

ODISHA HUMAN RIGHTS COMMISSION
2nd Floor, Toshali Bhawan, Satyanagar
Bhubaneswar-751007

OHRC Case No. 5708 of 2015

Nirupama Mishra & others

... petitioner

ORDER

Perused the petition as submitted by Nirupama Mishra, Lalita Das, Kumuduni Pati and Sushila Naik dated 28.1.16 of “Gaon Sathi Milita Kriyanusthan Kamiti, Odisha Pradesh”, Bhubaneswar which they submitted before the Commission on 28.1.16 in person along with one Laxmidhar Biswal. Prior to this petition, another petition dated 26.12.15 also received from Laxmidhar Biswal and others of the same organisation on self-same matter was perused and taken to record.

The four women petitioners as named above alleged that when they had gone to the official residence of the Chief Minister, Odisha on 8.12.2015 with a purpose to ventilate their grievance, they were prevented by the police and finding no other way, they protested in a democratic manner. The police officials and their staff who were already deployed there in order to scuttle their plan arrested them and forcibly lifted them in a police vehicle and slapped a case against all of them under Section 307 of the IPC, for which they had to remain in the Special Jail, Bhubaneswar for a period of sixteen days.

The petitioners particularly alleged that in flagrant violation of the direction of the Apex Court of the country and the appropriate provisions of law, male police officers had repeatedly pulled the hands of the women protestors and pushed their bodies in order to bring them to the doors of the police jeep, and in the melee, the left hand of Kumudini Pati, one of the women suffered a fracture.

The petitioners also alleged that the strike launched by them inside the Jail was also foiled by use of force.

The petitioners further alleged that due to such inhuman action of the police, they had to suffer physically, mentally and also economically as during their incarceration, their families encountered serious problems.

The petitioners prayed that besides initiating stern action against the errant police officials, a compensation of Rs.10 lakhs be awarded to each of them.

The Commission on receipt of the petition from Laxmidhar Biswal and others sought for a detailed report from the Deputy Commissioner of Police, Bhubaneswar. The DCP, Bhubaneswar got the incident enquired into through Shri A.K.Panda, ACP, Zone-I, Bhubaneswar and forwarded his enquiry report to the Commission in its letter dated 15.2.16. Perused the said enquiry report. In the first paragraph of the enquiry report, the enquiring officer has elaborated the various allegations as made by the petitioners.

It has been mentioned in the enquiry report that while the IIC, Airfield Police Station was performing law and order duty near the house of the Hon'ble Chief Minister, Odisha in the after-noon of

8.12.2015, four women namely; Nirupama Mishra, Lalita Das, Kumuduni Pati and Sushila Naik alighting from an autorickshaw moved towards the gate of Naveen Niwas holding bags in their hands in violating the prohibitory orders clamped under Section 144 Cr.PC. It was found that all of a sudden they poured kerosene oil on their bodies and tried to set themselves ablaze with the intention of committing self-immolation. At that point of time, when a lady Constable tried to dissuade them from committing such act, they all abused her in obscene languages and attacked her as well. However, the other lady Constables who were present there rescued the lady Constable from the hands of Gaon Sathi agitators. Accordingly, the Airfield Police Station registered a case vide Airfield PS Case No.286 dated 8.12.2015 under Section 188/294/307 readwith Section 34 of the IPC and the accused persons were arrested and then forwarded to the Court on 9.12.15. The accused persons were all medically examined before being forwarded to the Court. In the opinion of the treating physician except one Kumudini Pati, who had complained of pain on her left shoulder, no other women arrestees had any external injury on their person. Although, Kumudini Pati was referred to an Orthopaedic Specialist for opinion, the latter did not find any problem with her.

It has also been mentioned that the day before this incident, i.e. on 7.12.2015, the petitioners along with twenty others staged a demonstration in front of the Grievance Cell of the Hon'ble Chief Minister, Odisha without taking any licence. They suddenly in an agitated mood forcibly closed the gate of the Grievance Cell and when the police tried to restrain them from such activities, they became more

aggressive and violent and started abusing the police in obscene languages. They also tussled with the police personnel who were present there. In this connection, Capital Police Station Case No.506 dated 7.12.2015 was registered against them and accordingly, the accused persons were arrested and released on bail.

The enquiring officer opined that the allegations made by the petitioners were false and baseless.

Perused the enquiry report of the DCP, Bhubaneswar dated 16.6.16 which is a replica of the report of the Shri A.K.Panda, ACP, Zone-I, Bhubaneswar and there being no new facts in the report, it is not of much help.

The petitioners Laxmidhar Biswal and Kumudini Pati appeared before the Commission on 21.6.16 along with their learned Counsel Shri Suchendra Kumar Barik, who filed a petition for Kumudini Pati wherein it was mentioned that Kumudini after being injured on 8.12.15 in the alleged police brutality has been still suffering from pain on her left shoulder and the doctors of District Headquarters Hospital, Bhadrak treating her advised for a MRI test. The Advocate appearing for her pleaded that she being a poor helpless lady is unable to incur any expenditure for such a medical test and treatment and prayed for intervention of the Commission in the matter. Considering the plight of the poor lady, the Commission directed the Superintendent, SCB Medical College & Hospital, Cuttack to get her examined by the Professor of the Orthopaedics Department and ensure her proper medical treatment including the MRI Test and the entire cost of her treatment be met out of the Odisha State Treatment Fund in accordance

with the rules of government and submit a report to the Commission about the results of the test and treatment provided to Kumudini Pati. Accordingly, Kumudini Pati was also directed to appear before the Superintendent, SCB Medical College & Hospital, Cuttack for commencement of her treatment.

On 26.7.16, the learned Counsel appearing for the petitioners submitted that as per the direction of the Commission, Kumudini Patra was admitted into the SCB Medical College & Hospital, Cuttack for necessary test and treatment and was discharged on 21.7.16 and she was provided with medicines, free of cost and advised further treatment after one month. The learned Counsel prayed for grant of some financial help to Kumudini Pati as he is an extremely poor person and having no means to buy food and medicines. Considering the submission of the learned Counsel, he was advised to persuade Kumudini Pati to make a prayer before the Collector, Bhadrak as well as the RDC, Central Division, Cuttack for necessary financial assistance as per the rules of government.

Perused the medical examination report of Kumudini Pati as submitted by the Professor & HOD, Department of Orthopaedics, SCB Medical College & Hospital, Cuttack through the Superintendent of the said Medical College & Hospital vide its letter dated 26.7.16 along with relevant medical papers consisting of 10 pages in all.

According to the report of the Professor & HOD, Department of Orthopaedics, SCB Medical College & Hospital, Cuttack, the patient Kumudini Patra, aged about 38/F C/O- injury to (Left) shoulder was admitted on 5.7.16 vide Regd. No.6330/5.7.16 with Bed No.313 in the

Female Ortho Ward. Her shoulder MRI shows minimal tear of rotator cuff and X-ray shows no bony abnormality. All investigations including the MRI of the patient were done , free of cost under OSTF and medicines were also supplied to her by the Hospital. The patient was undergoing physiotherapy during her stay in the Hospital and was also advised to do active exercise at home as advised by the Physiotherapist. No active intervention like surgery and plaster case was not felt necessary in her case.

Perused the report of the Panchayati Raj Department dated 11.3.16 which has nothing to say about the arrest of some women members of Gaon Sathi on 8.12.15 and their subsequent detention in the Jail. In a terse report, the P.R. Department has maintained that no information is available with it regarding the commitment made by the Hon'ble Minister, Panchayati Raj on 4.12.2014 about the engagement of "Gaon Sathi" under MGNREGS. In the meantime, the nomenclature of "Gaon Sathi" has been changed to "Mate". It has been categorically made clear in the report that there is no scope for regularisation of "Gaon Sathi" under MGNREGS as per its guidelines.

Perused the written response of the petitioners as submitted by their learned Counsel to the police enquiry report dated 13.2.16 as also the report of the P.R. Department dated 11.3.16. .

It is submitted by the learned Counsel that it is a false statement of P.R. Department that there was no discussion with the Hon'ble Minister, P.R. on 4.12.14 with regard to engagement of "Gaon Sathi". It is also submitted that the FIR of Smt. Kumudini Pati was not accepted by the Airfield Police Station, Bhubaneswar. It has been further said that it

was totally false that four women leaders went to Naveen Niwas for committing self-immolation as claimed by the police.

Also perused the additional written response of the petitioner as submitted by their learned Counsel dated 3.10.16. The learned Counsel also produced a DVD of Kanaka TV containing the recording of the entire incident that happened on 8.12.15 near Naveen Niwas before the Commission for viewing the recordings.

In his additional response, the learned Counsel submitted that a particular male police officer along with other male police staff dragged the lady workers of Gaon Sathi in a brutal manner and pushed them into a PCR van. While the ladies were forcibly dragged into the police vehicle, one of them namely; Kumudini Pati being injured was found crying. It is further submitted that police arrested the four women workers without any provocation while they were all standing peacefully in front of Naveen Niswas. It was also submitted that though the IIC, Capital Police Station on 7.12.15 had assured the Gaon Sathis sitting on 'Dharana' at the Grievance Cell of the Hon'ble Chief Minister to arrange a meeting with Principal Secretary to Chief Minister Shri U.N.Behera,IAS, it was actually not done and on the contrary, on a false case, the concerned IIC arrested the petitioners and more than 20 others.

The learned Counsel for the petitioners through a submission dated 25.8.16 apprised the Commission that in compliance to the direction of the Commission, though Kumudini Pati has already filed her petition before the RDC, Central Division, Cuttack for grant of financial assistance, who, in turn, wrote to the Collector, Bhadrak vide its letter

dated 1.8.16 for needful action, but no visible action has been taken to redress her grievance.

The Commission viewed the video coverage of the entire scene which has been produced by the learned Counsel for the petitioners before the Commission in which the all the four women petitioners were taken in a police vehicle near the Naveen Niwas.

It is clearly seen from the said coverage that one particular police officer is found to be persistently pulling the hands of a particular woman with as much as force possible in a bid to push her into the police vehicle. It is also seen that the more the resistance the woman agitator put up to thwart the attempt of the male and female police officer to shove her into the police vehicle, the more the physical force was used by the concerned police officer to overpower her. Also it is seen that the rest three other women agitators were surrounded by the male police officers and they had all engaged themselves in forcing them into the vehicle. However, at the end of the scene, it is seen that two lady Constables though present at the spot did precious little in taking control of the women agitators.

The Commission is of the opinion that in all probability during the scuffle between that particular male police officer and a dark complexioned lady, the latter might have received injury in her left shoulder, for which she was under treatment in the Police Station, Bhubaneswar as well as the District Headquarters' Hospital Hospital, Bhadrak as is evident from the relevant treatment papers. The problem of the concerned woman agitator namely; Kumuduni Pati became so much acute that she was admitted into the Female Ward of the

Orthopaedic Department of the SCB Medical College & Hospital, Cuttack for 19 days for necessary tests and treatment on the intervention of the Commission, and even after her discharge from the Hospital, she was advised to continue the exercise as suggested by the Physiotherapist.

However, considering her long suffering from physical pain and consequent violation of her human rights, the Commission feels it prudent to recommend government in Home Department to pay a compensation of Rs.10,000/- (Rupees ten thousand) only and also to provide her any other need-based assistance to alleviate her poverty, if she is otherwise entitled to that as per government norms. Since the concerned male police officers are public servants and were found to have acted in a manner highly unbecoming of themselves, the State is vicariously liable for such highhanded behaviour of theirs. At the same time, the Commission is constrained to observe that in order to tackle such type of situations, the assistance of lady police officers and lady Constables should be invariably taken in addition to the male police officers.

A copy of this order be sent to the Principal Secretary to Government, Home Department as well as Principal Secretary to Government, Panchayati Raj Department, Odisha, Bhubaneswar for necessary compliance within two months hence.

Put up on 10.4.17 awaiting the receipt of the compliance report from government.

JUSTICE B. K. MISRA
ACTING CHAIRPERSON