



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/ 09/2016/
Date: 02/09/2016

MAS/Case No. – 6460/2008-09

Name of the Complainant : Bhagwat R. Nikalje,
Plot No. 53, New Garden Layout,
Bezan Baugh, Nagpur

V/s.

Name of Respondents : 1) Shri V. V. Subbarao & others
2) Dy. Commissioner of Police,
Zone –II, Nagpur City,
Nagpur

Date : **22nd August, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

After having heard the parties at length on the last date and after having gone through the records carefully, the point for consideration is whether a case of violation of human rights has been made out by the complainant Shri Bhagwat Nikalje so as to enable this Commission to pass necessary directions, so as to meet the ends of justice.

It is rather unfortunate that a victim of atrocities at the hands of his senior officer is yet to get justice because of the lethargic, apathy on the part of the law enforcing agency, which finally compelled him to approach this Commission seeking redressal for violation of his human rights.

Reflection on the background is necessary for appreciating the merits of the present complaint.

1. Complainant Shri Bhagvat Nikalje belongs to 'Mahar' Caste and entered railway service (an undertaking of Govt. of India) as a tracer in the year 1983 and with passage of time came to be promoted as junior electrical engineer. It appears that complainant faced turbulence in his career as dept. action for dereliction of duties was taken against him by his department for which his increment was ordered to be stopped two times, for the first time for the period of 3 years and second time for 8 years. These administrative orders have been challenged by aggrieved complainant before Central Administrative Tribunal (CAT), as orally informed by the complainant to this Commission. It is further submitted that on administrative grounds he came to be transferred to Nayanpur. With this background complainant Shri Bhagvat Nikalje alleges that because of his being a member of Schedule Caste his seniors, Shri V. V. Subbarao, Shri Vinay Singh, Shri A. N. Pathak and Shri A. S. Tomar insulted, humiliated him at every given opportunity on his caste and traumatised him by initiating unwarranted departmental enquiries against him, transferred him to a remote place Nayanpur and ensured that he doesn't get the official accommodation, and thus harassed him physically and mentally which adversely affected his other family members also. It would not be out of place to mention here that the Spl. IGP attached with the office of this Commission was also directed by my Ld. pre-deceaseor to conduct independent enquiry in this matter. The Ld. Spl. IGP submitted his report (Annexure 'D') on 22.08.2011, giving a finding that since the complaint relates to the service matter therefore cannot be

entertained u/s. 8(e) of the MSHRC (Procedure) Regulation, 2001. However I do not agree with this finding as obviously the service matter and the grievances in that regard is independent of the charges of humiliation on the ground of his caste and they cannot be merged together. Infact report of the Ld. SPI. IGP is absolutely silent on this point.

2. All these events seems to have occurred in and around the years 2008/2009 and it is during these years that complainant approached the police agencies at Nagpur viz. Jaripatka Police Station, Dy. Commissioner of Police, Commissioner of Police, Nagpur with his request to initiate prosecution against the aforesaid senior officers under Atrocities Act but of no avail as all his applications went unattended, which compelled him to approach this Commission, seeking to issue necessary directions to law enforcing agency and also relief for violation of his basic human rights.

3. Detail response has been filed on record by the Railway Dept. as well as the concerned police department rebutting all the adverse allegation levelled against them. The Commissioner of Police, Nagpur raised a specific contention that complainant Shri Nikalje from time to time was directed to submit his Caste Certificate on record so as to enable the police to take action on his application against the erring officers but he did not submit his Caste Certificate as directed. Therefore no action could be taken by them. It is further submitted that the allegations raised by the complainant more or less relates to terms and conditions of his service or employment with the Railway Department and therefore it did not call for any further action either by the police or this Commission and sought closure of the case.

It is in this background that Commission is called upon to examine and determine whether a case has been made out warranting its interference by invoking the powers conferred on it under the Act. For an effective and proper determination of this crucial question, I would like to first set out the legal principles relating to the Special Enactments i.e. Schedule Caste and Schedule Tribes (Prevention of Atrocities Act, 1989) and Protection of Human Rights Act, 1993 and then of course analyze the scope and object of Section 154, 155 Cr. PC.

I am required to analyze and discuss on the legal principles in view of the specific stand taken by the respondent police i.e. its inability to initiate action for want of submission of Caste Certificate by complainant.

Legal Principles:

The Schedule Caste & Schedule Tribe (Prevention of Atrocities Act, 1989) was passed by the Parliament on 11.09.1989 and the object was prevention of offences of atrocities against the members of Schedule Caste & Schedule Tribe, to provide for special court for trial of such offences and for relief and rehabilitation of the victims of such offence and the matters connected therewith or incidental thereto. Section 3 enumerates the nature of the offences and punishment prescribed for those offences. Pertinent to note that Central Govt. has also framed rules for proper implementation of the Act. These rules were made in the year 1995 Schedule Caste & Schedule Tribe (Prevention of Atrocities Rule, 1995). Rule 7 which is of mandatory nature provides that only a police officer not below the rank of a Dy.

Superintendent of Police so appointed by the order of State government is empowered to investigate the case.

In the instant case there is a blatant breach of requirement of Rule 7 as the report dated:27.04.2009 (Annexure 'A'), filed by ACP Anil Bobade shows that the enquiry was conducted by the Sr. PI of Jaripatka Police Station. I have pointed out this fact to indicate that right from the beginning either out of ignorance or intentionally serious lapses came to be committed by the concerned police, because a Sr. Inspector of Police was entrusted with the duty of enquiring into the authenticity of the allegations made by the complainant in this complaint.

The most blatant, and damaging aspect is the failure on the part of the police to register an FIR, the moment report was made by the complainant as instead of proceeding in accordance with the provisions contained in Sec. 154 Cr. PC, a unique, procedure seems to have been adopted whereby complainant Shri Nikalje was asked to submit his Caste Certificate to convince the police about his being belonging to fraternity of SC. I would like to reiterate the settle legal position governing the position of law regarding registration of FIR once an aggrieved person approaches the police station with a report of cognizable offence. High Court of Bombay in a unreported decision in Cr. Writ Petition no. 1357/2006 Mr. Mukesh R. Gokul V/s. State of Maharashtra & Others decided on 19.12.2011 pro-founded the well settled legal proposition as under:

“The Full Bench of our High Court in the case of Sandeep Rammilan Shukla & Ors. Vs. State of Maharashtra & Ors reported in 2008 All.M.R. (Cri.) 11 wp1357.06 3486 has held that Section 154 of the Criminal Procedure Code is a significant provision and has considerable

impact on administration of justice as well as have substantial effect on the Society. The Court proceeded to address the question as to whether any kind of discretion is available to the Officer In-charge of a Police Station in terms of Section 154 or he is left with no choice whatever as per the circumstances of the case. After analysing the decisions of the Apex Court on the point and interpreting Section 154 of the Code, the Full Bench has opined that Section 154 in no uncertain terms imposes an absolute duty upon an Officer In-charge of a Police Station to record information of a cognizable offence in prescribed book/books. It then went on to examine the question whether this absolute duty arising from the provisions of Section 154 of the Code by definite implication puts an absolute prohibition on the Police Officer in-charge of a Police Station to do any other act ancillary thereto or otherwise under the scheme of the Act. It went on to observe that there is no specific provision or legislative command where pre-investigative inquiry is either specifically permitted or prohibited. On this finding it has been held that as a rule and as requirement of law, the Police Officer in-charge of a Police Station hardly has any discretion in registering the case once the information given to him discloses a cognizable offence. It may be useful to advert to the dictum of the Apex Court in the case of Ramesh Kumari vs. State (NCT of Delhi) & Ors. reported in (2006) 2 SCC 677. In that case, the grievance of the appellant was that no case was registered by the Police Officer inspite of the mandate of Section 154 of the Code. It was argued that genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. For considering that submission,

*the Court in the first place referred to the exposition in State of Haryana vs. Bhajan Lal reported in 1992 Supp. (1) SCC 335, **which has held that the Police Officer concerned cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. It is further held in the said decision that the Officer In-charge of a Police Station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. The Court adverted to the exposition in paragraphs 31 to 33 in the case of State of Haryana (supra)***

Keeping in mind the mandate of Sec. 154 of the Cr. PC, if we turn to the grievances raised by the complainant, in his application dated:13.03.2009, it clearly emerges that he accused his seniors of insulting and humiliating as well as harassing him on the ground of his caste and unfortunately the bias went to the extent of harassing and pressurizing him in discharge of his official duties.

I am repeating that only justification sought to be placed on record by the concerned police is its assertion of failure or default on the part of the complainant to submit his Caste Certificate on record. Admittedly, this demand was illegal, unwarranted, once we take into consideration the principles laid down by Bombay High Court supra above. Secondly, this assertion seems to be fallacious because office of Div. Railway Manager vide its letter dated: 05.03.2009 (Annexure 'B') addressed to Commissioner of Police, Nagpur wherein it is clearly mentioned that in the Service Book of Shri B. Nikalje his Caste is written

as 'Schedule Caste', which means that the fact of caste of the complainant was already communicated to the office of the Commissioner of Police, Nagpur but even then for the reasons best known to the Investigating Officer, every time he insisted for the Caste Certificate rather than asking the concerned department to furnish complainant's service book or atleast furnish information about his caste and the above referred communication by the Divisional Railway Manager clearly indicates that he did inform the Commissioner of Police, Nagpur about complainant being a member of Schedule Caste, but even after receiving this information a tactful silence was maintained and no action was taken by the concerned officer.

Thirdly, complainant vide his communication at Annexure 'C' wherein he referred to his complaints/applications dated:17.06.2008, 30.12.2008, 17.02.2009, 07.03.2009 and 30.03.2009 informed the Commissioner of Police, and the other concerned police officers of having submitted his Caste Certificate with their office and this communication was received by the office of the Commissioner of Police, Panchpawli Division on 10.04.2009 by one Shri J. Tijare. Pertinent to note that alongwith Annexure 'C' he annexed Caste Certificate issued by the Executive Magistrate, Malsiras wherein his caste has been shown as 'Mahar'. A legal presumption has to be drawn that the office of the Commissioner of Police was duly supplied with the required Caste Certificate if not earlier, than on 10.04.2009. I must haste to clarify that this was not at all warranted or required under the law, particularly with reference to the decision of the Bombay High Court supra above.

It is astonishing to note that in the response at Annexure 'A' filed by ACP Shri Anil Bobade not a single word is whispered either about the communication of Divisional Railway Manager, Annexure 'B' nor about supply of the document by the complainant Shri Nikalje vide Annexure 'C'. This silence itself establishes a tainted, ill-motive on the part of the police, which is very unfortunate as they very blatantly ignored or rather choose to ignore the mandate of law and sat over the complaints/applications on absolutely untenable ground. This conduct unfortunately compels me to come to the conclusion that some extraneous considerations forced the police to act in such a way. They could have taken the action as per law and depending on the outcome of their investigation could have submitted a final report or a charge sheet but instead, with ulterior motives they simply went on avoiding to take legal action and instead went on harping on the complainant to submit his Caste Certificate on record.

Now, I come to the other important question of violation of human rights. Let us analyze the legal principles governing this concept which originates from Art. 21 of our Constitutions:

The Doctrine of Human Rights has been highly influential within International Law, Global and Regional Institutions, Action of the State and Non -Governmental Organization form a basis of the policy worldwide. The main concept of human right suggest that "If the public discourse of peace time global society can be said to have a common moral language, it is that of Human Right." Human Rights encompasses a wide variety of right viz. Right to a fair Trial; Enslavement; Free Speech; Right to Education; Right of Health; Right to proper and soothing medical care; Right to have pollution free

environment; Right of Senior Citizens etc. In other words it can be said that every human being has a right to live with dignity, freedom and justice. Of late the definition has been enhanced to include Right to Good Governance by State, which infact flows from the spirit of preamble to our Indian Constitution.

Thus it can be seen that human rights are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in series of International Convention, laying down minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. The gist of all this exercise is reflected from the Preamble of Indian Constitution and embedded under Article 21 of our Constitution.

Bearing in mind the above discussed legal principles and applying it to the facts at hands, I have no hesitation to hold that there is an apprehend violation of human rights of complainant as no fault on his part he has been made to run from one office to other for the last nine years and infact constrained to approach this Commission and it is after a long drawn period that he could seek the indulgence from this Commission.

Having considered the legal principles and the mitigating circumstances it is again reaffirmed that the lethargic inaction on the part of the concerned police officers and officials do make out a clear case of violation of human rights of the complainant. **Therefore following recommendations are made:**

- a) Director General of Police, requested to issue circular/instructions to all the Commissionerate Division in**

the State of Maharashtra to strictly follow the mandate of Sec. 154, 155 Cr. PC, i.e. obligation and duty on the part of the police to register a case, by making FIR and conduct investigation in accordance with the procedure laid down in Cr. PC.

The Director General of Police requested to issue circular/instruction to all the Commissionerate Division of State of Maharashtra of Rule 7 of Schedule Caste & Schedule Tribes (Prevention of Atrocities Rules, 1995) i.e., investigation by a police officer not below the rank of Dy. Superintendent of Police, when report under the Special Act is lodged with the police;

- b) Necessary disciplinary action against the erring police officers and officials be taken as per rules as admittedly they committed serious lapse and in fact abused their office and the Chair by committing serious default, error in the present matter. Police officials are directed to register a case under the Schedule Caste & Schedule Tribes (Prevention of Atrocities Act, 1989) against the Railway officials against whom the complainant has given the complaint and take appropriate legal action as per law;
- c) For the violation of the human rights of the complainant, and considering the aggravating circumstances on record this Commission deems it fit to award an interim compensation of Rs.50,000/- which shall be paid by the State to the complainant within four weeks;

d) Compliance of the above noted directions be reported to this Commission within six weeks from the date of receipt of this order.

With this recommendation case is closed and disposed off accordingly.

(M. A. Sayeed)
Member