

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

OWP No. 417/2018 (O&M) &
OWP No. 270/2019 [WP (C) No. 546/2019] (O&M)
(Through Video Conferencing)

Reserved On: 24.09.2020.

Pronounced On: 05 .11.2020.

Airport Authority of India

.....Petitioner(s)

Through: -

Mr. Inderjeet Gupta, Advocate in OWP No. 417/2018
Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate, in OWP No. 270/2019

V/s

Jammu and Kashmir State Human Rights Commission Jammu.

.....Respondent(s)

Through: -
None.

CORAM:

**HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE.
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.**

JUDGMENT

JAVED IQBAL, J:

At the outset it is pertinent and significant to mention here that this court while considering OWP 417/2018 on 06.03.2019 passed the following order:-

“The issue regarding the jurisdiction of the State Human Rights Commission to pass the impugned order has been

raised in the matter, which is pure question of law. The same issue is under consideration in OWP No. 270/2019. List this petition along with OWP No. 270/2019 on 8th April 2019.”

In view of aforesaid order, both the petitions are listed together for consideration and are as such being taken up for final disposal together.

In the first instance facts those emerge from the petitions in hand are required to be delineated separately here under: -

OWP No. 417/2018

1. The petitioner in this petition filed under Article 226 of the Constitution of India, craves indulgences of this court for granting the following reliefs: -

- (i) Allow this Writ petition of the petitioner.
- (ii) By way of writ of certiorari quash impugned orders dated 29-5-2017 & 11-12-2017 passed by Respondent in SUO-MOTO Cognizance taken in Case No. HRC/75-J of 2017.
- (iii) Such other appropriate relief, including the cost of litigation as may be deemed appropriate by this Hon'ble Court.

(Facts)

2. The background facts enumerated in the petition under the shade of which the aforesaid reliefs have been claimed are that the Airport Authority of India (AAI) controls and manages all the Airports in the country including the Jammu Airport as per the Airport Authority India Act, 1994.

2.1 According to the petitioner Jammu and Kashmir State Human Rights Commission (hereinafter for short 'the Commission') took suo-moto cognizance in case No. HRC/75-J of 2017. In the orders dated 29.05.2017 and 11.12.2017 passed by the Commission, it is recorded that some public spirited persons appeared before it with some documents alleging that restaurants and some public outlets operating at the Airports of Jammu and Srinagar are selling packaged commodities (food items etc.) at the prices more than the MRP in as much as declaring dual MRP on same packaged commodities in violation of The Legal Metrology Act of 2009 and The Legal Metrology (Packaged Commodities) Rules of 2011(hereinafter for short 'the Act of 2009' and 'the Rules of 2011', respectively) under the nose of higher officers and within their acknowledge.

2.2 It is being stated in the petition that in its impugned order dated 29.05.2017 the Commission held that the sale of goods above MRP is clear violation of human rights, which is required to be corrected and enquiry initiated.

2.3 It has further been stated in the petition that the respondent Commission on 29.05.2017 issued notices to the Controller of Legal Metrology J&K State, Director Airport Authority of India Jammu/ Srinagar, Director Tourism Department and Sr. Superintendent of Police AHJ Airports Jammu/ Srinagar.

2.4 It is next stated in the petition that the petitioner in response to notice entered appearance before the Commission and in its reply filed, raised a preliminary objection that the Commission has no jurisdiction to

entertain the complaint in question which objection, however, was not decided by the Commission.

2.5 Further it is stated that in its reply before the Commission, the petitioner submitted that at the Airports the consumable loose products, such as patties, burger, tea, coffee, samosa etc. are being sold at pre-defined rates for which rate list is displayed at the outlets as per contract and that the same contract is in vogue at all other Airports in India. It is being next stated in the petition that the Airport Director, Jammu/ Srinagar, has directed that all licensees of commercial contracts are bound to provide food and beverages at Jammu and Srinagar Airports at MRP.

2.6 According to the petitioner the Commission vide its order dated 11.12.2017 directed Sr. Superintendent of Police Airports Jammu/ Srinagar to conduct appropriate enquiry and that the Commission had no jurisdiction to pass such direction for conducting enquiry.

(Grounds)

3. The petitioner in the aforesaid backdrop maintains the instant petition *inter-alia* amongst others on the grounds that the Commission has no jurisdiction to entertain such type of complaints and to pass directions for conducting an enquiry by Sr. Superintendent of Police, Airport Jammu / Srinagar and that the Director Legal Metrology is competent under the Act of 2009 to take action against any concern charging prices higher than MRP and that the Commission has no jurisdiction to entertain any complaint for allegation of excess charge of prices printed on the product.

OWP No. 270/2019

1. The petitioner in this petition filed under Article 226 of the Constitution of India, craves indulgences of this court for granting the following reliefs: -

(a) “An appropriate writ, order or direction in the nature of writ of certiorari quashing the Complaint titled Mohd. Yousuf Vs. Dr. Anwar Choudhary and another filed and pending before the Respondent No. 1-Commission.

(b) An appropriate writ, order or direction in the nature of writ of certiorari quashing the order dated 24.12.2018 passed by the respondent no.1 Commission whereby despite successive enquires and despite nothing adverse reported against the petitioner, another enquiry has been directed to be held on the complaint and allegations of respondent No. 4 to be conducted by the respondent no. 3.

(c) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondent no. 1-Commission to desist from conducting any further enquiry pursuant to the order impugned dated 24.12.2018 and not to harass and victimize the petitioner in reference to the impugned complaint filed by the respondent no. 4.

(d) Any other relief which this Hon’ble Court in the facts and circumstances of the case deems fit and proper.”

(Facts)

2. The aforesaid reliefs are being sought by the petitioner on the premise that the petitioner in the year 2011 was working as a Casualty Medical Officer in District Hospital, Rajouri. On 06.08.2011, while being on night duty at around 04:50 am he received a patient namely Misbah (D/o respondent No. 4) with the history of snake bite. After subjecting her to various tests and examination he administered various medicines. Despite this her condition deteriorated, necessitating shifting her to Government Medical College, Jammu, for putting her on ventilator, which was not available in District Hospital Rajouri.

2.1. According to the petitioner despite all efforts made for saving the life of the victim by the petitioner and other concerned staff of the hospital, the victim died due to cardiac respiratory arrest, whereupon the respondent No. 4 with his relatives assaulted the petitioner and medical staff besides damaging hospital property. It resulted into registration of an FIR bearing No. 401/2011 under sections 353, 427 and 147 RPC at Police Station, Rajouri.

2.2. According to the petitioner, the respondent No. 4 reported death of his daughter in Police Station, Rajouri. As a consequence whereof proceedings under section 174 CrPC were initiated vide DDR No. 11 dated 08.08.2011. After holding detailed inquest proceedings, the same were closed holding the cause of death of the victim a snake bite.

2.3. According to the petitioner a communication in this regard came to be addressed by the Deputy Superintendent of Police, Headquarters Rajouri dated 29.02.2016 to District Magistrate Rajouri.

2.4. According to the petitioner the respondent No. 4 after a lapse of two years from the date of death of his daughter on 03.09.2013, filed a complaint before the Jammu and Kashmir State Human Rights Commission (hereinafter for short 'the Commission') alleging therein that his daughter died due to the negligence of the petitioner and one more official namely Masood Malik, working in District Hospital, Rajouri.

2.5. It is being further stated in the petition that simultaneously with the filing of impugned complaint before the Commission, the respondent No. 4 also filed a writ petition being OWP No. 1401/2013 titled as Mohd Yousuf vs. State of J&K and Ors., before this court on 04.10.2013, which is pending disposal before this court, leveling thereinsimilar allegations as had been leveled by him in the complaint filed before the Commission and seeking therein almost similar reliefs as had been sought by him before the Commission.

2.6. It is being next stated by the petitioner that the respondent No. 4 did not make any mention in the writ petition filed before this court about filing of the complaint before the Commission.

2.7. It is being further stated in the petition that the Commission upon entertaining the complaint of the respondent No. 4 issued notice in the matter to the Director Health Services, Jammu on 08.10.2013, whereupon the Director Health Services Jammu, directed the Chief Medical Officer, Rajouri and Medical Superintendent District Hospital, Rajouri, to furnish requisite information / reply in the matter.

2.8. According to the petitioner the Director Health Services vide his letter dated 15.01.2014 submitted a report before the Commission stating therein that the consequent upon the death of the daughter of the respondent No. 4 an enquiry was conducted by a committee consisting of the then Chief Medical Officer, Rajouri, Medical Superintendent District Hospital, Rajouri and one Doctor Abdul Rashid physician District Hospital, Rajouri. As per the report of the said committee, the deceased died on account of snake bite and prior to her death she had been properly attended to by the night staff and there appeared no negligence on the part of treating staff except that a call to the consultant was delayed resulting into the delayed arrival of the consultant at 7:35 am i.e. after the death of the victim/ deceased.

2.9. It is further stated in the petition that the aforesaid letter dated 15.01.2014 of the Director Health Services also contained the aforesaid enquiry report and other related documents as well.

2.10. According to the petitioner despite receipt of the aforesaid detailed report from the Director Health Services Jammu, the Commission did not close the proceedings and instead on 23.11.2017 directed another joint enquiry to be conducted by Additional Superintendent of Police, Rajouri, and Chief Medical Officer, Rajouri.

2.11. According to the petitioner the aforesaid enquiry was also conducted into the allegations leveled by the respondent No. 4 in his complaint filed before the Commission and after thorough examination and evaluation of the matter inasmuch as after recording statements of various witnesses afresh opined in their report dated 26.04.2018 that the allegations

leveled in the complaint are not substantiated against the petitioner and the Medical assistant namely Masood Malik who had followed the right medical procedure while performing government duties to save the life of the victim. In the said report as well the victim was found to have died by snake bite.

2.12. According to the petitioner the Commission despite the aforesaid enquiry report dated 26.04.2018, did not close the proceedings in the complaint and instead passed impugned order dated 24.12.2018 directing thereunder the respondent No. 3 herein to hold enquiry afresh into the allegations leveled by the respondent No. 4 in his complaint.

(Grounds)

3. The petitioner in the above backdrop thus challenges the maintainability of complaint as well as order dated 24.12.2018 passed by the Commission *inter-alia* amongst others on the grounds that the complaint filed by the respondent No. 4 before the Commission is highly motivated and is aimed at harassing, victimizing and black-mailing the petitioner which real motive has not been noticed by the Commission. Further that the complaint filed by the respondent No. 4 before the Commission is bad in the eyes of law inasmuch as the allegations projected therein do not warrant initiation of any action by the Commission. The Commission before taking cognizance of the complaint and initiating proceedings was under a legal obligation to establish violation of a human right. It is being further urged in the grounds that neither the respondent No. 4 in the complaint indicate as to which of his human rights had got violated nor the Commission before taking cognizance of the complaint established violation of any of the human rights

of the respondent No. 4. It is also urged in the grounds that initiation of proceedings by the Commission are totally illegal and contrary to The Jammu and Kashmir Protection of Human Rights Act 1997 (hereinafter for short 'Act of 1997'). It is further urged in the grounds that since the Commission had earlier ordered two enquiries, as such, in presence of the report of said enquiries where under the allegations of the respondent No. 4 were found to be baseless, directing initiation of another enquiry in terms of impugned order dated 24.12.2018 is highly unjustified that too when no infirmity had been found or noticed in the earlier enquiry reports by the Commission. It is further urged in the grounds that the order of fresh enquiry dated 24.12.2018 would make the petitioner again to suffer wrath of agony and harassment, as such, according to the petitioner the impugned order suffers from serious illegality and irregularity and consequently third enquiry against the petitioner would not legally be permissible. It is being further urged in the grounds by the petitioner that the impugned order dated 24.12.2018 suffers from non-application of mind besides violating principle of natural justice causing serious prejudice to the petitioner.

4. **Heard and considered.**

5. The learned appearing counsels in both petitions while making their submissions reiterated their stand taken in their respective petitions and raised a moot point qua the competence and jurisdiction of the Commission in entertaining the complaints in question, consequent cognizance taken thereof inasmuch as passing of impugned orders thereon.

6. It is significant to mention here that in OWP No. 417/2018 the only respondent party impleaded is none except the Commission, whereas, in OWP No. 270/2019 besides the Commission and its officers, the complainant is impleaded as party the respondent No. 4 and upon issuance of notices by this court, the respondent No. 4 earlier did appear through his counsel at some stage of proceedings, however, has not either chosen to file any response/ reply in opposition to the petition or to contest the same. Today also none appears for the respondent No. 4.

7. Without adverting to the contentious factual issues emanating from the cases setup by the petitioners in their respective petitions and having regard to the submissions made by the learned appearing counsels for the petitioners, it is imperative to have a discourse to the question of competence and jurisdiction of the Commission in entertaining the complaints in question and dealing with the same.

8. Before dealing with the aforesaid question it would be advantageous and appropriate to refer to the following provisions of the Act of 1997 being relevant and germane to the controversy: -

Section 2 (c) of the Act defines Human Rights as under: -

“2(c)“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India:”

Section 3 provides for Constitution of a State Human Rights Commission and reads as under: -

- (1) “The Government shall constitute a body to be known as the State Human rights commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
- (2) The Commission shall consist of-
 - (a) A Chairperson who has been a Judge of the High Court;
 - (b) One Member who is, or has been, a District Judge;
 - (c) three members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to Human rights.
- (3) There shall be a Secretary who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.
- (4) The headquarters of the Commission shall be at Srinagar.
- (5) The Commission shall have sub-offices at Jammu, Doda and Rajouri; Provided that the Government may establish sub-offices at other places in the State.
- (6) A member of the Commission shall hold sittings of the Commission at each sub-office.

Section 13 of the Act provides for functions of the Commission and reads as under: -

13. “Functions of the Commission: The Commission shall perform all or any of the following functions, namely: -

- (a) Inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of:
 - (i) Violation of human rights or abetment thereof; or

- (ii) Negligence in the prevention of such violation, by a public servant;
- (b) Intervene in any proceeding involving any allegation or violation of human rights pending before a Court with the approval of such Court;
- (c) Visit, under intimation to the Government, any jail or any other institution under the control of the Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereof;
- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommended measures for their effective implementation;
- (e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) Undertake and promote research in the field of human rights;
- (g) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (h) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (i) Such other functions as it may consider necessary for the promotion of human rights.”

Section 24 of the Act provides for matters not subject to jurisdiction of the Commission and reads as under: -

24. “Matters not subject to jurisdiction of the Commission- (1) The Commission shall not inquire into any matter which is pending before any other Commission duly constituted under any law for the time being in force.

(2) The commission shall not inquire any complaint relating to a matter not falling within its jurisdiction but may forward the same to a forum having jurisdiction to entertain the same.”

9. Further reference to **Regulation 14** of Jammu and Kashmir State Human Rights Commission (Procedure) Regulations 2011 (hereinafter for short ‘the Regulation’) framed under section 10 of the Act being relevant herein would also be appropriate and same reads as under:

“14.Complaints not entertainable- The Commission may dismiss *in limini* complaints of the following nature;

- (a) The allegations in the complaint do not make out a case of human rights violations;
- (b) Trivial or frivolous and illegible complaints;
- (c) Vague anonymous/ unsigned, or pseudonymous
- (d) Civil disputes such as contractual obligations, matrimonial matters, property rights and other types of cases which are covered by civil/ criminal law;
- (e) Pure and simple service matters;
- (f) Allegations not against a public servant;
- (g) Industrial/ labour disputes;
- (h) Matters sub-judice before any Court/ Tribunal/ Commission;
- (i) Matters outside the purview of the State Commission;
- (j) Complaints barred by laws;

(k) Matter fully covered by a judicial verdict/ decision of the Commission.”

10. A conjoint reading of the aforesaid provisions of the Act and the Regulation suggest that the Commission is a statutory body, creation of a statute empowered and authorized to discharge its functions and exercise its powers and jurisdiction within the parameters of the Act and Regulations thereunder. The Act and the Regulations further provides for a mode and mechanism for the Commission to be followed and adhered to qua the complaints filed before it.

11. Section 24(2) of the Act forbids the Commission from inquiring into any complaint not falling within its jurisdiction. Whereas Regulation 14 of the Regulations mandates the Commission to dismiss in *limini*, the complaints enumerated therein including the one involving civil dispute such as contractual obligations, matrimonial matters, property rights and other types of cases, which are covered by civil/ criminal law.

OWP No. 417/2018

Discussions and analysis

12. It is an admitted fact in the instant case that the Commission took suo-moto cognizance of the issue under section 13(a) involved in the complaint relating to alleged over pricing than MRP of food items at some restaurants and public outlets at the Airports of Jammu and Srinagar, allegedly in violation of the Legal Metrology Act of 2009 and the Legal Metrology (Packaged Commodities) Rules of 2011 observing the same to be glaring violation of a human right.

12.1. The Act of 2009 has been enacted in order to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weights, measure or number and formatters connected therewith or incidental thereto.

12.2. In exercise of powers conferred by sub section (1) read with clause (j) and (q) of sub section (2) of section 52 of the Act of 2009, the Rules of 2011 have been framed.

12.3. Under Rule 2 clause (m) "retail sale price" has been defined at which the commodity in packaged form may be sold to the ultimate consumer and that price has to be printed on the package.

12.4 Under Rule 32 of the Rules penalty for contravention of Rules is provided as punishable with fine to be imposed by the competent authority under the Act and the Rules.

13. A bare perusal of the aforesaid provisions would show that a mode is provided for dealing with the issue of over pricing of commodities and in presence of the said procedure contained in an independent statute, the Commission cannot be said to have any power, competence and jurisdiction to deal with any such issue. The aforesaid mode, however, seemingly is hijacked by the Commission under a misconceived notion of glaring violation of human rights. The Commission thus has mechanically assumed unto itself a power and jurisdiction in breach of the Act of 1997 supra read with Regulation of 2011. Still further the orders are totally evasive on the issue as to who pointed out the matter before the Commission to take cognizance thereof.

OWP No. 270/2019**Discussions and analysis**

14. In this petition the Commission has entertained the complaint of the respondent No. 4 on alleged violation of a human right by the petitioner on the premise that the petitioner a government doctor committed negligence while attending to the daughter of the respondent No. 4 having suffered snake bite resulting into her death. The Commission admittedly has failed to address the question raised by the petitioner before it as to whether the alleged negligence of the petitioner while discharging his official duties as a doctor constituted violation of a human right as defined under section 2 of the Act of 1997 clothing the Commission with a power to deal with the issue. Had the Commission addressed, in the first instance to the said question, it perhaps would have refrained from proceeding ahead with the consideration of the complaint. Assuming the petitioner had been negligent in discharge of his duties while attending to the daughter of the respondent No. 4 resulting into her death, yet it cannot by any sense of imagination said to be violation of a human right as defined under the Act of 1997 but could safely said to have been a case of civil liability or criminal liability against the petitioner.

15. The Commission in view of above has grossly erred while entertaining the complaint of the respondent No. 4 against the petitioner purportedly on the premise of violation of a human right wrongly assuming jurisdiction thereof under the Act of 1997 read with Regulation of 2011.

16. This court forebears from expressing any opinion about the veracity or otherwise of the allegations leveled in the complaint against the petitioner by the respondent No. 4, lest it may prejudice their respective stands in the writ petition pending before this court, filed by the respondent No. 4.

17. What emerges from above discussions and analysis of both the petitions is that the Commission in breach and violation of the provisions of the Act of 1997 and the Regulation of 2011, not only entertained the complaints in question relating to the issues falling beyond the purview and scope of term "human right" as defined in the Act of 1997, but also took cognizance thereof and proceeded therewith without any power, competence and jurisdiction. The said acts of the Commission ex-facie run contrary to the position of law well settled by a long line of decisions of the Apex Court that **when a statute requires a thing to be done in a particular manner, it is to be done only in that manner alone**. Reference in this regard would be advantageous to "**State of MP Vs. Centre for Environment**" reported in **2020 SCC online SC 687** and "**Competent Authority Vs. Barangore Jute Factory & Ors.**" reported in **2005 (13) SCC 477**.

(Conclusion)

18. For what has been discussed, analyzed and observed herein above, we find merit in the petitions. The same are allowed. The impugned complaint pending before State Human Rights Commission bearing Nos. HRC/75-J of 2017 (Suo-Moto) is dismissed as a sequel to which impugned orders dated 29-5-2017 & 11-12-2017 passed therein are quashed AND complaint No. HRC121-J titled as Mr. Mohd Yousuf Vs. State of 2013

pending before the State Human Rights Commission is dismissed.As a sequel to which the impugned order dated 24.12.2018 passed therein is quashed.

(Javed Iqbal Wani)
Judge

(Rajesh Bindal)
Judge

SRINAGAR
November, 5th 2020
Ishaq

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| i. | Whether the Order is speaking? | Yes/No. |
| ii. | Whether the Order is reportable? | Yes/ No. |

