

**GOVERNMENT OF WEST BENGAL
HOME DEPARTMENT
HUMAN RIGHTS BRANCH
WRITERS' BUILDINGS, KOLKATA**

From: Basudeb Banerjee
Additional Chief Secretary

To: The Secretary and CEO
West Bengal Human Rights Commission
Bhabani Bhawan, Alipore
Kolkata - 700 027

Subject: Recommendation No.46 and 47/2012-13/WBHRC/COM/34/
12-13.

Reference: WBHRC No.597/WBHRC/COM/34/12-13 dated 13/08/2012
and No.22/WBHRC/COM/34/12-13 dated 19/04/2013.

No.792-HS/HRC/Recom(WB)-23/12

Dated the 3rd May, 2013

Sir,

With reference to the above, I am directed to say that the matter has been carefully considered by the Government and it has been decided to bring it to the kind notice of the Commission that as per the prevalent practice, a person rescued from an agitated mob is brought to the police station for three purposes. First, it ensures his safety and security. Secondly, it gives the police sufficient time and opportunity to assess whether allowing him to return immediately to his place of work or residence, without making any suitable arrangements, would be detrimental to his safety and security. Finally, it provides the person an opportunity to regain a level of mental composure to enable him to lodge a complaint, if any, against the alleged perpetrators. As such, although there is no provision of any sort of 'protective custody' in the laws, the concept should not remain limited only to a minor or a lady who is trafficked or a person who is insane but should also extend to a person who is rescued from an agitated mob.

2. Under the above circumstances, the view of the State Government is that taking a rescued person to the Police Station at a point of time even when there was no FIR against him does not violate his human rights.

3. It may kindly be noted here that neither Prof. Ambikesh Mahapatra nor Shri Subrata Sengupta availed of the immediate opportunity which was available to them to lodge an FIR against any person or persons once they were

rescued by the police and taken to the Police Station. It may be further noteworthy that they were not put to any restraint at the Police Station. Resultantly, they could make telephone calls to their families and informed them that they were at the Police Station and would be returning home late.

4. It was during their presence in the police station that an FIR was lodged against them. A criminal case was therefore registered and both of them were eventually arrested. As such, a conclusion should not be construed that they were subjected to any illegality when they were taken to the Police Station and that they were arrested even before registering a criminal case.

5. The aforesaid criminal case was registered under section 500, 509, 114 IPC read with section 66A(b) of the Information Technology Act. Apart from section 509 IPC, section 66A(b) of the Information Technology Act is also a cognizable offence, as laid down under section 77B of the said Act. As such, arrest by the police in this case did not amount to violation of law. The question as to whether section 66A(b) of the Information Technology Act was or is applicable in the case is now under the realm of judicial scrutiny as a chargesheet has since been laid in the court of law.

6. The accused were legally entitled to be released on bail from the Police Station itself since the offences under which the aforesaid two persons were arrested are bailable in nature. In this connection, kind attention is drawn to the statement of Shri Subrata Sengupta made before the Additional Commissioner of Police, Kolkata wherein he admitted that the Addl. OC, Purba Jadavpur had offered him bail from the Police Station. But, as admitted by Shri Sengupta he did not avail the same in the late hours of the night for his own inconvenience.

7. Prof. Ambikesh Mahapatra on being asked by the Additional Commissioner of Police, Kolkata as to whether he had sought for bail from the Police Station, replied that he was not aware that bail could be sought from the Police Station. He further stated that he did not know any lawyer and so he did not contact a lawyer.

8. The above statement of Prof. Mahapatra appears to be at variance with the statement of his learned lawyer Shri Sanjib Ganguly. The latter stated

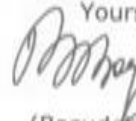
during the enquiry by the Additional Commissioner of Police that on 12/04/2012 at around on 23.30 hrs., he had sent his junior lawyer to the police station but he was asked to come later since no case had been recorded till then.

9. On an overall analysis, it appears improbable that when the bail was admittedly offered to one of the accused namely Shri Subrata Sengupta, it would not have been offered to the co-accused Prof. Ambikesh Mahapatra. Therefore, the conclusion drawn up by the Additional Commissioner of Police, Kolkata that the accused were indeed offered bail but they were reluctant to avail of the same appears to be credible and is accepted by the State Government.

10. After a careful consideration of the recommendations of the Commission as well as the facts on record, the Government is of the considered opinion that under the circumstances narrated above, there does not appear to be violation of human rights warranting payment of monetary compensation to the arrestees. Similarly, departmental action is also not warranted for any alleged police excess and highhandedness by the police officers concerned.

11. The above comments of the State Government may kindly be brought to the notice of the Commission.

Yours faithfully,



(Basudeb Banerjee)
Additional Chief Secretary