



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/02/2010/ 561

Date: 18 February 2010

Case No. -254/2007-08 with Case No. 6100/2007-08 and Case No.1260/2008-09

Name of the Complainant : Janabai Ramesh Jadhav &
Ramesh Soma Jadhav
Both residing at
Waar (Kundane)
Tal Dist Dhule

Vs.

The Superintendent of Police
Dhule

Date : 11 February 2010

Coram : Justice V G Munshi, Member

ORDER

Read the averments made in the complaint and Report filed Superintendent of Police, Dhule. Read the case papers.

2. Case No. 254/2007-08 is filed by complainant Janabai Ramesh Jadhav while case No. 6100/2007-08 and Case No. 1260/2008-09 are filed by her husband Ramesh Soma Jadhav. All these cases are similar in all respects and therefore, are decided by common order.

3. Before proceeding with the merits of the case, points to be decided etc it is necessary to acquaint ourselves with the facts and circumstances of the case with which we are concerned.

The complainants are residents of village War (Kundane) Tal & Dist. Dhule. The complainants come from backward class. The complainant Ramesh Jadhav is disabled person. Respondent Kailas Tukaram Ahirrao Advocate resides and does law practice at Dhule. Present complaint is made making allegations against Respondent Advocate Ahirrao and also claimed action against him. It was alleged that this Respondent is not only guilty of misbehavior but also misconduct. He harassed the



complainants, they being the members of backward class and made their life miserable. He always abused, insulted, defamed the complainants. He on many occasion insulted and abused them by making reference of their caste. It is their case that the conduct of the Respondent in Court and everywhere was not good. It was his practice to file false cases. The complainants even made his complaint before Bar Council of Maharashtra and inquiry is pending. In the last according to the complainants the Respondent by his behavior and conduct, every now and then caused great injustice to the complainants. In other words, he thereby violated human rights of the complainants. The complainants apprehend danger to their life and person at the hands of the Respondent. Therefore, they moved the Commission for necessary action in these matters and prayed that,

- Firstly, — Action should be taken
against Respondent Advocate under Atrocity Act.
- Secondly — Sanad of Respondent Advocate should be cancelled.
- Thirdly — Compensation of Rupees of Five lakhs should be paid to
the complainants.

In all these cases similar reliefs were claimed and therefore, they are considered and decided together.

4. The Respondent Superintendent of Police, Dhule by filing their Report strongly opposed said complainants on number of grounds.

5. Therefore, it is necessary to view the cases of the complainants in the light of facts and circumstances brought on record and also in the light of legal position.

- (i) Before proceeding with further it is necessary to know the background of the case. The Report mentions that sometimes in the year 1998 accident of the motor cycle of the complainant Ramesh Soma Jadhav and of motor cycle of one Yuvraj Indrasingh Girase taken place. About this accident an offence was registered in Police Station. The case was filed in Court. Respondent Advocate Kailas Tukaram Ahirrao appeared in that trial for and on behalf of accused. The Court delivered judgment and acquitted the accused. In mean time complainants did file case for compensation against the said person before Accident Claims Tribunal, Dhule and claimed compensation of Rs.2,50,000/- In this matter Respondent Advocate Ahirrao again appeared on behalf of accused. In this matter the Tribunal awarded lesser amount of compensation of Rs.1,50,000/-. The Report further mentions that, therefore, the complainants got annoyed with the Respondent Advocate and made such complainants. The Report mentions that, Police made inquiry in this matter and they did not find any substance into the allegations



made in the complaint. After going through the case papers filed on record, I also see no reason to disagree with the Report.

- (ii) About the same matter the complainants have filed number of similar complaints one after another before Commission.

Case No. 44/10/2006-07

Earlier similar complaint was filed before Bench (**Coram – T Singarvel – Member**). The Bench decided this matter and passed the order on July 30, 2007 and it is reproduced as under.

"The report of Superintendent of Police, Dhule dated 24.02.2007 is on record. Local Police have taken appropriate legal action. Commission need not proceed further.

This case is disposed of under Sec. 17 (i) (b) of the Protection of Human Rights Act, 1993."

Thus, this Bench disposed of earlier similar complaint on merits.

Case No. 995/2006

In respect same subject matter another similar complaint was filed before another Bench (**Coram – Subhash Lalla – Member**). This Bench also decided the said matter on merits. The Bench held that the complainant's got annoyed and were displeased, being dissatisfied with the order passed by the Court and award passed by the Tribunal. This Bench passed order on 06.11.2007. The Report of Respondent Police was accepted and proceedings were closed in view of Clause 8 (i) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993 under Section 17 (i) (b) of the Protection of Human Rights Act, 1993.

Thus, on this subject there are decisions of competent Forum. The complainants formed habit of making complaints again and again. Thus, the repeated similar complainant is not at all maintainable in view of clause 8 (i) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993.

- (iii) In this matter action is claimed not against public servant, but against Respondent Advocate. Section 12 (a) of the Protection of Human Rights Act, 1993 is reproduced as under.

"The Commission shall perform all or any of the following functions namely,



(a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf (or on a direction or order of any Court) into complaint of-

(i) violation of human rights or abatement thereof or

(ii) negligence in prevention of such violation by a public servant"

It was further pointed out that the expression "public servant" has been defined in Section 2(m) of the Act of 1993 and it reads as under,

'Public servant shall have meaning assigned to it in Sec. 21 of the Indian Penal Code.'

A careful reading of the definition of 'public servant' in Section – 21 of IPC shows that the Respondent cannot be said to be a public servant'. Therefore, in view of the bar under clause 8(f) of Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w. Sec.10 of Protection of Human Rights Act, 1993, the Commission cannot entertain such complaint, because allegations are not made against public servant.

High Court, Madras in

2005 INDLAW MAD 259

Santosh Hospitals Private Limited

Vs.

State Human Rights Commission

Tamil Nadu and Others

In similar set of circumstances it was held that,
"Human Rights Act deals with violation of Human Rights by a public servant and not others – Petitioner is surely not a public servant and hence the Human Rights Act will not apply at all."

In view of the principle laid down in above referred decision, the position of law is now very clear and the Commission cannot entertain and decide such matter.

- (iv) The complainants claimed action against Respondent Advocate. The complainant was made making allegations of misbehavior or misconduct of an Advocate. It is beyond the scope of power and jurisdiction of the Commission to take action against



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practicing Advocate. The question arises in this matter is whether Commission has jurisdiction to entertain, deal and decide such issue. Section 12 of the Protection of Human Rights Act, 1993 deals with functions and powers of the Commission. The relevant portion of Sec. 12 (a) (i) of the Act of 1993 is reproduced as under.

Sec. 12 (a) (i)

"The Commission shall perform all or any of the following functions namely (a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf into complaint of (i) violation of human rights or abatement thereof...."

Therefore, the complainant has to make out a case of violation of human rights, in view of the meaning assigned to the definition of "human rights" given under Sec. 2 (1) (d) with Sec. 12 (a) (i) of the Act of 1993.

The Division Bench of High Court Bombay in

A I R 2006 Bombay 44,

(State of Maharashtra Vs Sou Shobha Vitthal Kolte)

held that,

"Once a petitioner comes before Commission complaining of violation of human rights based on the right created under a statute and the statute itself provides a mechanism for redressal by way of appeal, revision or otherwise, the Commission ordinarily should not entertain a complaint and direct the parties to pursue their remedy under the statute."

In view of the principle laid down in the decision referred to above, the complainant has to pursue proper remedy. The Commission cannot entertain such matter.

(v) The complainant has already made complaint against Respondent Advocate before Bar Council of Maharashtra who is alone competent to take action in this matter. It appears that the said matter is still pending and inquiry is going on. The complainant thus has already availed proper remedy and therefore they have to pursue that remedy. As the Bar Council has already taken cognizance of this matter, it will not be proper on the part of the Commission to enter so deep into the merits of the case and to record some findings on its merits, that too without jurisdiction. The Commission hopes



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and trusts that the Bar Council would complete the inquiry as early as possible and to take suitable action if any.

(vi) Thus, the Commission neither can take action about professional misconduct of Advocate nor can cancel the Sanad of the said Advocate. Therefore, there arises no question of granting any compensation.

(vii) In this matter the complainants did file one another application claiming action against one Vijay Wagh and 13 other persons. It is completely different subject than the main complaint. The office infact should have registered it as a separate case. As the said application is supported by an affidavit, its cognizance is taken and it is thus, considered.

It was alleged that all these persons (No. 1 to 14) are the persons of criminal mentality. They illegally entered on the property of the complainant. They abused, insulted and always caused harassment and nuisance to the complainants. They thus, made the life of complainants miserable. The complainant made complaints to the Police for taking suitable action against these persons. It was alleged that Police did not take any action and joined hands with these persons. The complainants apprehend danger to their life and person at the hands of these persons. It was incumbent upon Respondent Police to see that the complainants do not get any nuisance or harassment at the hands of these persons. Because of inaction on the part of Respondent these persons continued the nuisance. Therefore, the complainants find it very difficult to reside in the village. It appears that no proper action was taken in this matter. Taking into consideration all these aspects, I feel it necessary to make following recommendation.

- (A) Superintendent of Police, Dhule to make inquiry on the complaint filed by the complainants (Copy attached) against Vijay Wagh and 13 others, on the basis of allegations made in the complaint, if necessary register offence and to take suitable action according to law.
- (B) Copy of this order be sent to Superintendent of Police, Dhule through Secretary State Human Rights Commission, Mumbai for information and necessary action and compliance be reported.

With these observations and recommendations Cases No. 254/2007-08, No. 6100/2007-08 and No. 1260/2008-09 are disposed of accordingly.



V. G. Munshi
(Justice V G Munshi)
Member, SHRC