



WWW.LIVELAW.IN
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Friday, the Twenty Fifth day of June Two Thousand and Twenty One

PRESENT

The Hon`ble The CHIEF JUSTICE
and
The Hon`ble Mr.Justice T.S.SIVAGNAM

WP (MD) No.10526 of 2021
and
WMP (MD) No.8202 of 2021

HENRI TIPHAGNE

... PETITIONER/PARTY IN PERSON

Vs

- 1.THE NATIONAL HUMAN RIGHTS COMMISSION,
REP.BY ITS SECRETARY GENERAL CUM
CHIEF EXECUTIVE OFFICER,
G.P.O.COMPLEX, MANAV ADHIKAR BHAWAN,
C BLOCK, INA, NEW DELHI-110023.
- 2.THE NATIONAL HUMAN RIGHTS COMMISSION,
REP.BY ITS REGISTRAR (LAW)
G.P.O.COMPLEX, MANAV ADHIKAR BHAWAN,
C BLOCK, INA, NEW DELHI-110 023.
- 3.THE GOVERNMENT OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY,
PUBLIC LAW AND ORDER DEPARTMENT F DEPARTMENT,
SECRETARIATE, FORT ST.GEORGE,
CHENNAI-600 009.
- 4.THE HOME SECRETARY,
HOME DEPARTMENT, SECRETARIATE,
FORT ST.GEORGE, CHENNAI-600 009.
- 5.THE DIRECTOR GENERAL OF POLICE,
DR.RADHAKRISHNAN SALAI,
MYLAPORE, CHENNAI-600 004.
- 6.THE DISTRICT COLLECTOR,
THOOTHUKUDI DISTRICT, THOOTHUKUDI.
- 7.THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT,
THOOTHUKUDI.

... RESPONDENTS



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Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a Writ of Certiorarified Mandamus or any other writ or order or direction in the nature of writ calling for the records pertaining to the impugned order passed by the 2nd Respondent office vide proceedings in Case File No. 907/22/41/2018 dated 25.10.2018 and quash the same as illegal and consequently direct the Respondents No.1 and 2 to reopen the case in File No.907/22/41/2018 and proceed with the same within a stipulated time allowing advocates for all parties to appear on line as used to be practice within the Commission in the past in accordance with the powers contemplated under the provisions of the Protection of Human Rights Act, 1993 within a stipulated time that may be fixed by this Hon'ble Court.

PRAYER IN WMP(MD)No.8202 of 2021:

To pass an order of Interim Direction by directing the Respondents 1 and 2 to furnish the report of investigation conducted by the investigation team of the Respondent one and two within a time to be stipulated by the Hon'ble Court to be furnished to the petitioner.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.HENRI TIPHAGNE, Party in Person and of Mr.R.SHANMUGA SUNDARAM, Advocate General, assisted by Mr.A.K.MANIKKAM, Standing Counsel for Government of Tamilnadu on behalf of the Respondents 3 to 7, the court made the following order:-

(Order of the Court was made by The Hon'ble Chief Justice)

Some disturbing facts have been brought to light by a public spirited individual espousing a public cause in person.

2.The matter pertains to an incident of police firing in the Thoothukudi district of Tamil Nadu on May 22, 2018. The immediate challenge of the petitioner is to the perceived lack of appropriate action by the National Human Rights Commission and the closure of the matter by such Commission, by its order of October 25,2018.

3.It is evident from the order of the NHRC of October 25, 2018 that such commission took *suo motu* cognizance of the incident on the day following the incident upon observing that victims' right to life had been grossly violated. The initial observations of the Commission referred to police having resorted to firing on unarmed protestors without following the standard operating procedure. The Commission called for reports from various authorities and, on May



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29,2018, the Commission sent its own team for spot investigation upon being directed by an order of the Delhi High Court in W.P.(C). No.5779/2018.

4.The order of October 25, 2018 also reveals that the investigation division of the NHRC conducted its spot inquiry of the incident and submitted its report to the Commission. However, according to the present petitioner, the contents of the report do not find any mention in the order of October 25, 2018. The relevant order of October 25, 2018 refers to a report filed by a Principal Secretary to the State dated September 6, 2018. Such report referred to a judicial commission, headed by a retired Judge of this Court, being set up by the State Government upon Court to inquire into "the cause and circumstances leading to the opening of fire resulting in death and injuries to persons on 22.05.2018 and subsequent events at Thoothukudi and nearby areas arising out of law and order disturbances including damage to public and private properties."

5.The report of the Principal Secretary speaks of the commission of inquiry also being asked to examine whether the force that was used was appropriate or warranted in the circumstances and whether there were any excesses on the part of the police officers; remedial measures were also required to be suggested.

6.It appears that the report of the Principal Secretary then referred to the handsome compensation of Rs.20 lakh each for the families of the deceased persons and Rs.1.5 lakh each for those injured. In the order dated October 25, 2018, the NHRC has, upon taking notice of the compensation paid, observed as follows:

'The district administration has taken adequate steps to restore normalcy in the district. The report (of the principal Secretary dated September 6, 2018) concluded that appropriate steps had been taken by the State Govt. to bring a normal and peaceful situation in a short period of time.'

7.The NHRC considered the report and expressed an opinion in the order dated October 25, 2018 that "adequate compensation had been paid to the victims and appropriate steps have been taken by the State ... and the judicial commission was looking into the police excess, if any, and no further intervention in the matter is required."

8.Learned Advocate-General representing the State informs this Court that the commission of inquiry has filed an interim report on May 14, 2021. The petitioner is quick to point out that such interim report was specifically sought by the State Government and may otherwise not have been forthcoming.



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9.For a start, the State must disclose the interim report in the counter-affidavit to be filed by the State wherein the State's considered stand should be clearly spelt out. It is also necessary, fit and proper that the report submitted to the NHRC by its investigation division following the spot investigation be forwarded to this Court, in a sealed cover in the event the Commission feels such report to be delicate at the moment.

10.It is somewhat alarming that the State through its police fires at unarmed protestors and no one is booked some three years after the incident. It may not augur well for a civilised society governed by the constitutional principles that we have to merely throw money at the families of the victims and give closure to an incident of possible brutality and excessive police action. No conclusion need be drawn yet before the facts come to light, but it is necessary the facts come to light and be made public.

11.Issue notice to the respondents, including the NHRC. A copy of this order must be reached to the NHRC in course of a week for the NHRC's stand to be indicated by way of a counter-affidavit within four weeks from date. The report of the investigation team of the NHRC should be forwarded to the Court as aforesaid.

12.Since learned Advocate-General has taken notice on behalf of the respondent Nos.3 to 7, no individual notices need be served on such parties upon a copy of the petition and the connected papers being forwarded to the office of learned Advocate-General.

13.Since the matter is of some importance, let it be taken up at the principal seat of the Madras High Court on August 9, 2021.

sd/-
25/06/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE SECRETARY GENERAL CUM
CHIEF EXECUTIVE OFFICER,
NATIONAL HUMAN RIGHTS COMMISSION,
G.P.O.COMPLEX, MANAV ADHIKAR BHAWAN,
C BLOCK, INA, NEW DELHI-110023.
- 2.THE REGISTRAR (LAW),
NATIONAL HUMAN RIGHTS COMMISSION,
G.P.O.COMPLEX, MANAV ADHIKAR BHAWAN,
C BLOCK, INA, NEW DELHI-110 023.

<https://www.mhc.tn.gov.in/judis/>



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3. THE PRINCIPAL SECRETARY,
GOVERNMENT OF TAMIL NADU
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CHENNAI-600 009.

4. THE HOME SECRETARY,
HOME DEPARTMENT, SECRETARIATE,
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5. THE DIRECTOR GENERAL OF POLICE,
DR.RADHAKRISHNAN SALAI,
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6. THE DISTRICT COLLECTOR,
THOOTHUKUDI DISTRICT, THOOTHUKUDI.

7. THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT,
THOOTHUKUDI.

+1 CC to M/s.HENRI TIPHAGNE, (SR-4210[I] dated 29/06/2021)

+1 CC to M/s.SPL GP (SR-4222[I] dated 29/06/2021)

ORDER
IN
WP(MD) No.10526 of 2021
and
WMP(MD)No.8202 of 2021
Date :25/06/2021

MR

TK/PN/SAR.3/30.06.2021/5P/10C

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