



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/08/ 2016/

Date: 04 /08 /2016

MAS/Case No.– 2465/2009-10

Name of the Complainant : Raghbirkaur K. Bungai
Abchalnagar Gobind Colony,
Bafna Road, Nanded – 431 601

V/s.

Name of Respondents : Superintendent,
Central Prison, Aurangabad

Date : **04th August, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

Both parties present.

On behalf of respondent, Shri Asad Zuber Momin, Addl. Sr. Jailor, Aurangabad Jail has produce certain relevant judgments and orders (Annexure 'A') relating to the same issue and subject, which has been agitated by the complainant Smt. Raghbirkaur K. Bungai. Pertinent to note that in the year 2009-10 at the instance of the Superintendent of Prison, Aurangabad Central Prison custodial death of prison Indrapalsingh alias Bunty Komalsingh Bungai was registered as CD Case no.41/2009-10. Mother of the deceased Smt. Raghbirkaur had filed a complaint on 20.07.2009 alleging suspicious death of her son in Central Prison Aurangabad, while he was in judicial custody in criminal case u/s. 302/34 IPC, the prisoner Indrapalsingh died on 08.06.2009.

These two cases were clubbed together by the order of the then Chairperson and after holding a detail enquiry disposed off the cases vide order dated: 11.03.2010. it would be advisable to reproduce in

verbatim observations and directions issued by the Commission while disposing off the case, made in para 5 & 6 of the order as under:

5. "In view of above discussion, in our opinion the deceased died an accidental death in the jail. The jail authorities have taken all necessary care to provide treatment to the accused. Prima-facie the deceased died by consuming unknown tablets obtained by him from unknown person while he was in the company of his relatives, after the court proceedings were over. It is a case of showing over leniency, casual approach, and carelessness shown by police guards, allowing prisoners to meet anybody, and to pass on drugs, resulting death which in our opinion is a serious misconduct on their part.

6. We, therefore, recommend that the appointing authority of the concern police guards, who escorted the 3 accused to the Session Court at Nanded shall hold departmental inquiry in accordance with law regarding their alleged misconduct and lapses, and submit the compliance report, regarding the action taken.

We may clarify that complainant Smt. Raghbir Kaur, will be at liberty to file such proceedings, as are available, and claim compensation. The observations and findings recorded above, are prima facie in nature, and will not come in her way if she decides to approach other forum."

Further present complainant Smt. Raghbirkaur also invoked the Criminal Writ Jurisdiction of High Court of Judicature of Bombay, by filing Criminal Writ Petition no. 1125/10 before Aurangabad bench wherein she claimed compensation of Rs.10,00,000/- on account of custodial death of her son Indrapal.

This petition came to be disposed off on 21.01.2011 by making following observations in para no. 6 **“Admittedly, no offence has been registered. The matter has not been investigated nor a charge sheet has been submitted in the Court. The petitioner’s claim for compensation/damages is based upon a plea of negligence of the respondents including the police officers who were members of the escort party. The petitioner has claimed compensation/damages of Rs.10,00,000/-. According to us, such disputed questions cannot be decided in the exercise of writ jurisdiction. Negligence as a fact, is require to be proved and established in accordance with Law which can only be done by the parties by leading in the evidence. On account of negligence, the Court would have to arrive at the quantum of damages/compensation to be paid. All these aspects can not be decided into the exercise of writ jurisdiction. The Human Rights Commission had already relegated the petitioner to the alternate remedies which were available to the petitioner in Law for claiming compensation. On the basis of some inquiry conducted by the District Magistrate it can not be held that negligence has been proved.”**

Now despite the issue having been settled by this Commission as well as by the High Court, surprisingly on 30.07.2009 complainant Smt. Raghbirkaur filed the present petition seeking the same relief and it appears that it came to be registered by the Legal Department through oversight without realising that the matter was already subjudice before this very Commission. Be that as it may, legally speaking, this Commission cannot again reopen the issue and give a fresh adjudication, in view of the decisions supra above. But at the same time a duty falls on this Commission to ensure that the

recommendations made by this Commission to the Home Department have been duly dealt with in accordance with the provisions contained in Sec. 18(e) of the Protection of Human Rights Act, 1993. For the sake of clarity the relevant provisions is produced as under

“Section 18 (e): the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission”.

It does appear that Superintendent, Central Prison Aurangabad addressed two letters on 15.02.2012 and 13.03.2012, to Commissioner of Police and Asst. Commissioner of Police, Aurangabad, requesting for information on follow up action taken by them in pursuance to the directions passed by this Commission (para no. 5 & 6 reproduced above). However it appears that no response was given by the concerned office to Superintendent Prison which only reflects the casual approach in dealing with the orders passed by this Commission. **Since the complainant is still searching for the justice, this Commission again directs the Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the Addl. Chief Secretary Home Dept, as well to Commissioner of Police, Dy. IG Prison, and Asst. Commissioner of Police, Aurangabad for information and action in accordance with the provisions of section 18(e) reproduced supra above.**

Accordingly for the abovestated circumstances and as no further inquiry is warranted in the matter, the present proceeding stands closed and disposed off.

(M. A. Sayeed)
Member