

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

Administrative Staff College Compound, 9, Hazarimal Somani Marg, Opp. C.S.T.(VT), Mumbai- 400 001.

Telephone Number : 2207 3434 Fax : 2207 3434

Website : <http://mshrc.maharashtra.gov.in>

SHRC/VGM/12/2009/ 3509

Date: 08th December 2009

Case No. - 1090/2006-07

Name of the Complainant : Manohar Arjundas Totlani
RH - 4, 0-12, Sector - 9, CBD Belapur,
Navi Mumbai - 400 614.

Vs.

The Commissioner of Police
Navi Mumbai.

Date : 4 December 2009

Coram : Justice V G Munshi, Member

ORDER

Read the averments made in the complaint and the reply received from the Commissioner of Police, Navi Mumbai. Read the report received from the Investigation Wing of the Commission. Read the case papers. Heard the parties.

2. The complainant is resident of Belapur, Navi Mumbai and he is a social worker. Present complaint was made to the Commission in respect of the incident taken place on 07.11.2006 in the annual meeting of the Corporation. It was alleged that the meeting was attended by Corporations, officers, and other persons. In the said meeting hue and cry taken place and without any intimation, suddenly the National Anthem started. It was alleged that National Anthem was played to stop the disturbances or to overcome hue and cry in the house. It was the grievance made by the complainant, all these things thereafter continued and all the



persons present there thus, insulted National Anthem. Editor Vinod Gangwal made complaint of this incident in CBD Belapur Police Station. Police did not take any action. That on 20.12.2006 the complainant went in Office of Commissioner of Police to give notice of hunger strike. He was arrested under sections 37 and 135 of Bombay Police Act. It was alleged that Police filed false cases against the persons who have taken part in hunger strike and arrested them. The complainant approached Commission and prayed for necessary action in this matter.

3. The Respondent Commissioner of Police, Navi Mumbai by filing their Report denied and disputed all the allegations made against them. According to the Respondent firstly, no offence as allege ever taken place. Secondly, Police taken proper action against the complainant and other persons in order to maintain peace, law and order. Thirdly, criminal cases are filed and are pending against complainant and matters are sub judice in Court. In short according to the Respondent there is no substance into the allegations made in the complaint and therefore no further action is necessary in this matter.

4. The Report of the Investigation Wing of the Commission mentions that National Anthem was played in order to stop the disturbances.

5. Therefore, it is necessary to view the case in the light of facts and circumstances brought on record and also in the light of legal position.

(i) It was alleged by the complainant that he and other persons were falsely implicated in criminal cases. The Report shows that on 22.12.2006 offence at Cr.No. 233/2006 under Section 309 of IPC was registered against complainant and other persons in Police Station CBD Belapur, they were arrested. Later on they were released on bail. After completing investigation charge sheet (Case No. 2266/2007) was filed in Court and this matter is subjudice. Similarly, in respect of incident dated 20.12.2006 offence at Cr.No. 53/2006 was registered against complainant and other persons under sections 37 (1) read with Sec. 135 of Bombay Police Act in Police Station Belapur. They all were arrested and that on 08.06.2007 charge sheet was filed in Court and Case No. 2308/2007 is pending before the Court. It was prayed in the complaint that these cases should be withdrawn. It was alleged by the complainant that he and other persons were falsely implicated in all these cases. All these aspects are to be heard and decided by the Court



R/R,HRG - RECOMM

were criminal cases are pending and not by the Commission in view of clause 8 (h) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. In other words, it will be proper on the part of the Commission to go so deep into the merits of the case and record findings or order on its merits and too without jurisdiction. The complainant can very well take all these defences before the Court at the time of trial of the case.

- (ii) The next point arises for consideration is about causing insult to National Anthem. It is incumbent upon everybody to honour National Anthem and not to commit any act which amounts to insult to National Anthem. This matter was referred to the Investigation Wing of the Commission. Special Inspector General of Police (SHRC) Mumbai submitted report, and the relevant portion is reproduced as under.

"In the instant case, it appears from the CD that National Anthem was played to stop disturbances, neither anybody intentionally prevented singing nor caused any disturbance to the assembly engaged in such singing, hence section 3 is not applicable to this case. However, the Hon'ble Member may consider to recommend guidelines to be followed at the time of singing National Anthem."

I see no reason to disagree with this Report. Thus, the CD of National Anthem was played to stop the disturbances. There cannot be any difference of opinion on the point that CD of National Anthem cannot be played or should not be played for stopping disturbances. It must be played at proper time and full honour and respect must be given to the National Anthem.

- (iii) Special Inspector General of Police of the Commission recommended that in this matter action needs to be taken against person at fault. The Commission is also of the same opinion. The Commissioner of Police, Navi Mumbai is therefore, required to see whether the alleged act amounts to an offence within the meaning of Section 3 of Prevention of Insults to National Honour Act, 1971 and if so,



to take action according to law and see that no such incident is repeated in future.

(A) Copy of this order be sent to Commissioner of Police, Navi Mumbai for necessary action according to law.

(B) Copy of this order be sent to Commissioner of Police, Navi Mumbai through Secretary State Human Rights Commission, Mumbai for information and necessary action.

With these observations and recommendations Case No. 1090/2006-07 is disposed of accordingly.



V. G. Munshi

(Justice V G Munshi)
Member, SHRC