



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 1388/WBHRC/Gen/1048/17

Date: 18.12.18

Recommendation No 19,20,21 & 22/WBHRC/2018-19/1048/GEN/2017

From: Shri Laima Chozah IAS,
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 12.12.2018 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,

Secretary & CEO.

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.1048/WBHRC/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

A petition was received on 27/4/2017 from one Sourav Chakraborty resident of EP-101, 1 No. Pallishree Colony, Patipukur, Kolkata - 700048 by the Commission. The petitioner alleged that on 20/4/2017 around 9.30 P.M. he and some of his friends were sitting at 3rd Lake, Lake Town when some civic police entered into the area and ordered them to immediately vacate the place. As the petitioner took some time to comply with the orders he was scolded in a rough voice and slang language were hurled at him. Further, the civic police beat him up with lathis and took him into custody in a police jeep and brought to the Police Station. The petitioner alleged that he was in pain and was bleeding but in spite of that he was being abused and as he was unable to walk due to injuries the police men at the Thana mocked at him. He further alleged that no G.D. or FIR was recorded regarding his offence. He requested the Commission for an enquiry for assault on him by police personnel.

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Assistant Secretary
W.B. Human Rights Commission

2. After perusing the petition the Commission took cognizance and decided to call for a report from Commissioner of Police, Bidhannagar Police Commissionerate. The initial enquiry report was submitted by Shri Anindya Sundar Bhattacharji, ACP, Bidhannagar Zone-I and forwarded to the Commission by the Commissioner of Police, received on 18/9/2017. According to the enquiry report on the night of

20/4/17 Sourav Chakraborty son of Bipul Chakraborty of Pallyshree Colony, P.S. Lake Town was arrested during anti-crime patrol duty from Lake Town, Block-B Park, while he and others were allegedly found creating nuisance under influence of liquor. S.I. Golam Yeajdani along with officers and men of Lake Town P.S. arrested Sourav Chakraborty u/s 34 (V) 61 of Police Act of 1861 and brought them to the Police Station. The offence was bailable for which Sourav Chakraborty was granted bail from P.S. In this connection, NCR No.323 dt.20/4/2017 u/s 34(V) 61 of Police Act, 1861 was registered. The accused were produced before Ld. ACJM, Bidhannagar where he pleaded guilty and was convicted by Ld. Court by imposing fine of Rs.35/- which he has duly deposited in the Court.

3. This report was examined by the Commission and certain clarifications were sought from C.P., Bidhannagar regarding allegation that the petitioner was beaten up and had bleeding injuries as this point was not clarified in the ACP's report. Further, another clarification was sought whether any memo of arrest was issued and any medical examination carried out on the arrested Sourav Chakraborty. The Commissioner of Police, Bidhannagar submitted a further enquiry report to this effect conducted by Ms. Ritu Dhar, ACP, Bidhannagar Zone-I received by the Commission on 11/4/2018. According to the report of ACP, Bidhannagar Zone-I the statement of SI Golam Yeajdani was recorded and it could be learnt that the arresting S.I. issued memo of arrest to Sourav Chakraborty but he refused to sign the same after which he was taken to the Police Station on 20/4/2017 at 20.20 hrs. He was released on bail on the same day at 20.45 hrs. vide Lake Town P.S. G.D.E. No.1501 dt.20/4/2018. The arresting officer, S.I. Golam Yeajdani further told Ms. Dhar that due to shortage of time he did not make any arrangement for medical examination of the arrested accused, namely, Sourav Chakraborty.

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4. The matter was duly discussed in full Commission and it was decided to call S.I. Golam Yeajdani for recording his statement u/s 16 of the PHR Act.

5. S.I. Golam Yeajdani appeared before the Commission on 30/7/2018 and his statement was duly recorded. He stated before the Commission that on 20/4/2017 he was posted as a Sub Inspector at Lake Town P.S. and was on anti-crime patrol duty in the evening. On that day he arrested Sourav Chakraborty at about 18.20 p.m. from Lake Town Block B Park. About 6/7 persons were present in the park but they all fled away and only Sourav Chakraborty could be arrested. They were, according to him, creating disturbances under the influence of liquor. The S.I. stated that arrest memo was prepared at the spot but Sourav Chakraborty declined to sign the same; he (S.I) had not taken signature of any respectable persons of the locality on the arrest memo either. He also admitted that no medical examination was done due to shortage of time. As the matter was bailable he was taken to Police Station and released. He also admitted that three civic volunteers, namely, Sumit Das, Abhijit Bhattacharya, Akash Das as well as one junior Constable Somnath Satpati accompanied him during the anti-crime patrol duty. The arresting S.I. admitted that no medical test was conducted on Sourav Chakraborty regarding he being under influence of liquor and that the arrest was made u/s 34 Police Act of 1861. The S.I. informed that as per his knowledge Lake Town P.S. has been covered u/s 34 Police Act and that he would produce the Government Notification to this effect. He further stated that no seizure list was prepared regarding mobile phone or any personal property of the arrested person. He denied that Sourav Chakraborty was beaten up by the police personnel. He stated that within two weeks he would produce Govt. Notification regarding extension of Section 34 Police Act to Lake Town P.S. area. S.I. Golam Yeajdani again appeared before the Commission on 31/8/2018 and again his

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statement was recorded by the Commission. He informed that he did not have any notification extending Section 34 of Police Act to territorial jurisdiction of Lake Town Police Station.

6. The Commission examined the petition, two reports submitted by A.C.P after conducting the enquiry as well as statement of the arresting officer S.I. Golam Yeajdani recorded u/s 16 of the PHR Act. The Commission came to the conclusion that the petitioner, Sourav Chakraborty was arrested from Block B Park, Lake Town on 20/4/2017 around 20.20 hrs. No medical examination was conducted which is mandatory u/s 41 of the Cr.P.C. The arrest memo was defective in nature as no signature of independent witnesses or that of the arrested person was obtained. The arresting officer claimed to have informed the uncle of the arrested person but he has not recorded the name of the aforesaid person which makes his claim doubtful. No seizure list was made regarding personal property seized from the accused and no medical examination was conducted to prove the allegation that he was under influence of liquor/or was assaulted by police. Since there was no medical examination the Commission is inclined to believe that the petitioner was beaten up at the Police Station or during arrest for which he sustained injuries as per his claim. In the absence of medical examination, as mandated in the law, the allegation that the arrestee was under the influence of liquor is also not believable.

7. The Commission further examined provision of Section 34 Police Act of 1861 which gives power to police officers for punishment for certain offences on roads. This include slaughtering cattle, furious riding, cruelty to animals, obstructing passengers, exposing goods for sale, throwing dirt into street, being found drunk or riotous, indecent exposure of persons and neglect to protect dangerous place or structure. However, the Section further states that **"any person who, or any road**

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or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the State Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment with or without hard labour not exceeding eight-days, and it shall be lawful for any police officer to take into custody, without a warrant, any person who within his view commit any of such offences". As mentioned above, the State Government has to notify that section 34 of the Police Act has been extended to Lake Town P.S. area. Since the officer could not produce any such notification, the Commission can safely presume that Lake Town P.S. is not legally empowered to take action u/s 34 Police Act of 1861. Therefore, the Act of the S.I. Golam Yeajdani in arresting and prosecuting the petitioner, Sourav Chakraborty was not only bad in law but was also illegal. Therefore, the Commission holds the Sub Inspector responsible for committing an illegal act.

8. The Commission in the premises makes the following recommendations :-

i. The petitioner, Sourav Chakraborty be compensated by a sum or Rs.50,000/- (Rupees fifty thousand only) for his illegal arrest and detention.

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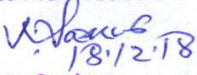
ii. It is further recommended that departmental proceedings be drawn up against S.I. Golam Yeajdani for not following the procedure of arrest as laid down in Cr.P.C. and also illegally arresting Sourav Chakraborty u/s 34 Police Act for which Lake Town P.S. is not covered by any Govt. Notification as required under the provisions of Section 34 Police Act of 1861.

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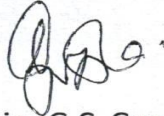
iii. The State Government is at liberty to take steps for recovery of the sum of Rs.50,000/- (Rupees fifty thousand only) from the said S.I. Golam Yeajdani in accordance with law.

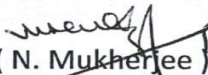
iv. The Commission further recommends that in order to avoid legal complications the government may consider issuing proper notification in respect of Thanas of West Bengal which it wants to cover u/s 34 of Police Act of 1861.

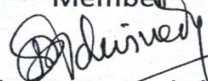
The Principal Secretary, W.B.H.R.C. is directed to send a copy of recommendations to the Chief Secretary, Govt. of West Bengal for appropriate action at his end and action taken report be sent by Government to the Commission within four months time.

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 18/12/18
 N. C. Sarkar
 Assistant Secretary
 W.B. Human Rights Commission

Dt : 12-12-2018


 (Justice G.C. Gupta)
 Chairperson


 (N. Mukherjee)
 Member


 (M.S. Dwivedy)
 Member

Encl : Copies of complaint and police report.

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