

(2014) 10 KL CK 0363
In the High Court Of Kerala
Case No : W.A. No. 527 of 2014

State of Kerala

APPELLANT

Vs

The Human Rights Commission

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 174
Protection of Human Rights Act, 1993 — Section 12, 13, 14, 16, 16(a)

Citation : AIR 2015 Ker 124 : (2015) 1 KHC 391 : (2015) 1 KLJ 437 : (2015) 1 KLT 239

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : P.I. Davis, Government Pleader, Advocates for the Appellant; M.A. Zohra, C.K. Sreejith, K.V. Sohan and K. Sreeja Sohan, Advocates for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. This Writ Appeal has been filed by the State of Kerala challenging the judgment dated 24.09.2013 passed by a learned Single Judge in W.P. (C) No. 23210 of 2014. Learned Single Judge by the aforesaid judgment has dismissed the Writ Petition filed by the State of Kerala against the order passed by the Kerala State Human Rights Commission (for short, "the Commission") directing payment of compensation. Brief facts giving rise to the Writ Appeal are: Two minor children, namely, Baby Shaniba, aged 7 years, D/o. Abubekar Sidhique and Ramseena, aged 4 years, D/o. Abdul Rahim met with an unnatural death on 15.06.2007 while they fell into a quarry which was open and flooded. The newspaper, Malayala Manorama daily dated 16.06.2007 published the above news item. The Commission initiated suo motu proceedings on the basis of the newspaper report dated 16.06.2007. In the suo motu proceedings, statements were submitted by the owner of the quarry as well as the Geologist, Mining and Geology Department, Kasaragod. The police had also registered a case as Crime

No. 425 of 2007 under S. 174 of the Code of Criminal Procedure. The Commission found the quarry owner as well as the Mining and Geology Department as negligent and directed for payment of compensation of Rs. 1,00,000/- in the proportion of Rs. 50,000/- by the owner of the quarry and Rs. 50,000/- by the Mining and Geology Department to the legal heirs of the deceased children. The Government was directed to make the above payment to the legal heirs and recover it from the owner of the quarry and Officers of the Mining and Geology Department. The said order was issued by the Commission on 20.03.2012. Writ Petition No. 23210 of 2013 was filed by the State in this Court on 23.09.2013. Learned Single Judge by his order dated 24.9.2013 refused to entertain the Writ Petition observing that the State has stated no reasons for approaching this Court with the inordinate delay of 1 1/2 years. Being aggrieved by the said judgment, this Writ Appeal has been filed.

2. We have heard Shri P.I. Davis, learned Government Pleader as well as the learned counsel appearing for private respondents.

3. Learned Government Pleader in support of the appeal raised the following submissions: (i) Learned Single Judge erred in dismissing the Writ Petition on the ground of laches whereas the Court ought to have proceeded to decide the case on merit. (ii) The Commission without directing and conducting an enquiry has passed the order dated 20.03.2012 which is not in accordance with the provisions of the Protection of Human Rights Act, 1993 (for short, "Act 1993"). (iii) The Commission neither issued any notice nor gave opportunity to the Officers of the Mining and Geology Department which violates the provisions of S. 16 of Act, 1993. (iv) The Commission has no jurisdiction to pass order for payment of compensation and it can at best only make recommendation. (v) The Commission could have only directed payment of compensation by the quarry owner who was to compensate for all damages and injury as per the terms and conditions of the permit and no compensation could have been directed to be paid by the Government.

4. Learned counsel for the private respondents refuting the submissions of the learned Government Pleader supported the order of the Commission.

5. We have heard learned counsel for the parties and perused the records.

6. The first submission of the learned Government Pleader is that the learned Single Judge ought not have dismissed the Writ Petition on the ground of laches and ought to have considered the submissions on merit.

7. We have considered the above submission of the learned Government Pleader and perused the judgment. From the judgment passed by the learned Single Judge it does appear that the State Government has filed the Writ Petition virtually after 1 1/2 years challenging the order passed by the Commission. This Court has made the following observation in paragraph 4.

"After hearing the learned Government Pleader at length, this Court finds that if

the entire liability is to be mulcted upon the 1st respondent, then it is open for the petitioner to pursue appropriate remedy before the appropriate forum in accordance with law. This Court does not find it as a fit case to call for interference, more so, when the cause of action projected in this writ petition is a stale one. The laxity on the part of the litigant has always been deprecated by Courts, particularly by the Apex Court and the observation made in this regard as per the decision reported in Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, is quite relevant, whereby it has been held that, a person, who is simply sleeping over his rights, is not entitled to have relief at the hands of this Court in exercise of the discretionary jurisdiction under Art. 226 of the Constitution of India."

8. This Court by the said order has declined to interfere for two reasons. Firstly, this Court found that if the entire liability is to be mulcted on the 1st respondent, then it is open for the petitioner to pursue appropriate remedy before the appropriate forum in accordance with law and secondly, the cause of action projected is a stale one. Although in the Writ Petition no satisfactory explanation was given for laches in approaching the writ court, however, looking into the issue which has been raised in this appeal, we are of the view that appellant's submissions on the merits of the appeal also need to be considered by the appellate court and hence we have proceeded to consider the submissions of the learned Government Pleader for the appellant on merits also.

9. The next submission urged by the learned Government Pleader for the appellant is that the Commission without directing or holding an enquiry passed the order which violates the provisions of Act, 1993. S. 12 of Act, 1993 provides for functions of the Commission which is to the following effect:

"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, or on a direction or order of any court into complaint of-."

Section 13 deals with the power relating to inquiries and Section 14 deals with investigation. Section 17 provides for enquiry into the complaint which is to the following effect:

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

(i) call for the 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 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."

10. From the order passed by the Commission, it is clear that suo motu proceedings were initiated on the basis of newspaper report published in the Malayala Manorama daily dated 16.06.2007. Order of the Commission further notes that the quarry owner and the Geologist, Mining and Geology Department had filed their statements. The following portion of the order passed by the Commission is extracted.

"Sri, Pallikunju, Echilimkal, Mukkunothu, Bara, Uduma, the quarry owner and the Geologist. Mining and Geology Department, Kasargod filed statement." Regulations have been framed by the Commission, viz., The Kerala Human Rights Commission (Procedure) Regulations, 2001 (for short, "the Regulation"). Referring to Regulation No. 39, learned Government Pleader contended that no investigation report was called for by the Commission. Regulation No. 39 is quoted as below:

"39. Calling for investigation report,--(a) Whenever the Commission orders investigation to be undertaken by its Investigation Team or by any other investigating agency as decided by it under Section 14 of the Act, a copy of such order along with copies of the papers relevant thereto shall be furnished forthwith to such team/agency calling upon it to conduct investigation and the said team/agency shall submit its report within the time specified in the order and if no time is specified, within one month from the date of receipt of the order.

(b) If no such report is received within the time allowed, the matter shall be placed before the Bench without delay for further directions."

The scheme of Act, 1993 indicate that the Commission has power to direct for conducting any investigation pertaining to the enquiry by any Officer or through the investigating agency of the Central or State Government with the concurrence of the Central or State Government which is clearly delineated in S. 14. S. 17 deals with the procedure regarding enquiry into complaints. From the order of the Commission it is clear that the Commission has not directed for investigation rather proceeded to enquire about the complaint as per S. 17. It is relevant to note that complaint has been defined in Regulation 2(e) which contains a very wide definition and includes all petitions or communications or any information by any other means whatsoever alleging violation of human rights. Regulation 2(e) is as follows:

"2(e) "Complaint" means all petitions or communications received by the Commission from a victim or any other person on his behalf in person or by post

or by telegram or by fax or by any other means whatsoever alleging violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant of all or any of the human rights defined in clause (d) of sub-section (1) of S. 2 read with sub-section (5) of S. 21 of the Act."

The Commission in the present case proceeded to enquire into the violation of human rights on the basis of the newspaper report dated 16.06.2007 as noted above which is clearly covered by the definition of complaint under Regulation 2(e). From the order of the Commission it also does appear that the Commission has called for report from the Geologist, Mining and Geology Department as well as owner of the quarry. S. 17(i) empowers the Commission to call for report from "the Central Government or any State Government or any other authority or organization subordinate thereto". Geologist, Mining and Geology Department is subordinate to the State Government, hence report could have been called from him. Thus in the present case the Commission proceeded to conduct an enquiry suo motu and also called for report as mentioned in the order. Submission of the learned Government Pleader for the appellant that the Commission did not enquire into the matter according to the provisions of Act, 1993 thus cannot be accepted. In so far as investigation as contained in S. 14 is concerned, it is not necessary in all cases that any investigation be directed. Commission can proceed to enquire into the matter and take decision even without directing for an investigation. We thus do not find any fault or infirmity in the order of the Commission on the basis of the above submission.

11. Next submission made by the learned Government Pleader for the appellant is that the Commission was obliged to hear Officers of the Mining and Geology Department who were going to be prejudicially affected. In the present case as it appears from the order of the Commission that a report was called for from the Geologist, Mining and Geology Department, which fact has been noted in the order. Negligence on the part of the Mining and Geology Department was found proved after perusing the materials on record. S. 16 is the enabling provision which empowers the Commission at any stage of the enquiry to give an opportunity of being heard when the Commission (a) considers it necessary to inquire into the conduct of any person; or (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the enquiry. Present is not a case in which reputation of any person was going to be prejudicially affected so as to invite the applicability of S. 16(b).

12. Now we come to S. 16(a), i.e., "inquiry into the conduct of any person". As noted above, S. 16 begins with "if, at any stage of the inquiry, the Commission....". As observed above, S. 16 is the enabling provision which empowers the Commission to afford reasonable opportunity when it is necessary to conduct enquiry into the conduct of any person. The key words are "necessary to conduct enquiry into the conduct of any person". Thus, for the applicability of S. 16, the Commission is to be satisfied that the enquiry into the conduct of any person is necessary. In the present case, the Commission did not think it

necessary to conduct enquiry into the conduct of any person, hence has not proceeded under S. 16. S. 16 is not to be mandatorily proceeded in all kinds of enquiry about violation of human rights. Present is not a case where it was necessary to conduct enquiry into the "conduct of any person" for completing the enquiry and taking appropriate action under Act, 1993. The submission of the learned Government Pleader that without giving opportunity to the Officers of the Mining and Geology Department, the Commission ought not have directed payment of compensation, thus cannot be accepted. It is not necessary for finding out lapses of a statutory authority to enter into any enquiry regarding conduct of a person. S. 16 of Act, 1993 has been engrafted not for situation like in the present case where due to negligence of the owner of the quarry and Officers of the Mining and Geology Department two minor children fell into the open and flooded quarry and met with their untimely death. Submission of learned Government Pleader for the appellant that provisions of S. 16 of Act, 1993 were violated by the Commission cannot be accepted.

13. Now we come to the next submission of the learned Government Pleader, i.e., the Commission cannot direct for payment of compensation under Act, 1993. S. 18 of Act, 1993 was amended by Act 43 of 2006 which reads as follows:

"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 enquiry 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.

Original Section 18 as was enacted was to the following effect:

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

(1) Where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority on initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons;

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

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

(4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) 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;

(6) 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."

By the amendment made to S. 18, the words "to make payment of compensation or damages to the complainant or to the victim or the members of his family" have been brought into the statute. The Apex Court had occasion to consider the provisions of Act, 1993 in N.C. Dhoundial Vs. Union of India (UOI) and Others, . In the said case one of the questions before the Apex Court was regarding bar of S. 36(2) which provided that the Commission shall not enquire into any matter after the expiry of one year from the date on which the act constituting violation of the right is alleged. In the above case the Commission observed that S. 36(2) was not applicable since violation of the human right was a continuing one. In that context the following was laid down in paragraph 14.

"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 a 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."

The Apex Court in the above case has clearly stated that the Commission like any other Statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confined to it.

14. When the Commission has specific power under S. 18(a)(i) that it may recommend to the concerned Government or authority to make payment of compensation or damages, we cannot accept the submission of the learned Government Pleader that the Commission under S. 18(a)(i) cannot direct payment of compensation. When the Commission recommends to the concerned Government or Authority to make payment of compensation or damages, it is with the intend to make payment by the said authority. The use of the word "recommend" in S. 18(a)(i) does not take away the effectiveness or competency of the order for issuing direction for payment of compensation. We thus do not accept the submission that there is lack of jurisdiction for the Commission in directing payment of compensation.

15. As noted above the Section as originally enacted did not contain the words "compensation" but by amendment Act 43 of 2006, S. 18 was amended to specifically include the words "to make payment of compensation on damages...". The amendments brought in S. 18 thus clarify the doubt if any regarding jurisdiction of the Commission to direct the Government to pay compensation.

16. In a case before the Allahabad High Court - U.P. Power Corpn. Ltd. and Another Vs. National Human Rights Commission and Another, where the deceased came in contact with a live wire of 11000 volts the Court has upheld the power of the Commission to recommend for compensation. It is relevant to note the following observation made by the Division Bench:

"According to S. 18(a) where 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 to make payment of compensation or damages as the Commission may consider necessary. Thus, the commission has jurisdiction to recommend compensation as the Commission may consider necessary. The power of the Commission under S. 18 is not initiated by any other provisions or any State Legislature or subordinate legislation. The power of the Commission under S. 18 is in addition to any other provisions covering the subject matter and not in derogation of any other provisions of law. Entitlement of a person whose human rights have been violated in accordance with the relevant statutory provisions governing payment of compensation, does not in any manner create a fetter in the right of Commission to find out the magnitude of violation of human rights and award a compensation. Thus, the mere fact that under the orders issued by the U.P. Power Corporation, amount of Rs. 1,00,000/- has been fixed in case of death or injury by the Corporation, does not fetter the rights of the Commission to award compensation over and above the amount of Rs. 1,00,000/- cannot be faulted on the above ground."

17. Now we come to the last submission. Learned Government Pleader for the appellant referred to clause (9) of the terms and conditions of the permit which is to the following effect:

"9. The permit holder shall make and pay such reasonable compensation as may be assessed by lawful authority in accordance with the law in force on the subject for all damage, inquiry or disturbance and which may be by him in exercise of the powers granted by this permit and shall indemnify and shall keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith."

The above terms and conditions is between the Government and the quarry owner. The above condition by which the quarry owner/permit holder is entitled to compensate the Government to pay the compensation and indemnify the Government is the condition which is binding between the permit holder and the Government. It is open for the Government to take recourse to clause (9) of the permit if it is so advised. But clause (9) of the permit cannot be read in any manner to mean that the Commission cannot direct for payment of compensation by the Government in case of violation of human rights by negligence of Officers of the Mining and Geology Department.

In view of the forgoing discussion we do not find any merit in the submissions raised by the learned Government Pleader. The Writ Appeal deserves to be dismissed.

Writ Appeal is hence dismissed.