

(2010) 12 MAD CK 0112

In the Madras High Court

Case No : Writ Petition (MD) No's. 1645 and 10479 of 2009 and M.P. (MD) No's. 2 and 3 of 2009

V. Kumaravel and Others

APPELLANT

Vs

National Human Rights Commission and The State
Government

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

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

Citation : (2010) 12 MAD CK 0112

Hon'ble Judges : K.Chandru, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; S.C. Herold Singh, GA, for the Respondent

Final Decision : Dismissed

Judgement

K.Chandru, J.—The prayer in both writ petitions are identical. The Petitioner in W.P.(MD) No. 1645 of 2009 is a Sub Inspector of Police and four Petitioners in W.P.(MD) No. 10479 of 2009 are Head Constable, Police Constable Grade II, Sub Inspector of Police and another Head Constable respectively. The relief claimed in the writ petitions was to set aside the order of the State Government in G.O. Ms. No. 232, Public(Law and Order) Department, dated 22.2.2008 and the consequential order of recovery, dated 26.4.2008 passed by the fourth Respondent as well as G.O. Ms. No. 610, Public (Law and Order) Department, dated 19.5.2008 passed by the State Government and the consequential order of recovery of fourth Respondent, i.e. Superintendent of Police, Virudhunagar, dated 8.1.2009.

2. All the Petitioners at the relevant time were working at Pandalkudi Police Station. On 7.5.2004, the Petitioners apprehended one Captain Ganesan of Vallakkottai village. It was the case of the Petitioners that the Sub Inspector Kumaravel and a Head Constable Elango went to one Danalakshmi lodge for an

inspection. At that time, they found Ganesan and two others were in drunken condition and were quarreling. When they tried to separate them, they were assaulted with sharp edged weapons by the three persons. Hence they called for an additional reinforcement in which other Petitioners had joined as they were detained for election duty. While the said Ganesan was taken to the Police Station, he escaped from the running vehicle. A case was also registered against him for various offences in the Town Police Station, Aruppukkottai.

3. The story of the complainant Ganesan was altogether different. It was his case that when he went to a hotel for having his dinner, some persons from the Pandalkudi police station were also taking meals. An altercation took place in the hotel, as a result of which Ganesan was taken to the police station for the so-called enquiry. He was severely assaulted by the police personnel. He also gave a criminal complaint which was registered as Crime No. 367 of 2004. The complaint given by the Petitioners were also registered as Crime No. 366 of 2004. The said Ganesan who was a serving personnel in the Army got treated in the Military Hospital. The torture and beating of the said Ganesan became a public issue. Hence, an enquiry under PSO 151 was ordered to be conducted by the Revenue Divisional Officer, Aruppukkottai. On enquiry, the RDO submitted a report, dated 4.5.2005 and recommended an action against the Petitioners for causing grievous injuries to Ganesan by using excessive police force. The District Collector on receipt of the report forwarded the same along with his inputs to the State Government on 22.09.2006. It is thereafter the State Government had issued G.O. Ms. No. 1032, Home, dated 22.9.2006 and directed the Director General of Police to take disciplinary action against the Petitioners.

4. In the meanwhile, on a complaint received by the National Human Rights Commission, the first Respondent herein and on finding of the District Magistrate that the police personnel had committed excess on Captain Ganesan and caused serious injuries, recommended action against the concerned police. Airport was also called for from the District Collector, Virudhunagar. On the basis of the report, it called upon the Chief Secretary to the Government to show cause by a letter, dated 23.1.2008 as to why recommendation u/s 18(C) of the Protection of the Human Rights Act, 1993 should not be made by granting an interim relief to the complainant. On receipt of the said show cause notice, the Government which had already issued G.O. for taking an action against the Petitioners, decided to grant compensation of Rs. 50000/- and also to recover the said compensation from the Petitioners since liability on the Government was brought by the action of the Petitioners herein. Pursuant to the said decision, the State Government issued the first impugned order in G.O. Ms. No. 232, Public (Law and Order) Department, dated 22.2.2008 and the amount of Rs. 50000/- was directed to be recovered from the Petitioners herein. Consequent upon the said direction issued by the State Government, the fourth Respondent Superintendent of Police by a consequential proceedings dated 26.4.2008 fixed the liability of Rs. 10000/- to each of the Petitioners to be recovered at the rate of Rs. 500/- per month on installment basis. In the meanwhile, the first Respondent

NHRC by a letter, dated 14.3.2008 while appreciating the decision of the State Government, but found that since the Petitioners had assaulted a person of the Indian Army holding the rank of the Captain, the compensation awarded was inadequate and had recommended Rs. 1 lakh as compensation. The State Government upon receipt of the letter dated 14.3.2008 decided to sanction Rs. 50000/- as an additional compensation and also to recover the amount from the Petitioners. Therefore, it had issued G.O. Ms. No. 610, Public (Law and Order) Department, dated 19.5.2008 ordering an additional compensation of Rs. 50000/-. On the basis of the said direction, the fourth Respondent had issued a consequential order, dated 8.1.2009 and directed recovery of equal amount on installment basis from the Petitioners. The Petitioners had challenged all the four orders, i.e. two main G. Os. And two consequential orders by the fourth respondent.

5. The first writ petition was admitted on 14.7.2009 and an interim stay was also granted. Likewise, the second writ petition was admitted on 14.10.2009 and an interim stay of recovery was granted. In fact, even before the grant of stay, recoveries have been made from the salaries of the Petitioners from May, 2008.

6. The ground taken by the Petitioners was that the impugned recovery was contrary to the provisions of the Protection of Human Rights Act and no opportunity was given to the Petitioners. No enquiry was held u/s 17 of the Protection of Human Rights Act. The report of the RDO, Virudhunagar was based on no evidence. In addition to this submission, Mr. M. Ajmal Khan, learned Counsel appearing for the Petitioners placed reliance upon a judgment of this Court in *Rajesh Das, I.P.S. v. Tamil Nadu State Human Rights Commission* reported in 2010 (5) CTC 589.

7. In the present case, apart from the fact that the NHRC had sought for enquiry into the complaint, had directed the State Government to consider the grant of compensation with their own revenue officer at the level of the District Magistrate and had recommended action against the police personnel and had also found that the incident of assault and torture of the complainant was true. In fact, the Petitioners themselves have filed the deposition of the complainant Captain Ganesan in the typed set which clearly showed that the Petitioners had assaulted the serving personnel of the Indian Army. Even after the identity of the complainant was revealed by an Advocate Ram Kumar, they were not only misbehaved with Ganesan, but the complainant when tried to go away from the place in his car, he was stopped and ten police personnel under the leadership of Jayaseelan, Sub Inspector of Police (the third Petitioner in W.P.(MD) No. 10479 of 2009) removed him from the Car and had beaten him with iron rods in a savage manner and caused grievous injuries. Even the complainant's father and Advocate Ram Kumar were beaten up. After noticing that public have gathered, Kumaravel, Sub Inspector of Police (the Petitioner in W.P.(MD) No. 1645 of 2009) had stated that the complainant should be moved to the station and once and for all finished off). When the complainant was removed in the jeep, he escaped,

went to the forest and ran 8 Kms. He contacted his father and with his father's help, a vehicle was sent and the Petitioner was taken to the Commander of NCC Battalion stationed at Virudhunagar. He directed him to be treated in the Government Hospital at Virudhunagar in the emergency ward. Thereafter, the District Collector, Virudhunagar was contacted by the Commandant of NCC. Since the facility at the District Headquarters was lacking, the complainant went to a private hospital at Madurai. The assault of the complainant was also telecasted in a leading TV channel. After some treatment, the complainant went to the military hospital at Chennai and was inpatient from 12.5.2004 till 22.5.2004.

8. If this is the state of affairs for serving Army personnel, then it does not lie in the mouth of the Petitioners to question the bonfires of the Government's action as well as the recommendation made by the NHRC. When the Government had issued the first order, not only it was prompted by the NHRC, which awarded an interim compensation, but they had the report of the District Collector. It had fructified into a Government order wherein disciplinary action was directed to be taken against the Petitioners. Therefore, it cannot be said that there was no material with the Government while granting compensation. It was only when the NHRC found that the interim relief was meager, the question of enhancement of the interim relief was considered and that it was enhanced to Rs. 1 lakh in too. It is not open to the Petitioners to challenge the said award of compensation given by two Government orders. It is only an interim relief granted in terms of Section 18(C) of the Protection of Human Rights Act.

9. It is very well open to the Petitioners to move the NHRC and get themselves imp leaded if they went to contest the enquiry by the NHRC. On the other hand, by stalling the payment of interim relief, the Petitioners cannot foreclose the proceedings before the NHRC as well as the disciplinary action ordered by State Government vide G.O. Ms. No. 1032, Home, dated 22.9.2006. Since proceedings against the Petitioners have not been completed and the relief granted at an interim stage (which power the NHRC certainly has), this Court is not inclined to interfere with the impugned orders. Any payment made by the Petitioners will be ultimately subject to the disciplinary action to be taken against the Petitioners. Even otherwise the Petitioners can always move the NHRC for varying or modifying its own earlier order. It cannot be said that either the NHRC lacks power to grant the interim order pending enquiry into complaint on the basis of the prima facie materials or that the State Government was wrong in agreeing with the suggestion of the NHR C to pay the relief and claim the amount from the Petitioners as they have the liability to make good the loss.

10. The Supreme Court in D.K. Basu Vs. State of West Bengal, had held in paragraphs 44, 45 and 54 as follows:

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants.

Public law proceedings serve different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability forth public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.⁴⁵ The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for Redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.....⁵⁴. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for Redressal of the established infringement of the fundamental right to life of citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defense of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation

as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

11. The Supreme Court in *Central Bureau of Investigation v. Inshore Singh and others* in Criminal Appeal No. 2047 to 2049 of 2010, dated 25.10.2010 raised a question in paragraph 2, which is as follows:

2. What should be done to policemen who "Bobbitt" a person in a police station and think that they can get away with it? That is the question to be decided in this case.

12. In the very same judgment, in paragraph 26, it had observed as follows: 26. Also all the accused are guilty of totally flouting and throwing to the winds the directives of this Court in *D.K. Basu Vs. State of West Bengal*, (vide paragraph 35). That decision outlaws third-degree methods in police stations, but it is well-known that third degree methods are still widely used in many of our police stations, as this case reveals...."

13. Thereafter, in paragraph 31, the Supreme Court held as follows: 31. In our opinion, policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says "If the salt has lost its flavor, wherewith shall it be salted? (Matthew 5, Mark 9.50 and Luke 14.34-35)", or as the ancient Romans used to say "Who will guard the praetorian guards?"

14. In an identical circumstance, this Court in *A. Sundaram and two others v. NHRC, New Delhi and three others* reported in 2010 (1) TLNJ 364 (Crl) had upheld the order of the NHRC.

15. The recoveries made from the salaries of the Petitioners shall continue as per the two impugned Government Orders. However, the findings rendered herein will not prejudice the Petitioners in their departmental action. This will also not prevent the Petitioners from moving the NHRC either for reopening the case before the NHRC or varying for the earlier direction given to the State Government. In view of these findings, it is unnecessary to go into the decision of this Court in *Rajesh Das case* (cited supra). In that case, the State Government had not taken any stand and the case remained only at the stage of the Commission's recommendation.

16. In the light of the above, both the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.