

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CJ Court

Case: WP(C) No. 388 of 2021

UT of J&K and others

...Petitioner(s)/Appellant(s)

Through: Sh. H. A. Siddiqui, Sr. AAG.

v/s

National Human Rights Commission and
others

.... Respondent(s)

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

PANKAJ MITHAL, CJ

1. The Union Territory of Jammu and Kashmir, the Financial Commissioner, Health and Medical Education Department, Civil Secretariat, Jammu and the State Drug Controller, Drugs and Food Control Organization, J&K have together preferred this writ petition for quashing of the orders dated 07.09.2020 and 18.01.2021 passed by the National Human Rights Commission (for short 'the Commission') in complaint No. 80/9/4/2020 dated 08.06.2020 and for quashing of all proceedings in relation thereto.

2. The facts as are revealed indicate that some time in the month of December 2019 and January 2020, about 10 children died in Ramnagar Tehsil of Udhampur District of UT of Jammu and Kashmir due to consumption of a spurious cough syrup.

3. The reports regarding the aforesaid incident had appeared in the media and one social activist made a complaint in this regard dated 08.06.2020 before the Commission with the prayer that the incident had occurred due to the negligence of the officials of the Drug and Food Control Department, therefore, appropriate action be taken against its officers and the families of the victims be provided with adequate compensation.

4. It is on the aforesaid complaint that the Commission directed for issuance of notice. A report was submitted on 01.07.2020 by the Under Secretary, Department of Health and Medical Education, Government of Jammu and Kashmir stating that the department had carried out investigation in the alleged incident of infant mortality and 33 samples of the left-over/partially consumed alleged cough syrup were collected. The test reports of the Chief Scientist, CSIR IIMM dated 22.02.2020 indicates presence of Parabens, Heavy Metal and Diethylene Glycol and their presence may be the cause of the death. Accordingly FIR No. 33 of 2020 has been lodged under the Drugs and Cosmetics Act against the manufacturers of the alleged cough syrup.

5. On consideration of the aforesaid report, the Commission vide order dated 07.09.2020 found procedural lapses on the part of the Drugs Department and that it failed to keep a regular vigil on the contents of the medicines. Thus it issued notices to the Chief Secretary, Government of J&K to show cause why compensation of ₹3,00,000/- each may not be awarded to the next of kins of the deceased child.

6. The aforesaid order on consideration of the reply furnished by the Chief Secretary was followed by the order dated 18.01.2021. The Commission was not satisfied by the reply submitted to the show-cause notice. It recorded that there is no denial of the lapse on part of the Drugs Department of the State.

The only submission forthcoming that the primary responsibility of paying compensation rests upon the manufacture of the drug/cough syrup against whom not only the FIR had been lodged but a complaint has also been filed, did not find favour with the Commission. The Commission held that the State of Jammu and Kashmir is vicariously liable for the lapses on part of the department and as such proceeded to recommend for the payment of compensation of ₹3,00,000/- each to the next of kins of all the deceased.

7. The submission of Sh. H. A. Siddiqui, Sr. AAG is that the manufacture of the cough syrup alone is responsible to compensate the next of kins of the victims and that the State cannot be held vicariously liable to pay the compensation.

8. We are not at all impressed by the aforesaid argument inasmuch as the lapse on part of the Drugs and Food Control Department of the State is not denied rather accepted. If the said department had acted vigilantly, the sale of the spurious cough syrup which was the cause of the death could have been avoided. In view of this, the State is rightly held vicariously liable for the omissions of the department in allowing the sale of spurious/contaminated cough syrup so as to compensate the families of the victims.

9. It may not be out of context to mention that until and unless, the State is held vicariously responsible for such actions or omissions, the Government or its department would never swing into action effectively so as to control the menace of sale of contaminated or spurious drugs. A welfare State cannot escape from the responsibility to compensate the irreparable loss so caused to the families of the victims due to lapses of the Department.

10. It is trite to mention here that ordinarily the State of its own always come out with packages and grants of financial help in events of any social

carnage or accidental death wherever such incidents gain political mileage. We fail to understand the hick up in paying compensation as directed in the present case. Therefore, it is all the more reason for the State to maintain parity and uniformity to abide by the decision of the Commission holding it vicariously liable to compensate the families of the deceased children.

11. Sh. H. A. Siddiqui made a feeble attempt to contend that as an FIR and complaint has already been lodged against the manufacture of the cough syrup and the matter is *sub-judice*, the Commission ought not to have taken cognizance of the matter in view of Regulation 8(1)(b) of the National Human Rights Commission (Procedure) Regulations, 1994.

12. The submission is devoid of merit inasmuch as there are no pleadings to the above effect. The above provision only provides that ordinarily complaints with regard to matters which are *sub-judice* are not entertainable by the Commission. The above rule is of general nature and does not bar the jurisdiction of the Commission absolutely. It has not been mentioned as to when the social activist had made a complaint to the Commission and whether on the said date any matter was *sub-judice*. It was not even raised before the Commission. The lodging of the FIR or a complaint against the manufacture of the drug does not make a matter to be *sub-judice* in the court of law so as to debar the Commission from taking cognizance in the matter. The matter is against the State is not stated to be *sub-judice*.

13. In the overall facts and circumstances of the case, we do not deem it proper to exercise our extra ordinary discretionary jurisdiction so as to interfere with the orders impugned passed by the Commission.

14. The writ petition is accordingly dismissed with no orders as to costs.

(SINDHU SHARMA)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
02.03.2021
Raj Kumar

Whether the order is speaking?: Yes/No.

Whether the order is reportable?: Yes/No.

