

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.306/25/3/2022

Present

1. Mr. Justice Jyotirmay Bhattacharya - Chairperson
2. Mrs. Justice Madhumati Mitra - Member
3. Mr. Naparajit Mukherjee - Member

A petition of Shri Shovan Bal was received on transfer from National Human Rights Commission u/s 13(6) PHR Act by the West Bengal Human Rights Commission on 08/8/2022. The Commission took due cognizance of the matter.

2. The petitioner alleged that he was travelling on a motorcycle bearing no.WB 48A 8826 on 4th July, 2022 towards Burdwan (being a resident of Kalikapur, Bolpur, Dist-Birbhum) when near Birhata More traffic signal he was intercepted by some civic volunteers who demanded papers of motorcycle from him. They also demanded money from him. During the course of conversation suddenly a civic volunteer assaulted him in front of CCTV camera and the incident occurred between 2.30 p.m. to 4.30 p.m. He also alleged that three male persons kicked him on his private parts. He requested the West Bengal Human Rights Commission for an enquiry into the matter.

3. A report was called from Supdt. of Police, Purba Bardhaman which was duly submitted to the Commission vide S.P., Purba

Bardhaman memo No.417/C dt.02/11/2022. The enquiry was conducted by Dy.S.P. (traffic), Purba Bardhaman, who after enquiring into the allegations stated that a naka checking was being organized at Birhata. More by traffic personnel of Birhata Sub-Traffic Guard. As per said enquiry report the petitioner was stopped at the naka checking point while he was travelling in his motorcycle bearing no.WB48A 8826 and was asked to produce documents relating to his vehicle. The petitioner failed to produce any valid documents and also failed to show his digi locker. The petitioner was informed that he would be prosecuted "on line" on which he started misbehaving with on duty traffic personnel and threatened that he would submit a petition against them. The on duty traffic personnel checked his documents on POS machine which were incorporated with BAHAN portal and found that all his documents updated, on which he was released without prosecution. In the report, the enquiring officer further mentioned that the petitioner was treated on 04/7/2022 at 16.30 hrs. (the incident occurred sometime between 14.30 hrs. to 16.30 hrs.) at Guskara Primary Health Centre around 16.30 hrs. by Medical Officer, Dr. Biswajit Kuiri. The enquiring officer observed that since the incident happened on 04/7/2022 between 14.30 hrs. and 16.30 hrs. at Birhata it was, perhaps, not possible for the petitioner to get him examined at 16.30 hrs. at Guskara Primary Health Centre which was 32 k.m. away from the place of incident. The enquiring officer concluded that the allegation of assault was "completely baseless". Further, in his report it was mentioned that ASI Kaushik Pal, lady Constable, Sima Khatun, Civic Volunteers, Debjit Saha, Bhaskart Dhara, Khandakar Safiq were performing duty at Birhata Sub Traffic Guard between 14.30 hrs. and 16.30 hrs. on 04/7/2022 as revealed from duty roster. He also enclosed copy of medical report of Guskara Primary Health Centre regarding the treatment and injury of the petitioner.

4. The West Bengal Human Rights Commission duly examined the report of Dy. S.P. (Traffic), Purba Bardhaman and decided to seek clarification on following points from Supdt. of Police, Purba Bardhaman – (a) a statement of Medical Officer of Guskara Primary Health Centre along with copy duly attested of the medical certificate, (b) a statement of the petitioner, (c) statements of ASI Kaushik Pal and all other team members duly signed and (d) G.D. entries regarding departure of the naka team and their return.

5. The Supdt. of Police, Purba Bardhaman duly forwarded all the relevant papers as asked for by the W.B.H.R.C. vide his memo no.490/C dt.21/12/2022 which were duly examined by the West Bengal Human Rights Commission. The injury report of complainant as prepared by Dr. Biswajit Kuiri, Medical Officer, Guskara Primary Health Centre mentioned about “tenderness and swelling present over testis. Tenderness present over Ant. angle of neck. In the injury report, the doctor recorded the statement of the complainant, Shri Sobhan Bal, son of Binoy Bal of Vill. Kalikapur, Bolpur, Dist-Birbhum as under *“physically assaulted by throttling of scrotum by group of person and throwing of leg and fist of hand as told by the patient”*. The injury report shows that the patient was examined on dt.04/7/2022 (date of incident) and the time mentioned therein is 4.30 p.m. However, the enquiring officer did not submit the statement of Dr. Biswajit Kuiri as asked for by the Commission. The statement of the petitioner, Shovan Bal was forwarded to W.B.H.R.C. by Supdt. of Police, Purba Bardhaman in which he reiterated whatever was stated earlier in his petition. In his statement dt. 19.12.2022 made before the DSP (Traffic) Purba Bardhaman he specifically stated that torture for demand of money continued from 2.30 p.m. to 3.30 p.m.

6. The statement of ASI (Armed Branch) 976 Kaushik Pal was recorded and in his statement he stated that on 04/7/2022 he along

with one lady Constable and three Civic Volunteers, was performing 'B' shift traffic duty at Birhata signal between 1400 hrs. to 2200 hrs. Approximately, between 14.30 hrs. and 15.30 hrs. one motorcycle bearing no. WB48A 8826 appeared at the check point when they asked for valid papers from the driver. The driver failed to produce any valid document or show the same on digi locker. The driver was warned that he would be fined online on which he became highly agitated and misbehaved with the police party. The ASI stated that the matter was checked up on POS machine on which it was found that the papers of the vehicle were in order. The driver was thus, allowed to go without imposing any fine. A lady Constable 3017SimaKhatoon more or less corroborated the statement of ASI, Kaushik Pal. CV 54 Bhaskar Dhara, CV 469 Debjit Saha and CV 161 Khandakar Safiq corroborated the statements as mentioned above. The copy of General Diary dt. 04/7/2022 of Birhata Traffic Guard between 0759 hrs. to 0801 hrs. of 05/7/2022 as forwarded by the Supdt. of Police, Purba Bardhaman was duly examined. In entry no. 46 of 1305 hrs. it is mentioned that all officers and forces and civic volunteers left for duty at BSTG for performing second shift traffic control duty. In entry no. 52 (22.15 hrs.) it is mentioned that " by this time officer, force and civic volunteer returned back at BSTG after performing second shift traffic control duty".

7. All the documents were duly examined by the Commission and it was decided to examine concerned officers u/s 16 of the PHR Act. The Officer-in-Charge of Guskara P.S. and ASI Kaushik Pal (who was physically present and performing duty at place of occurrence) were called by the Commission for examination on 02/3/2023. Lady S.I. Nitu Singha of Guskara Beat House stated to Commission that he had joined the Beat House on 19/7/2022 as O.C. but had no role to play with the incident of 04/7/2022 since Birhata Traffic Guard was not

under control of Guskara Beat House. Further, on the date of incident, she was not O.C. of Guskara Beat House but one S.I. Arun Kr. Som was the O.C., who has since been transferred.

8. In view of above the West Bengal Human Rights Commission decided to examine further ASI Kaushik Pal along with the O.C. of Birhata Traffic Guard. On 17/3/2022 the Commission examined ASI Kaushik Pal and his statement was duly recorded. He accepted that he was on duty on 04/7/2022 between 14.30 hrs. and 20.20 hrs. as directed by the Officer-in-Charge of the Traffic Guard and on the basis of Command Certificate (C.C.). He admitted to the incident by stating that he had demanded documents relating to registration of motorcycle which the motorcycle rider failed to show physically as well as in his digi locker. He stated that through POS machine documents were verified but added the driving license could not be verified through POS machine. The officer was shown Notification No.208-WT/3M-128/97 (Pt.iiiD) dt.24/1/2022 of Transport Department, Govt. of West Bengal in which it has been mentioned officers not below the rank of Sub Inspector or Sergeant are authorized to impose fine. He admitted that as Assistant Sub Inspector of Police he was not authorized to check documents or impose fine. He further stated that the allegation regarding demand of money was not true and that he had no enmity or prior acquaintance with the complainant. He stated that the complainant was released as he had raised hue and cry, without imposing any fine. He also admitted that in his statement the Dy.S.P. (Traffic) dt.19/12/2022 he did not mention that the complainant failed to produce Driving license. He denied assaulting complainant by two Civic Volunteers on his private parts but simultaneously stated "it is not true that the complainant was assaulted by the Civic Volunteer as per my instigation". He admitted that GDE No.42 and 54 as shown to him did not mention his name but name of one ASI Indrajit Hazra was

mentioned. He performed duty on the relevant date on the basis of one special C.C. No.295/22 dt.04/7/2022.

9. Statement of S.I. Chinmoy Bandopadhyay, O.C., Birhata STG was recorded by the Commission following his examination. He admitted that he is in charge of the Traffic Guard and allots duty to different A.S.I.s supervising the personnel. He admitted that officer not below the rank of S.I.s are authorized to impose fine for traffic violations but due to insufficient number of Sub Inspectors, Asst. Sub Inspectors are generally allotted such duties. He stated that he had no prior knowledge of the incident of 04/7/2022 at Birhata Traffic more and he came to know of the same from the letter of Dy. S.P. (Traffic), Purba Bardhaman dt.01/11/2022. He stated that it was fact that ASI Kaushik Pal was allowed to perform duty at Birhata signal point on 04/7/2022 between 1400 hrs. to 2200 hrs. He also admitted that none of the G.D. entries, as shown to him, had contained the name of ASI Kaushik Pal for performing duty at Birhata Traffic Guard. He further stated that Kaushik Pal never mentioned the incident of 04/7/2022 nor asked him to register FIR. None of the Lady Constable or Civic Volunteers reported the matter to him. He admitted that allowing police officers to leave office for duty from the traffic guard without entries in the G.D. was a mistake on his part.

10. The statement of the enquiring officer, Atanu Banerjee, Dy.S.P. (Traffic), Purba Bardhaman was recorded by the West Bengal Human Rights Commission. He stated that the complainant while recording his statement before the Dy.S.P stated that he had uploaded all documents regarding the motorcycle on 04/7/2022 but the Dy.S.P. did not enquire the time when the documents were uploaded on his mobile phone. He admitted that he did not record the statement of Medical Officer, Guskara P.H.C> who had treated the complainant on relevant date but

had collected the injury report from said PHC and submitted the same to the West Bengal Human Rights Commission.

Findings :

11. On perusal of the enquiry report submitted by Dy. S.P.(Traffic) Purba Bardhaman injury report of complainant, other documents, viz., copies G.D. Entries, statements of the complainant, police officers, namely, Shri Atanu Banerjee, Dy.S.P. (Traffic), S.I. Chinmoy Bandopadhyay, O.C. and ASI Kaushik Pal, the West Bengal Human Rights Commission concluded that it was fact that Shri Shovan Bal was travelling in his motorcycle bearing registration no. WB 48A 8826 on 04/7/2022 when he was intercepted by ASI Kaushik Pal and his team around 14.30 hrs. at Birhata Traffic Naka checking point. He was asked by them to produce documents relating to his motorcycle which he could not produce readily but the same was found to be in order through the POS machine available with police party at check point. The documents were duly verified but in the process there was an altercation between the petitioner and the police party.

In his complaint as well as in his statement made before the Dy. S.P. (traffic), the complainant has specifically stated that as demanded by the Traffic police personnel he showed all the papers to them on line, but they demanded money from him and he was stopped by them. The materials placed on record clearly indicate that the Traffic police who were on duty on the date of incident stopped the motor-cycle of the complainant. In their statements, the Police Personnel who were on duty on the relevant date and time released complainant without imposing fine as he had all relevant documents relating to his motor-cycle. Allegation of assault of the complainant was denied by the Police Personnel on duty while making their statements. The injury report of the complainant clearly showed that he was medically examined at

Guskara PHC and doctor found injuries on his person. The statement made by the complainant before the doctor had also mentioned the history of assault. In spite of specific direction of the West Bengal Human Rights Commission, the statement of doctor was not recorded, but in his statement the Dy. S.P.(Traffic) specifically replied that he collected the Injury report from Guskara P.H.C. There is no doubt regarding the genuineness and authenticity of the injury report. The doctor who examined the complainant described the injuries sustained by the complainant in Injury Report. Injury Report corroborated the allegation of assault of complainant. The police party allowed the petitioner to leave without submitting any prosecution or lodging complaint against him though they were claiming that the petitioner had misbehaved with the police party. The G.D. Entries did not mention names of police personnel detailed for traffic duty on 04/7/2022 from 14.30 hrs. to 22.30 hrs. Further, there was no entry about the alleged incident by ASI Kaushik Pal in charge of the naka checking police party. The Officer-in-Charge, Birhata Sub-Traffic Guard informed the West Bengal Human Rights Commission about his total ignorance of the incident for the next five months when he first came to know of the incident on 01/11/2022 from a letter of the Dy.S.P. This goes to show that the ASI had performed his duties in a very negligent and irresponsible manner and that there was an incident of assault on the petitioner during entire episode. Furthermore, the O.C. clearly admitted that detailing one ASI for traffic violation duty was against the law since Transport Department Notification has authorized only Sub Inspectors of Police for performing such duties.

12. In view of above the West Bengal Human Rights Commission makes following recommendations :

- (i) A sum of Rs.50,000/- (Rupees fifty thousand) only as compensation be awarded to Shri Sovhan Bal, son of Binoy Bal,

Kalikapur Bolpur, Dist-Birbhum for injury sustained and for causing harassment by the police officers for no fault of his own.

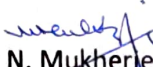
(ii) A departmental proceeding be initiated against ASI (AB) 976 Kaushik Pal for performing duty in a very negligent, lackadaisical manner and assaulting a motorcycle driver, Shri Sovhan Bal who was riding in his motorcycle bearing No.WB 48A 8826.

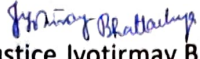
(iii) S.I. Chinmoy Bandyopadhyay, O.C. of Birhata Sub Traffic Guard be warned to perform his duties properly since it was seen that he made the G.D. entries in a very perfunctory manner without mentioning the names of the police party detailed for traffic checking duties on 04/7/2022 between 14.30 hrs. and 22.00 hrs. at Birhata Naka Checking point. Also knowingly he deputed an ASI for such traffic duties since officers not below the rank of Sub Inspector of Police were authorized to impose fine as per Transport Department notification. He should be duly cautioned on this issue.


(iv) Shri Atanu Banerjee, Dy. S.P. and the enquiring officer should also be warned to submit enquiry report properly to the Commission as he failed to record the statement of Medical Officer, Guskara P.H.C. who performed medical examination on the petitioner despite the directions of the Commission.

13. Special Secretary, W.B.H.R.C. is directed to send authenticated copy of the recommendations to the Chief Secretary, Govt. of West Bengal. Chief Secretary, Govt. of West Bengal should inform the Commission about the action taken or proposed to be taken on the recommendations within a period of 3 (three) months from the date of receipt of this communication.

Ld. Registrar, W.B.H.R.C is directed to upload the recommendations in the website


(N. Mukherjee)
Member
31/3/2023


(Justice Jyotirmay Bhattacharya)
Chairman
31.03.2023


(Justice Madhumati Mitra)
Member 31.03.2023

Encl : Copy of petition, Copies of G.D. Entries, injury report and statements of ASI Kaushik Pal, SI. Chinmoy Bandyopadhyay and Atanu Banerjee, Dy.S.P and copies of police inquiry reports. Copy of Transport Department Notification No.208-WT/3M-128/97(Pt.III)(D) dt.24/01/2022