
(2011) 09 DEL CK 0547
In the Delhi High Court
Case No : Writ Petition (C) 5984 of 2002

Subhash Sharma

APPELLANT

Vs

NCT of Delhi and Another

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Protection of Human Rights Act, 1993 — Section 14, 16, 36
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4

Citation : (2011) 8 AD 716

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vineet Malhotra, for the Appellant; V.K. Tandon, for R-1., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the orders dated 17.01.2000 and 11.07.2002 of the Respondent No. 2 National Human Rights Commission (NHRC) and consequentially seeks to restrain the Respondent No. 1 from initiating disciplinary proceedings against the Petitioner as directed by the Respondent No. 2 NHRC.

2. Rule was issued in the petition and the operation of the orders impugned in the petition stayed. Counter affidavits were filed by both the Respondents. Rejoinder has been filed by the Petitioner to the counter affidavit of the Respondent No. 2 NHRC. However, none has been appearing for the Respondent No. 2 NHRC; none appears today also; NHRC is proceeded against ex parte. The counsel for the Petitioner and the counsel for the Respondent No. 1 have been heard.

3. The orders of the Respondent No. 2 NHRC impugned in this petition emanated from a petition of the South Asia Human Rights Documentation Centre, New Delhi forwarding to Respondent No. 2 NHRC representation of students and teachers of IGNOU Centre, Central Jail No. 3 alleging that on 08.05.2006 one Mr.

Shaheed Anis Azmi aged about 18 years lodged in Jail No. 3 Tihar, as an under trial u/s 3/4 TADA Act was mercilessly beaten up by Jail Warden Mr. Dinesh Kumar along with the Petitioner herein then posted as the Deputy Superintendent of Jail No. 3. It was further the allegation that the said Mr. Shaheed Anis Azmi had been denied proper medical treatment and only when his condition deteriorated he was referred to Deen Dayal Upadhyay (DDU) Hospital on 11.05.1996 and even though the said Mr. Shaheed Anis Azmi informed the doctors attending to him about beatings aforesaid but no case was registered on account of personal interference of the Petitioner herein.

4. The Respondent No. 2 NHRC took cognizance of the petition aforesaid and sought a report from the Superintendent, Jail No. 3, Tihar.

5. In response thereto, the DIG (Prisons), Tihar Jial reported that though Mr. Shaheed Anis Azmi had been reprimanded on 08.05.1996 for violating jail rules and for not following the instructions and for abusing the warden Mr. Dinesh Kumar but was let off with a simple warning; the allegations of beating and / or of denying medical aid were denied.

6. The Respondent No. 2 NHRC found the report aforesaid to be not convincing and got the matter examined through its own investigation team. An Inspector of the Respondent No. 2 NHRC on examination of Mr. Shaheed Anis Azmi aforesaid and other independent persons assigned to take IGNOU classes in the jail and the Hospital records concluded that the said Mr. Shaheed Anis Azmi was mercilessly beaten up by the Petitioner and the Warden Mr. Dinesh Kumar and despite him claiming of pain in the abdomen was not given medical aid; that Mr. Shaheed Anis Azmi was in DDU Hospital treated for Uretric Colic Renal Stone "which might be as a result of severe beating of abdominal wall and kidney region"

7. The Respondent No. 2 NHRC communicated its finding aforesaid to the IG (Prisons) who was asked to enquire into the matter personally and submit a report.

8. The IG (Prisons), Delhi in his report dated 30.10.1996 denied the allegations and reported that Mr. Shaheed Anis Azmi had cooked up the allegation as a defence to strict action by Jail Administration. It was further reported that the said Mr. Shaheed Anis Azmi was on earlier occasions also referred to the Hospital for Renal Stone problems.

9. The Respondent No. 2 NHRC vide order dated 17.01.2000 impugned in this petition held, that the Petitioner and the warden Mr. Dinesh Kumar had given conflicting versions when examined by the Inspector of Respondent No. 2 NHRC and before the IG (Prisons); that from the statements of Mr. Shaheed Anis Azmi and other independent witnesses and medical records it was established that Mr. Shaheed Anis Azmi was mercilessly beaten up by the Petitioner and the warden Mr. Dinesh Kumar and as a result of which he sustained internal injury and vomited blood; that he was not provided immediate medical attention and was

admitted to jail hospital only in the evening of 08.05.1996 and shifted to DDU Hospital on 11.05.1996. It was further held that the DIG and the IG (Prisons) had not made fair and independent inquiry as was expected of them in terms of Section 14 of the Protection of Human Rights Act, 1993 and had tried to shield the errant officials of their department. The Respondent No. 2 NHRC accordingly recommended to the Respondent No. 1, to initiate disciplinary proceedings for major penalty against the Petitioner and the warden Mr. Dinesh Kumar for their act of high handedness in beating the inmate Mr. Shaheed Anis Azmi; to pay Rs. 25,000/- to Mr. Shaheed Anis Azmi by way of immediate interim relief; and to place copy of the said order in the ACR of the IG (Prison) and the DIG for not making a fair and independent inquiry.

10. The IG (Prison) and the DIG applied to the Respondent No. 2 NHRC for review of the aforesaid order stating inter alia that they had conducted the inquiry aforesaid objectively and without any effort to shield the guilty persons.

11. The Respondent No. 2 NHRC vide order dated 06.04.2000 modified the earlier order dated 17.01.2000 by deleting there from the observations against the said two prison officials.

12. The Petitioner and the warden Mr. Dinesh Kumar also applied for review. They also pleaded, that they had not been given any opportunity of being heard before the order dated 17.01.2000 making recommendations against them; that pursuant to the order dated 06.04.2000 exonerating the DIG and IG (Prisons), the directions against them were also liable to be set aside.

13. The Respondent No. 2 NHRC however vide order dated 11.07.2002 also impugned in this petition held that the DIG and IG (Prisons) were exonerated on the ground that they had made an honest report to the Respondent No. 2 NHRC; that they were Supervisory Officers and their exoneration did not affect the findings against the Petitioner and the warden Mr. Dinesh Kumar. Accordingly, the review petition was dismissed.

14. The Respondent No. 1 GNCTD on the basis of the report of the inquiry of the DIG and IG (Prisons) has pleaded that the Petitioner herein had not indulged in any action in violation of human rights.

15. The Respondent No. 2 NHRC in its counter affidavit has reiterated the proceedings as recorded in its orders aforesaid.

16. The contention of the counsel for the Petitioner is two fold. Firstly, it is contended that Section 16 of the Act requires the Respondent No. 2 NHRC to before making any order prejudicially affecting any person give such person a reasonable opportunity of being heard and to produce evidence in his defence. It is argued that such opportunity was not given to the Petitioner. Secondly, it is contended that Section 36 of the Act prohibits the Respondent No. 2 NHRC from enquiring into any matter after the expiry of one year from the date on which the act constituting the violation of human rights is alleged to have been committed.

Reliance is placed on M.P. Human Rights Commission Vs. The State of M.P. and Others, holding that persons who are going to be prejudicially affected have to be given necessary opportunity to produce evidence. It is thus contended that the continuance of the inquiry by NHRC after one year from 08.05.1996 was without jurisdiction and consequently the order dated 17.01.2000 made after one year of the date of the alleged incident is without jurisdiction.

17. As far as the first of the aforesaid contentions is concerned, the Respondent No. 2 NHRC neither in its orders dated 17.01.2000 has recorded that any opportunity of hearing was given to the Petitioner before making the order prejudicially affecting the Petitioner nor has it so stated in its counter affidavit. Rather, in the counter affidavit it is pleaded that the requirement of Section 16 of the Act stands satisfied after granting hearing to the Petitioner on his review application.

18. I am unable to accept the aforesaid reasoning of Respondent No. 2 NHRC. A defect in the order dated 17.01.2000 of non compliance of Section 16 of the Act could not have been cured by hearing the Petitioner on an application for review filed by them. It was not as if the Respondent No. 2 NHRC, upon review being filed by the Petitioner set aside the earlier order dated 17.01.2000 and has decided the matter afresh. The order dated 11.07.2002 has been made as on a review only and without re-considering the matter. Thus the hearing given on review application cannot be a substitute for the hearing required to be given earlier. The order dated 17.01.2000 impugned in this petition thus suffers from defect of non-compliance of Section 16 and is liable to be set aside / quashed on this ground alone and consequently the occasion for review thereof would not arise and the order on review would also stand quashed.

19. I am however unable to agree with the interpretation by the Petitioner of Section 36 (supra). Section 36 is a provision providing jurisdictional limitation, as held in N.C. Dhoundial Vs. Union of India (UOI) and Others, . Limitation is only for entertaining the petitions / complaints and no statute of limitation requires the proceedings to be concluded within the limitation provided. The enquiry in the present case admittedly commenced within one year. Section 36 does not require it to be concluded within one year. I also find the Division Bench of the Madras High Court in T. Venkateswaran Vs. Muthuraj and Others, and M. Mahendran and Others Vs. K.A. Anthony, Madalaimuthu @ Mariasundaram, The Assistant Registrar, State Human Rights Commission and The Secretary, State Human Rights Commission, has held that the jurisdictional limit in Section 36 is only for taking cognizance of the Act constituting violation of Human Right and not for conclusion of the inquiry. I respectfully concur with the same. It thus cannot be said that the order of the Respondent No. 2 NHRC is bad for the said reason.

20. I also find that the Respondent No. 2 NHRC having allowed the review filed by the DIG and IG (Prisons) has lend credence to their enquiries / report. The order dated 06.04.2000 allowing the review of the DIG and IG (Prisons) except

for vaguely stating that the inquiries made by them were objective and bona fide, does not even to reconcile the report of the two inquiries. There is no discussion in this regard in the order dated 11.07.2002. I find it difficult to reconcile the report of the three inquiries i.e. one conducted by the DIG (Prison), the one conducted by the Inspector of the Respondent No. 2 NHRC and the one conducted by the IG (Prisons). The Respondent No. 2 has chosen not to produce before this Court any medical records which would have shown any evidence of any beatings or physical abuse. Rather the report is of the said Mr. Shaheed Anis Azmi suffering from Renal Stone. There is no conclusive finding also of the same having been caused by any beating. I am unable to find from the depositions of the witnesses recorded by the Inspector of NHRC also that any case of the Petitioner having beaten up the said Mr. Shaheed Anis Azmi was made out. Rather the Inspector of the Respondent No. 2 NHRC in his report qua the hospital records has only stated that the said Mr. Shaheed Anis Azmi was suffering from Renal problems.

21. The petition therefore succeeds. The orders dated 17.01.2000 and 11.07.2002 of Respondent No. 2 NHRC recommending disciplinary proceedings for major penalty or otherwise against the Petitioner are set aside / quashed. No order as to costs.