed by them there was also a direction by the N.H.R.C. to the State Government to report to it the action taken against the police officers concerned. Even though Single Judge virtually allowed the Writ Petition filed by the State by setting aside the order issued under S. 18(3) and by remanding the matter to the N.H.R.C. for re-consideration of maintainability, Writ appeal is filed by the State challenging the judgment because according to the State, Single Judge himself should have declared the complaint as barred by limitation under S. 36(2) of the Act The appellants grievance in the Writ Appeal is that as on the date of disposal of the Writ Petition 12 years had passed since his suffering and the judgment has deprived him of even the advance interim compensation granted by the N.H.R.C. under S. 18(3) of the Act. Even though the 3rd respondent had not challenged the interim order in a separate Writ Petition, he has filed Writ Appeal against judgment supporting the State and by raising the same contention that complaint is not maintainable and if at all maintainable against the State he has no personal responsibility as he was only head of the investigating team. Since the judgment under appeal is the same in all the Writ Appeals we have heard all the cases together and proceed to dispose of the same by this common judgment.

4. The central issue that arises in this cases is as to whether the N.H.R.C. has lost it's jurisdiction by virtue of elapse of time that is one year from the alleged violation of the Human Rights in terms of S. 36(2) of the Act. Government Pleader and appellant in Writ Appeal No. 2119/2006 heavily relied on the decision of the Hon''ble Supreme Court in Dhoundial's case referred above and submitted that the concept of continuing cause of action cannot be applied to the limitation under S. 36(2) of the Act and the Single Judge having accepted in principle that maintainability should be considered only with reference to act of violation of human right the Writ Petition should have been allowed holding that

the complaint is barred by limitation under S. 36(2) of the Act and thereafter N.H.R.C. forfeited their jurisdiction to entertain the complaint. However, appellant has referred to the specific findings of the N.H.R.C. in the impugned order which sustained as within time the complaint based on Reg. 8(b) of the N.H.R.C. (Procedure Regulation) 1995 which stipulates that N.H.R.C. shall not entertain complaints with regard to matters which are sub-judice. Besides supporting the findings of the N.H.R.C. on maintainability of the complaint and the jurisdiction of the N.H.R.C. the appellant's counsel also referred to the bundle of grievances starting with the registration of crime with his arrest and the ultimate judgment of the Supreme Court where under only he was completely liberated from another round of investigation on serious charge of espionage under the Official Secrets Act. Therefore according to him even the last order issued by the Government directing re-investigation after closure of the case by the C.B.I. that was cancelled by the Supreme Court is an independent violation of human rights entitling him to file complaint before the N.H.R.C.

5. Since the Single Judge heavily relied on the judgment of the Supreme Court in Dhoundial's case for remanding the matter and in the Writ Appeal the State is relying on it we have gone through the said judgment. What we notice is that in the said case decided by the Supreme Court the complaint of human right violation was with specific reference to the detention in prison of Government officer who was apprehended for offences punishable under the Prevention of Corruption Act. It is seen from the judgment that the said person was arrested and was in fact chargesheeted for offences punishable under the Prevention of Corruption Act whereas in this case the finding of the CBI in their report filed before the Chief Judicial Magistrate's Court as well as the findings of the Supreme Court is that the appellant was implicated in a false case which led to not even framing of charge against him. The case was closed at the threshold by the prime investigation agency namely C.B.I. and the State's effort to re-open the matter was closed by the Supreme Court which heavily condemned the attitude of the State. Therefore, in our view the principle of continuing cause of action canvassed by the party in the case decided by the Supreme Court that was relied on by the Single Judge does not apply to the facts of this case.

6. While considering the issues raised in the Writ Appeals on merit we have to keep in mind the definition of "Human Rights" contained in S. 2(d) of the Act which is as follows.

2(d). "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

7. Section 10(2) of the Act authorises the N.H.R.C. to frame Regulation for its procedure and Reg. 8 framed under the said provision is as follows.

8. Procedure for dealing with complaints.--(1) All complaints in whatever form received by the Commission, shall be registered and assigned a number and

placed for admission as per the special or general directions of the Chairperson before a Single Member Bench constituted for the purpose, not later than one week of receipt thereof. If the Single-Member Bench dealing with the case, either for admission or for final disposal, having regard to the importance of the issues involved, is of the opinion that the case should be heard by a Bench of not less than two Members he/she may refer the case to a Bench of two Members. On receipt of the reference, the case shall be assigned to a Bench of two or more Members, as may be constituted by the Chairperson. Ordinarily complaints of the following nature are not entertainable by the Commission :-

(a) in regard to events which happened more than one year before the making of complaints;

(b) with regard to matters which are sub-judice;

(c) ...

8. Appellant's counsel has referred to the findings of the N.H.R.C. on maintainability of complaint with reference to limitation prescribed under S. 36(2) of the Act wherein they held that under Reg. 8(b) they could not entertain complaint in respect of a matter which is sub-judice. Every police investigation certainly involves restrictions and deprivation of personal liberties like arrest, questioning, detention in prison and other procedure engaged by investigating agency namely police and court and all these are human right violations. However whatever is the action permissible under law leading to violation of human rights cannot be the subject matter of complaint before N.H.R.C. Powers conferred on criminal courts under Cr.P.C. take care of situations of human right violations in the course of bona fide investigation or trial of a criminal case, though there is no prohibition against N.H.R.C. looking into human rights violations of an accused or even a convict. However the whole action of the police turns out to be violations of human rights justifying filing of complaint before the N.H.R.C. or State Commission when the investigation itself is mala fide and the case booked happens to be a false case. Even though Government Pleader tried to establish before us that there was justification for ordering fresh investigation or re-investigation even after closure of case by the C.B.I., we do not think we can consider the same because the findings of the Supreme Court in their judgment referred above are absolute and final. The only question that has to be considered is the scope of limitation under S. 36(2) of the Act which for easy reference is extracted hereunder.

36. Matters not subject to jurisdiction of the Commission.-- (1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(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.

9. What is clear from sub-section (2) is that it is not a period of limitation prescribed for filing complaint before the N.H.R.C. or State Commission. On the other hand it is a restriction on the exercise of jurisdiction by the Commission on a complaint filed after expiry of one year from the date of the act constituting violation of human right. While considering the jurisdiction of the Commission with reference to the period prescribed under sub-section (2) of S. 36 we have to necessarily look into the procedure followed by the Commission under the Regulation stated above. It is not uncommon that many cases of actionable human right violations are perpetuated by agencies of State particularly the police as in this case by registering false cases against innocent persons. However invariably cases are instituted before the criminal court leading to trial, appeals, revision etc., before the hierarchy of courts. In our view Reg. 8(b) is a very prudent regulation made by N.H.R.C. to keep away from matters that are pending in courts of competent jurisdiction as in criminal cases. We have to look at the maintainability of the objection raised by the State and appellant supporting them by considering as what would have happened if a petition was filed before the N.H.R.C. when Appellant was arrested and detained in prison pursuant to registration of F.I.R. in court serious offences of espionage charged against him. Even though there is no provision in the Act prohibiting N.H.R.C. from looking into human right violations during investigation and trial of criminal cases, the question has to be considered in a prudent and practical manner and that is why N.H.R.C. has rightly framed Reg. 8(b) wherein it is specifically stated that they will not ordinarily entertain any complaint when the act is one in respect of which any case is pending before a court that is when it is sub-judice. In this case the appellant is a Senior Scientist of a sensitive organisation like I.S.R.O. and was head of several projects when he was charged along with other Scientists with offences punishable under the Official Secrets Act. The State has no case that the appellant could have filed complaint before the N.H.R.C. for human right violation at the stage of investigation or when F.I.R. was pending before the Chief Judicial Magistrate's Court. Therefore going by Reg. 8(b) which is binding on the N.H.R.C., we are of the view that they rightly held that complaint is maintainable only after the cases that led to the human rights violations are over in court. Now looking at the sequence of developments in this case what we notice is that soon after appellant was discharged by the C.J.M. from the criminal case based on C.B.I.'s final report the State Government revived the case against him by ordering re-investigation or further investigation which led to Appellant's challenge against the same in this court in Writ Petition though was unsuccessful, the Appellant completely succeeded in Supreme Court which held that the State is responsible for the misfortune and suffering of the Appellant. We therefore feel that the bar under Reg. 8(b) against entertainment of complaint and proceeding with the same by N.H.R.C. continues until the cases before the courts are over and it is only thereafter the N.H.R.C. gets jurisdiction to proceed to entertain and enquire into the complaint filed before it. It is seen that the complaint is filed by the appellant before N.H.R.C. within 6 months from the date the Supreme Court cancelled fresh investigation or further investigation

by the police under the Government orders challenged before the Supreme Court. Since the complaint is filed within one year from the date of judgment of the Supreme Court we hold that the N.H.R.C. rightly entertained it as within time under S. 36(2) of the Act and proceeded to enquire into the matter. The counsel for the appellant referred to definition of "human rights" contained in S. 2(d) and contended that the fresh investigation ordered by the Government even after closure of the criminal case by the C.B.I., affects his dignity as a Senior Scientist and his position in the society and that by itself constitutes a human right violation. We are in agreement with this argument because being arrayed as an accused that too a Scientist like the Appellant in a serious offence of espionage punishable under the Official Secrets Act even after C.B.I. closed the case as bogus is a stigma and it amounts to mental torture. So much so there is force in the contention of the appellant that the fresh investigation ordered by the State Government which was subject matter of litigation before the Supreme Court itself casts a shadow on his integrity and character and the findings of the Supreme Court as these while cancelling the order against the Appellant clearly supports Appellant's case of human rights violation. However in view of our findings above that the complaint is not beyond the time there is no need for us to go into the contentions raised as to which acts of the respondents independently constitutes human rights violation which the N.H.R.C. can consider while disposing of Appellant's complaint.

10. The next question to be considered is the correctness of the direction issued by the N.H.R.C. under S. 18(3) of the Act granting interim compensation of Rs. 10 lakhs to appellant. Since the Single Judge has set aside the impugned order on limitation the legality, propriety and correctness of the said finding of N.H.R.C. is not gone into by him. Government Pleader has however challenged the findings of the N.H.R.C. on merits with regard to justification for granting interim compensation under S. 18(3) of the Act. The appellant has stated in detail the suffering he had, that is detention in police custody as well as in judicial custody for nearly two months and the erosion of his personal reputation and that of the family and suffering he had in service which are elaborately considered by the N.H.R.C. for granting advance compensation. On going through the order of the N.H.R.C. we notice that they have considered appellant's suffering with reference to the findings of the Supreme Court in the judgment vacating Government orders on re-investigation. Considering the suffering the appellant had, both in personal life and in service and the loss of reputation in the society we do not find any justification to interfere with the interim compensation ordered to be paid by the N.H.R.C. under S. 18(3) of the Act. We therefore uphold the order of the N.H.R.C. with regard to the interim compensation ordered to be paid under S. 18(3) of the Act with direction to the State to make the payment within a period of 3 weeks from production of this judgment. So far as the appeal filed by the 3rd respondent in the Writ Petition is concerned we notice that the N.H.R.C. has not found any of the police personnel including the said appellant personally responsible for violation of human right of the appellant. On

the other hand the Commission had directed the State Government to report to it as to what action they have taken against the said appellant and others. The appellant is right in his contention that N.H.R.C.'s direction to the Government though not in so many words convey the idea that they are personally responsible and they should be proceeded against. We feel it is certainly premature on the part of N.H.R.C. to order action against the officers concerned because they are all persons made as personally party respondents in the petition before the N.H.R.C. and unless in the course of final enquiry N.H.R.C. identifies the persons if any personally involved in human rights violation they cannot order the Government to take action or to recover compensation. So much so we vacate the observation of the N.H.R.C. in regard to direction to State to consider action against officers concerned, which certainly the Commission is free to consider in the course of enquiry and while issuing final orders after giving opportunity to all concerned. Writ Appeal No. 422/2007 is allowed as above and Writ Appeal filed by the State is dismissed but with the above direction. Writ Appeal No. 2119/2006 is closed as unnecessary. Government Pleader also raised contention that when civil suit filed by the appellant is pending the N.H.R.C. does not get jurisdiction to decide the matter. In the first place suit was filed subsequent to filing of complaint before N.H.R.C. Appellant's contention is that it is filed by way of abundant caution. In any case we notice that N.H.R.C. has clearly stated in their order that advance compensation awarded will be set off against the final award to be passed by them or against decree passed by civil court. In other words appellant is not entitled to same compensation amount for the same grievance from two forums. We therefore do not think the suit subsequently filed by the appellant affects the jurisdiction of the N.H.R.C. to proceed with the enquiry in the complaint filed before them. We also make it clear that all parties are free to adduce evidence and raise whatever contention they want in the further enquiry for disposal of the case by the N.H.R.C.