

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

OWP No. 1318/2017

1. Mst. Zooni (Aged 65 years)

W/O Late Gh. Rasool Dhobi
R/O Sail, Tehsil Beeru,
Distt. Budgam.

2. Gh. Hassan Dhobi (Aged 40 years)

S/O Ghulam Rasool Dhobi
R/O Sail, Tehsil Beeru
District Badgam.

.....Petitioner(s)

Through: Mr. S. M. Saleem, Advocate.

Vs.

1. State of J&K through

Commissioner/ Secretary to Government
Home Department,,
Civil Secretariat Jammu/Srinagar.

2. Director General of Police,

J&K, Srinagar.

3. Inspector General of Police, Kashmir Zone,

Srinagar.

4. Sr. Superintendent of Police, Budgam

5. Station House Officer,, Police Station Beerwah.

.....Respondent(s)

Through: Ms. Maha Majeed, Assisting
Counsel vice Mr. Mohsin Qadiri, Sr. AAG.

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

ORDER

15-02-2024

1. The petitioner no.1 is mother and petitioner no.2 is a brother of one, Nazir Ahmad Dhobi S/o Gh. Rasool Dhobi R/o Sail Beerwah, Budgam. They

have invoked extraordinary writ jurisdiction vested in this Court by Article 226 of the Constitution of India, to seek a writ of mandamus to the State to implement the order dated 18.02.2009 passed by the then J&K State Human Rights Commission [“the Commission”]. The petitioners also seek a direction to the respondents to pay a compensation of Rs.15.00 lacs for its failure to protect the life and liberty of their kin, Nazir Ahmad Dobhi, and also an employment to the petitioner no.2 under SRO 43 of 1994.

2. It is submitted by the learned counsel for the petitioners that the then Commission, vide order dated 18.02.2009, recommended to the J&K Government to pay Rs. 1.00 lac as compensation to the petitioner no.1, and a benefit of SRO 43 of 1994. The said recommendations, as contended by learned counsel for the petitioners, have remained unimplemented for the last several years. Learned counsel argues that the son of petitioner no.1, Nazir Ahmad Dhobi, was a peace loving citizen of this country and, therefore, it was the duty of the State to protect his life and liberty guaranteed to him under Article 21 of the Constitution of India. He further submits that it is because of the failure of the State to maintain law and order that the militants could dare to pick up Nazir Ahmad Dhobi, from his home and, thereafter, he was not heard by anybody.

3. The petition is opposed by respondents. In the objections filed by respondents 1 to 3, it is submitted that Nazir Ahmad Dhobi, son of petitioner no.1, was enrolled in BSF as washer man and later promoted as constable in the Coy-122 Battalion, stationed at Rajasthan in the year 1992. He visited his home town after obtaining earned leave from the Competent Authority. It is further averred that during the said period, the militancy was at its peak in the

area and the security forces were engaged vigorously in eliminating the militants.

4. The said Nazir Ahmad Dhobi, the son of petitioner no.1, being himself a BSF constable was in touch with the people of the security forces posted in the area and perhaps this was not liked by the militants. He was, accordingly, abducted, tortured and left in injured condition. He was hospitalized by the family members and after regaining health, he proceeded to Rajasthan to join his duty. He did not reach Rajasthan for joining and there is every possibility that he might have been abducted again by the militants. The family members did not lodge any report about the said incident in the concerned police station, probably because of fear of militants. There is also a supplementary affidavit on record filed by Deputy Secretary, Department of Home of UT of Jammu and Kashmir, in terms of order dated 18.03.2023, in which the respondents have spelled out that pursuant to the recommendations made by J&K State Human Rights Commission dated 18.02.2009, the matter was placed before the Empowered Committee for its consideration on 22.07.2009. The Empowered Committee, after considering the relevant records/reports pertaining to the case, did not accept the recommendations of the erstwhile J&K State Human Rights Commission. The decision so taken was conveyed to the erstwhile Commission.

5. Having heard learned counsel for the parties and perused the material on record, the facts are not much in dispute. Indisputably, Nazir Ahmad Dhobi, the son of petitioner no.1, was a serving para-military personnel and was picked up by the militants when he had come on earned leave to his home town. He was abducted, tortured and then set free. He was also admitted in hospital for treatment of his injuries. He, however, left for joining

his duties in Rajasthan after his recovery, but could not reach there. There is no evidence on record as to whether Nazir Ahmad Dhobi was again picked up by the militants and killed or he of his own left for unknown destination. The report of the Director General of Police, which is referred to by the Commission, does not indicate clearly as to what happened to Nazir Ahmad Dhobi, after he was set free by the militants after subjecting him to torture. Before the Commission also no material was placed which could have facilitated the Commission to come to a conclusion as to what had actually happened to Nazir Ahmad Dhobi. However, as it appears from the reading of order of the Commission, a compassionate view was taken and recommendations were made to the then Government of Jammu and Kashmir for payment of Rs.1.00 lac as *ex gratia* and a benefit of SRO 43 of 1994, as is apparent from the stand taken by the respondents. The recommendations made by Commission dated 18.02.2009, were placed before the competent authority, however, having regard to the facts and circumstances and also for want of relevant evidence on record, the recommendations were not accepted by the Government and this fact has been intimated to the then Commission.

6. So far as the prayer of the petitioner for issuance of mandamus to the Government to necessarily implement the recommendations of the Commission is concerned, the issue is not longer *res integra*. A Division Bench of this Court in the case of “*State of Jammu and Kashmir v. J&K State Human Rights Commission (OWP No. 1756/2018)* and clubbed matters decided on 02.04.2021, has already considered this issue at length. The relevant observations of the Commission in this regard are made in paragraph nos. 11, 12 & 13. This Court has also held that the Commission has no authority to direct the payment of compensation or for that matter for

providing employment to the complainant approaching it for determination of violation of his/her human rights. As is rightly observed by the Division Bench that, where the recommendations are not accepted by the Government, the Commission can, in terms of Section 19(5) of the J&K State Human Rights Commission Act of 1997, ask the Government to forward its comments on the recommendations including action taken or proposed to be taken. When the Commission receives comments indicating action taken or proposed to be taken from the Government, it has no authority to proceed further. As is held in paragraph 13 of the judgement, the powers vested in the Commission under the Act of 1997, terminate when it concludes the proceedings initiated on a petition/complaint and submits the enquiry report to the Government or the authority. Thereafter, the Commission can only publish its report and action taken or proposed to be taken by the Government or the authority as is coming forth from Section 19(6) of Act of 1997. In the instant case, the mandate of the Commission terminated when it concluded the proceedings initiated on the complaint of petitioner no.1, and submitted the same to the Government and also when the Government reported back the action taken on the said report.

7. In view of the clear position of law laid down by the Division Bench of this Court, the plea of learned counsel for the petitioners that the recommendations made by the Commission are final and binding on the Government in all circumstances, cannot be accepted. The judgement relied upon by learned counsel for the petitioners rendered by the Hon'ble Supreme Court of India in the case of "*National Human Rights Commission v. State of Arunachal Pradesh*", may not be attracted to the facts and circumstances of this case. In the aforesaid case, the provisions of National Human Rights

Commission Act were under consideration and it was in the context of aforesaid provisions and the peculiar facts of the case, the matter was decided. The aforesaid judgement cannot be said to be a judgement laying down a firm proposition of law that recommendations made by the Commission are in all cases binding on the State.

8. This brings me to the next argument addressed by learned counsel for the petitioners that it is a Constitutional and Statutory duty of the State to protect the life, liberty and property of its citizens and therefore, the State having failed to protect the life of son of the petitioner no.1, is liable to compensate the petitioners. It is not the case of the petitioners nor is it gatherable from admitted facts and circumstances of the case, leading to the missing of the son of the petitioner no.1, that there was any remissness, negligence or lack of due care on the part of State and its authorities to protect the life of the son of petitioner no.1. The son of petitioner no.1 was a BSF personnel and competent enough to protect himself from any possible attack on his life and liberty. If at all, he was under any threat from militants, he being a member of security forces should have approached the concerned police Station for security. There is nothing on record to show that the son of petitioner no.1 ever approached any authority with a complaint that he had a security threat or that he be provided requisite security. In the absence of such request or information to the Police or other law enforcement agencies, the State and its authorities could not have been expected to provide security to the son of the petitioner No.1.

9. It is unfortunate that son of petitioner no.1 was picked up from the locality and abducted by the militants. It has come in the reply affidavit of the respondents that he was subjected to torture by the militants and severally

injured. The militants left the son of petitioner No.1 in an injured condition and he was got treated in the Hospital by his family members. He was supposed to join back his duties in his Battalion based in Rajasthan. However, he could not reach there and was probably again abducted by the militants. The son of the petitioner No.1 had actually left his home for joining his Battalion in Rajasthan but he did not reach there nor his whereabouts could be known. In these circumstances it is difficult for anybody to say as to whether he is dead or alive. Since he has not been heard by the people who know him for the last more than seven years, as such, there is presumption of his death. However, such presumptive death cannot, by any stretch of reasoning, be directly attributed to the State.

10. This Court can take judicial notice of the fact that in the year 1992 the law and order situation in the Valley was at its worse and the militancy was at its peak. Numerous innocent people were killed by the militants who were hell bent upon to disturb the peace and tranquillity of the State for achieving their nefarious designs. The son of the petitioner No.1 seems to have become the victim of these circumstances, which during those times were virtually beyond the control of the para-military forces deployed to protect the life and liberty of the citizens.

11. It is axiomatic that the protection of life and property of its citizens is a primary duty of the State referable to Article 21 of the Constitution of India. However, the fact remains that State cannot watch each and every activity of citizens. There may be situations in which the State cannot help a person immediately when the life, liberty or property of such a citizen is in danger.. The law enforcement agencies, which are tasked to ensure protection of life and property of the citizens, cannot be expected to be omnipresent.

12. For the foregoing reasons, I find little merit in the submission of the learned counsel for the petitioners. However, having regard to the facts and circumstances of the case and the clear admission made by the respondents in the reply affidavit that the son of the petitioner No.1 suffered atrocities in the hands of the militants because of his being a Constable in the Border Security Force and his proximity with the security personnel deployed in his home town, I am of the considered opinion that the State, being a protector of life and liberty of its citizens, cannot completely wash its hands off. The State must also bear a human face and rescue its citizens who suffer distress only because of the nature of the duties their kins perform in the service of the nation. Here is a case where the petitioner No.1 has lost her young son who was rendering his services to the nation as a BSF personnel. It is because of his nature of duties and his service to the nation, he was picked up by the militants, tortured and most probably killed. The State cannot be so oblivious and ungrateful towards such people who lay down their lives while performing their duty to protect the nation. It is fairly admitted by the respondents in their reply affidavit that working of petitioner No.1's son as Constable in BSF and his closeness with the security forces deployed in the area became the cause of his mysterious disappearance at the hands of the militants. The grudge and hatred of anti-social elements for the people serving in the Army and Security Forces and those responsible for maintaining law and order in the Valley, is not unknown to anybody. It is in this background, I hope and trust that the Government of the day will take note of what is observed hereinabove by this Court and the facts and circumstances emanating from the case and heal the wounds of the petitioner No.1, who had to lose her young son, the bread winner of the family, in the

OWP 1318/2017

hands of the militants. A payment of lump sum compensation of Rs. 5 lacs to the petitioner No.1 shall be a befitting tribute to her son. I order accordingly.

The writ petition is, accordingly, disposed of.

(Sanjeev Kumar)
Judge

SRINAGAR

15.02.2024

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes

