



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai - 400 001
Tel : 2207 3434 Fax : 2207 3434, 2209 2857 Website : <http://mshrc.maharashtra.gov.in>

MSHRC/MAS/08/ 2016/
Date: 08/08/2016

MAS/Case No. – 5205/2009-10

Name of the Complainant : Rameshwar Shriram Jamnikar
R/o. Murtizapur,
Dist. Akola – 444 401

V/s.

Name of Respondents : Superintendent of Police,
Akola

Date : **08th August, 2016**

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

ORDER

After having heard the parties at length on the last date and after having gone through the records carefully, the short and limited point, for consideration is whether a case of violation of human rights has been made out by the complainant Shri Rameshwar Jamnikar so as to enable this Commission to pass necessary directions, so as to meet the ends of justice.

It is necessary to highlight on the development of human rights in our country. I quote, with approval observation of Dr. S. Radhakrishnan “No beast is more dangerous and destructive to man than his own fellow man”.

The Doctrine of Human Rights has been highly influential within International Law, Global and Regional Institutions, Action of the State and Non -Governmental Organization form a basis of the policy

worldwide. The main concept of human right suggest that “If the public discourse of peace time global society can be said to have a common moral language, it is that of Human Right.” Human Rights encompasses a wide variety of right viz. Right to a fair Trial; Enslavement; Free Speech; Right to Education; Right of Health; Right to proper and soothing medical care; Right to have pollution free environment; Right of Senior Citizens etc. In other words it can be said that every human being has a right to live with dignity, freedom and justice. Of late the definition has been enhanced to include Right to Good Governance by State, which infact flows from the spirit of preamble to our Indian Constitution.

Thus it can be seen that human rights are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in series of International Convention, laying down minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. The gist of all this exercise is reflected from the Preamble of Indian Constitution and embedded under Article 21 of our Constitution.

Bearing in mind these guiding principles and scope and ambit of human right I now turn to the merits of the present complaint.

Complainant's wife Smt. Usha Jamnikar during the relevant period was elected as President of the local Nagar Parishad, Murtizapur Dist. Akola and belongs to the privilege backward community. Complainant Shri Rameshwar Jamnikar who happens to be her husband has alleged of facing humiliation, degradation and vindictive treatment by the local MLA belonging to one of the active political party. Complainant has alleged about he, his wife and family being

subjected to face illegal action, torture, harassment at the hands of local MLA and his goons and infact his father losing his life on that count. But the prime and the main incident is of 04.01.2010 which resulted in filing of this complaint making grievance of violation of his human rights. At the relevant time Shri A. B. Bhairav, PI was holding the charge of Murtizapur Police Station. On that fateful day a 'Bandh as well as hunger strike' was declared by the political as well as citizens of Murtizapur because of water scarcity in their town and though police bandobast and arrangement were made to prevent occurrence of any unruly incident but the mob went out of control when one of the participant of the hunger strike became serious and was been taken to the hospital, the mob who had gathered there became unruly and created chaos and raucous on the spot and one of the group went towards the house of complainant and pelted stones at his house, resulting into immense damage to the windows and doors, damaged his four and two wheelers, trespassed into his house and attacked his wife Smt. Usha causing injuries to her. This incident occurred despite PI Bhairav being requested by complainant about the possible attack on her house and of providing police protection and escort to his house but except deputing one homeguard constable no steps were taken by PI Bhairav to avoid occurrence of such serious incident. The situation was defused subsequently by the police party rushing to his house and apprehending the culprits but by that time the damage was already done. His wife Smt. Usha was taken to the Primary Health Centre, Murtizapur where she was treated by the medical officer. Of course no external injuries were found on her person but she was admitted and was treated for trauma.

It is not necessary to go into the detail about the subsequent consequences but suffice to point out that the culprits responsible for the incident were booked for the offences of rioting and other relevant Penal Sections as well as humiliating the complainant and his family on their caste under the relevant provisions of the Atrocities Act. The case has been committed to the Court of Session, Akola and is pending before it.

This is so far as the incident and its consequences on the complainant's family is concerned but important to note that since PI Bhairav was found guilty of misconduct and dereliction of the duty, a regular enquiry under the Disciplinary Rules was conducted against him and the Inquiry Officer imposed penalty of withholding his increment for one year. But in Appeal, the said punishment came to be reduced to strict warning by Appellate Authority Shri Mohan Rathod SPI. IG Amravati Division, Amravati (the relevant order is filed alongwith Annexure 'A')

The above discussed mitigating circumstances clearly spells out a case of gross negligence, casual approach on the part of police officer who infact is supposed to be the guardian and law enforcement officer of the society in whom the people at large repose their confidence in protecting them from the anti social elements of the society. Admittedly complainant and his family suffered humiliation, degradation at the hands of their opponents because his wife Smt. Usha was heading the local highest body and right from 2009 onwards the family suffered on one or the other count at the hands of their opponents. Thus a valuable Constitutional Right not only to live with dignity, honour, respect but even the duty to serve the society by virtue

of holding a elected post was defeated, thereby resulting into violation of human rights. Because this is what the human right is and is meant to be. The very fact that the mischief mongers damaged the house, vehicles of the complainants, barged into his house hurling abuses on his caste and using force on his wife establishes as to how their human rights were contravene, attacked and shattered on account of the apathy on the part of the law enforcing agency.

This would take me to one of the resolutions taken in the International Convention against Torture and other Cruel Inhumane or Degrading Treatment or Punishment (Held in the year 1984) which provides as under:

“The Convention defines torture and specifies that states parties must prohibit torture in all circumstances. Torture cannot be justified during a state of emergency, or other exceptional circumstances, nor because of superior orders received by an official. The Convention prohibits the forcible return or extradition of a person to another country where he or she is at risk of torture. States must ensure that all acts of torture are offences under its criminal law – including complicity and participation in and incitement to such acts. States must establish jurisdiction over such offences in cases of torture where the alleged offenders are not extradited to face prosecution in another state, regardless of the state in which the torture was committed, or the nationality of the perpetrator or the victim (‘universal jurisdiction’). In exercising universal jurisdiction states are obliged to take suspected perpetrators of torture into custody, to undertake inquiries into allegations of torture and to submit suspected torturers to the prosecuting authorities. States must also co-operate with one another

to bring torturers to justice. Statements made as a result of torture may not be invoked in evidence – except against the alleged torturer. Victims of torture also have a right to redress and adequate compensation.”.

In view of the foregoing discussion, bearing in mind the factual and legal aspects of the case, I have no hesitation to hold that a case of gross violation of human right has been established and the person responsible is none other than the police officer who was supposed to be their protector but the facts proved otherwise, and therefore was held responsible in the regular enquiry under the Disciplinary Rules and was imposed a punishment. Of course I leave it to the concerned authorities to ponder as to whether the punishment imposed was reasonable or otherwise, keeping in mind the gross negligence and misconduct proved against him. This is a case fit wherein the complainant's family is entitled to the benefit of Clause (i) of Section 18 of the Protection of Human Rights Act, 1993 which provides payment of compensation / damages to the victim or the members of his family.

Under the facts and circumstances of the case, in my opinion an award of interim compensation / damages to the tune of RS.2,50,000/- would meet the end of justice. Accordingly I proceed to pass the following recommendatory order:

- a) Home Department, Govt. of Maharashtra to pay an amount of Rs.2,50,000/- as compensation/damages to complainant Shri Jamnikar within 3 months from the receipt of this order , failing which the department would be liable to an interest of 12.50% p.a. on it till the actual payment is made.**

b) Copy of this order to be forwarded to the ACS, Home Department for further necessary action.

Commission directs the Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the Addl. Chief Secretary, Home Department, Maharashtra State for information and action and report compliance of the same to the Commission in accordance with the provisions of Section 18 of the Protection of Human Rights Act, 1993.

**(M. A. Sayeed)
Member**