

BHAVIKA PHORE Vs. UOI

WP (C) 819/2019

Court No.1 /Item No.26 (CJI) listed on 08.07.2019

SYNOPSIS

The petitioner is a law student who is interested in seeing Human Rights protected in India and statutory Redressal is made available to all fellow citizens in the country. She is invoking the writ jurisdiction of the Hon'ble Supreme Court under Article 32 of the Constitution of India to direct the respondents to fulfil their statutory obligations as per section 30 and 31 of the Protection of Human Rights Act 1993 ('the Act'). One of the main objectives and legislative intent of the Act is with regard to setting up/specifying special Human Right Courts in each district for the better protection of Human Rights and also to appoint a Special Public Prosecutor for the same. Section 30 of the Act envisages that the State Government with the concurrence of Chief Justice of High Court by notification specify for each district a Court of Session as a Court of Human Rights for speedy trial of offences qua violation of Human Rights. Whereas section 31 of the Act provides that the State Government shall specify and appoint Special Public Prosecutor for the purpose of conducting cases in that Court. To uphold and protect the basic and Fundamental Rights of an individual it is an indispensable obligation upon the State to provide affordable, effective and speedy trial of offences related to violation of Human Rights which can only be achieved by setting up special courts in each district as provided under the Act. Moreover

establishment of special Human Rights Courts further strengthen and enhance existing mechanism and also boost up preservation and protection of human rights in letter and spirit at grass roots level which is the very foundation of democratic principles to achieve the vision of the constitutional framers as stated in the Preamble. Intervention of this Hon'ble Court in setting up Human Rights Courts will provide the victims of human rights abuse, a quick and efficacious access to justice which is constitutional obligation of the State to respect, protect and uphold the basic human rights of its citizens, as such rights are inalienable, indivisible and universal which can never be compromised in any circumstances or at any cost and every citizen of our country has an inherent and sacrosanct right to redressal of their human rights violation.

The relevant provision of the Act is produced herein under-

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(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;

(e) "Human Rights Court" means the Human Rights Court specified under section 30;

30. Human Rights Courts.—For the purpose of providing speedy trial of offences arising out of violation of human

rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if—

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor.—For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Therefore, It is submitted that in the context of these provisions of the Act it is evident that even after passing of more than a quarter of a century, the respondents failed to establish the special Human Rights Courts in each district to conduct speedy trial of offences arising out of violation and abuse of human rights and also appoint a Special Public Prosecutor for the purpose of conducting trial in those Courts. Human Rights in India have been considered deplorable by countries and NGOs throughout the world. The recent India Human Rights Report 2018, which was published by the Country Reports on Human

Rights Practices for 2018, United States Department of State, Bureau of Democracy, Human Rights and Labor provide a deep reality into the sad state of affairs in India. The said report throws light on various human rights violations such as police brutality, torture and excess custodial and encounters deaths, horrible conditions in prison and detention centres, arbitrary arrests and unlawful detention, denial of fair public trial.

Also the Amnesty International Report 2017/18 published by the NGO, focuses on India and its deplorable state of Human Rights present in the country. There is also another report by an NGO, "Human Rights Watch" published in January 2018 which provides a country summary on various offences arising in human rights violations such as the Government's treatment of Dalits, Tribal Groups, and Religious Minorities, curbing of Freedom of Expression by Government etc. Many report brings to light a really shocking fact about custodial deaths in India in the past years, referring to abuse of power and unfathomable torture undergone by individuals due to police excess in India.

From 2001 to 2010, the National Human Rights Commission (NHRC) recorded that 14,231 i.e. 4.33 persons died in police and judicial custody in India. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001-2002 to 2009-2010, and a large majority of these deaths being a direct consequence of torture in custody.

These deaths reflect only a fraction of the problem with regard to torture and custodial deaths in India and not all the cases of deaths in police and prison custody are reported to the NHRC. The NHRC does not have jurisdiction over the Armed Forces under Section 19 of the Human Rights Protection Act. Further, the NHRC does not record statistics of torture not resulting into death. Torture remains endemic, institutionalized and central to the administration of justice & India has demonstrated no political will to end torture, as it remains widespread and integral to law enforcement. Deaths in police custody are reported at regular intervals. These deaths were often passed off as suicides, sudden medical complications, self-inflicted injuries and natural deaths. For instance, out of the total 84 cases of death in police custody recorded by the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs during 2009, deaths in 80 cases were attributed to hospitalisation/treatment (9 cases); accidents (4 cases); by mob attack/riot (2 cases); by other criminals (3 cases); by suicide (21 cases); while escaping from custody (8 cases); and illness/natural death (33 cases).

On 9 March 2010, Minister of State in the Ministry of Home Affairs, Government of India stated in the Lok Sabha that the National Human Rights Commission registered 39 cases of rape from judicial and police custody from 2006 to 2010 up to 28 February 2010. These included 9 cases, including 2 in judicial custody and 7 in police custody, in 2006-2007; 17 cases, including 2 in judicial custody and 15 in police custody, in 2007-2008; 7 cases, including 2 in judicial

custody and 5 in police custody, in 2008-2009; and 6 cases, including 1 in judicial custody and 5 in police custody in 2009-2010 up to 28 February 2010. The Asian Centre for Human Rights (ACHR) has consistently underlined that about 99.99% of deaths in police custody can be ascribed to torture and occur within 48 hours of the victims being taken into custody.

This Hon'ble Court in the case of ***Dilip K. Basu v State of West Bengal AIR 2015 SC 2887***, clearly pointed out the laxity of State governments in not forming the Human Rights Court and urged that if a small State like Sikkim can comply with the requirement of specifying a sessions Court as Human Rights court, there is no reason as to why other states can't comply it. This Court even went to the extent of stating that there is no proof to even show that the State Governments took effort also to form the same and directed them to consult with the Chief Justices of High court of respective states, and examine the feasibility of specifying Human Rights Court in each district inconsonance with section 30 of the Act. As this case mainly dealt with constitution of State Human Rights Commissions, the court only passed a direction to State Governments to take appropriate action as per section 30 of the Act, unlike the other stringent direction to 7 states to set up State Human Rights Commission within a time period of 6 months. This court in the present case (supra), also clarified that word 'may' used in sec 30 of the Act, should be read as 'shall & must'.

It is submitted that even after such a stern direction was made qua the setting up of Human Rights Court all State Governments till now have evaded their responsibility. Protection of Human Rights in India is in a very bad state, and setting up of Human Rights Court in every state in India, will help further the cause in a really strong way.

That this Hon'ble Court in ***Shakti Vahini vs. Union of India (2018) 7 SCC 192***, held that the concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the Constitutional Courts as the sentinel on qui vive to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to assert for dignity that has the spark of divinity and the realization of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and choice within the framework of liberty is of paramount importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person.

It is humbly submitted that to achieve the ideal of social justice, the Constitution lays down the directives for the state in Part IV of the constitution which enshrined duties of the State under the 'Directive principle of state policy' to enact law to secure social order for the promotion of welfare of the people. The relevant provision of the Directive principle of state policy is produced herein under-

38. 1[(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

It is pertinent to note that article 39-A specifically provides equal justice and free legal aid which says state shall secure operation of legal system which promotes justice on the basis of equal opportunity and also evolved free legal aid concept to ensure that opportunity to access of justice shall not be denied to any citizen by reason of economic or other disabilities.

[39A. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

It is the primary responsibility on the State to ensure that needs of citizens are met and their basic human rights are protected. At the

same time it also pertinent to mention that India has a ratified and is also signatory and state party of various international instruments on Human Rights to promote universal respect for and observance of Human Rights and fundamental freedoms such as The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights together called as Bill of Rights which deals with the core of International Human Rights Law. The Act does not define which offences can be considered as human rights Offences for the purpose of conducting trial before the Human rights courts while it only says *offences arising out of violation of human rights*. Therefore the legislative intent is very broad to include every act which infringe or curtails or violates human rights and basic fundamental freedom of human being can be considered as human rights offences. Different types of violation of human rights such as Illegal detention and arrests, fake encounters, false implication by state agencies, extra judicial killing, unlawful killing by state agencies, torture and custodial deaths etc. will definitely be human rights offences for the purpose of conducting trial in human rights courts. Hence this Petition.

LIST OF DATES

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| 10.12.1948 | The Universal Declaration of Human Rights (UDHR) which set out objectives to secure the universal and effective recognition and observance of the human rights was signed and adopted by India and also incorporated in Part III of the Constitution of India |
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i.e. Fundamental Rights it is considered as a bulwark in field of significance and development of human rights.

10.04.1979 The International Covenant on Civil and Political Rights(ICCPR) has been ratified by India and all state parties to this covenant are obliged to respect the [civil and political rights](#) of individuals, which lays down provisions basic human rights and freedom of individual.

10.04.1979 The International Covenant on Economic Social, and Cultural Rights(ICESCR) has been ratified by India which are incorporated in part IV of the constitution of India i.e. Directive Principles of State Policy which lays down the principles of social and economic welfare of the state and its citizens.

08.01.1994 The Parliament enacted a landmark legislation i.e. [The Protection of Human Rights Act, 1993](#) which provides the constitution of a National Human Rights Commission at the Union level, which steers State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights.

21.11.2011 A report was published on Torture in India, 2011 by Asian Centre for Human Rights.

- 18.04.2018 An RTI Application was filed to inquire about the working of the Human Right Courts.
- 05.05.2018 A Reply to the above RTI application was received wherein It was revealed that agency like NHRC has no clue of the Human Right Courts and its redressal mechanism.
- 31.05.2018 A First Appeal filed was u/s 19(1) of RTI, Act 2005 against the reply received.
- 07.06.2018 A Reply to the First Appeal was received.
- 10.01.2019 This Hon'ble Court on 10.01.2019 in Civil Appeal No. 5912 of 2012 in Punjab Human Rights Commission v. Jatt Ram & Ors observed that despite this Hon'ble Court's explicit orders to constitute courts pertaining to Human Rights, no such step has been taken despite the fact that in doing so no additional infrastructure or additional recruitment or staff will be required in setting up these designated courts. Notice was issued to all chief secretaries of every State to show cause as to why appropriate directions in this regard should not be issued.
- .06.2019 Hence this Writ Petition.

PRAYER

In the facts and circumstances stated above, this Hon'ble Court may be pleased to issue the following:

- A. A Writ, Order or Direction in the nature of Mandamus to the respondent States to specify and set up Human Rights Courts for each district across the country and also appoint special public prosecutors to conduct speedy trial of offence arising out of Human Rights violation, compulsorily within a specified time limit preferably within 3 months.
- A. A Writ or Order or Direction to Registrars of all High Courts to enable the establishment of the Human Rights Courts in all the 725 districts in 29 states and 7 Union Territories in a time bound manner and also to the Respondent No.1 to provide sufficient and adequate funds for setting up of the same.
- B. A Writ of Mandamus to respondents to adhere and implement the provision of section 30 read with clause (d) of section 2 and also section 31 of the Protection of Human Rights Act in its true spirit.
- C. Any other order or directions to secure justice to the petitioner which this court may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALLAS
IN DUTY BOUND EVER PRAY.**

Drawn by:-

Filed by:-

Manoj V. George
(Advocate)

(AAKARSH KAMRA)
Advocate for the Petitioner

Place:- New Delhi

Date:- 06-2019