

(2014) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22658 of 2011

Southern Power Distribution Company of Andhra Pradesh Ltd.	APPELLANT
Vs	
A.P. State Human Rights Commission and Another	RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Protection of Human Rights Act, 1993 — Section 17 18 18(a) 29

Citation : (2014) 3 ALD 216 : (2014) 3 ALT 698

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.;Sanjay Kumar, J

Bench : Division Bench

Advocate : P. Vinod Kumar, for the Appellant;

Final Decision : Disposed Off

Judgement

Kalyan Jyoti Sengupta, C.J.—Pursuant to our order dated 23.01.2014, original record relating to this case has been sent by the Andhra Pradesh State Human Rights Commission (hereinafter referred to as "the Commission"). We have minutely checked up the record and we wish to record our observations hereunder. Since no counter-affidavit has been filed by any of the party and, in fact, the record will speak for itself to justify the order passed by the Commission. In this writ petition, the petitioner has challenged the above order basically on three grounds. Firstly, the Commission has no jurisdiction or authority to give any direction for payment of money. Secondly, the Commission, at the most, can make a report and to recommend to the Government and if it is not done, then some other procedure has to be followed as provided under the provisions of the Protection of Human Rights Act, 1993. Thirdly, the findings reached by the Commission are without making any inquiry at all and without any material whatsoever.

2. Learned Counsel for the petitioner, while highlighting the aforesaid grounds, submits without taking care of above legal disability, entire exercise for decision making and consequently decision are illegal and the same are liable to be set aside.

3. Learned Counsel for the complainant/unofficial respondent submits that the complaint was made to the Commission indicating the cause of the accident which resulted in destruction and loss of sugar cane crop. On receipt of the complaint, the District Collector, Chittoor, also submitted a report and based on the report of the District Collector and also the claims and contentions of the complainant, the aforesaid order was passed by the Commission. Therefore, it cannot be said that without conducting any inquiry or without any material, the order was passed by the Commission.

4. None appears for respondent No. 1-Commission. When we notice that the records are made available, we think that nothing can be said beyond the records.

5. The issue cropped up before us is whether the Commission can give a direction or mandate for payment of money, meaning thereby whether the Commission can pass a money decree or not? In this regard, we set out the functions and powers of the Commission, which could be found under Sections 17 and 18 of the Protection of Human Rights Act, 1993, (hereinafter Act) which have been made applicable by virtue of Section 29 for State Human Rights Commission.

17. Inquiry into complaints.-The Commission while inquiring into the complaints of violations of human rights may-

(i) call for information or report 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.

18. Steps during and after inquiry.-The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely-

(a) where the inquiry discloses, the commission of violation of human rights, or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

6. It appears that the Commission has called for a report from the writ petitioner organization and the report was submitted denying the allegations made by the complainant. The District Collector has also submitted a report to the Commission basing on the report of the Tahsildar submitted to him. Tahsildar is said to have reported that because of the short circuit the fire broke out and caused loss to the sugar cane crop. It appears from the report that the Commission has neither considered the report submitted by the writ petitioner nor called for independent report from Tahsildar. According to us, the report of the Tahsildar should have been asked for and, while perusing the same, it should have considered which version is to be considered whether the writ petitioner's or the Tahsildar's or for that matter the District Collector. It does not appear in the record that the writ petitioner has produced any cogent material to show that he grew sugar cane or they have destroyed by fire. The petitioner merely made allegations.

7. Under the circumstances, we are constrained to uphold the argument of the learned Counsel for the petitioner that without making any investigation and inquiry the above order has been passed by the Commission.

8. While dealing with the contentions raised by the petitioner, we are of the view that the Commission has no jurisdiction and power to give any mandate or direction for payment of money which will be clear from the provisions of Section 18(a) of the Act, which empowers the Commission to make recommendation to

the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim or the members of his family. If such payment is not made, the Commission may send a copy of its inquiry report together with its recommendations to the concerned Government or authority and they in their turn shall within a period of one month or such further time as the Commission may allow, forward its comments on the report including the action taken or proposed to be taken thereon to the Commission. Thus, it is clear that neither the Government nor the authority is bound to take action as per the recommendations of the Commission. It is for them either to accept or not to accept the recommendations and the Government authority concerned will forward its comments on that report. It is clear from clause (f) of the said Section that the Commission will publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission. Clause (b) of Section 18 also provides as an optional measure, which might be taken by the Commission instead of inquiry or order, the Commission itself can approach the Supreme Court or the High Court for any directions, orders or writs as that Court may deem necessary.

9. In view of the above discussion, we are of the view that this matter requires a fresh consideration. Accordingly, we set aside the impugned order. We direct respondent No. 1-Commission, in the event the complainant proposes to proceed with this complaint, to take a fresh decision after making due inquiry, investigation and collecting materials, for coming to the conclusion that the complainant grew sugar cane in the field, there has been an electrical live wire at that point of time drawn over the land where the complainant grew sugar cane. There has been an incident of short circuit, which resulted sparking of fire and the sugar cane crop has been destroyed by the fire. Further, the Commission shall collect evidence for quantification of the alleged damage. Respondent No. 2-complainant, within a fortnight from the date of receipt of a copy of this order, shall express his intention to the Commission to proceed afresh with the matter. If such written intention is not supplied, the Commission shall not proceed afresh with the matter. In that event, it would be open for the complainant to approach the appropriate forum for redressal of his grievance in all respects. Accordingly, this writ petition is disposed of. Miscellaneous Petitions pending, if any, in this petition shall also stand closed. No order as to costs.