

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

Administrative Staff College Compound, 9, Hazarimal Somani Marg, Opp. C.S.T.(VT), Mumbai- 400 001.

Telephone Number : 2207 3434 Fax : 2209 1804 / 22093678

Website : <http://mshrc.maharashtra.gov.in>

SHRC/VGM/12/2008/ 780

Case No. - 258/2007-08

Name of the Complainant : Smt K G Arora
C-5/17 Hari Ratan Society
Bangur Nagar, Goregaon (W)
Mumbai - 90

Vs.

The Dy Commissioner of Police
Zone - XI, Mumbai

Date : 4 December 2008

Coram : **Justice V G Munshi, Member**

ORDER

Read the allegations made in the complaints dated 09.04.2007, 02.04.2007 and 15.12.2004 and report filed by the Respondent Dy Commissioner of Police (Zone - XI), Mumbai. Read the case papers. Heard the parties.

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

The claimant claims to be the owner of house property 'shop' situated at 30th Ashokraj Bldg., S V Road, Goregaon (W), Mumbai - 62. The said shop was given to one Respondent Sanjay Omprakash Sharma on licence for a period of 11 months and accordingly agreement taken place between the parties. It was alleged



by the complainant that possession of the Respondent and occupation of shop was illegal, because the Respondent did not vacate it, though the licencee period was over. According to the complainant, the licence was terminated by sending notices through Advocate on 23.12.2003 and 21.02.2004. The period of licence expired on 24.03.2004 and no extension was granted by the landlord. Even thereafter the Respondents did his business in these shop premises illegally without licence.

3. It is the case of the complainant that Respondent Sanjay Sharma carried business under the name and style "M/s. Sanjay Ice Cream." This Respondent is the leader of Hawkers Union. He did such business not only in the said shop but on road by keeping three illegal handcarts. It was alleged that he joined hands with police and officials of Bombay Municipal Corporation. It was the grievance made by the complainant that despite of his several complaints, no legal action was taken against this Respondent, by these officers and officials.

4. According to the complainant licence from the Police Department was necessary and required to run such business in the shop late upto the night till 1.30 A.M. The police licence was last renewed in year 2004-2005. The complainant raised objection for the renewal of this licence in writing by making complaints dated 02.12.2003, 06.12.2004 and 30.12.2006. Therefore, the licence was not renewed for the period 2006 onwards. However, the Respondent conducted said business without licence and that upto 1.30 A.M in the night. Though the complainant made several complaints to Police, they did not take any action.

5. **Secondly,** Deepak Sharma is the younger brother of the licencee Sanjay Sharma. It was alleged that Deepak



R/R,HRG

Sharma fraudulently obtained Reliance Telephone landline connection (No. 30920412) A/C 1804080154 and the phone was installed in the shop on dated 29.08.2003. As the bill of Rs. 20,137/- was not paid by the customer, the said connection was disconnected by the Company. It was alleged by the complainant, Deepak Sharma submitted required documents to the Company without the consent and knowledge of the complainant. It was alleged that, this Deepak Sharma, forged the signature of the complainant and submitted light bill of complainant's shop 'M/s. Shakti Store' without the knowledge of the complainant. The complainant made several complaints to the competent Authority. In the last Deepak Sharma transferred the said connection in the name of complainants firm 'M/s. Shakti Store.'

6. **Thirdly,** according to the complainant Respondent illegally used these shop premises since April 2004 to April 2007 for a period of 37 months and did not pay occupation charges despite of several notices to him through Advocate. It was alleged that Respondent is neither vacating the shop premises nor paying the occupation charges, because he gets help from police.

7. **Fourthly,** on 15.12.2004 the complainant made complaint to the police Authority that the Respondents with the help of police, threaten him to withdraw the complaints earlier made against them. The complainant apprehends danger to his life and person at the hands of these persons and therefore, prayed for suitable action.

8. **Fifthly,** the complainant moved another complaint dated 25.06.2007. It was alleged that one K R Madan fraudulently obtained credit card, ration card, election card, ATM card and Bank Accounts of various Banks and cheated various financial institutions, by using the name and address of the shop of the



R/R,HRG

complainant, and that too without the consent and the knowledge of the complainant. Amount of Rs. 35,021.43/- is due from K R Madan. It was alleged that because of these illegal transactions he is getting harassment, nuisance from these persons. Though he made complaint, no action was taken in this matter against the wrong doer.

9. **Sixthly**, the complainant during the pendency of this case, went on by filing similar or identical complaints / applications on record and they are taken into consideration along with main complaint / complaints.

10. The Respondent Dy Commissioner of Police (Zone - XI), Mumbai by filing their report denied and disputed all the allegations made against them. According to them the dispute that arose among the parties is of civil nature and therefore, it is to be heard and decided by the competent Court. They denied that they have not taken proper action in this matter.

11. Therefore, it necessary to view the case in the light of facts and circumstances brought on record and also in the light of legal position.

(i) It was alleged that the Respondent despite of termination of licence neither paid the occupation charges nor did vacate the shop premises. Attempt was made to make out a case of licence, termination of licence, possession, arrears of occupation charges etc. The Respondent Dy Commissioner of Police in their report did mention that some money transactions also taken place among the parties. There cannot be any difference of opinion on the point that, it is a civil matter and it is to be heard and decided by the competent Civil Court and not by the Commission. In other words it is not proper on the part of the Commission to go so



R/R,HRG

deep into the merits of this case and to record observations or findings like a Civil Court and that too without jurisdiction. In such matter which is of civil nature, the complainant has to avail the remedy if any which is available under law. In other words the Commission should not deal and decide such civil dispute in view of clause 8 (d) and 8 (k) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w. Sec.10 of Protection of Human Rights Act, 1993

(ii) 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 a Commission complaining of violation of human rights based on a 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 this legal position, the complainant in order to seek such relief, in the matter, which is of civil nature, has to avail proper remedy available under law.

(iii) According to the complainant the licence of the Respondent was terminated vide their notice dated 23.12.2003 through Advocate. On 02.12.2003 he raised



R/R.HRC

objection for renewal of police licence to run the business for the further period of 2004 and 2005. It was the grievance of the complainant that even then Respondent Police renewed the said licence. The Respondent since year 2006 did business without such police licence. According to the complainant the Respondent Police did not take any action though he made number of complaints. The Respondent Dy Commissioner of Police in their report admitted that as the complainant raised objection about renewal of shop licence, the Asst Commissioner of Police, Goregaon did not renew the said licence since year 2006. It further mentions that the Respondent Sanjay Sharma did not get the renewal of the health licence from Municipal Corporation and therefore, criminal case is filed and is pending in the Court of Magistrate (Court No.39) Vile Parle, Mumbai and the said matter is subjudice. However, it was the grievance of the complainant, why police licence to run business was renewed, by the Respondent Dy Commissioner of Police, for the year 2004 and 2005 when objection was raised by him well in advance vide notice dated 23.12.2003. There is force in the submission made by the complainant. Moreover, the Respondent in their Report nowhere given any reply on this point. It was incumbent upon them, to explain why the licence was renewed for years 2004 and 2005, even though complainant raised objection in the year 2003. In other words the said licence was renewed for further two years though there was strong objection from the complainant. This aspect remained unexplained by police. This circumstance cannot be ignored.



R/R,HRG

(iv) It was alleged that the Respondent keeps the shop opened till 1.30 AM in the night that too without licence. It was the grievance made by the complainant that even then police did not take any action. The Respondent Police in their reply stated that Respondent Sharma appointed one servant and he stays in the shop during night hours. The Respondent did not find that, the shop was kept opened, after the fixed hours. It indicates that Respondent Sharma does business in the said shop and that too without licence. The Respondent Dy Commissioner of Police could not explain how the Respondent Sharma is doing business in the said shop without holding police licence. It was incumbent upon the Respondent Authority to take suitable action in such case.

(v) It was alleged by the complainant that Respondent Deepak Sharma forged his signature, submitted light bill of the shop of the complainant without his knowledge and consent. It was his grievance that, though he made complaints, action was not taken by Police. In report no comments were made by Respondent on these allegations. It is seen that police have not taken any action on this complaint. Similarly, it was alleged by the complainant that one K R Madan fraudulently used name and address of the shop of the complainant, without the consent and knowledge of the complainant and obtained credit cards etc and now amount of Rs.35,021.43/- is due from him. According to the complainant because of such illegal transactions made by K R Madan by using his shop's name and address, he is getting nuisance, harassment etc from all these persons. It was his grievance that police did not take any action in this matter. It



R/R,HRG

is necessary to mention that the complainant was required to make number of complainants to several Authorities including Respondent Dy Commissioner of Police. According to him he could not get relief. On the other hand in the last it was the grievance made by the complainant that Respondent Sanjay Sharma and other persons given him threats to withdraw the complaints. He apprehends danger to his life and person. Therefore, the case of the complainant is considered in view of the provisions of Sec. 2 (d) and Sec. 12 (a) of the Protection of Human Rights Act, 1993.

(vi) Taking into consideration all these aspects and all the circumstances appearing in this case, I feel it proper and necessary to make following recommendations in view of the provisions of Sec. 18 of the Protection of Human Rights Act, 1993, because some aspects were not properly considered and dealt with by the other side.

(A) Commissioner of Police, Mumbai to appoint Senior Police Officers to make inquiry into the allegations made in paragraphs No. (iii), (iv), (v) and (vi) of the order, in the light of observations made in the above paragraphs.

(B) The Inquiry Officer shall, call the complainant and other witnesses if necessary, and to record their statement, to inspect documents, to hear the parties, to consider all the circumstances and to come to correct conclusion, and lastly to take action if any, according to law.



R/R,HRG

(C) Copy of this order be sent to Commissioner of Police, Mumbai through Secretary, State Human Rights Commission for information and necessary action.

With these recommendations the Case No. 258/2007-08 is disposed of accordingly.

Dated : 4 December 2008



V G Munshi

(Justice V G Munshi)
Member, SHRC