

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHAWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-7**

O.H.R.C. CASE NO.1916 OF 2013

Jatish Chandra Mahanta & others -

... Petitioners

ORDER

25th April, 2014

The petitioners, who are office bearers of Samrudha Odisha, a political outfit of Odisha presented a petition before this Commission that one Mahanadi Aban Power Company entered into one MOU with the Government of Odisha for establishment of a Thermal Power Project in village Tentulei under Talcher Block in the district of Angul. They allege that the said company without informing the general public of the area, handed over their valuable fertile lands to NSL Company. It is further alleged that despite the protest of the villagers, the Company with the active support of the administrative machinery and goons when forcibly erected compound wall around the acquired land on 18th March, 2013 Miss Ritarani Das, Secretary of Samrudha Odisha presented a memorandum addressed to the Chief Minister of Odisha through the Sub-Collector, Talcher on the same day requesting therein that the Company should be stopped within 24 hours in taking up the construction of the compound wall and to stop terrorizing the people of the locality, failing which they would be resorting to hunger strike in front of the residence of the Chief Minister, Odisha. The petitioners further state that the members of Samrudha Odisha accompanied by Ritarani Das marched towards the residence of the Chief Minister around 4 PM of 19th March, 2013 but they were accosted on their way near Sishu Bhawan Chhak by Police and were left at PMG Square with an advice that they should stage 'Dharana' there. Accordingly, under the leadership of Miss Das, the members of Samrudha Odisha resorted to hunger strike at Lower PMG Square. It is alleged that on the

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same day night, around 2.30 AM, Police with the help of goons of the Company, in utter violation of the basic human rights kidnapped Ritarani Das. Accordingly, the petitioners sought the intervention of this commission as to how around 2.30 in the night Ritarani Das was picked up by Police and with a further prayer not to implicate Miss Das in any false accusation and to take stringent action against Company having violated the rules and procedures in respect of acquisition of lands.

The Commission on receipt of the complaint from the petitioners asked the Collector, Angul and DCP, Bhubaneswar to send their reports in the matter. Pursuant to the direction of this Commission, the DCP, Bhubaneswar got the matter enquired into by Sri P.K. Patnaik, OPS, Asst. Commissioner of Police, Zone-I, Bhubaneswar Urban Police District. Sri Patnaik, ACP Zone-I, Bhubaneswar in his letter dated 21.08.2013 reported to the DCP, Bhubaneswar that his inquiry reveals that on 20.03.2013 at 2 AM one Ritarani Das, Zilla Parishad Member, Angul was apprehended by Smt. Mamata Nayak, IIC, Vikrampur Police Station and staff at Lower PMG Square, Bhubaneswar in connection with Vikrampur PS Case No.27 dated 18.03.2013 which was registered under Sections 143/341/186/294/506 of the IPC read with Section 149 of the IPC and under Section 7 of the Criminal Law Amendment Act. The said fact has also been reflected in Capital PS Station Diary Entry No.689 dated 20.03.2013. The ADM, Angul in his letter No.1757 dated 03.10.2013 has submitted the report of the Tahasildar, Talcher. The Tahasildar-cum-Land Acquisition Officer (MAPCL), Talcher reports to the ADM, Angul that possession in respect of 455.30 acres of private land in village Tentulei was handed over to IDCO, Bhubaneswar for establishment of industries, which was eventually to be transferred to M/S. Mahanadi Aban Power Corporation Ltd. The said lands were accordingly handed over to M/S. Mahanadi Aban Power Corporation Ltd. and after amalgamation of NSL Power & Infratech Pvt. Ltd. and

M/S. Mahanadi Aban Power Corporation Ltd., construction of the boundary wall was undertaken by M/S. NSL Power Limited. As reported by the NSL Power Limited, there was no violation of the provisions of the Land Acquisition Act in respect of the aforesaid Project. The report of the Tahasildar, Talcher further discloses that while construction of the boundary wall of NSL Power Limited was in progress in village Tentulei, on 18.03.2013, some local residents created disturbance at the site and threatened to kill the employees of NSL Power Limited and abused them including the Police personnel, who were deployed on duty. Accordingly, Vikrampur PS Case No.27 dated 18.03.2013 was registered and during investigation, the involvement of Ritarani Das, daughter of Gokula Das of village Tentulei was prima-facie established and she was arrested on 20.03.2013 at 8 AM along with four others after observing all the formalities of arrest and were forwarded to the Court of SDJM, Talcher. It is further reported that the said Vikrampur PS Case No.27 of 2013 has ended in submission of charge sheet on 31.05.2013 and the matter is subjudice. The IIC, Vikrampur Police Station in her letter to Tahasildar, Talcher dated 21.09.2013 reports that Ritarani Das along with Srikant Naik, Dhiren Naik, Mulia Naik and Baidhar Naik were arrested on 20.03.2013 at 8 AM in connection with Vikrampur PS Case No.27 dated 18.03.2013 and were forwarded to the Court of SDJM, Talcher as prima-facie materials were available against them under Sections 143/341/294/186/506 of the IPC read with Section 149 of the IPC as well as under Section 7 Criminal Amendment Act. The IIC, Vikrampur Police Station has also reported that the case has ended in submission of charge sheet on 31.05.2013 against the accused persons.

I have heard Sri P.K.Patnaik, ACP Zone-I, Bhubaneswar Urban Police District and Smt. Mamata Naik, IIC, Vikrampur Police Station, who were present in this commission being noticed by this Commission and Smt. Naik produced the original Station Diary Book of Vikrampur

Police Station. Sri P.K. Patnaik, ACP Zone-I, Bhubaneswar in his letter to the DCP, Bhubaneswar specifically states that the victim Ritarani Das was apprehended by Smt. Mamata Nayak, IIC, Vikrampur PS and her staff at Lower PMG Square, Bhubaneswar at 2 AM on 20.03.2013 in connection with Vikrampur PS Case No.27 dated 18.03.2013 and he has also specifically stated that the same has been reflected in the Capital PS Station Diary Book vide Entry No.689 dated 19.03.2013. As per the direction of this Commission, the original Station Diary Book of Capital Police Station w.e.f. 07.03.2013 to 11.04.2013 was produced and entry No.689 dated 19.03.2013 made at 3 AM reveals that the Diary Charge Officer noted in the Station Diary Book that "Mamata Nayak, IIC Vikrampur Police Station apprehended Ritarani Das, President of Samrudha Odisha in connection with her PS Case No.27 of 2013. The said fact was entered in the Station Diary Book of Capital Police Station for future reference". So this entry made in the Station Diary Book of Capital Police Station and the report of a Senior Police Officer namely the ACP, Zone-I, Bhubaneswar establishes the fact that Ritarani Das was taken into custody by Smt. Mamata Nayak, IIC Vikrampur Police Station from Lower PMG Square in connection with Vikrampur PS Case No.27 of 2013 at the dead of the night i.e. at 2 'O' clock and the same belies the report of the Tahasildar, Talcher and the letter of the IIC, Vikrampur Police Station that Ritarani Das was arrested on 20.03.2013 at 8 AM in connection with Vikrampur PS Case No.27 of 2013. Station Diary Entry No.392 alleged to have been made at 8 AM in the Station Diary Book of Vikrampur Police Station dated 20.03.2013 reveals that the IIC along with SI Sri P.K.Panda, Havildar, M.B.Pradhan, Constable, Y.Gagarai and Home Guard, Khirod Behera returned to Police Station from Bhubaneswar along with arrested accused persons in PS Case No.27 of 2013 namely Sushree Ritarani Das, Dhiren Naik, Baidhar Naik, Mulia Naik and Srikanta Naik and SI

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of Police Sri P.K. Panda arrested them in the said case after observing all formalities and rules as per the Apex court direction and Constable Y. Gagarai was directed to guard the accused persons.

So this very entry in the Station Diary Book of Vikrampur Police Station vide Entry No.392 dated 20.03.2013 at 8 AM bolsters the case of the petitioners that Ritarani Das, a woman was arrested by Vikrampur Police on the night of 19.03.2013 by violating all the established norms and procedures and in utter disregard of the law of the land. No amount of excuses and apologies can undo the wrongs which have been perpetrated on the victim a lady by the illegal acts of Vikrampur Police. It is very unfortunate that the ADM, Angul and the Tahasildar, Talcher without unfolding the truth, tried to shield the perpetrators of violation of human rights and, therefore, the Commission is constrained to observe that the aforesaid two functionaries of the State failed to discharge their duties as responsible public officers and, accordingly, their conduct is reprehensible.

The position of law is very clear on the point.

Sub-Section 4 of Section 46 of the Code of Criminal Procedure, 1973 specifically states that :

“Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”

In the instant case, the IIC, Vikrampur Police Station has not produced a single scrap of paper to show that before arresting Ritarani Das on the night of 19.02.2013/20.03.2013 at Lower PMG Square, Bhubaneswar, she had obtained the permission from the SDJM, Talcher or SDJM, Bhubaneswar in that regard.

Thus, the materials on record and to be specific, the entry made in the Capital Police Station Diary Book at 3 AM vide Entry No.689 dated 19.03.2013 and Vikrampur Police Station Diary Book Entry No.392 dated 20.03.2013 clearly establishes the case of the petitioners Sushree Ritarani Das that she was arrested in the dead of the night of 19.03.2013 in utter violation of the mandate of law i.e. Section 46(4) of the Cr.P.C. and the Commission has no hesitation in mind to observe that the basic human rights of a woman were infringed by the IIC, Vikrampur Police Station Smt. Mamata Nayak and the arresting officer, SI of Police Sri P.K.Panda of the said Vikrampur Police Station.

The horizon of human rights is expanding. Very often, this Commission is receiving complaints about violation of human rights because of indiscriminate arrest. How are we to strike a balance between the two? Therefore, a realistic approach should be made in this direction. The law of arrest is one of balancing individual rights/liberties and privileges on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively. Protection of the individuals from oppression and abuse by Police and other enforcing officers is indeed a major interest in a free society. To strike the balance between the needs of law enforcement on the one hand, and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other is a perennial problem of statecraft.

The arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances, namely;

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

- (ii) The accused is likely to abscond to evade the processes of law.
- (iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a Police Officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.

The settled position of law is, no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The arrest and detention in a police lock up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest, therefore, can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.

(AIR 1994 SC 1349, Joginder Kumar Vrs. State of UP)

Now reverting back to the case in hand, the records reveal that Vikrampur PS Case No.27, dated 18.03.2013 was registered under Sections 143/341/186/294/506 of the IPC read with Section 149

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of the IPC and under Section 7 of the Criminal Law Amendment Act. Thus, the case is not a case which involves grave offences like murder, dacoity, robbery, rape etc. necessitating arrest of the accused persons and bring their movement under restraint to infuse confidence among the terror-stricken victims.

Accordingly, taking into consideration, the nature of violation of such human rights of Sushree Ritarani Das, the Commission recommends payment of compensation of Rs.50,000/-(Rupees fifty thousand) under Section 18(a) of the Protection of Human Rights Act, 1993 to the victim Sushree Ritarani Das.

A copy of this order be sent to the Principal Secretary to Government, Home Department with a request to arrange payment of the above compensation amount in favour of Sushree Ritarani Das and compliance report be submitted to this Commission within four weeks time.

Put up this matter on 20.06.2014.

Let copies of this order be sent to the Chief Secretary of the State and Director General of Police, Odisha, Cuttack for information and guidance of all Police Officers of the State.

The original Station Diary Book of Capital PS w.e.f. 07.03.2013 to 11.04.2013 and the Station diary Book of Vikrampur PS w.e.f. 08.03.2013 to 17.04.2013 and the Command Certificate Book of the Vikrampur PS w.e.f. 08.02.2013 to 27.03.2013 and copies of the papers in Vikrampur PS Case No.27 of 2013 be returned back to the concerned IICs of the Police Stations forthwith.

**JUSTICE B.K. MISRA
ACTING CHAIRPERSON**

25th April, 2014