



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 651/WBHRG/Gen/1041/17

Date: 11.04.19

Recommendation No 37/WBHRG/2018-19/1820/GEN/2017

From: Shri Laima Chozah IAS,
OSD & Ex-officio Principal Secretary & CEO.

To: The Chief Secretary
Government of West Bengal
NABANNA
325, Sarat Chatterjee Road
Mandirtala, P.O.- Shibpur,
Howrah-711102

Sir,

I am directed to send herewith an authenticated copy of the Recommendations dated 26.02.2019 in connection with the complaint of Shri Parth Kumar Ojha resident of 30, College Row, Kolkata - 700009 made by the West Bengal Human Rights Commission alongwith enclosures for taking necessary action. The recommendations are self-explanatory.

Action taken or proposed to be taken by the Government on the recommendations may please be intimated to the Commission within 4(four) months.

Yours faithfully,

Laima Chozah 06/08/19.

OSD & E.O. Pr. Secretary & CEO.

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.1041/WBHC/Gen/17

P r e s e n t

1. Mr. Justice G.C. Gupta - Chairperson
2. Mr. N. Mukherjee - Member
3. Mr. M.S. Dwivedy - Member

The West Bengal Human Rights Commission received a petition from one Parth Kumar Ojha resident of 30, College Row, Kolkata – 700009 on 24/4/2017 to the effect that on 12/4/2017 around 7.45 p.m. he was standing in front of Azad Hind Dhaba, Salt Lake under Bidhannagar (North) P.S. with his brother, Vishal Sharma. At that moment a lady police officer, accompanied by 4/5 other policemen asked them to come to the Police Station. When the petitioner questioned for what reason he was being called to the P.S. the lady police officer allegedly stated that “as he was very beautiful” he was being called to the P.S. When the petitioner refused, one of the policemen accompanying the police party punched him on the right eye. He was taken to the Police Station and detained for three hours and they were forced to sign some papers. They also tested him for presence of alcohol. Subsequently, the petitioner’s father was called to the P.S. and the police personnel took Rs.3000/- in cash. The petitioner alleged that he was medically examined first at

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Medical College and Hospital, Kolkata on 13/4/2017 followed by examination at Regional Institute of Ophthalmology, Medical College and Hospital, Kolkata. The petitioner enclosed photograph of injury to his right eye as well as injury reports of the two hospitals indicating injuries just below the right eye and treatment schedule for such injury received.

2. The Commission took cognizance of the matter and called for a report from Commissioner of Police, Bidhannagar. Smt. Ritu Dhar, Asstt. Commissioner of Police, Bidhannagar Zone-I submitted an enquiry report on the petition of Parth Kumar Ojha which was received through Commissioner of Police, Bidhannagar on 19/12/2017.

3. According to the report, on 12/4/2017 lady Probationary Sub Inspector Mouli Khamaru and Probationary Sub Inspector Shahensha Hossain along with C/936 Kanai Das and C/1025 Pranab Mallick [all of Bidhannagar (North) P.S.] were performing special evening raid duty under the Police Station area. Around 1900 hrs. in the vicinity of Indira Bhawan, they noticed two persons consuming beer and "chat" on the road by the side of their parked bike. LPSI Mouli Khamaru, C/936 Kanai Das and C/1025 Pranab Mallick asked them why they were taking beer on the road. They allegedly threw the beer cans away and denied consumption of beer thereby confronting with the police personnel. They also refused to go to the P.S. and insisted to settle the matter at the spot. LPSI Mouli Khamaru was pushed when she grabbed the hand of one of them

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for forcibly taking him to the police vehicle. PSI Shahensha Hossain, who was sitting in the vehicle, came to the spot and slapped the man who allegedly pushed her (LPSI). They were forcibly taken to the vehicle and were subjected to breath analyzer test at Police Station in which the alcohol level was found to be below 30 per cent. They were prosecuted u/s 34 Police Act (P.R. No.148/17 dt.12/4/17 reference G.D. No.784 dt.12/4/2017). Subsequently, they were released on bail and that one of them mentioned his name as Bharat Ojha son of Hari Sankar Sharma of 30, College Road, Kolkata – 700009. The enquiring officer further stated that she examined LPSI Mouli Khamaru, PSI Shahensha Hossain, C/936 Kanai Das, C/1025 Pranab Mallick and driver CD/10922 Raju Sarder and all corroborated the above facts. The report further stated that PSI Shahensha Hossain admitted to have slapped the accused persons when they pushed lady PSI Mouli Khamaru. During enquiry the petitioner, Parth Ojha and Bishal Sharma (the other accused) were examined who denied to have taken beer. They alleged they were eating “chat” standing on the road when the police officer forcibly took them to the Police Station. He (Parth Ojha) further alleged that he was punched on the eye when he asked the reason for taking them to the P.S. The place of occurrence is behind Indira Bhawan opposite CGO Complex and not Azad Hind Dhaba, as claimed in the petition.

4. On receipt of this report the Commission raised certain queries seeking clarification from Commissioner of Police, Bidhannagar Police Commissionerate. A further report was received from ACP, Bidhannagar Zone-

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I, Smt. Ritu Dhar, who clarified that I.C., Bidhannagar (North) P.S. stated that report of breath analyzer was not available in P.S. records. She further clarified that no medical examination report of the accused persons were available at Bidhannagar North P.S. while arrest-cum-inspection memo along with copies of bail bond and P.R. bond were sent to the Commission. The report further clarified that lady PSI Mouli Khamaru did not start any case of assault on her against the accused persons. Regarding action of the two officers, the enquiring officer further examined them when both of them stated that minimum force was applied on the accused persons to prevent further assault on lady PSI Mouli Khamaru and to arrest Parth Kumar Ojha who was resisting the same vigorously. Two G.D. entry copies No.784/18 dt.12/4/17 and no.787/18 dt.12/4/17 were enclosed. The matter was examined in the Commission and it was found that in the arrest-cum-inspection memo no signature of relative or of local person was taken and the arrestee also did not sign on the grounds that he refused to sign the same (as stated by arresting officer). In G.D. No.784/18 recorded by lady PSI Mouli Khamaru the bare incident has been recorded along with arrest u/s 34 Police Act. It has been mentioned that minimum force was applied as the accused persons Bharat Ojha and Bishal Sharma were resisting arrest. In G.D. No.787/18 it has been mentioned that one Bimal Ghosh, Law Clerk stood surety in releasing the accused persons on bail. The ACP, in clarification report, further added no case was started for alleged assault on lady PSI Mouli Khamaru.

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5. On receiving this report the matter was discussed in full Bench of the Commission and it was decided to examine lady PSI Mouli Khamaru and PSI Shahensa Hossain u/s 16 of the PHR Act. The examination was duly conducted on 18/12/18 and statements of both lady PSI Mouli Khamaru and PSI Shahensa Hossain recorded by the Commission.

6. Lady PSI Mouli Khamaru disclosed that she along with PSI Shahensa Hossain and two police constables were performing special raid on 12/4/17 around 7 p.m. in plain clothes when they found two persons drinking alcohol and abusing at the top of their voice. She asked them not to do such things and leave the place when those persons wanted to know about her identity as she was in plain clothes. She showed her identity card and in the meantime, one person, who was later identified as Parth/Bharat Ojha came to close to her, pushed her on which she fell on the ground. PSI Shahensa Hossain came to her rescue when she told that she was a police officer and was arresting Parth/Bharat Ojha. The latter used abusive language at her "Sali sabka rate hota hai tera keya rate hai". With the help of two constables PSI Shahensa Hossain over powered him and brought Bharat Ojha and Bishal Sharma to Bidhannagar (North) P.S. According to her statement, Bishal Sharma co-operated with them. The motorcycle found at the spot was brought to the P.S. Bishal Sharma called his parents to the Police Station who expressed apology for which reason lady PSI Mouli Khamaru did not lodge any specific complaint for assaulting her. The incident was recorded in G.D. No.784/18 dt.12/4/17. As both the officers were

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under probation they were not fully aware of the procedure and only started a case u/s 34 Police Act against Parth Kuamr Ojha and Bishal Sharma who were granted bail on Police Station. I.C. Somnath Banerjee was not available at the P.S. They had suo motu applied section 34 of Police Act and were not aware of any Govt. notification regarding application of Section 34 Police Act in Bidhannagar (North) P.S. area. She further added that she herself did not undergo any medical test and that it was usual practice to conduct raid in plain clothes. She further stated that Smt. Ritu Dhar, ACP, during conduct of her enquiry did not record her statement. Smt. Anuradha Mondal another ACP had examined her. Subsequently, she added that Smt. Mondal examined her but she was not sure whether her statement was recorded. She alleged that Smt. Ritu Dhar, ACP never examined her. She also added that no breath analyzer test of either of the accused was conduct by her. She denied assault of the accused person either by police party or PSI Shahensa Hossain as indicated in the report of Smt. Ritu Dhar, ACP. In the arrest cum inspection memo, which was prepared in her hand writing, there is mention of one cut injury suffered at the time of arrest. As no local person was available so no signature could be obtained on the receipt memo. The allegation of abuse "Sali sabka rate hota hai tera keya rate hai" was not recorded in the prosecution report by the officer.

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7. PSI Kazi Sahensa Hossain, currently S.I. of Police at Airport P.S., corroborated the statement of lady PSI Mouli Khamaru so far as the two persons consuming liquor and a motorcycle being parked nearby, which he

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detected during special raid. PSI Sahensa Hossain intervened when he found that one of the accused persons, namely, Parth Ojha pushed LPSI Mouli Khamaru forcibly on shoulder and she fell down on the ground. Both accused persons resisted arrest and they were forcibly taken in the police vehicle to Bidhannagar P.S. Matter was informed to ASI Saikat Banerjee at the Police Station. He further added that (a) no police personnel assaulted Parth/Bharat Ojha and injury appearing in the photograph was injury suffered by Bharat Ojha at Azad Hind Dhaba 500 m. away from where the accused was arrested, (b) breath analyzer test was not conducted as machine was not functional, (c) Smt. Ritu Dhar, ACP never interviewed PSI Sahensa Hossain or examined him for preparing the report, (d) He denied to have slapped Parth Ojha.

8. As some adverse statements were made, against both the enquiring officer and the I.C., the Commission decided to seek clarification by examining Smt. Ritu Dhar, ACP the enquiring officer as well as Shri Somnath Banerjee, I.C., Bidhannagar (North) P.S. Smt. Ritu Dhar in her statement informed the Commission that Smt. Anuradha Mondal who was posted as ACP Zone-I, during the incident conducted an internal enquiry and submitted a report to Bidhannagar Police Commissionerate which she had obtained from the file. She asserted that both lady PSI Mouli Khamaru and PSI Kazi Sahensa Hossain were interviewed by her though she did not record their statement formally. She categorically stated that any statement to the contrary is untrue. She admitted that she did not check whether there was a Govt. of West Bengal notification

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extending Section 34 Police Act to Bidhannagar (North) P.S. She further stated that PSI Sahensa Hossain had admitted during his interview that he had slapped the accused person and his denial was factually incorrect. Report of Anuradha Mondal indicated that breath analyzer test was conducted on the accused person and it was less than 30 per cent. The slang deposed in the statement of lady PSI Mouli Khamaru before the Commission was not disclosed during examination by the enquiring officer, Smt. Ritu Dhar. Following sentences in the report of Ritu Dhar were recorded strictly on the basis of statement made by lady PSI Mouli Khamaru and PSI Sahensa Hossain :

“Then they stopped their vehicle PSI Mouli Khamaru, c/936 Kanai Das and C/1025 Pranab Mallick came down and asked them that why they were taking beer on the road. Then they threw the cans of beer and totally denied and started arguing with the police personnel.”

“Then PSI Mouli Khamaru hold the hand of one of them for taking him into the police vehicle but suddenly he pushed her.”

9. Shri Somnath Banerjee, I.C., Bidhannagar (North) P.S. was examined when he stated that he was not aware of any notification issued by Govt. of West Bengal regarding applicability of Section 34 Police Act in Bidhannagar (North) P.S. but traditionally this section was being applied on the basis of presumption. He further stated that police officers on special raid duty generally move in plain clothes and that breath analyzer test was being undertaken with

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the help of an instrument belonging to the traffic police. He added that lady PSI Mouli Khamaru informed him that Parth/Bharat Ojha had undergone breath analyzer test. He stated that during the occurrence on 12/4/17 he was not present in the Police Station and S.I. Saikat Banerjee was in-charge. He further added that none had informed him about the incident including pushing of LPSI Mouli Khamaru by the accused person. As such, no case was registered. The statement that no breath analyzer test of accused was conducted made by lady PSI Mouli Khamaru was factually incorrect. He further wanted time to study the papers relating to prosecution u/s 34 Police Act against Bharat/Parth Ojha. He also added that it was not possible on his part to say why no medical examination was conducted on Parth/Bharat Ojha. Subsequently, I.C., Bidhannagar (North) P.S. Somnath Banerjee submitted a report annexed with his statement dt.16/1/19 in which he stated that Parth/Bharat Ojha was convicted for pleading guilty for the offence and paid a fine of Rs.30/- in the Court of Ld. ACJM, Bidhannagar P.R. No.148/17 dt.12/4/17 u/s 34 Police Act sent to Ld. Court from the P.S. could not be traced in the Ld. Court. In another subsequent date I.C. Shri Somnath Banerjee of Bidhannagar (North) P.S. appeared before Commission on further consulting the G.D. and informed the Commission that on perusal of G.D. entry book he could not find any authorization for conducting of special raid by lady PSI Mouli Khamaru and PSI Sahensa Hossain. He also could not find any order of Commissioner of Police making these two probationers as 'effective.'

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10. From the above facts the Commission concluded that the two officers, lady PSI Mouli Khamaru and PSI Sahensa Hossain along with force unauthorisedly went out from Police Station without making any G.D. entries for special raid in plain clothes. They picked up a quarrel with Parth/Bharat Ojha and Bishal Sharma and during the scuffling Bharat Ojha was injured in the left eye. They were brought to the Police Station and prosecution submitted u/s 34 Police Act. This prosecution report which according to PRB should be forwarded by the O.C. of the Police Station was not done so and the probationary officer, Mouli Khamaru herself forwarded to the Court thereby violating *Police Regulation Rule 254 read with BP Form No.33 which should have been forwarded by O.C. to Ld. Court.* No medical examination was conducted, although, in the arrest cum inspection memo an injury on the left eye was recorded. No signature of any local witness was obtained in the arrest cum inspection memo and the signature of the accused was also not obtained on the ground that he refused to sign but the same fact was not recorded in the G.D. The officers lady PSI Mouli Khamaru and PSI Sahensa Hossain alleged of being physically assaulted by the accused persons during arrest and that the injury resulted in jostling. However, in the G.D. Entry there is no such record and that lady PSI Mouli Khamaru failed to start any specific case for assault and obstruction to performance of her duty against the accused persons which raises considerable doubt about her claim. Further, the lady PSI Mouli Khamaru and PSI Sahensa Hossain both admitted that they were not aware of any Govt.

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Notification regarding extension/applicability of Section 34 Police Act of 1861 in Bidhannagar (North) P.S. area which was corroborated by Shri Somnath Banerjee, I.C. of this Police Station. The fact that the accused person Parth/Bharat Ojha received injuries is borne out by the injury report submitted by him to the Commission. Also the entire story of the police regarding the incident becomes quite doubtful due to non-seizure of the motorcycle, a beer can, which was allegedly thrown by the accused on the road side. The Commission, therefore, came to conclusion that during the course of the arrest, force was used by lady PSI Mouli Khamaru and PSI Sahensa Hossain on Parth/Bharat Ojha resulting in injury to his face under the right eye. No medical examination was conducted immediately after the arrest as is mandatory under Section 54 Cr.p.c. *"when any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made."* Thereby these two arresting officers violated express provisions (Section 54) of Cr.P.C. as mandated by law. Also they applied Section 34 of Police Act of 1861 which was not in force in Bidhannagar (North) P.S. area due to lack of Govt. Notification thereby resorting to an illegal act.

11. In view of above the Commission makes following recommendations :

- (i) The Commission took a lenient view regarding the conduct of LPSI Mouli Khamaru and PSI Kazi Sahen Sha Hossen in the entire incident and assaulting

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Parth/Bharat Ojha and Bishal Sharma since these officers were probationers at the time. The Commission recommends that LPSI Mouli Khamaru and PSI Kazi Sahen Sha Hossen should be warned not to indulge in such indiscipline and illegal acts as police officer in future.


(ii) A compensation to the tune of Rs.30,000/- (Rupees thirty thousand) only be paid both to Parth/Bharat Ojha and Bishal Sharma for causing injury to Parth/Bharat Ojha and their illegal arrest.

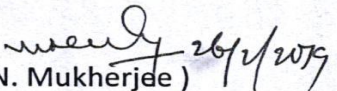
The Principal Secretary, W.B.H.R.C. is directed to send a copy of recommendations to the Chief Secretary, Govt. of West Bengal for appropriate action at his end and action taken report be sent by Government to the Commission within four months time.

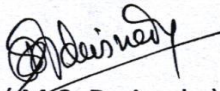
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Assistant Secretary
W.B. Human Rights Commission

Date : 26-02-2019


(Justice G.C. Gupta)
Chairperson


(N. Mukherjee)
Member


(M.S. Dwivedy)
Member

Encl : (i) Petition of Parth/Bharat Ojha.

(ii) Two inquiry report of Smt. Ritu Dhar, ACP Zone-I, Bidhannagar.

(iii) Statements of Smt. Ritu Dhar, ACP Zone -I, Shri Somnath Banerjee, I.C., Bidhannagar (North) P.S., LPSI Mauli Khamaru and PSI Kazi Sahen Sha Hossen.

Ld. Registrar, W.B.H.R.C. to upload the recommendation in Commission's website.