

(2003) 12 SC CK 0030

In the Supreme Court Of India

Case No : Writ Petition (C) No. 42 of 2001 with Transfer Petition (Civil) No's. 180, 261, 283, 293, 850 and 877 of 2001 and Special Leave Petition (Civil) No's. 8220, 11182, 11186 and 14392 of 2001

N.C. Dhoundial

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 473
Income Tax Act, 1961 — Section 34
National Human Rights Commission (Procedure) Regulations, 1994 — Reg

Citation : AIR 2004 SC 1272 : (2004) AIRSCW 126 : (2004) 1 ALD(Cri) 291 : (2004) 1 AWC 516 Supp : (2004) 97 CLT 790 : (2004) 2 JCR 129 : (2005) 1 LW(Cri) 150 : (2003) 10 SCALE 60 : (2004) 2 SCC 579 : (2003) 6 SCR 674 Supp : (2003) 8 Supreme 738 : (2004) 1 UJ 746

Hon'ble Judges : S. Rajendra Babu, J;P. Venkatarama Reddi, J;H. K. Sema, J

Bench : Full Bench

Advocate : R.N. Trivedi, Additional Solicitor General, Rajeev Dhawan and N.N. Goswamy, Rishi Malhotra, Prem Malhotra, Sunita Sharma, Shree Prakash Sinha, Nikhil Nayyar, Anil Shrivastav, Rajeev Sharma, A.D.N. Rao, P. Parmeswaran, Indu Goswamy, Sanjay R. Hegde, Sushma Suri, Ramesh Babu M.R. and G. Prakash, for the appearing parties Party in Person in W.P. C No. 42/200, for the Appellant; Party-in-person (NP) in W.P. (C) No. 42/2003, for the Respondent

Final Decision : Allowed

Judgement

P. Venkatarama Reddi, J.—A search was conducted by the officials of CBI on 25.03.1994 at the residential house of Shri Ashok Kumar Sinha an officer of the Telecom Department (hereinafter referred to as "the complainant") at Ranchi. This was followed by searches of the houses of his close relations and contractors at Patna and Ranchi. In between he was admitted to hospital on two occasions. On discharge from CCI Hospital at Ranchi on 3.4.1994. the petitioner was arrested "with a view to interrogate him in custody" and produced before the

Court of Special Judge, CBI, Ranchi with a prayer to remand him to police custody for 10 days. The Special Judge remanded him to judicial custody for a fortnight with a direction to the Jail Superintendent to get him medically examined and to submit the report. On receipt of the report of the Jail Superintendent, he was remanded to police custody for seven days and there was a further order to release him on provisional bail for one month from 13.4.1994. The Court also directed that he should be admitted in CCI Hospital and interrogated there. The provisional bail was confirmed later on subject to certain conditions. The CBI, after obtaining sanction, filed a charge sheet on 18.8.1998 under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act for the possession of assets disproportionate to the known sources of income.

2. A day thereafter, i.e. on 19.8.1998, the National Human Rights Commission (for short 'NHRC') received a complaint from Mr. A.K. Sinha alleging illegal detention from 25.3.1994 to 3.4.1994. He also alleged harassment and torture by the CBI officials including Mr. N.C. Dhoundial, S.P., CBI (Petitioner in WP (C) 42/2001). He alleged that a false case was registered against him for extraneous reasons on account of the antagonistic attitude of the S.P.--Mr. Dhoundial, towards him. The complainant alleged that the action of the CBI in causing his unlawful detention during the period 25.3.1994 to 3.4.1994 and the harsh treatment meted out to him aggravated his disease of cancer (which was detected later) and a major surgery had to be performed at Tata Memorial Cancer Hospital, Bombay to save his life. Seven officers of CBI were named in the complaint who, according to the complainant, were directly or indirectly responsible for his illegal detention. NHRC took cognizance of the complaint and called for a report from the Director, CBI. On consideration of the report, the learned Member of NHRC found that there was no substance in the complaint and that no action was called for. The learned Member observed that there was no truth in the allegation of harassment and denial of proper medical attention. It was also observed that the complainant never complained to the Court that he was being ill-treated by the CBI officers. The learned Member further observed that "there was considerable force in the stand taken by the CBI that this complaint has been filed only to demoralize the CBI officers who are zealously investigating." Proceedings to this effect were drawn up on 6.11.1998. The complainant then filed a petition on 21.9.1999 pointing out certain facts which according to him missed the attention of the NHRC while taking the decision recorded on 6.11.1998. The petitioner prayed for reopening the case and to take a fresh decision after giving him adequate opportunity to present his case.

3. The learned Chairman of NHRC, by his proceeding dated 10.3.2000 treated the petition filed by Shri A.K. Sinha as review petition and having found a prima facie case of illegal detention of the complainant by the CBI officials during the period 25.3.1994 to 3.4.1994, thought it fit to recall the findings recorded in the proceeding dated 6.11.1998 and to further proceed with the enquiry in the matter. Accordingly, show cause notices were issued to four CBI officials namely,

Shri N.C. Dhoundial, Shri Narayan Jha, Shri P.K. Panigrahi and Shri B.N. Singh as to why appropriate recommendation should not be made to the Competent Authority for initiating disciplinary action and such other action as may be found expedient. On receipt of replies from the concerned officials of the CBI, the learned Chairman, by his proceeding dated 12.6.2000, rejected the version of the CBI officials, over-ruled the objections raised by them on points of law and held that the complainant was in de facto custody of the said officials without authority of law during the period 25.3.1994 to 3.4.1994 resulting in the violation of his human rights. The Commission directed the Director, CBI to initiate appropriate disciplinary action for the misconduct of the four officials arising out of the illegal detention of the complainant Shri A.K. Sinha. It was made clear that the direction would not in any manner affect the prosecution of Shri Sinha for the offences under Prevention of Corruption Act. It may be noted that before recording its findings and giving directions as above, the Commission did not afford personal hearing or the opportunity to adduce evidence to the writ petitioner and other officials.

4. Questioning the said order of NHRC, Shri P.K. Panigrahi, the then Inspector, CBI filed a Writ petition--CWJC 2454/2000 under Article 226 in the Patna High Court (Ranchi Bench). The learned Judge dismissed the writ petition by an order dated 14.8.2000. The learned Judge observed that all the contentions raised by the writ petitioner were considered by NHRC and he found no reason to interfere with the impugned order. However, the learned Judge made it clear that the order in question was in the nature of recommendation and disciplinary proceedings as and when initiated have to be disposed of independently on the basis of the evidence brought on record. Against this order in the Writ Petition Shri Panigrahi filed an appeal--LPA No. 309/2000 (R). By a speaking order dated 22.3.2001, the Division Bench admitted the appeal as the appeal raised important and debatable questions. Legal questions arising in the appeal were broadly indicated by the Division Bench. While ordering notice to NHRC, status-quo with respect to the appellant was directed to be maintained. Questioning this interim order passed pending the LPA, the complainant Shri A.K. Sinha filed SLP (C) No. 14392/2001. NHRC filed SLP (C) 8220/2001 against the same interim order.

5. Subsequent to the admission of LPA, two other CBI officials Shri Bishwanath Singh, the then SI, CBI and Shri N. Jha, the then Deputy SP, CBI also filed writ petitions under Article 226 of the Constitution. The learned Single Judge, following the interim order passed in LPA, granted an order of status-quo in regard to those writ petitioners also. It was further ordered that the Writ Applications shall be heard after the disposal of LPA. Assailing this order, the complainant A.K. Sinha filed SLP (c) Nos. 11182/2001 and 11186/2001. While so, Shri N.C. Dhoundial, the then SP, CBI, Ranchi had directly filed writ Petition (c) No. 42/2001. under Article 32 in this Court questioning the NHRC's order dated 12.6.2000. This Court directed issuance of notice on 15.1.2001. Thereafter, a bunch of transfer petitions, three by A.K. Sinha and three by NHRC

came to be filed in this Court with a prayer to transfer the LPA and Writ Petitions to the file of this Court and to hear the same along with WP(C) No. 42 of 2001 filed by N.C. Dhoundial. The ground of transfer is that similar issues are involved for adjudication in the LPA/Writ Petitions pending in the High Court and the Writ Petition pending in this Court.

6. The SLPs, TP's and the Writ Petition have been grouped together and posted for final disposal. That is how these 11 matters are before us.

7. Before proceeding further, it is necessary to make a brief reference to the stand taken by the officials of CBI on the factual aspects relating to the alleged detention between 25.3.1994 to 3.4.1994 and the findings recorded by NHRC on this disputed issue.

8. The factual account given by the CBI officials is as follows:

After the search on 25.3.1994 the complainant was asked to accompany the DSP, CBI to the SP's office at Ranchi. During interrogation, the complainant disclosed that he kept certain papers, pass-books and keys of lockers in a brief case handed over to one Ranjan Pandey, a contractor of his department at Patna. He volunteered to accompany the CBI officials to Patna with a view to assist them in the investigation. Accordingly, Shri N. Jha, Shri Panigrahi and Shri B.N. Singh together with the complainant started on the journey to Patna in the evening. After reaching the outskirts of Ranchi. Sri Sinha complained of chest pain and wanted to be examined at a private nursing home named by him. Accordingly, he was taken to that hospital but the doctor concerned was not available. Hence, on the request of the complainant, he was taken to Central Coalfield Hospital at Ranchi and was admitted in the Hospital. The CBI officials left the hospital after his family members came to the hospital to attend on him. On the morning of 26.3.1994, he was discharged from the hospital after certain tests including ECG were conducted. The complainant then expressed his preparedness to go to Patna by air. He bought his own ticket and accompanied the CBI officers to Patna. On search of the house of Shri Ranjan Pandey at Patna, the brief case could not be found. However, certain papers were seized from his residence. Then the houses of the two close relatives of the complainant were searched till late night that day on the basis of the information furnished by him. On completion of the searches, the CBI officers stayed in the Coal India Guest House at Patna. The petitioner volunteered to stay with them that night on the ostensible ground that he felt embarrassed to stay with his relatives in the aftermath of the raids. On 27.3.1994, the flight to Ranchi was cancelled and there was some uncertainty in the time schedule of the trains brought for Ranchi on account of Holi festival the next day. Hence, the officials along with the complainant took a bus from Patna on the night of March 27th and reached Ranchi in the early morning hours of March 28th. The complainant was requested to attend the CBI office at Ranchi at 8.30 a.m. Accordingly, he came to the CBI office and in the course of questioning he disclosed that one more brief case with important documents was kept with another contractor. On a search of the said

contractor's house, nothing incriminating was found, While returning to the CBI office, the petitioner again reported that he was not feeling well and requested that his father-in-law be informed. Accordingly, his father-in-law came to the CBI office and both of them left for CCI Hospital. His father-in-law got him admitted in the hospital and also deposited money for treatment. On 1.4.1994, even while the complainant was in hospital, he came to the CBI office with two brief cases said to have been kept with the two contractors. Those brief cases were seized in the presence of witnesses in the CBI office. The brief cases did not contain any incriminating material. The complainant without participating in further interrogation went back to the CCI Hospital. He was discharged from the CCI Hospital on 3.4.1994 at 12 noon and on the request of the IO went to the CBI office. As he did not cooperate with the investigating agency and did not even come forward to produce the documents relating to investments etc. admitted by him, it was decided to arrest and interrogate him in custody. That is why he was arrested on 3.4.1994 and produced before the Special Judge, CBI, Ranchi with a prayer to remand him to police custody.

9. The CBI officials denied having kept the police personnel in the hospital either on 25.3.1994 or on the second occasion. They relied on the entries in the case diary in support of their contention that he was not arrested till 3.4.1994. Regarding the steps taken by them for providing medical attendance to the complainant on the first day i.e. 25.3.1994, the stand of CBI officials has been that it was done on humanitarian considerations, but not because he was in their custody.

10 The Commission was not prepared to accept the version of the CBI officials. The relevant comment made by the learned Chairman of NHRC to discredit their version is extracted hereunder:

"The Commission has given its anxious consideration but it is not inclined to accept the above explanation because it is unreal to expect that a wrong doer will make a record of his wrong actions. Absence of such record in the case diaries prepared by a notice cannot be relied on to disprove the otherwise established fact of the illegal detention of Shri A.K. Sinha during the aforesaid period. Had Shri Sinha not been in actual custody of the CBI officers, there was no occasion for them to have provided him the medical aid and attention and to keep him under constant surveillance. More so, as per the officers' own showing, they were accompanying the petitioner from Ranchi to Patna and back for the purpose of making recoveries of certain incriminatory articles. The Commission, therefore, finds no substance in this objection of the notice officers and rejects the same."

11. Thus the initiative taken by the CBI officers in joining him in the hospital when he complained of chest pain and the factum of complainant accompanying the CBI officials to Patna and coming back with them were relied, upon by the Commission to come to the conclusion that the complainant was in the actual custody of CBI officers. The Commission also observed that the complainant was

under constant surveillance. Though it is not elaborated, the Commission probably meant that he was being watched while he was in hospital.

12. It is to be noted that the Commission did not afford personal hearing to the officials who were put on notice nor any opportunity of adducing evidence was afforded. The complaint was decided on the basis of averments in the review petition and the replies submitted by the officials concerned. The plea of the officials was tested broadly on the basis of probabilities and a conclusion was reached that the officials concerned were guilty of human rights violation.

13. The three legal objections raised by the CBI officials were over-ruled by the Commission. Firstly, it was held that by virtue of Section 13 of the Protection of Human Rights Act, 1993, the power of review conferred on the civil court was available to the Commission. As the earlier order was not a decision on merits but merely an order abstaining from further enquiry the Commission felt that there was no bar to reconsider the entire issue in the interest of justice. The second objection based on Regulation 8(1)(b) of NHRC (Procedure Regulations) which bars complaints with regard to matters that are 'subjudice' was rejected with the observation that the question of violation of human rights as a result of alleged unauthorized detention of the complainant was not subjudice. The other important objection 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) was answered by the Commission in the following words:

"The violation of human rights is a continuing wrong unless due reparation is made. It gives rise to recurring cause of action till redressal of the grievance. 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."

14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the 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 for 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. The assumption underlying the observation in the concluding passage

extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.

15. Now, let us look at Section 36 of the Protection of Human Rights Act, which reads thus:

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."

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. If an authority is needed for this proposition the observations of this Court in *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus:

"Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the income tax Officer to bring to tax escaped income."...

The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide *Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar*, and *Bhinka and Others Vs. Charan Singh*, .

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the Section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar u/s 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this view point is that such a view, If accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant

case. The time limit prescribed is referable to the alleged 'act' constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3.4.1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3.4.1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3.4.1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression 'continuing offence' in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3.4.1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrong-doers. To characterize it as a continuing wrong is, therefore, inappropriate. One year period for taking up the enquiry into the complaint, therefore, comes to an end by 3.4.1995. 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 1/2 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 effect on the service career of the writ petitioner, is violative of Article 14 of the Constitution.

19. Before concluding our discussion on, this aspect, we would like to clarify in reiteration of what was said by this Court in *Paramjit Kaur Vs. State of Punjab and Others*, that in a case where the NHRC proceeds to investigate and inquire into the violation of human rights pursuant to the directions of this Court under Article 32 of the Constitution, the bar contained in Section 36(2) will not apply because in such an event, NHRC does not function under the provisions of the Act but as an 'expert body' aiding the Supreme Court in the discharge of its constitutional power under Article 32.

20. The question whether Section 13 of the Act empowers the Commission to exercise the power of review conferred on the Civil Court and if so, whether the conditions for the exercise of such power are satisfied, has been debated before us. In any case, whether the Commission has the power to reopen the closed complaint and enquire into the same in the absence of new material coming to light has also been debated. These questions need be gone into in view of our conclusion that the Commission exceeded its jurisdiction in taking up the enquiry in the face of the bar created by Section 36(2).

21. In the result, the order of NHRG dated 12.6.2000 is quashed and the writ petition (civil) No. 42 of 2001 stands allowed. The SLP Nos. 8220 of 2001, 11182 of 2001, 11186 and 14392 of 2001 filed against the interim orders granted by the High Court are dismissed. All the Transfer Petitions are also dismissed with an observation that the High Court of Jharkhand may dispose of the related Writ Petitions/LPA pending on its file with expedition in the light of this judgment. No costs.