
upon for some of the posts including Librarian for the existing incumbents who are already in the University system. This notification which was produced during the course of arguments will not, in our opinion, govern the appointment of respondent 3 which was made in November, 1997 in response to the advertisement issued in that year. The notification of the UGC relied upon was issued in December, 1998. This notification issued in the year 1998 cannot validate an appointment made in the year 1997 which was then invalid. It is true that the petitioners in both these petitions were not eligible for the post but that does not justify the University in selecting respondent 3 who was also ineligible.

(13) It is interesting to note that in the case of the petitioners in CWPs 16759 and 16882 of 1997 the University declared them ineligible for appointment as Lecturers in Law by refusing to round off the percentage of their marks and also in the case of the petitioner in CWP 42 of 1998 whereas it chose to adopt a different yardstick in the case of respondent 3 in CWPs 17904 of 1997 and 42 of 1998 and rounded off his marks to make him eligible. The action is obviously arbitrary on the face of it and cannot be sustained.

(14) In the result, CWPs 16759 and 16882 of 1997 are without any merit and the same stand dismissed whereas CWPs 17094 of 1997 and 42 of 1998 are allowed and the appointment of Rameshwar Das Mehla as Librarian of the University is quashed. Parties to bear their own costs.

J.S.T.

Before G.S. Singhvi & M.S. Gill, JJ.

R.S. KHATRA,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 16018 of 1998

8th July, 1999

Protection of Human Rights Act, 1993—Ss. 2(d), 12 (a) (i) (ii) and 13 to 16—Complaint before Human Rights Commission against a Police Officer for lodging false FIR—Commission taking cognizance of

complaint and calling upon the Police Officer to file personal affidavit to explain his conduct—Commission is within its jurisdiction to call the personal affidavits of Police Officers upon complaints regarding infringement of human rights when filed —No interference in writ jurisdiction—It is open to the Police Officer to raise the questions posed in the petition before the Commission itself as to whether Commission can take cognizance of the complaint and call for personal affidavit.

Held, that the Commission has thrice ordered the petitioner to file his personal affidavit to rebut the allegations of respondent No. 3 and to place before the Commission true facts but the petitioner did not pay any heed to the orders of the Commission. It is rather in the interest of the petitioner to file his reply in the form of affidavit especially when repeated opportunities have been given by the Commission to explain his conduct. The petitioner should have posed the questions of law now raised in this petition before the Commission itself. From the peculiar facts and circumstances of this case, it is clear that the petitioner has made it an issue not to submit to the jurisdiction of the Commission. A perusal of Section 13 shows that the Commission has conducted the proceedings strictly in accordance with law. The impugned orders passed by the Commission are legally sound and well within its jurisdiction. Any sweeping direction as sought for by the petitioner in the writ petition would cripple the functioning of the Commission altogether and no such mandate can be issued by this Court because in that eventuality no respondent would appear before the Commission.

(Para 12)

Further held, that the Commission has a right and jurisdiction to call for personal affidavits of Police Officers against whom a complaint regarding infringement of human rights has been filed and it has rightly taken cognizance on the complaint of respondent No. 3. Both the questions are answered accordingly. The writ petition is liable to be dismissed.

(Para 13)

Amarjit Singh, Counsel for the Petitioner.

Rupinder Khosla, Deputy Advocate General for Respondent No. 1.

R.S. Cheema, Senior Advocate with Rajiv Trikha, Advocate for Respondent No. 2.

JUDGMENT

Mehtab S. Gill, J.

(1) Shri R.S. Khatra, petitioner who is an I.P.S. Officer alleges that Shri Ramesh Dutt Sharma, Ex-M.L.A. Anandpur Sahib, District Rupnagar, filed a complaint (Annexure P1) with the Punjab State Human Rights Commission levelling allegations against him that he had some grudge against him and got a false First Information Report under Sections 420 and 506 of the Indian Penal Code registered against him. In this complaint, Shri Ramesh Dutt Sharma sought an inquiry to be conducted by an independent agency.

(2) The Punjab State Human Rights Commission (hereinafter described as 'Commission') took cognizance of this complaint and issued notice to the Principal Secretary (Home) and the Inspector General of Police (Litigation), Punjab. The Commission,—*vide* order dated 28th July, 1998 (Annexure P2) directed the petitioner to file his reply in the form of an affidavit to the complaint filed by Shri Ramesh Dutt Sharma. In the meanwhile, the Inspector General of Police (Litigation) Punjab filed a detailed report (Annexure P3) which had been prepared by Shri Kuldip Singh, Superintendent of Police, Rupnagar regarding the allegations levelled by Shri Sharma. The Commission again,—*vide* its order dated 13th August, 1998 (Annexure P4) directed the petitioner to file his personal affidavit. *Vide* order dated 30th September, 1998, (Annexure P5), the Commission showed its unhappiness and directed the petitioner to file his personal affidavit. The petitioner has further stated that the substantial questions of law that have been raised are as follows :—

- (i) Whether the Commission has a right and jurisdiction to call for personal affidavits of Police Officers against whom no violation of human rights has been alleged ?
- (ii) Whether the cognizance of such a complaint can be taken up by the Commission ?

The petitioner has further prayed that the order dated 28th July, 1998, 13th August, 1998 and 30th September, 1998 i.e. Annexure P2, P4 and P5 passed by respondent No. 2 are wholly without jurisdiction and are liable to be quashed.

(3) Notices were served upon the respondents and reply was filed on behalf of respondent No. 2, Secretary, Punjab State Human Rights Commission and respondent No. 3 Shri Ramesh Dutt Sharma, Ex-M.L.A.

(4) Respondent No. 2 in his reply stated that there was serious and intentional violation of human rights as fully detailed in the complaint, Annexure P1 and that respondent No. 3 had approached the Commission through complaint Nos. 104/98 and 106/98. The complainant further stated that he was framed up in a false case on the initiative of the petitioner who harassed him and his son. This by itself *prima-facie* discloses the violation of fundamental rights of respondent No. 3 as enshrined in the Constitution of India. The Complainant's right to life and personal liberty has been jeopardised. A great stress has been laid on Sections 2(d) and 12(a) (i) (ii) of the Protection of Human Rights Act, 1993 (hereinafter referred to as the 'Act') which are reproduced as under :—

“2 (a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) “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 ;

“12. Functions of the Commission :—

(a) inquire, *suo motu* 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.

(5) We have heard arguments advanced by both the learned counsel for the parties and gone through the material available on the file.

(6) The complainant, in his complaint (Annexure P1) attached to the writ petition, has made certain allegations against the petitioner rightly or wrongly, which are under investigation before the Commission. As per Section 14 of the Act, it is within the powers of the Commission to investigate and further utilise the services of any Officer or investigating agency of the Central Government or any State Government. Further under sub-section (1), 2 (a) (b) and (c) of Section 14, the investigating agency can summon and enforce the attendance of any person and examine him. Sub-sections (1), (2) (a), (b) and (c)

are reproduced as under :—

“14 (1) The Commission may for the purpose of conducting any investigating pertaining to the inquiry, utilise the services of any officer or investigating agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government as the case be.

2. For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—

- (a) summon and enforce the attendance of any person and examine him ;
- (b) require the discovery and production of any document ; and
- (c) requisition any public record or copy thereof from any office.

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(7) The Commission, in the present case, did not hand over the investigation to any independent agency and has summoned the petitioner to answer the allegations which have been levelled against him through affidavit.

(8) The other relevant Section 16 which needs a mention is reproduced hereunder :—

“16. Persons likely to be prejudicially affected to be heard.—If, at any stage of the inquiry, the Commission—

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that a person a reasonable opportunity of being heard in inquiry and to produce evidence in his defence :

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

(9) A bare perusal of Section 16 reveals that if the Commission is of the opinion that the reputation of any person is likely to be prejudiced or affected by the inquiry, then a reasonable opportunity has to be given to that person which could be only after summoning him.

(10) If and when the petitioner makes a statement or files an affidavit before the Commission, no prejudice is likely to be caused to him in any civil or criminal proceedings as he has got protection under Section 15 of the Act which is reproduced hereunder :—

“15. *Statement made by persons to the Commission.*—No statement made by a person in course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceeding except a prosecution for giving false evidence by such statement :

Provided that the statement—

- (a) is made in reply to the question which he is required by the Commission to answer ; or
- (b) is relevant to the subject matter of the inquiry.

(11) Further more, while inquiring into complaints under this Act, the Commission has all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908. For facility of reference, Section 13 is reproduced 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 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) xx xx xx
- (4) xx xx xx
- (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 (45 of 1860), 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).”

(12) The Protection of Human Rights Act, 1993 has been enacted with a view to bringing about greater accountability especially from the functionaries of the State and protection of human rights of an individual and devising efficient and effective methods of protecting the same. Commission has been given the powers to inquire, *suo motu* or on a petition presented to it by a victim into the complaint of violation of human rights or abetment thereof and to provide better protection of human rights and for matters connected therewith or incidental thereto. Shri Ramesh Sharma, respondent No. 3 has filed a written complaint against the petitioner, Annexure P1, levelling specific allegations of atrocities against the petitioner which are being investigated by the Commission. The complainant has also raised a strong plea of his false implication at the instance of the petitioner for settling his personal scores and if this plea is proved, this constitutes a grave threat to the liberty of the Complainant. Section 16 of the Act lays down that whenever the Commission considers it necessary to enquire into the conduct of any person, it must give that person a reasonable opportunity of being heard. In view of this provision, the Commission has thrice ordered the petitioner to file his personal affidavit to rebut the allegations of respondent No. 3 and to place before the Commission true facts but the petitioner did not pay any heed to the orders of the Commission. It is rather in the interest of the petitioner to file his reply in the form of affidavit especially when repeated opportunities have been given by the Commission to explain his conduct.

The petitioner should have posed the questions of law now raised in this petition before the Commission itself. From the peculiar facts and circumstances of this case, it is clear that the petitioner has made it an issue not to submit to the jurisdiction of the Commission. A perusal of Section 13 already reproduced above shows that the Commission has conducted the proceedings strictly in accordance with law. The impugned orders passed by the Commission are legally sound and well within its jurisdiction. Any sweeping direction as sought for by the petitioner in the writ petition would cripple the functioning of the Commission altogether and no such mandate can be issued by this Court because in that eventuality no respondent would appear before the Commission.

(13) In view of above discussion, it is held that the Commission has a right and jurisdiction to call for personal affidavit of Police Officers against whom a complaint regarding infringement of human rights has been filed and it has rightly taken cognizance on the complaint of respondent No. 3. Both the questions are answered accordingly.

(14) For the reasons stated above, the petition filed by the petitioner is dismissed with no orders as to costs.

R.N.R.

Before S.S. Sudhalkar, J.

PARAMPAL SINGH & OTHERS,—*Appellants.*

versus

PUNJAB STATE WARE HOUSING CORPORATION & OTHERS,—
Respondents.

F.A.O. 2388 of 1998

5th August, 1999

Arbitration and Conciliation Act, 1996—S. 8 (2)—Copy of arbitration agreement already produced on record by the appellants—Respondents filed application under section 8 of the Arbitration Act for referring matter to the Arbitrator without producing the arbitration agreement—Matter referred to arbitrator—Challenge thereto on the grounds of non-compliance of S. 8 (2)—Order not liable to be set aside on technical grounds as copy of agreement already on the record.

Held, that the provision of sub-section (2) of Section 8 of the Arbitration and Conciliation Act, 1996 that the copy of the arbitration agreement or duly certified copy thereof should be produced along with