

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 671 of 2021

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Rajib Kumar Behera Petitioner

-versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. P.K. Satapathy,
P. Panda and B. Das,
Advocates

For Opp. Parties : Mr. A.K. Sharma,
Addl. Government Advocate
(Opposite Parties no.1 to 3)

P R E S E N T :

THE HONOURABLE DR. JUSTICE B.R.SARANGI

DECIDED ON :01.06.2021

DR. B.R.SARANGI, J. The petitioner, Rajib Kumar Behera, the then S.I. of Police (IO in Aska PS Case No. 9 of 2013), has filed this writ petition to quash the order dated 11.11.2020 passed

by the Odisha Human Rights Commission, Bhubaneswar in OHRC Case No.1650 of 2013 under Annexure-1, and further seeks direction to exonerate him from the charges levelled against him.

2. The factual matrix of the case, in hand, is that opposite party no.4-Minakshi Pattnaik, being the complainant before the Odisha Human Rights Commission (OHRC), filed a petition on 22.05.2013 making certain allegations against the present writ petitioner and his staff, who have been harassing and inflicting atrocities on her and her family members. She specifically alleged that on 04/05.05.2013, some police personnel came to her house at 2.00 A.M. in the night and forcibly took her husband to the police station and tortured him physically and mentally.

2.1 On receipt of such complaint dated 22.05.2013, copy of the same was sent to Superintendent of Police, Ganjam with a request to get the matter enquired into and submit a factual report to the Commission. In response to the

same, a report was received, which was also sent to opposite party no.4 for her information and response. In the said report it was mentioned that the allegations made by opposite party no.4 are found to be false. The report which was called for from the Superintendent of Police, Ganjam would show that he had conducted the enquiry through Bichitrananda Samal, Ex-IIC, Aska Police Station, who is the same police officer, who was inquiry officer of the case. Considering the lacuna in the report of the Superintendent of Police, Ganjam and the allegations made in the complaint being serious in nature, even after five years have lapsed, the Commission thought it proper to cause an independent enquiry to the allegations. Accordingly, requested the Addl. D.G. of Police-cum-Director Investigation, OHRC to entrust the inquiry to any of the officers at his disposal. Consequently, inquiry was conducted by Deputy Superintendent of Police, Investigation Wing of the Commission, who submitted report to the Commission and in order to give an opportunity of hearing before passing any order, notice was issued to Bichitrananda

Samal, the then IIC, Aska police station and the petitioner (Rajib Kumar Behera, I.O. in Aska P.S. Case No.9 of 2013) to appear in person before the Commission on 19.11.2019.

2.2 Pursuant to such notice, the petitioner appeared before the Commission on 13.12.2019 and copies of the inquiry report of the investigation wing of OHRC was supplied to him. But he took a plea that opposite party no.4 had paid a sum of Rs.1,10,000/- to one Manjula Bahadur with an assurance to provide government job to the daughter of opposite party no.4 in the railway department on oral agreement. Even after lapse of assured time, there was failure on the part of Manjula Bahadur to provide job. Therefore, on 22.10.2012 evening at about 6.00 P.M., opposite party no.4 came to Raghunath Nagar with an auto rickshaw and with dishonest intention lifted the CBZ Xtreme motor cycle of Manjula Bahadur, without her knowledge and consent, while it was parked in front of the house of Raghunath Choudhury at Raghunath Nagar, Aska. Opposite party no.4 also threatened with dire consequences to Manjula Bahadur and

demanded to return the cash she paid to her. On examination of Majula Bahadur, her son and other witnesses, the petitioner registered the case. But opposite party no.4 was absconded from the locality and this Court in BLAPL No. 1358 of 2013 granted bail and accordingly she was released on bail in obedience to the order of the High Court. Therefore, being aggrieved by registration of theft case against opposite party no.4 by Manjula Bahadur, she filed false case against the petitioner.

2.3 On the basis of above reply given by the petitioner and the FIR lodged, the same was referred to opposite party no.4 for her response to the report of Superintendent of Police, Ganjam, who enquired into the matter by the same I.O. and submitted a report before the Commission which was not accepted and, as such, opposite party no.4 denied the same. Thereby, the Commission conducted an independent inquiry and on the basis of such inquiry report of the investigation wing of the Commission submitted by the Deputy Superintendent of Police, proceeded

with the matter by affording opportunity of hearing to all the parties. The Commission relying upon the judgment of the apex Court in the case of ***Nandini Satpathy v. Dani*** (P.L.), AIR 1978 SC 1025 and after perusal of records as well as the report submitted by the Deputy Superintendent of Police, investigation wing of Commission, came to a definite conclusion that there is violation of human rights of Purna Chandra Pattnaik, the husband of opposite party no.4, for which he is entitled to get compensation. As such, taking the entire report into consideration, the Commission recommended as follows:-

“(1) A sum of Rs.2,00,000/- (Rupees two lakhs) be paid to the victim Shri Purna Chandra Pattnaik by the State and the same be recovered from Shri Rajib Kumar Behera, the then SI of Police (IO in Aska PS Case No.9 of 2013).

(2) Shri Bichitrananda Samal, the then IIC, Aska Police Station be cautioned not to file statement before the Commission or any other authority which is against the material available on record.

(3) Let the Director General of Police, Odisha Cuttack issue a circular/advisory to all the Police Stations in the State to keep the CCTV cameras in fullest operation. Any plea of non-fuctioning of the CCTV cameras will certainly be viewed adversely agaisnt the In-Charge of the Police Station. This is a common recommendation.

(4) The Director General of Police, Odisha, Cuttack may consider to take any other action as deem fit and proper.”

The Commission also further directed that compliance be made within a period of two months of receipt of the order and report compliance be submitted to the Commission by 29.01.2021. Hence this application.

3. Mr. P.K. Satpathy, learned counsel for the petitioner contended that the impugned order dated 11.11.2020 passed in OHRC Case No.1650 of 2013 by the Commission imposing liability on the petitioner is liable to be set aside as it has not accepted the explanation given by the petitioner and ignored the vital witnesses as well as committed procedural irregularity, for which the said order cannot sustain in the eye of law. It is further contended that the Commission, while passing the order impugned, relied upon the inquiry report of the Deputy Superintendent of Police, OHRC and not taken into consideration the explanation given by the petitioner and also the station dairy records of Aska Police Station. As such, there was no raid on 04/05.05.2013

in the night for arresting the accused in Aska P.S. Case No.9 of 2013. It is further contended that the evidence of Smt. R. Chhatoi, who is the vital witness to the inquiry, has not been taken into consideration by the Commission in proper perspective. Thereby, he seeks for quashing of the order impugned by exercising the extraordinary power under Articles 226 and 227 of the Constitution of India.

4. Mr. A.K. Sharma, learned Addl. Government Advocate justifying the action taken by the OHRC contended that there is no illegality or irregularity committed by the Commission by taking into consideration the inquiry report submitted by the Deputy Superintendent of Police, OHRC, who conducted an independent inquiry and submitted its report to the Commission on the basis of the direction given. More so, the petitioner was also given opportunity and having availed the same by participating in the process of hearing without any objection, if the Commission has passed the order impugned, that cannot be found to be faulted with so as to cause interference by this Court at this stage. Therefore, the

writ petition has no merit and the same should be dismissed with cost.

5. This Court heard Mr. P.K. Satapathy, learned counsel for the petitioner and Mr. A.K. Sharma, learned Addl. Government Advocate through virtual mode, and perused the record. As the matter is being decided at the stage of fresh admission, this Court is not inclined to issue notice to opposite party no.2-Secretary, OHRC or to private opposite party no.4. As it is a certiorari proceeding, on the basis of materials available on record, this writ petition is being disposed of finally with the consent of learned counsel for the parties.

6. The facts delineated above are not in dispute. On perusal of the order dated 11.11.2020 passed by the OHRC it appears that the Commission acted with due diligence to find out the truthfulness of the allegations and initially though inquiry was conducted by the Superintendent of Police, Ganjam, who relying upon the inquiry conducted by IIC,

Bichitrananda Samal, submitted the report vide Annexure-3 dated 27.06.2013, in which it has been stated that opposite party no.4 had given a sum of Rs.1,10,000/- to one Manjula Bahadur of Aska Sugar Factory, Nuagaon as hand loan, but she did not return the same and, therefore, opposite party no.4 forcibly kept the motor cycle of Manjula Bahadur. On the other hand, on the written report of Manjula Bahadur, Aska P.S. Case No.9 of 13.01.2013 under Sections 341/379/506/34 IPC was registered against opposite party no.4 and, as such, the case is under investigation. The Commission having not satisfied with such report, requested the Addl. D.G.-cum-Director Investigation to entrust the inquiry to any of the officer at his disposal. On that basis, the Deputy Superintendent of Police, OHRC conducted inquiry and examined seven witnesses, one of whom is Purna Chandra Pattnaik, the husband of opposite party no.4. The inquiring officer also verified the documents like station diary entries and recorded that CCTV footage of Aska police station of the relevant period was not available. The inquiry officer has

submitted its report in extenso and in the conclusion of the said report, it has been stated as under:-

“CONCLUSION

- (i) *Sri Rajib Kumar Behera, the then SI of Aska police station and the Investigating Officer of that PS case No.09 dated 13.01.2013 u/s 341/379/506/34 IPC, being accompanied by three other staff of that police station, entered into the house of Smt. Minakshi Pattnaik, the complainant of this OHRC case, located at village Karatali under Aska Police Station limit of Ganjam District on 05.05.2013 at about 2AM and forcibly brought her husband Sri Purna Chandra Pattnaik, a senior citizen and old man, to Aska Police Station and detailed him illegally inside that Police Station till 10 AM on that day, violating his human rights. He was not involved in any case and there was no reason for such bringing on the part of police. Law does not mandate to detain any person to effect arrest of his/her spouse, involved in any case.*
- (ii) *Though Sri Bichitrananda Samal, the then IIC of Aska PS, denied his knowledge of such illegal detention, his version is not believable in support of the fact that he was present at the Police Station during that period of detention as per the station diary of that Police Station. But neither the complainant Smt. Minakshi Pattnaik, nor her husband Sri Purna Chandra Pattnaik has made allegation against him.”*

7. After perusal of the report of the Deputy Superintendent of Police, OHRC, the Commission observed

that due to non-functioning of CCTV in the police station and in number of cases, where allegation of this nature comes to the notice of the Commission, it has been seen that the CCTV is either gone out order or footage are not available. More so, when the allegation of Section 379 IPC has been raised against a lady, opposite party no.4 herein, what promoted the police officers to raid her house at 2.00 A.M., which itself creates a doubt in the mind of Commission to proceed with the matter. Thereby, the Commission has accepted the report submitted by Deputy Superintendent of Police, OHRC and relying upon the decision of the apex Court in ***Nandini Satpathy*** mentioned supra has come to a conclusion that there is violation of human rights of Purna Chandra Pattnaik and made recommendation as has already been quoted hereinbefore.

8. The contention raised by learned counsel for the petitioner that the explanation submitted by the petitioner has not been taken into consideration, is not correct. So far as examination of vital witnesses are concerned, since the

Commission has relied upon the independent inquiry report submitted by Deputy Superintendent of Police, OHRC, who has taken evidence of seven witness, it cannot be said that there is procedural irregularity committed by the Commission so as to cause interference by this Court at this stage. Therefore, the contention so raised cannot sustain in the eye of law.

9. It is not in dispute that this Court is exercising the power under Article 226 of the Constitution of India in writ of certiorari.

Relying upon ***Ryots of Garabandho v. Raja of Paralakhimedi***, AIR 1943 PC 164, the apex Court in ***T.C. Basappa v. T. Nagappa***, AIR 1954 SC 440 held as follows:

“The writ of certiorari is so named because in its original form it required that the King should “be certified” of the proceedings to be investigated and the object was to secure by the authority of the superior Court, that the jurisdiction of the inferior tribunal should be properly exercised.”

10. In **Halsbury’s Law of England**, 4th Ed., vol.1, Para 1531 it is stated as follows:

“The order of certiorari issues out of High Court, and is directed to the Judge or officer of an inferior tribunal to bring proceedings in a cause or matter pending before the tribunal into the High Court to be dealt with in order to ensure that the applicant for the order may have the more sure and speedy justice. It may be had in either civil or criminal proceedings.”

11. ***Halsbury’s Laws of England***, (Fourth Edition) (2001 Re-issue) Vol.1(1) Para-123 have explained Certiorari (quashing order) is an order of the superior Court by which decisions of an inferior Court, tribunal, public authority or any other body of persons who are susceptible to judicial review may be quashed.

The supervision of the superior Court exercised through writs of certiorari goes on two points. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded.

12. Certiorari, under Article 226, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction by assuming

jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

13. In ***Bharat Bank v. Employees of Bharat Bank***, AIR 1950 SC 188, the apex Court held that the object of the writ of certiorari is to keep the exercise of powers by inferior judicial and quasi-judicial tribunals within the limits of the jurisdiction assigned to them by law and to restrain from acting in excess of their authority.

14. A Constitution Bench of seven learned judges in ***Hari Vishnu v. Ahmad Ishaque***, AIR 1955 SC 223, laid down the following propositions as well settled and beyond dispute:

- “(1) *Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*
- (2) *Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*

- (3) *The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well a right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence, and substitute its own findings in certiorari.”*

15. **In *Nagendra Nath Bora v. Commr. of Hills***

Division, AIR 1958 SC 398, the apex Court held as follows:

“The jurisdiction under Article 226 of the Constitution is limited to seeing that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi judicial powers do not exercise their powers in excess of their statutory jurisdiction, but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them. In other words, its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even through of law, will not be sufficient to attract this extraordinary jurisdiction.

16. **In *State of Andhra v. Chitra Venkata Rao***, AIR 1975

SC 2151 : (1975) 2 SCC 557, the apex Court held that since the function of the superior Court in a proceeding for certiorari is supervisory and not appellate, the superior Court will not review

in intra vires findings of the inferior tribunal, even if they are erroneous.

17. In ***Surya Dev Rai v. Ram Chander Rai***, (2003) 6 SCC 675 : AIR 2003 SC 3044, relying upon ***T.C. Basappa v. T. Nagappa***, AIR 1954 SC 440; ***Province of Bombay v. Khushaldas S. Advani***, AIR 1950 SC 222 and ***Dwarka Nath v. ITO***, AIR 1996 SC 81, the apex Court held that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of a subjects and obliged to act judicially. Since the writ of certiorari is directed against the acts, order or proceedings of the subordinate Courts, it can issue even if the lis is between two private parties.

This Court has also considered the same in its judgments in the cases of ***Santosh Kumar Sahoo v. Secretary, State Transport Authority, Odisha, Cuttack***, 2020 (II) OLR 238; ***General Manager, East Coast Railway and others v. Surendra Jal and others***, 2020 (II) OLR -747 and ***Bidyut***

Manjari Sethi v. State of Odisha and others, 2020 (I) CLR 474.

18. Applying the principles laid down by the apex Court as well as this Court mentioned supra, this Court is of the considered view that none of the conditions for issuance of writ of certiorari has been satisfied in interfering with the order impugned passed by the Orissa Human Rights Commission.

19. Apart from the same, the expression '*human rights*' has its origin in international law, appertaining to the development of the status of an individual in the international legal system, which was originally confined to the relation between sovereign States, who were regarded as the only persons in international law.

20. The concept of *human rights*, embodied the *minimum rights of an individual versus his own State*. When human rights are guaranteed by a written Constitution, they are called 'Fundamental Rights' because a written Constitution is the fundamental law of a State.

21. Though the concept of *human rights* is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'human rights' is of recent origin, emerging from (post Second World War) international Charters and Conventions.

22. India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th December, 1966. The human rights embodied in the aforesaid Covenants stand substantially protected by the Constitution. There has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and system of administration of justice; with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation. Therefore, an act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in

States and Human Rights Courts for better protection of human rights and for matter connected therewith or incidental thereto, the parliament enacted a law, called “The Protection of Human Rights Act, 1993”.

23. Human rights are rights available against the State. There must, therefore, be cases of conflict between the interests of the individual and of the State. Hence, a guarantee of human rights must necessarily contain the limitations or exceptions; the guarantee of human rights will prevail subject to these limitations, so that the collective interests may not be jeopardized. The Indian constitution acknowledges that there cannot be any such thing as absolute or uncontrolled liberty, for that would lead to anarchy and disorder.

24. In *Santokh Singh v. Delhi Administration*, AIR 1973 SC 1091, it has been held that liberty has to be limited in order to be effectively possessed. The question, therefore, arises in each case of adjusting the conflicting interests of the individual and of the society.

25. In ***Re Kerala Education Bill***, AIR 1958 SC 956, the apex Court held that any element without which a guaranteed Fundamental Right cannot be ‘effectively exercised’, cannot be taken away by the State in exercise of its power to regulate or restrict the exercise of the Fundamental Right.

26. Applying the principles of law, as discussed above, to the present factual position, this Court is of the considered view that no error has been committed by the Odisha Human Rights Commission by passing the impugned order dated 11.01.2020 in Annexure-1 so as to cause interference of this Court in the present proceeding.

Therefore, this Court does not find any merit in this writ petition, which is accordingly dismissed. No order to costs.

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DR. B.R.SARANGI,
JUDGE

Orissa High Court, Cuttack
The 13th January, 2021 GDS/Alok/Ashok/Ajaya.

