



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION



EIGHTH ANNUAL REPORT

(1st April 2008 – 31st March 2009)

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MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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PREFACE

This is the Eighth Annual Report of the Maharashtra State Human Rights Commission. The Constitution of India as adopted in 1950 is one of the most rights-based constitutions in the world. Drafted around the same time as the Universal Declaration of Human Rights (1948), the Indian Constitution captures the essence of human rights in its Preamble, and through certain rights and sections provides to its citizens what is known as the Fundamental Rights (Part - III, Articles 14 - 35) and the Directive Principles of State Policy. These rights are similar to those rights which are provided in the Universal Declaration of Human Rights and the rights provided in the International Covenant on Civil and Political Rights and Political Rights International Rights on Social, Economic and Cultural Rights.

Section 2 (1) (d) of The Protection of Human Rights Act 1993 defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

In a civil society the rights of people are protected by the Sovereign State and they are uniform, indivisible, inalienable and interdependent and apply to all peoples everywhere without any bias or discrimination. The realization of these rights is essential for every human being to live a life of dignity.

In an effort to supplement the judiciary and the executive to protect Human Rights, the Government of Maharashtra *vide* its Resolution of the Home Department (No. HRC-1099/278/Pol-14) dated 15th January 2000 decided to set up a State Human Rights Commission. The Maharashtra State Human Rights Commission was established on 6th March 2001 under section 21 (1) of the Protection of Human Rights Act, 1993. Since then the Commission has been striving to protect the citizens against violations of their Human Rights. The Commission has left no stone unturned and has been performing its functions efficiently under section 12 of the Protection of Human Rights Act, 1993.

We present here the Eighth Annual Report for the Year 2008- 2009 to the State Government, which is subsequently to be placed before the Legislative Assembly in accordance with Section 28 of the Protection of Human Rights Act, 1993.

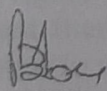
When human rights are not well known by the people, abuses such as discrimination, intolerance, injustice, oppression and slavery can arise. Human Rights as a concept was born out of the *atrocities* and *enormous loss of life* during World War II. The Universal Declaration of Human Rights was created by the United Nations to provide a common understanding of what everyone's rights are. It forms the basis for a world built on freedom, justice and peace. Human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history.

The successful implementation of the human rights treaty standards, whether

at the international or national level, depends on their accessibility to the victims of human rights abuse. This means both familiarity with the standards and access to remedial mechanisms.

It is endeavoured that the Commission's goal is to achieve, uphold and protect the basic human rights. The Human Rights Commission has been given adequate powers of investigation and inquiry into the complaints of human rights violation and reporting to the Government, on individual or general issues, of importance in the field of human rights. Public interest being a prime concern, the Commission has taken initiative by filing *suo-moto* cases to help people to redress infringement of human rights by public servants.

The present Hon'ble Chairperson and Hon'ble Member assumed office in the Commission in September, 2013. Till then, for the reasons best known, the annual reports from 2007-08 to 2012-13 were not prepared by the then Secretary Shri Mafiul Hussain. Thereafter, the pending work of this Annual Report of the earlier period of the Commission was taken up on top priority and is being submitted now. It is made clear that the information and statistics stated in the report is based on the report prepared by the then Secretary.



Shri Bhagwantrao D. More

Member



Justice Shri S. R. Bannurmath

Chairperson

Place: Mumbai

Date:

CHAPTER I

Introduction

1.1 The Maharashtra State Human Rights Commission works for the protection of human rights. It is concerned with the unjust/ unequal treatment meted out to people at the hands of the public/ Government officials alone and proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation. This is the Eighth Annual Report of the Maharashtra State Human Rights Commission covering the period from April 1st 2008 to March 31st, 2009.

1.2 The Maharashtra State Human Rights Commission was established on March 6th 2001 when the Hon'ble Governor of Maharashtra signed the warrants for the appointment of the Chairperson and three members as provided under Section 22 of the Protection of Human Rights Act' 1993. The United Nations through its instruments in international and regional institutions seeks to promote, protect and implement human rights in a uniform manner throughout the world. The stepping stone which envisaged these Commissions was the Universal Declaration of Human Rights viz., UDHR. The Human rights instruments embody political commitment by member states to modify their domestic policies.

1.3 The Commission In its full strength had an acting Chairperson and three other members. The 2006 amendment has decreased the Members from three to two. The State Commission shall consist of a Chairperson who has been a Chief Justice of a High Court; one Member who is, or has been, a Judge of a High Court; one Member who is, or has been, a District Judge in that State; two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. The Commission was set *vide* Government No. H.R.C. 1099/378/P10-14, dated 15th January 2000 of the Home Department. The Commission became operational from March 6th 2001. The Commission also seeks to protect human rights by timely intervention in the court proceedings and visits to jails and custodial homes. They also try to promote human rights by literacy and encouraging efforts of non-governmental organizations and institutions that work in this field.

1.4 The Commission can enquire *suo-motu* or on a complaint/ petition resented to it by a victim of human rights violation, or any person on his behalf, into complaints of violation of human rights or abetment thereof or into negligence in prevention of such violation by a public servant. It can also intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such a court.

1.5 Composition

The Hon'ble Chairperson of the Commission was Justice Shir. Kshitij Vyas, and the Hon'ble Members of the Commission were Justice Shri V. G. Munshi, Shri T. Singaravel and Shri Subhash Lalla. The Secretary of the Commission was Shri Mafiul Hussain during the period.

CHAPTER II

COMPLAINTS HANDLED BY THE COMMISSION

2.1 This was the eighth year of the Commission's functioning. Awareness about the Commission and its activities became more widespread, thereby causing a reluctant augmentation in the number of persons who approached the Commission with their problems.

There has been gradual Increase in the number of complaints, received by the Commission each year, which reflects the growing awareness amongst the public.

STATISTICAL DATA

2.2 In the current reporting year, i.e. 2008 --- 09, the Commission received a total of 7208 fresh cases. We had a pendency of 5447 complaints from the previous year 2007-08, the total pendency being 12655. During 1st April 2008 to 31st March 2009, 8563 complaints were disposed off. 4092 complaints were pending for disposal at the end of the current year.

2.3 Out of 12655 cases 5161 cases were dismissed in limine. 3402 cases were disposed of after receiving reports and hearing. Recommendations were made to the concerned Governmental Authorities in matters during the current reporting year.

2.4 During the year 2008-09, 126 new complaints were sent to the Investigation Wing of the Commission, Also, 18 old cases were pending from the previous year. Out of this total of 144 cases, 135 cases were investigated during this year. 9 cases were pending at the end of the year.

2.5. The Commission took *suo-motu* cognizance in 4 matters during this year.

NATURE OF COMPLAINTS

2.6. An analytical study was conducted on the 7208 complaints received by the Commission, and they were divided on the basis of the following categories—

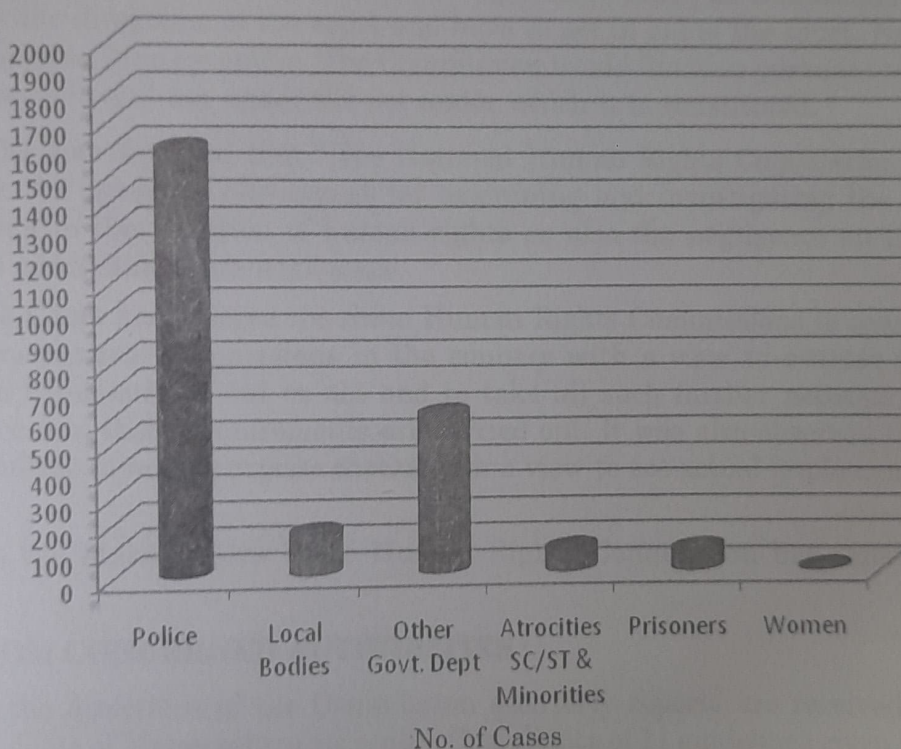
**ENTERTAINABLE BY THE COMMISSION AS PER
THE PROCEDURES AND REGULATION—**

1.	Against the police force - These complaints, mostly included complaints, alleging abuse of power by the police force, failure to register offence, false implication, illegal detention, corruption, etc.	(1600 matters)
2.	Against local self-governing bodies - This category includes complaints against Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils, Municipal Corporations etc.	(156 matters)
3	Against other Governmental Departments - Complaints against other departments like the Home Department, Public Works Department, Public Health Department, Social Welfare Department etc have been included in this category.	(603 matters)
4.	Complaints regarding atrocities to SC/ST or other minorities etc. -	(86 matters)
5.	Complaints regarding violation of human rights of prisoners.	(80 matters)
6.	Complaints regarding violence and injustice against Women - This category includes complaints of harassment, rape, molestation and other crimes against Women, where the complainant lodged the complaint with the proper authority, but no cognizance of the same was taken by the proper Authority.	(07 matters)

7.	Custodial death in prisons, police custody and Police encounters intimations.	(143 matters)
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NOT ENTERTAINABLE BY THE COMMISSION AS PER THE PROCEDURE REGULATION—

1.	Complaints regarding service matters.	(580 matters)
2.	Complaints regarding family disputes.	(267 matters)
3.	Complaints regarding land disputes.	(469 matters)
4.	Complaints against private persons.	(2688 matters)
5.	Complaints against banks, recovery agents, loans, etc.,	(107 matters)
6.	Other complaints	(422 matters)



2.7 Over the years, as per above data it has been noticed that complaints against the police officials were large in numbers. Thus training and sensitization programmes are necessary for the Police.

SUO-MOTU COGNIZANCE TAKEN BY THE COMMISSION

2.8 The Commission is empowered under the provisions of Section 12 (a) of the Protection of Human Rights Act, 1993 to take *suo- motu* cognizance or cognizance on its own initiative into matters of alleged or apparent human rights violations. In the current reporting year, the Commission took *suo-motu* cognizance in 4 cases. A brief summary of the said cases is given below —

Case No. 1/2008

Coram- Hon'ble Chairperson, Justice Shri Kshitij R. Vyas Pakistani resorts to Gandhigiri for being sent back to Pakistan, Saki Naka police station

Case No. 2/2008

Coram- Hon'ble Member, Shri Subhash Lala Regarding sad situation in observation home, Dongri, Mumbai

Case No. 3/2008

Coram- Hon'ble Chairperson, Justice Shri Kshitij R. Vyas Regarding woman who was allegedly raped in Saki Naka police station.

Case No. 4/2008

Coram- Hon'ble Chairperson, Justice Shri Kshitij R. Vyas Miserable state of health care in PHCs in Maharashtra.

CUSTODIAL DEATH CASES

2.9 The Commission received a total of 518 (including cases transfer from NHRC) intimations regarding custodial deaths during the current reporting year. There were 232 intimations of death in beggar's homes, 121 intimations regarding death in children's homes, 12 deaths in police custody, 126 intimations of death in jail custody, 22 intimation regarding death in MDC Home and 5 intimations of death in encounter.

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CHAPTER III

RIGHTS OF ARRESTEES : SUB-COMMITTEE

3.1 In the exercise of its jurisdiction under article 32 of the Constitution of India, the Supreme court, in case of 'Vishakha versus the State of Rajas than' held that, "the fundamental rights possessed by every human being in this world, inhabited by people of different continent, countries, castes, colours and religions. The country, colour and religion may have divided them into different groups but as human beings they are all one and possess the same rights."

It may be stated that in the reported case, the Supreme Court in exercise of the jurisdiction under article 32 of the Constitution entrusted the National Human Rights Commission as under :

"The Commission is a truly an expert body to which a reference has been made by this court in the instant case. The power and jurisdiction of this court under article 32 of the Constitution cannot be curtailed by any statutory limitations, including those contained in the section 36 (2) of the Protection of Human Rights Act, 1993 ; all authorities in the country are bound by the directions of the court and have to act in aid of the court. National Human Rights Commission is no exception. The Commission would function pursuant to the directions issues by the court and not under the act under which it is constituted."

3.2 It was further observed that "The National Human Rights Commission is also a body created under an Act made by parliament for examining and investigating the questions and complaints relating to the violation of human rights as also the negligence on the part of any public servant in preventing such negligence.

The Supreme Court has ordered the State Human Rights Commissions to constitute a "Sub-Committee" In respective Commissions in the country with a view to oversee whether those requirements are being carried out or not and to take all such further necessary steps as are required to ensure that those requirements are carried out. It was also observed that, it shall be open to the Committee to make surprise checks with a view to see actual implementation of those requirements.

Accordingly, the Maharashtra State Human Rights Commission has constituted a Sub-Committee.

RESPONSE FROM CONCERNED AUTHORITIES :

3.3 As per the directions of the Commission quarterly reports are received from District Police Superintendents of Maharashtra regarding Compliance of 11 guidelines given by The Hon'ble Supreme Court.

SURPRISE VISITS :

3.4 About proper compliance of the 11 guidelines of the Supreme Court, Hon'ble Chairman and Members of the Commission visited following Custodial institutions in the year 2008-09.

Sr. No. (1)	Police Station / Custodial Institutions (2)	District (3)	Date of visit (4)	Hon'ble Members (5)
1	Central Prison	Nasik	16.07.2009	Hon'ble Justice Shri K. R. Vyas
2	Open District Prison	Paithan	18.07.2009	Hon'ble Justice Shri K. R. Vyas
3	District Jail	Ahmednagar	10.08.2009	Hon'ble Justice Shri K. R. Vyas
4	Bhadrakali Police Station	Nashik	07.05.2008	Hon'ble Justice Shri V. G. Munshi

(1)	(2)	(3)	(4)	(5)
5	Pimpalgaon Police Station.	Nashik	07.05.2008	Hon'ble Justice Shri V. G. Munshi.
6	Nashik Road Central Prison.	Nashik	08.05.2008	Hon'ble Justice Shri V. G. Munshi.
7	Mahad City Police Station.	Raigad	06.06.2008	Hon'ble Justice Shri V. G. Munshi.
8	Chiplun Police Station.	Ratnagiri	07.06.2008	Hon'ble Justice Shri V. G. Munshi.
9	Satara Taluka Police Station.	Satara	08.06.2008	Hon'ble Justice Shri V. G. Munshi.
10	Shegaon Police Station	Buldhana	11.07.2008	Hon'ble Justice Shri V. G. Munshi.
11	Kothrud Police Station	Pune	27.10.2008	Hon'ble Justice Shri V. G. Munshi.
12	Jaigad Police Station	Ratnagiri	07.12.2008	Hon'ble Justice Shri V. G. Munshi.
13	Ratnagiri City Police Station.	Ratnagiri	08.12.2008	Hon'ble Justice Shri V. G. Munshi.
14	District Jail	Ratnagiri	08.12.2008	Hon'ble Justice Shri V. G. Munshi.
15	Sawantwadi (City) Police Station.	Sindhudurg	09.12.2008	Hon'ble Justice Shri V. G. Munshi.
16	Sawantwadi District Jail	Sindhudurg	09.12.2008	Hon'ble Justice Shri V. G. Munshi.
17	Central Prison	Mumbai	31.1.2009	Hon'ble Justice Shri V.G. Munshi.

OBSERVATION AND RECOMMENDATION :

3.5 The Sub-committee observed that the 11 guidelines issued by the Apex court were properly displayed in almost all Police stations. In some cases it was suggested that such board should be displayed at a conspicuous place. In some cases instructions were given to maintain register of arrested person properly, and to maintain documentary proof about information of arrest to be given to the relatives of the arrested person and to maintain medical examination reports, etc. It was impressed upon the station officers that they should make the arrested person aware of his/her rights. The arrested person must be permitted to meet his lawyer during investigation. It was pointed out to the Police Officer on duty, at the time of preparation of memo of arrest more care must be taken. If injuries are found on the body of arrested person and even in other cases also he must be medically examined without delay. Similarly, the Sub-committee members visited a number of jails situated in the State of Maharashtra. The main grievance of the incarcerated persons was that, they were not produced before the Court regularly and therefore their trials are delayed and they have to stay in jail unnecessarily for longer periods. Accordingly, the instructions are given to jail Superintendents to take more care and to see that these persons are produced before Courts regularly. Similarly, complaints made about medical treatment to be given to these persons in jails. Accordingly, necessary instructions were given to the jail Superintendents.

3.6 Work of the Sub-committee

Section 12 (j) of the Protection of Human Rights Act, 1993, empowers the Commission, "to perform such other functions as it may consider necessary for the promotion of human rights". In order to spread literacy of the rights of arrestee among various sections of society and to promote awareness regarding safeguards available, some steps were taken by the commission, in that direction such as by way of publication, holding seminars, workshops etc.

Celebration of International Human Rights Day and Publication of a Calendar :

Hon'ble Chairperson of the Commission Shri K. R. Vyas (Former Chief Justice of High Court, Bombay) suggested a novel idea to promote awareness among the people by publication of a calendar. This idea was unanimously accepted by all Members and it was implemented. The Commission published a calendar for the year 2009. It was released by Shri A. N. Roy, Director General of Police, on the occasion of International Human Rights Day in the Commission's Premises by organising a function in MSHRC, Mumbai, and its copies were sent to all the police stations, jails, and other places of detention, in the State. All the eleven guidelines given by the Apex Court in the decision reported in AIR 1997 S.C. 610 (D. K. Basu *vs.* State of West Bengal) were depicted in a more effective manner. The Commission felt that such efforts would promote awareness amongst the people.

CHAPTER IV

PROMOTION OF HUMAN RIGHTS EDUCATION AND AWARENESS

4.1 The Maharashtra State Human Rights Commission is a body that works primarily to address human rights violations that are committed by State functionaries. The Commission has only a quasi-judicial power, to pass orders that are recommendatory in nature not mandatory. Also, keeping in mind various provisions of the Act number of complaints cannot be entertained.

4.2 People who have faced violations or whose rights have been denied, often have a thirst for vengeance, a burning desire to see their oppressors reprimanded. When the system fails to get them what they need, they may well turn to avenues outside the system, which may lead them to the path of lawlessness, antisocial behaviour, and ultimately to destruction.

4.3 There is therefore, a need to work directly at the grass root level, from where the victims /Complainants may approach the Commission, it is necessary to promote the education about human rights and awareness about various forums available for redressal of grievances regarding violation of human rights.

4.4 With this objective, the Commission has been undertaking various activities, participating in workshops and seminars.

CHAPTER V

ADMINISTRATIVE MATTERS AND LOGISTICAL SUPPORT

5.1 The Government of Maharashtra *vide* its G.R. No. HRC-1099/378/Pol-14 dated 15th January 2000 established the Maharashtra State Human Rights Commission. The Commission became operational on 6th March 2001, and began functioning on 12th March 2001. The said resolution maintains that, its Headquarters will be in Mumbai. Justice Shri Kahitij Vyas was appointed as a Chairperson on 6th August 2007 and continued in that post. Justice Shri V. G. Munshi, Shri T. Singaravel and Shri Subhash Lalla, were serving as Members of the Commission during the year.

STAFF :

5.2 The staff of the Commission working in different wings namely the Administrative Wing, the Accounts Wing, the Investigation Wing, the Legal Wing and the Research Wing. Shri Mafiul Hussain was posted as the Secretary of the Commission from 26th May 2008, till date. Shri D. Kanakaratanam worked as the Special Inspector General of Police since 4th June 2008. Smt. Neena Khaparde worked as Registrar during the year. Shri V. G. Parulekar worked as the Desk Officer and Shri G. Ravishankar worked as the Superintendent during the year. Dr. Jaishri Patil continued in the post of Research Officer since 19th November 2007 till date. Shri R. D. Shirsath has been in the post of Assistant Registrar since 22nd October 2007 till date.

PREMISES :

5.3 The Government of Maharashtra *vide* its G.R. No. HRC-1099/378/Pol-14, dated 15th January 2000, stated that the Headquarters of the Maharashtra State Human Rights Commission would be located at Mumbai. Accordingly, the Government allotted or offered to allot various premises such as the New Administrative Building, Opposite Mantralaya, Worli Government Transport Service, Arun Chambers, Tardeo, Mumbai, New Administrative Building, Bandra (E.), and Old Custom House, Mumbai. Finally, *vide* its Circular No. G.A./11.0 /C.N.15/2001/22, dated 20th June 2002, the Government allotted area 1380 sq. ft. in the premises of Administrative Staff College Building at 9, Hazarimal Somani Marg, Opposite CST, Mumbai 400 001 to the Commission. This was earlier occupied by the State Finance Commission. The Maharashtra State Human Rights Commission continues to function in the same premises.

RESOURCES :

5.4 During the year 2008-09, the State Government made available a grant of Rs. 1 crore 97 lakhs 65 thousand against which the total expenditure was Rs. 1 crore, 88 lakhs, 56 thousand.

CHAPTER VI

ILLUSTRATIVE CASES

(1) CASE No. : 131/23/2006-07/8494

Name of the Complainants : Shri Prakash Ganpat Gadge

Name of the Respondent : Superintendent of Police, Pune, Rural.

Date of Order : 16th July 2008.

Coram : Hon'ble Member Shri T Singaravel.

Nature of the Case : Complaint is against the local police for high handed behaviour.

Action Taken by the Commission : A report was called from the Superintendent of police. A perusal of report shows the allegation pertaining to the investigation of Narayan Gaon police station. Departmental enquiry has been instituted against the Head Constable.

Decision : Compensation of Rs. 10,000 is recommended to be paid to the complainant within 30 days of the receipt of these proceedings by the Government of Home Ministry. As well as the copy of proceedings should be forwarded to the Addl. Chief Secretary, Home, for necessary actions enclosing a copy of the complaint as well as copy of the two reports submitted by the Superintendent of Pune, Rural.

(2) CASE No. : 3897/2007-08/785

Name of the Complainant : Smt. Taratai Dilip Moon.

Name of the Respondent : Joint Director, Higher and Technical Education, Nagpur.

Date of Order : 20th January 2009.

Coram : Shri T. Singaravel (Hon'ble Member).

Nature of the Complaint :

Complainant claimed that her Human Rights were violated as she was not given compassionate employment in place of her deceased husband by the office bearer of Vidya Prakash Sansthan, Chandrapur District. The respondent informed that a class IV post was given to the complainant. However she had requested the Commission to advice the Joint Director of Higher and Technical Education, Nagpur to approve the appointment given to the complainant as the organization was unable to give class. In post to the complainant that was held by her husband before his death for want of experience in laboratory work.

Action taken by the Commission : Report was called from the Joint Director of Higher and Technical Education, Nagpur. Shri Arvind Jaiswal, Secretary of Vidya Prakash Sanstha was also called. A copy of the proceedings of the hearing at Nagpur was sent to the Joint Director of Higher and Technical Education. Pune has already approved the appointment of Smt. moon on compassionate grounds and so a separate approval at his level was not necessary.

Decision of the Commission : Since, the grievances of the complainant have been redressed at the intervention of this commission. Hence, this case is closed.

(3) CASE NO.- 5809, 5809A TO G, 5926 TO 5945/2007-08/8993.

Name of the complainant- Tarabai Devrav Deshmukh

Name of the Respondent : Additional Chief Secretary (Health Department)

Date : 11th August 2008.

Coram : Shri Subhash Lalla (IAS) (Retd.) Hon'ble Member

Nature of the complaint.—Complainant has requested Municipality Hospital to get justice as the operation of cataract was not done properly.

Action taken by the Commission.—Report was received by the Civil Surgeon which stated that under National Programme for Control of Blindness in the operating theatre at Parabhani, 33 cases were operated out of 28 patients developed infection of eyes and therefore 28 of them have lost their eye sight for eyes so operated. Hon'ble Chief Minister gave financial assistance of Rs. 25,000 per case. Now applicants have requested financial compensation because of negligence on part of the administration. Government *vide* Government resolution by Public Health Department have instituted inquiry into the said incident by appointing one man committee of Dr. T. P. Lahane, Prof. and head of the Grant Medical College, Mumbai. He was directed to submit the report in 8 days. Lapses on the part of hospital administration, it is submitted that one surgeon services are terminated and in one case action is taken against sister. Concerned officer were supposed to file the affidavit. Additional Chief Secretary, Health Department requested to appear with the report about the policy of government to give compensation due to lapses on the part of Government Officer in such cases and whether the Government is likely to pay the compensation?

Directions by the Commission :

1. All the persons responsible for this Medical Negligence as pointed out by Dr. T. P. Lahane in his report be punished by the following due process of law. Because of their negligence, so many people have lost their eye sight and have given the bad name to this national programme and the government.

2. The affected persons who have lost their eye sight due to this negligence are not in position to live their life independently without taking the help and support of the relatives. They cannot earn their livelihood by physical labour now, as most of them were looking in the form as labour earlier. This is caused due to the medical negligence by Government Officers and employees. This has come out clearly in the report submitted by the Dr. T. P. Lahane and hence they need to be compensated financially by government, This amount of compensation may be decided by the government as its level by adopting any rational rule or law prevailing and the cases decided in similar damages causes namely, the Consumer Protection Act, 1986 and Motor and Vehicles Accident Act, etc. Action taken be reported to this commission by giving priority to this case within 6 weeks.

With this recommendation the case is closed under sect. 17 (i) (b) of the Protection of Human rights Act, 1993.

(4) CASE No. : 3574/2007-08/8742.

Name of the complainant : Shri Mangesh Kashiram Palekar and others

Name of the Respondent :

(1) Additional Collector (Encroachment and Eviction Department),

(2) Chief Executive Officer, Bandra (E.).

Date : 31st July 2008.

Coram : Justice (retd.) Kshitij Vyas, (former Chief Justice) Chairperson.

Nature of the complaint.—Complainants is the residents of Mahakali Darshan Co-operative Housing and Society Ltd. Complainants want to call for the record and proceedings of rehabilitation scheme. By way of interim relief the complainants have prayed to stay further demolition and construction that may be carried out on in the village Gundavi.

Action taken by the Commission.—The dispute clearly pertains to a civil dispute having property rights *vide* regulation 8 (d). It is not possible for the commission to go into the same. There is no dispute to the fact that against the order passed by the Additional Collector, whereby the complainants were diverted to vacate their structure within Survey No. 78 and 79 of village Gundavli and hand over to the developer, failing which the structure will be demolished. Appellant appealed before the Administrator and additional Commissioner, Konkan division who directed the society to execute the agreement within 7 days and the subject, to the same. The complainants shall vacate the occupied structure within 10 days from in the receipt of the order.

Decision of the Commission.— The commission cannot go into this matter and the appellant and respondent have agreed to abide by the decision that may be rendered by the Chief Executive Officer, Bandra. The complainant has stated that they would file their objection with respect to the execution of the agreement to the Slum Rehabilitation Authority within 2 weeks from today. Copy shall where of be given to the society. The slum Rehabilitation Authority shall decide the same after considering the objections as early as possible preferably within 2 weeks from the receipt of the objection. The parties shall abide by the said decision. With this direction the complaint is disposed off.

(5) CASE No. : 192/2008-09/8876.

Name of the Complainant : Shri Driyanoba Sakharan Vikhe.

Name of the Respondent : Inspector General of Prison, Pune.

Date : 24th July 2008.

Coram : Justice Shri Kshitij Vyas (Former Chief Justice) Hon'ble Member.

Nature of the Complainant.—The convict who is undergoing life imprisonment for the offence committed by him under sec. 302 of IPC has prayed to transfer him to Aurangabad, Central Prison from the Ratnagiri Special Prison where he is undergoing sentence of imprisonment.

Action taken by the Commission : It appears that he is in Ratnagiri because of his central activities. Therefore, he was required to be transferred from Aurangabad Central Prison to Ratnagiri Special Prison. Sr. Jailor submitted that the request made by the convict to transfer him from Ratnagiri to Aurangabad is under consideration by the Inspector General of Prisons. Jail authorities are conscious about the fact that by transferring the convict to Ratnagiri has caused hardship to the family members of the convict. As they are not able to meet him at Ratnagiri, which is about 700 km from the place where his relatives are staying therefore the proposal to shift him to Parbhani District Prison is under the Dy. Inspector General of Prisons, Central Region, Aurangabad. Even the said proposal is accepted by the said authority it will not solve the problem of the convicts as that would be a temporary measure. By transferring the convict to a place which is at the distance of about 700 km will certainly take away the rights of the relatives of the convict to meet him for all the times.

Decision of the Commission.— In the opinion of the commission, the question requires the serious consideration. The commission therefore recommends that the jail authorities should consider not only the case of the present convict, but also other convicts who are residing at nearby place before transferring the concerned convicts to other prisons. The case of the present convict may be considered accordingly.

With this recommendation, the case is disposed off.

(6) CASE No. : 4999/2008-09/304

Name of Complainant : Shri Prakash D. Dalvi.

Name of Respondent :

(1) Commissioner of Police, Thane.

(2) District Deputy Registrar, Co-operative Society, Vardhavat Mansion, Shivaji Path, Thane (W.).

(3) Chairman, Raghukul Co-op Housing Society, Parasik Nagar, Kalva, Thane.

Date of Order : 23rd January 2009.

Coram : Shri Subhash Lalla, Hon'ble Member.

Nature of Complaint.—The applicant has made a complaint regarding disconnection of water supply by the Society.

Action taken by the Commission.— Water supply has been restored to the applicant and the Department of Co-operative Society has taken appropriate action. It was further noted that the complainant was a defaulting member of the Society and had not paid maintenance charges for a long period.

Decision of the Commission.— The applicant has been directed to clear all society dues including arrears and current within 1 year by paying instalments every month so that such a situation will not arise again. Case was closed by according to regulations under Section 17 (1)(b) of the Protection of Human Rights Act, 1993.

RECOMMENDATIONS THAT WERE REJECTED BY THE GOVERNMENT

(1) CASE No. : DK Basu 2/2007-08

Name of Complainant : P. Manivelan.

Name of Respondents :

- (1) ACS (Home).
- (2) Director General of Police, Maharashtra.
- (3) Smt. Pradnya Saravade, ACP, Anti Corruption Bureau, Mumbai Police.
- (4) Mr. D. N. Bhonge, Investigating Officer ACP, Anti Corruption Bureau, Mumbai.
- (5) Shri Pandurang Shinde, ACP Anti Corruption Bureau, Mumbai.
- (6) Mr. Mahesh Pote, Ex-Officer Anti Corruption Bureau.

Date of Order : 22nd August 2008.

Coram : Justice Shri Kshitij R. Vyas, Hon'ble Chairperson.

Nature of Complaint.—The Complainant has challenged the investigation carried out against him and his arrest by the respondents who are the Police Officers.

Action taken by the Commission.—The Commission observed that the Police from ACB has exceeded their powers and rights and ill treated the complainant during the custody with them and thus violated the guidelines issued by the Hon'ble Supreme Court in the matter of D. K. Basu Vis State of West Bengal. Accordingly notices were issued to the respondents and directed them to submit their reply Affidavits.

Decision of the Commission.— The Commission recommended compensation of Rs. 25,000 to the complainant and Departmental Enquiry to be initiated against ACP Sarvade through Director General of Police.

Action on the Recommendation by the Government.— The Commission received a letter dated: 15th April 2009 from Home Department, Mantralaya in which it is stated that the Commission has taken cognizance of the Complaint filed by the complainant after one year of the incident which is against sec.36(2) of the Protection of Human Rights Act, 1993. Taking into consideration the above fact the government denies the recommendations of compensation of Rs. 25,000 as well as Departmental Enquiry against ACP Smt. Sarvade.

(2) CASE No. : 663/2006-07

Name of Complainant : Maruti Gunewar.

Name of Respondents : Superintendent of Police, Chandrapur.

Date of Order : 27th February 2009.

Coram : Shri T. Singaravel, Hon'ble Member.

Nature of Complaint.—The Complainant has filed complaint regarding unnatural death of his son.

Action taken by the Commission.— The matter is pending before a Competent Court of law. However, the facts remained that the human rights of the Complainant stand violated. It is quite clear that the case is lingering on for 23 years due to various proceedings and continuous transfer of the case from local authorities to the CBI.

Decision of the Commission.—The Commission recommended interim monetary compensation of Rs.1,00,000 to be paid to the complainant by the State Government for gross violation of the Human Rights of the Complainant in respect of speedy justice an ingredient of Article 21 of the Constitution.

Action on the recommendation by the Government: The Commission received a letter dated the 30th December 2012 from SP Chandrapur alongwith the copy of the letter dated the 12th June 2009 of Home Department, Mantralaya in which it is stated that the compensation of Rs. 1,00,000 to be paid to the complainant has been denied by the Government.

Annexure A

The Supreme Court has laid down the following 11 requirements to be followed in all cases of arrest or detention :—

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- (2) That the Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the Police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and, major and minor injuries, if any present on his/her, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board.