

K. Murugesh Vs. Registrar, State Human Rights Commission and ors.

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Court : Chennai

Decided On : Aug-11-2008

Reported in : AIR2009Mad1

Judge : A.K. Ganguly, C.J. and ;F.M. Ibrahim Kalifulla, J.

Acts : [Protection of Human Rights Act, 1993](#) - Sections 13 and 17; [Indian Penal Code \(IPC\), 1860](#) - Sections 175, 176, 177, 178, 179, 180, 193, 196 and 228; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 100, 195 and 346; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : W.P. No. 15648 and M.P. No. 1 of 2008

Appellant : K. Murugesh

Respondent : Registrar, State Human Rights Commission and ors.

Advocate for Def. : J. Raja Kalifulla, G.P.

Advocate for Pet/Ap. : K. Venkatramani, Sr. Counsel and ;M.M. Muthappan, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Ganguly, C.J.

1. Heard the learned counsel for the parties. Despite notice, nobody appears for the private respondent.

2. This writ petition has been filed by one Sub-Inspector of Police attached to D-5, Manavalan Nagar Police Station, Tiruvallur District. An enquiry against him is going on before the State Human Rights Commission. The nature of the complaint against the writ petitioner is that acting on a complaint relating to some property disputes, the writ petitioner arrested one Sankar, the third respondent herein, and allegedly handcuffed him and dragged him to the police station through a market place. Receiving such treatment from the police, the said Sankar lodged a complaint with the State Human Rights Commission and the enquiry is on. The writ petition has been filed alleging unfairness in the said enquiry. In elaborating his case on unfairness, the learned Counsel for the petitioner has drawn the attention of this Court to page 20 of the additional typed set of papers filed by him. The said typed set would show that he was allowed to cross-examine the original complainant, by name, Sankar.

3. The learned Counsel for the petitioner submitted that the aforesaid procedure, which was followed by the Commission, is contrary to the provisions of the [Protection of Human Rights Act, 1993](#) (hereinafter will be referred to as 'the said Act'). We have looked into the provision of Section 13 of the said Act, which pertains to the powers of the Commission relating to inquiries. The said section is set out below:

13. Powers relating to inquiries:

(1) The commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), insofar as it may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, and the Commission shall be deemed to be

a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

4. From a perusal of the aforesaid provision, it is clear that the Commission has been given the power of a Civil Court in certain matters, while it enquires into any complaint under the said Act. It is not in dispute that the two complaints, which were filed by the said Sankar, have been made over to the writ petitioner. Those complaints by Sankar are at page Nos. 6 and 10 of the additional typed set. So, what the Commission did was that after the aforesaid complaints are made over to the writ petitioner and the writ petitioner has gone through the same, the Commission gave him an opportunity to cross-examine Sankar. We do not find that there was any unfairness on the part of the Commission in adopting the said procedure, whereby the petitioner is given an opportunity to cross-examine the complainant in respect of his complaints, copies of which were already made available to the petitioner.

5. It is obvious that the enquiry before the Commission cannot be equated with a full-fledged criminal trial, nor can it be equated with a trial under the (Code of Civil Procedure. From a perusal of Section 13 of the said Act, it is clear that what the Commission had to follow is a fair procedure. In the instant case, the Commission, on receipt of the complaints, gave the petitioner an opportunity to cross-examine the complainant on the basis of those complaints. We are of the view that by following the aforesaid procedure, the Commission was only giving the writ petitioner, an opportunity to cross-examine the complainant. So by giving an opportunity to the petitioner, the Commission cannot be said to have acted unfairly against the interest of anyone.

6. The other point, which has been urged against the Commission, is that under Section 17 of the said Act, some procedures have been laid down about the inquiry into complaints. The learned Counsel for the petitioner submitted that, in the instant case, the Commission issued summons to the writ petitioner without waiting for the report or the explanation given by the higher authority on the complaint made against him by Sankar. We find that under Section 17(ii) of the said Act, the Commission can initiate an enquiry, without even complying with the

requirements under Section 17(i), which provides for calling for the report. Therefore, we do not find that the Commission by initiating the proceeding in the instant case against the writ petitioner has committed any error. It is, however, open to the writ petitioner to take such defence available to him on the basis of the report given in the matter by those official superiors. We do refrain from making our comments on the correctness or otherwise of the complaints against the petitioner but, at the same time, we do not feel inclined to stop the proceedings, which is going on before the State Human Rights Commission, which is headed by a retired Chief Justice of Chhattisgarh High Court.

7. We do not find any merit in the writ petition, which is accordingly dismissed. The proceedings before the Human Rights Commission may go on in accordance with law. Consequently, the connected miscellaneous petition is also dismissed. There will be no order as to costs.

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