

(2006) 07 MP CK 0103
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1344 of 2004

Umesh Kumar Gandhi

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 8
Protection of Human Rights Act, 1993 — Section 16

Citation : (2006) ILR (MP) 1636 : (2006) 4 MPLJ 230

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Deepak Chandna, for the Appellant; Brajesh Sharma, Government Counsel for Respondents No. 1 to 4, K.N. Gupta, with Praveen Newaskar, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Challenging the recommendations made in the findings recorded by the State Human Rights Commission in its order dated 29-12-2001 as contained in Annexure P/1 and the subsequent recovery of Rs. 10,000/- being effected by the State Government vide Annexure P/2 dated 25-3-2004, petitioner has filed this petition.

Petitioner was posted in Central Jail, Gwalior at the relevant time in the year 2000 when one Parmanand was also undergoing a sentence of 10 years imprisonment imposed upon him on his conviction for having committed offence u/s 8/15 of the N.D.P.S. Act. It seems that said Parmanand became ill and as proper treatment was not given to him he expired on 8-12-2000 in J.A. Group of Hospitals, Gwalior. Death of said prisoner Parmanand resulted in complaints being made and, therefore, a Magisterial inquiry was ordered and the Executive Magistrate, Gwalior conducted the inquiry and submitted its report Annexure P/4

on 4-6-2001. In the said report it was found that Parmanand expired on 8-12-2000 in J.A. Group of Hospital. While on his way to the said Hospital he was suffering even prior to the said date and it was found that he expired because proper treatment was not given to him.

In the light of the inquiry report matter was taken up on a complaint by the Human Rights Commission and in the order and report Annexure P/1 dated 29-12-2001 the commission has found death of Parmanand to be because of negligence attributed collectively to the doctors. Jail Superintendent and other authorities responsible for taking action in the matter. A compensation of Rs. 50,000/- was awarded to the legal heirs of late Parmanand as a interim measure and it was ordered that the Government shall be free to recover the aforesaid amount from the persons responsible which included the present petitioner. In pursuance thereof amount of Rs. 10,000/- is being recovered from the petitioner and, therefore, petitioner is before this Court impugning the action as indicated hereinabove.

Shri Deepak Chandna, Learned Counsel appearing for the petitioner pointed out that in the said case proper inquiry has not been conducted and in the inquiry opportunity of giving his evidence and cross-examination as provided for u/s 16 of the Protection of Human Rights Act, 1993 is not extended to the petitioner. It was argued by Shri Deepak Chandna that no opportunity of recording evidence was given to the petitioner and without considering the fact that the petitioner is not responsible for any negligence action taken is impugned. By referring to a communication made by the Jail Headquarters, Bhopal to the Chief Secretary, Government of M.P. as contained in Annexure P/5 dated 1-8-2003 Shri Deepak Chandna emphasised that no action could be taken against the petitioner without following the provisions contemplated under the M.P. Civil Services (Classification, Control and Appeal) Rules, 1996 and Rule 10 thereof. Accordingly, on these grounds challenge is made to the orders passed and the action impugned.

Refuting the aforesaid Shri K.N. Gupta, learned senior counsel representing the State Human Rights Commission inviting my attention to the report submitted by the commission as contained in Annexure P/1 and taking me through the report argued that all opportunity was granted to the petitioner to defend himself and the reasonable finding recorded by the commission after meticulously analyzing the material available on record does not call for any interference by this Court exercising jurisdiction in a petition under Article 226 of the Constitution. Accordingly, Shri K.N. Gupta, learned senior counsel seeks for dismissal of the petition.

Shri Brajesh Sharma, Learned Counsel representing the State Government adopted the arguments advanced by Shri K.N. Gupta and supplemented it by contending that petitioner is found to be negligent in discharge of his duties as a result of which Parmanand lost his life and, therefore, action has been taken by the State Government in view of the findings recorded by the Human Rights

Commission which does not warrant any interference.

I have heard Learned Counsel for the parties at length and perused the record.

Petitioner has assailed the action taken against him and the order impugned mainly on two counts firstly it is stated that no opportunity of defence and giving evidence is afforded to the petitioner and as the action taken is without following the provisions of section 16 of the Protection of Human Rights Act, 1993 petitioner seeks interference in the matter. Second ground urged is that petitioner cannot be held responsible for any lapse on his part and this is emphasised by contending that as adequate Reserve Police Force was not made available for taking the prisoner to hospital no negligence can be attributed to the petitioner.

I will take up first the ground urged with regard to violation of section 16 of the Protection of Human Rights Act. From the records it is seen that after the report was submitted by the Executive Magistrate as contained in Annexure P/4 and when the matter was placed before the Human Rights Commission notices were issued to all concerned. Notices were issued not only to the petitioner Shri Umesh Gandhi but also to Shri R.V. Trivedi the Doctor concerned who had treated the prisoner in the Hospital, Shri B.B. Shrivastava, the then Reserve Inspector of Police. That apart, notices were also issued to Dr. Naval Sharma and Dr. A.K. Singhal who had treated the patient and their statements were also recorded. On the basis of show cause notice issued to the petitioner, records indicate that petitioner had appeared and submitted his reply to the Addl. Registrar, Law Commission vide Annexure R/1 dated 29-11-2001. Thereafter, when the proceedings were held on 1-12-2001 records indicate that petitioner appeared before the Commission and on the said date apart from the petitioner Dr. R.B. Trivedi and Shri B.B. Sharma was also present. Petitioner had submitted his written explanation to the show cause notice and thereafter as petitioner was present in person he made certain oral statements before the commission. The commission indicated to him that the oral statement made by him is not the ground indicated by him in the written explanation and, therefore, he was directed to supplement his explanation by giving further written statement.

Available on record is Annexure R/2 the proceedings that took place on 1-12-2001. It bears the signatures of the petitioner in the left hand side margin and the order-sheet clearly indicates that on 1-12-2001 petitioner did appear before the Commissioner and made a oral statement and permission was granted to him to supplement it by written statement. It seems that petitioner even after appearing before the Commission and after giving his oral statement never made any request for cross-examining any witness, inspection of any document or for giving any evidence in the matter. It is for the first time before this Court that petitioner is coming out with a case that opportunity has not been granted to him. Records indicate that petitioner was heard by the commission on 1-12-2001 and at that point of time no such request was made by the petitioner as is argued by counsel today. Section 16 of the Protection of Human Rights Act, 1993

only contemplates that if at any stage of inquire into the conduct of any person or if for the inquire into the conduct of any person or if in the opinion of the commission reputation of any person is likely to be prejudicially affected by the inquiry it has to give reasonable opportunity of hearing to the person concerned in the inquiry and also to produce his evidence in defence.

Admittedly, in this case before taking action against the petitioner in the inquiry which was being held before the commission petitioner was issued notice. He submitted his written statement thereafter he was permitted to appear in person. He did appear on 1-12-2001 and his oral statement was considered and petitioner did not make any request for any further inquiry or evidence to be adduced. That being so. I am unable to hold that the action taken in the case is without following the provisions of section 16. Petitioner was granted opportunity and as petitioner did not make any request for giving any further evidence or for cross-examination of any witness no fault can be found in the procedure followed. Accordingly, first ground raised on behalf of the petitioner with regard to non-grant of opportunity has to be rejected as records indicate to the contrary.

As far as second ground urged in the petition is concerned, this pertains to non-consideration of the defence and rejection of the same by the commission. In the entire petition so also in the explanation Annexure R/I it is the case of the petitioner that he had sought for Reserve Police Guard from the Reserve Inspector of Police on 27-11-2000, 29-11-2000, 30-11-2000, 1-12-2000. 2-12-2000. 3-12-2000, 4-12-2000. 7-12-2000 and 8-12-2000 but as police guards were not supplied to him by the Reserve Police Inspector he was unable to send the prisoner Parmanand to J.A. Group of Hospital for treatment. Accordingly, attributing negligence on the part of the Reserve Police Inspector and non-supply of proper guard petitioner wants to contend that he is not responsible for the negligence, if any. This defence of the petitioner has been considered by the commission in its report and finding Annexure P/1. It has been indicated by the commission in the report that prisoner Parmanand complained about his illness on 16-10-2000. He was treated by the Jail Doctor on 17-11-2000 and on 24-11-2000 he was sent to J.A. Hospital, Gwalior with a police guard for treatment. Doctors in J.A. Hospital examined him and recommended for X-ray of chest, examination of blood and various other tests. The doctors also recommended that he be admitted in the hospital. However, as adequate police guards were not available for keeping the prisoner in the Hospital he was brought back to the prison and thereafter it is the case of the Jail Supdt. that he had written letters from 27-11-2000 continuously on every day to 8-12-2000 to provide police guard for sending the prisoner to hospital for treatment.

This aspect of the matter has been considered by the commission and the commission has held that in the matter of providing police guard the Reserve Police Inspector Shri B.B. Shrivastava has committed serious irregularity and he has been held responsible for not providing adequate guards to the jail

authorities. However, at the same time it has been found by the commission that merely because police guard was not made available that by itself is not a ground for not taking action for sending Parmanand to the J.A. Hospital for treatment. In para 10 and again in paras 13, 15 and 17 of the report the commission has held that petitioner may be justified in saying that he was not provided adequate police guards and, therefore, he was not in a position to send the prisoner to the Hospital. However, the commission further found that this by itself is not a ground for not sending the prisoner to the Hospital. It was found by the commission that on 24-11-2000 when Parmanand was advised to be admitted in the hospital and directed for X-ray test and various other tests including the blood test, petitioner except for directing his sub-ordinates namely the Jailor and the Deputy Jailor to write letters for police guards has not taken any action for pointing out the position to higher authority and taking efforts for sending the prisoner to hospital for treatment. Holding that by simply asking his sub-ordinate officers to write letters requesting for police guards on 6 or 7 occasions petitioner cannot shirk from his liability the commission has found petitioner equally responsible for the accident and negligent in the discharge of his duties. In para 17 of the order the commission has reported that in the year 2000 for about 9 months continuously the Reserve Police Inspector did not make efforts for providing police guards on various occasions.

This being a serious matter petitioner was required to point out the fact to his higher authorities and to ensure that steps are taken immediately in the matter. Instead of doing so petitioner was content in asking his sub-ordinate authorities namely the Jailor and the Assist. Jailor to write letters on various dates and sat over the matter in spite of the fact that on 24-11-2000 the competent doctor of J.A. Hospital had indicated for immediate admission of Parmanand and further test in the matter. Commission has found that on certain previous occasions also when police guards were not available certain prisoners were sent to the hospital by providing escort in the form of jail guards. It has been indicated that on 13-11-2000 one Anand s/o Laxman was sent to the hospital for treatment and for sending him jail guard was provided by the Jail Superintendent. Similarly on 14-11-2000 one Ramesh, on 25-11-2000 one Sumna and on 5-12-2000 one Pushpa were sent to the J.A. Hospital for treatment with a Jail Guard by Superintendent of Jail. This clearly indicates that even if adequate police guards were not available in certain cases the jail authorities have sent the prisoners for treatment to the hospital by escort through jail guards who were available in the jail. It has been held that in not taking prompt action in the matter petitioner also being responsible he cannot shirk from his liability. This finding of the commission is a reasonable finding and I find no infirmity in the same.

Records indicate that not only the petitioner was given the reasonable opportunity to submit his defence in the matter but his defence was considered by the commission and after meticulously analysing the conduct of the petitioner from different angles a finding is recorded that the petitioner has not been diligent in discharge of his duties. Petitioner being the Superintendent of jail is

expected to act in a more responsible manner. When the authorities of J.A. Hospital on 24-11-2000 had recommended for immediate admission of Parmanand in the hospital and further investigation it was the duty of the petitioner to ensure that proper treatment is given to Parmanand. Instead of doing so petitioner was content in relying upon the jail doctors for giving treatment to Parmanand and by making certain correspondence through his subordinate officers to the Reserve Police Inspector for providing police guards. On the contrary petitioner as indicated by the commission should have brought this fact to the notice of the higher authorities and ensure proper treatment to the prisoner Parmanand.

this Court has no hesitation in holding that the commission in the facts and circumstances of the case has rightly found petitioner negligent in discharge of his duties. Petitioner being a senior officer and incharge of such a big jail like Central Jail, Gwalior where thousands of prisoners are housed is required to discharge his duties more efficiently so that Human Rights and other constitutional rights available to the prisoners are not adversely affected.

The commission having analysed each and every aspect of the matter and have recorded a finding holding the petitioner responsible along with others for death of Parmanand, I find no error in the order passed warranting interference by this Court exercising writ jurisdiction in the matter. A reasonable finding recorded by the State Human Rights Commission on due appreciation of the material available on record and the reasons given for holding the petitioner responsible being based on evidence available on record is neither perverse nor illegal to such a extent that interference by this Court in these proceedings is called for. Accordingly, in the facts and circumstances of the case finding no merit in the contentions advanced petition stands dismissed without any order as to cost.

Certified copy as per rules.