

Date: 06.05.2013

**Discussed.**

The Commission has perused the letter dtd. 3<sup>rd</sup> May, 2013 sent by Shri Basudeb Banerjee, Additional Chief Secretary addressed to the Secretary & C.E.O. of this Commission regarding the recommendations No. 46 & 47 of this Commission dated 13.08.2012. The said letter has rejected all the recommendations of the Commission in this matter.

The Commission initially stipulated the State Government to intimate the Commission of the action taken or proposed to be taken within a period of two months from the date of communication of its recommendations. However, after remaining silent on this issue for quite sometime, the State Government suddenly sought for extension of time on two occasions and ultimately on 3<sup>rd</sup> May, 2013 the Commission has been informed of the inability of the State Government to accept any of its recommendations.

The Commission is constrained to put it on record that it finds it difficult to accept the reasons given in the letter of the Additional Chief Secretary for non-acceptance of the Commission's recommendations.

But the Commission does not want to controvert all the reasons in the letter in question as the matter is possibly subjudice before the Hon'ble Court. But to put the records straight, Commission wants to mention that one of the reasons stated in the letter of the Additional Chief Secretary, Home Department is that of all the offences alleged against Ambikesh Mahapatra and Subrata Sengupta, the one under section 66A(b) of the Information Technology Act 2000 is cognizable and as such the Additional O/C Purba Jadavpur P.S. is entitled to start the investigation. This has possibly been put forward by way of an afterthought.



Pursuant to the Commission's order, the Commissioner of Police and Additional Commissioner of Police submitted a detailed report in the matter. The report of Additional C.P. Shri Sudhir Mishra who actually enquired into the matter clearly mentioned under the head 'conclusion' at page 7 of his report:-

*"Since the offence punishable under section 509 of the Indian Penal Code was cognizable in nature, he treated the said letter of complaint as a First Information Report, in terms of Section 154 of the Code of Criminal Procedure and on the basis thereof registered Purba Jadavpur Police Station Case No. 50 dated 12.04.2012. Since Section 509 of the Indian Penal Code is cognizable in nature as per the schedule of the Code of Criminal Procedure, Shri Milan Kumar Das was entitled to initiate investigation as per section 156 of the Code. Such investigation seems to be in conformity with law"*

This was again confirmed by him in his evidence before the Commission on 05.07.12 wherein he clearly stated :-

*"Of the Sections lodged against the arrestees, only Section 509 IPC is cognizable offence and others are not".*

The Commissioner of Police Shri R.K.Pachnanda, IPS in his evidence before the Commission on 05.07.12 also stated:-  
*"Additional O.C. felt that Section 509 IPC would be attracted and hence he started the case".*

Milan Kanti Das, Additional O/C of Purba Jacavpur P.S. who investigated the case as I.O. stated in his evidence before the Commission on 17.07.12

*"The case was started u/s 500/509/114 IPC read with 66A(b) of the I.T Act. Out of these section 509 IPC is a cognizable offence".*

Thus, it is very clear from what has been stated hereinabove that the police had started the investigation of the case only on the basis that section 509 IPC is a cognizable offence and not on the basis that section 66A(b) of the I.T. Act is a cognizable offence.



Therefore, the reasons on this score given in the action taken report seems to be an afterthought and does not absolve the police officials of the alleged illegality which caused the violation of human rights of Ambikesh Mahapatra and Subrata Sengupta.

In this Connection the Commission also quotes paragraph 14 of its recommendation which reads as under :

*14. "Protective custody by the police can be only resorted to in case of a minor or a lady who is trafficked or a person who is insane. The concept of protective custody is wholly misplaced in respect of two adult men. On the other hand Shri Sanjoy Biswas who was present on the spot admitted before the Commission that there was a case of wrongful confinement of the arrestees against the agitated mob and a case under Section 341 IPC, which is a cognizable offence, was made out. Police did not arrest any one from those agitated persons who forcibly confined the arrestees and even though the Police Station one and half kilometer away. On the other hand police arrested those two elderly persons who were peacefully sitting confined in the office of the Society".*

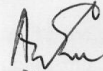
The State Government however, conveniently chooses not to deal with the illegality committed by the police officials in paragraph 14 of the recommendation. The concept of the police resorting to protective custody which has no sanction in law only on the ground of a so called convention is intriguing. Clearly the police failed to act in accordance with law by not arresting anyone from the agitated mob who wrongfully confined Professor Ambikesh Mahapatra and Shri Subrata Sengupta from their own residential complex and thus acted in gross violation of human rights of those two persons.

The Commission is surprised to find that the State Government is supporting the illegal actions of the police on the basis of a so called convention which has no legal sanction. To say the least, this is contrary to Rule of Law.



The Commission, as noted above, does not accept the reasons given in the letter of Additional Chief Secretary, dated 03.05.13.

The Secretary, W.B.H.R.C. is directed to bring these observations of the Commission to the notice of the State Government and to upload the letter of the Addl. Chief Secretary, Home Department and the aforesaid observations of the Commission in the website immediately.



(Justice Asok Kumar Ganguly)  
Chairperson



( Justice N. C. Sil )  
Member



( S. N. Roy )  
Member