

A.F.R.
Reserved

Case :- WRIT - C No. - 23926 of 2017

Petitioner :- State Of U.P. And 2 Others

Respondent :- U.P. Human Rights Commission And Another

Counsel for Petitioner :- Bhola Nath Yadav

Counsel for Respondent :- R.P.Singh Parihar

Hon'ble Bala Krishna Narayana,J.

Hon'ble Prakash Padia,J.

Per Hon'ble Prakash Padia,J.

1. Heard Sri Suresh Singh, learned Chief Standing Counsel for the petitioners and Sri R. P. Singh Parihar, learned counsel for the respondent no.2.

2. The petitioners have preferred the present writ petition for quashing of the order dated 7.11.2016 passed by U.P. Human Rights Commission, Lucknow in Case No.1757(71)/2016-17 by which the District Magistrate, Fatehpur/Superintendent of Police, Fatehpur were directed to pay Rs. 1 lac to the Ansarul Haq/respondent no.2 and to inform the Commission.

3. The facts in brief as contained in the writ petition are that the respondent no.2 namely Ansarul Haq sustained injuries on the head and in the right eye due to the riots which occurred on 14.1.2016 during the procession on the occasion of Makar Sankranti at Jahanabad, District Fatehpur. After the aforesaid incident the respondent no.2 moved an application dated 10.5.2016 to the Chief Minister, Govt. of U.P., claiming for the compensation. In this regard a certificate was also issued in favour of the respondent no.2 on 14.6.2016 by the Chief Medical Officer, Fatehpur, stating therein that the right eye of the

complainant/respondent no.2 is 100% blind and left eye is normal and as such the opinion was recorded to the effect that the disability suffered by the respondent no.2 is 30%. A scheme was introduced by the State Government namely "U.P. Victim Compensation Scheme-2014" in which it is provided that a victim shall be eligible for the grant of compensation if he is found eligible under the provisions of para 4 of the Victim Compensation Scheme-2014, which was amended vide amendment scheme dated 7.6.2016.

4. Paragraph 4 of the U.P. Victim Compensation Scheme-2014 as has been published in the official gazette on 09.4.2014 is reproduced below :-

"4. A victim shall be eligible for the grant of compensation if:

(a) the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act;

(b) the victim/claimant reports the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant cooperates with the police and the prosecution during the investigation and trial of the case."

5. It is contended that as per the aforesaid scheme of 2014 a person is entitled for compensation when he sustained disability ranging from 40 to 80%. It is further argued that the respondent no.2 sustained injuries causing disability only upto 30%. On the application

submitted by the respondent no.2 before the Chief Minister an order was passed on 2.8.2016 under the signatures of the Secretary (Account) Govt. of U.P., Lucknow by which an order was passed to pay a sum of Rs.20,000/- to the respondent no.2 under the U.P. Relief Fund Scheme. In compliance of the aforesaid order the amount of Rs.2,00,000/- (two lacs) was duly paid to the respondent no.2 by the District Magistrate, Fatehpur vide cheque dated 31.8.2016. Being not satisfied with the aforesaid amount of compensation, the respondent no.2 made an application before the Chairman/Secretary, State Human Rights Commission, Lucknow, which was registered as Case No.1757 (71)/2016-17. On the aforesaid application the State Human Rights Commission, Lucknow wrote a letter dated 18.5.2016 to the Superintendent of Police, Fatehpur for conducting the enquiry and to submit its report in respect of the aforesaid complaint. Pursuant to the same, an enquiry was got conducted and the report dated 27.7.2016 was submitted by the Circle Officer, Bindki, to the Superintendent of Police, Fatehpur, on 27.7.2016, copy of which is appended as annexure 11 to the writ petition.

6. The aforesaid report was duly forwarded by the Superintendent of Police, Fatehpur, to the Secretary, Human Rights Commission, Lucknow vide its letter dated 30.7.2016. Thereafter, the U.P. Human Rights Commission, Lucknow/respondent no.1 without considering the materials available on the record and without considering the provisions of law specially the provisions of Section 18 of the Protection of Human Rights Act, 1993 passed the order dated 07.11.2016 by which the compensation of Rs.1 lac was awarded to the

complainant/respondent no.2. The District Magistrate/Superintendent of Police, Fatehpur, were directed to pay the aforesaid amount to the complainant/respondent no.2. Further directions were given to the District Magistrate, Fatehpur/Superintendent of Police to make the aforesaid compensation to the complainant/respondent no.2 and inform the commission, copy of the order dated 7.11.2016 passed by the respondent no.1 is appended as annexure 1 to the writ petition. Aggrieved against the aforesaid decision taken by the respondent no.1 petitioners have preferred the present writ petition.

7. It is argued by Sri Suresh Singh, learned Chief Standing Counsel that the order impugned passed by the respondent no.1 is perverse and without jurisdiction and have been passed without application of judicial mind and as such the same is liable to be quashed. It is further argued that Section 18 provides that 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 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.**

8. It is further argued that in so far as the present case is concerned, no finding whatsoever has been recorded in the order impugned that there is any violation of human rights or there is any negligence in the prevention of violation of human rights or abetment thereof by a public servant. It is further provided that commission may

recommend to the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim or to the members of the family but by the impugned order the respondent no.1 directed the District Magistrate/Superintendent of Police to make the payment of compensation as such the order impugned passed by the respondent no.1 is without jurisdiction. It is further argued that the complaint moved by the respondent no.2 was not maintainable since there is no allegation regarding the commission of violation of human rights or negligence in prevention of violation of human rights or abetment thereof by public servant. It is further argued that the respondent no.2 sustained injuries in one eye due to which disability sustained by him is 30% and as such the respondent no.2 was not eligible for compensation/damages under the U.P. Victim Compensation Scheme-2014 as amended in the year 2016. In spite of the same, an order was passed to make the payment of Rs.20,000/- in favour of respondent no.2 under the scheme of Relief Fund scheme of the Chief Minister but without considering the aforesaid aspect of the matter impugned order has been passed.

9. In the counter affidavit it is stated by the learned counsel for the respondent no.2 that the order passed by the respondent no.1, which is impugned in the present writ petition is absolutely perfect and valid and does not call for any interference by this Court specially under Article 226 of the Constitution of India.

10. Heard learned counsel for the parties and perused the record.

11. With the consent of learned counsel for the parties,

the writ petition is being disposed of finally at the admission stage itself.

12. The challenge before the Court, which is addressed during the course of submissions, is that the power of Commission under Section 18 (a) (1) of the Act, 1993. It is argued that the Commission under the aforesaid provision can only "recommend" to the concerned Government Authority to make payment of compensation or damages to the complainant or to the victim or members of his family.

13. In view of the aforesaid it is submitted that the power of the Commission being re-commendatory in nature and direction given by the Commission to the District Magistrate, Fatehpur/Superintendent of Police, Fatehpur, to furnish proof of compliance of payment of compensation to the extent of Rs.100,000/- (one lac) to the respondent no.2 is contrary in law and is liable to be set aside.

14. The National Human Rights Commission has been constituted, together with the State Human Rights Commissions, "for better protection of human rights" and for related ancillary matters. The Commission is a high powered body whose Chairperson is a person who has been the Chief Justice of the Supreme Court. Among its members is a person who is, or has been a Judge of the Supreme Court; and another who is, or has been the Chief Justice of a High Court. Two other members are to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. The appointment of the Chairperson and Members is by a Committee chaired by the Prime Minister and which

includes among other persons, the Speaker of the Lok Sabha, Union Minister of Home Affairs, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairperson of the Rajya Sabha. The presence of these high dignitaries on the selection committee is indicative of the importance which Parliament has ascribed to the functions of the Commission.

15. The functions of the Commission under Section 12 include among other things, the power to inquire suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction of a court, into a complaint of the violation of human rights or abetment thereof or negligence in the prevention of such a violation, by a public servant.

16. Section 12 which defines the functions of the Commission is in the following terms:

"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--

(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 of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution

under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(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 recommend 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) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) 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;

(i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights."

17. When it makes inquiries, the Commission under Section 13 has all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 and, in

particular, in respect of the matters enumerated therein. The Commission for the purposes of investigation is empowered under Section 14, to utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government. The procedure before the Commission is governed by Chapter IV of which Section 17 provides an enquiry into a complaint of a violation of human rights. The Commission is empowered to call for information or a report from the Central Government or State Government or any other authority or organization subordinate to them. Section 18 deals with the steps to be taken during and after the enquiry and is in the following terms:

"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 inquiry 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."

18. Section 18 vests wide powers in the Commission. Under clause (a), it is empowered to recommend the payment of compensation or damages to the concerned government or authority where the enquiry has disclosed the commission of a violation of human rights or negligence in the prevention of a violation of human rights or abetment thereof. The provisions of Section 18 (a) correspond to the functions of the Commission specified in Section 12 (a). The Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as that Court may deem

necessary. The Commission under clause (c) of Section 18 can recommend to the concerned government or authority at any stage of the enquiry to grant interim relief to the victim or the members of his family. Under clause (e), the Commission has to send a copy of its inquiry report together with its recommendations to the concerned Government or authority which shall, within a period of one month or such further time as may be allowed, forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission.

19. These provisions emphasize three aspects. First, the enactment of the Protection of Human Rights Act, 1993 is an intrinsic part of the enforcement of the fundamental right to life and personal liberty under Article 21 of the Constitution. Equally, by enacting the legislation, Parliament has evinced an intention to enact legislation in compliance with India's obligations under the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations. Secondly, the Commission is a high powered body which has been vested with exhaustive powers to order an investigation, conduct enquiries and for which it is vested with all the powers of a civil court. Clauses (a) to (f) of Section 18 are not evidently an exhaustive enumeration of the powers of the Commission since the use of the expression "and in particular" would indicate that the powers which are enumerated are illustrative in nature. The Commission follows a procedure which is governed by Section 17 for the purpose of making inquiries upon which it has to take steps in conformity with Section 18.

20. The aforesaid aspect of the matter dealt with in great detail by a Coordinate Bench of this Court in Writ C No.15570 of 2016 (State of U.P. and 2 others Vs. N.H.R.C. and 3 others). In the aforesaid case a judgement was delivered by Dr. Dhananjaya Yeshwant Chandrachud the then Chief Justice that the Commission is entitled to direct for the payment of compensation to the victim where it finds either a violation of human rights or a negligence in the prevention of a violation of human rights. The operative portion of the aforesaid judgment is quoted below :-

“The basic question is whether the use of the expression "recommend" in Section 18 (a) can be treated by the State Government or by an authority as merely an opinion or a suggestion which can be ignored with impunity. In our view, to place such a construction on the expression "recommend" would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority or a government which is aggrieved by the order of the Commission is entitled to challenge the order. Since no appeal is provided by the Act against an order of the Commission, the power of judicial review is available when an order of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under Article 14 and of the basic principles of equality, it would not be possible to accept the construction that the State Government can ignore the recommendations of the Commission under Section 18 at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be

open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected. The order which has been passed by the Commission has been passed on a careful appreciation of materials which were placed on the record. The deceased was an under trial prisoner who was lodged in the district jail in Muzaffarnagar. The treatment record indicated that he was provided treatment only from 15 May 2012 and he died on 21 May 2012. Though he had been admitted to jail on 9 September 2011, until 15 May 2012, no medical check up was carried out to control or treat his lung disease. He was not sent to a competent medical facility until his condition had deteriorated. Consequently, finding a case of negligence on the part of jail officials in providing medical treatment, the Commission has ordered the grant of compensation. The Commission is entitled to do so where it finds either a violation of human rights or a negligence in the prevention of a violation of human rights.

For these reasons, we find no substance in the petition. The writ petition is, accordingly, dismissed.

There shall be no order as to costs. "

21. Even from perusal of Section 18 of the Act, 1993 it is clear that the Commission has empowered to take any of the steps as contained under Section 18 of the Act, 1993. As many as six steps were mentioned under Section 18 of

the Act. Sub-clause (a) of Section 18 deals with the fact that where the enquiry discloses the commission of violation of human rights or abatement thereof by a public servant he may recommend to the concern government or authority to make payment of compensation or damages to the complainant or to the victim. From perusal of the same, it is clear that the Commission has full power to recommend regarding payment of compensation or damages to the complainant, if he finds on enquiry that there is a violation of human rights or negligence in the presumption of violation of human rights. Another Division Bench of this Court in Writ C No.7890 of 2014 (State of U.P. and 2 others Vs. National Human Rights Commission) decided on 1.2.2019 has taken the same view.

22. From perusal of the report placed before the respondent no.1 it reveals that during procession on the occasion of Makar Sankranti at Jahanabad, District Fatehpur on 14.1.2016 due to riots the complainant/respondent no.2 sustained injuries on the head and in the right eye. The complainant/respondent no.2 was referred by the local doctor for treatment at Kanpur Nagar from where he was referred to the AIIMS, New Delhi where he was diagnosed but the complainant/respondent no.2 has lost the eye sight of one of his eyes. The commission also gone through the report of the Circle Officer, Bindki, Fatehpur. From perusal of which it reveals that in the mis-happening on 14.1.2016 the complainant sustained injuries on the head and the right eye due to which he lost the eye sight of one of his eyes. The respondent Commission also taken into

consideration the judgement delivered by the National Consumer Disputes Redressal Commission in the case of ***H. S. Sharma Vs. Indraprastha Apollo Hospital and another*** reported in ***2007 (4) AWC 4.175 (NC)*** where the Commission has awarded a compensation of Rs.2,00,000/- (two lacs) to a victim, who lost his eye sight due to negligence. Further findings were recorded by the Commission in the order impugned that in the matter in question it is evident from the report of the Circle Officer that the complainant has lost his sight of one of his eye during the riots, which is inevitable incident. The Chief Medical Officer has also certified that the right eye of the complainant is 100% blind. The Commission after considering the entire material on record passed the order to award compensation in favour of the petitioner and directions were given to the District Magistrate, Fatehpur/Superintendent of Police, Fatehpur to make payment of compensation to the extent of Rs.1,00,000/- (One lac only) to the complainant Ansarul Haq and informed the Commission.

23. In so far as the argument raised by the learned counsel for the petitioners that since the respondent no.2 has sustained injuries causing disability only upto 30% and the compensation could only be awarded when the disability ranging from 40% to 80% is suffered, the aforesaid provision has been made in the U.P. Victim Compensation Scheme, 2014. The provisions of the aforesaid scheme will not apply in so far as the application submitted by the respondent no.2 before the respondent no.1 is concerned.

24. In view of the same, the aforesaid objections raised

by the petitioners is no force.

25. On the basis of the aforesaid facts, the Commission has ordered for the grant of compensation.

26. In view of the facts as narrated above as well as from perusal of the judgement of two different Division Benches of this Court passed in Writ C No.15570 of 2016, State of U.P. and 2 others Vs. N.H.R.C. and 3 others, (supra) and Writ C No.7890 of 2014, State of U.P. and 2 others Vs. National Human Rights Commission (supra) it is clear that the respondent no.1 has full power and authority to direct the District Magistrate/Superintendent of Police to make the compensation to the victim as has been done in the present case.

27. In the facts and circumstances of the case, Commission is entitled to do so where it finds either a violation of human rights or negligence in the prevention of violation of human rights.

28. The order dated 7.11.2016 passed by respondent no.1/U.P. Human Rights Commission, Lucknow does not want any interference specially under Article 226 of the Constitution of India.

29. The writ petition is devoid of merits and accordingly dismissed. No order as to cost.

Order Date :- 24.10.2019

Pramod Tripathi