



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION, MUMBAI

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SRB/Case 217 /2011-12

Name of the complainant : Mukund J Deshmukh & Ors.

V/s.

Commissioner of Police, Amravati

Date : 17th February, 2014

Coram : Justice S.R.Bannurmath
(Chairperson)

ORDER

This complaint is by 27 residents of Pusda Tahsil and District Amravati alleging the violation of human rights by the police officials of Walgaon police station. It is alleged that on 25.04.2010 there was an election of the Grampanchayat at the village, one of the complainant Pankaj Dinkarrao Deshmukh when came out of the polling booth, he was assaulted by two police officers without any reason and when questioned by others present, they were also assaulted by the police staff causing injuries to them. It is stated that thereafter, the complainants were arrested and taken to the police station at Walgaon and thereafter were sent to other police stations nearby as the number of accused were more. It is alleged that in the police station, the police officials, in violation of guidelines issued by the Apex Court in D.K.Basu case, not only stripped them but also did not provide food etc. and thus violated the human rights of the complainant. In this regard it is further submitted that when the complainants and others approached the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in Criminal Writ Petition 368/2010 for quashing criminal proceedings

against them and also highlighting the alleged violation of human rights by the police, the Hon'ble High Court without going into the merits of the case namely legality or otherwise of the case registered against them, so far as the second prayer of violation of human rights, the Hon'ble High Court observed that the complainants have alternate remedy to approach the State Human Rights Commission & disposed off the Criminal Writ Petition. It is to be noted that the main case in Criminal Case no.520/2010 for the offences under Section 143, 147, 336, 332, 352 r/w Section 149 IPC against all these complainants has ended in acquittal as per the Judgment of the J.M.F.C Amravati in Criminal Case 520/2010 for lack of evidence & I am told the judgement has become final. Hence for the violation of the human rights of the complainant they have approached the Commission in the present case.

In pursuance of the notice issued the Commissioner of Police, Amravati has submitted a detailed report interalia contending that all the allegations are false, since the concerned police have not violated in human rights of the complainants and have followed meticulously the guidelines issued in D.K. Basu Case. So far as the injuries to the complainants later resulting in the arrest, it is submitted that on 25.04.2010 during the said Grampanchayat Election the complainant no.1 who was contesting the election alongwith his people started altercation with the police and pelted stones at them and as such the police had to take action by mild retaliation & the, arrest of these persons. In sum & substance it is stated that though the concerned police have acted legally and within their bounds and followed D.K.Basu case guidelines, the present false complaint is liable to be rejected.

I have heard Shri.Mukund Deshmukh the 1st complainant and Shri.Shrish D.Rathod the present Police Inspector of Walgaon Police Station and perused the various records produced by both sides.

On perusal of the entire materials the fact that there was some disturbance during the Grampanchayat Election on 25.04.2010 is not in dispute but what is disputed is as to the alleged assault by the police on the complainants as well as failure on their part thereafter to follow the guidelines as per D.K. Basu case. It is to be noted that if this is the case of the complainant the police alleged that as the complainants were themselves involved in pelting stones and rioting which resulted in injuries to some of the police staff present at the polling booth, the police had to register case against these complainant and take action.

Since the criminal case filed against the complainants in Criminal Case 520/10 has ended in acquittal, and as no appeal has been filed by the State, even though the acquittal may only amount to failure on the part of the police and prosecution to convince the court as to the guilt of the accused, that by itself will not help either of the parties. However, what is relevant here is whether the alleged arrest of the accused from the spot and thereafter after taking in the custody the guidelines of D.K. Basu case have been strictly followed.

At the outset again whether such guidelines have been followed or not by the police at this length of time cannot be ascertained especially when it is word against word, and as such the other circumstantial evidences are to be looked into for this purpose.

In my view there appears to be some justifications on the part of the complainants though somewhat exaggerated. The first and foremost reason to arrive such consideration is the inaction on the part of the police in registering a case given by complainant and others against the police officers including Raju Mendhe & Shri.Lakade Police Constables. There is unimpeachable evidence in this regard as to the lodging of this complaint by some of the complainants which has been received by the then Sr. Police Inspector of Walgaon police station on 25.04.2010 itself at about 8.30p.m as per the endorsement on the complaint itself.

Surprisingly, no action in this regard has been taken by the police and infact the present P.I after looking into the records admitted this fact. Prima-facie non action on the part of the police in registering a case complained by some of the present complainants and on the other hand registering a criminal case against them for rioting and un-lawful assembly, indicates biased version on the part of the police. The criminal Procedure Code mandates registration of every complaints of criminal nature by police immediately on receipt of the same. Of course the truth or otherwise can be later decided by the competent court. This inaction as already noted amounts to bias on the part of the police and infact the acquittal of the complainants from the criminal case registered against them fortifies this biased version of the police before the Commission. This may amounts to possible suppression of facts and also taking sides of parties especially during election process.

As already noted, the allegations of not following guidelines in D.K. Basu case and the reply by the police in this regard, being only word against word, same cannot be decided by this Commission but the bias of the police as indicated against the complainants party appears to be justified. As I find inaction on the part of the police in not registering case of the present complainant, which might have if registered in finding truth or otherwise, has resulted in some injustice to the complainants and amounts to violation of their human rights of getting proper aid from the police as there is no inquiry in respect of their complaint. Hence the commission makes following recommendations :-

- (a) The State shall bring awareness and educate the police personnel as to the strict procedure to be followed when they received complaint i.e first registering a case and investigate the same if found to be a penal offence & if found there is possibility of prosecution after investigation, since non recording of complaint

submitted to a police amount to violation of human rights i.e the basic access to the criminal justice system.

- (b) Since in the present case as the commission finds the inaction on the part of the police not registering a case against the police officials about which some of the complainants intended to lodge criminal case and thus they have been shut out Hon'ble Justice system, I direct payment of a compensation of Rs.10,000/- each to the complainants by the State, compliance of which shall be reported in four weeks from the date of receipt of this order.

(Justice S.R. Bannurmath)
Chairperson

Mumbai.