

VERDICTUM.IN

Court No. - 2

Case :- WRIT - C No. - 10623 of 2024

Petitioner :- Prabha Shankar Dwivedi And 3 Others

Respondent :- State Of U.P. Human Rights Commission Thru. Chairman Maanav Adhikar Bhawan Lko And 4 Others

Counsel for Petitioner :- Gaurav Mehrotra, Abhineet Jaiswal

Counsel for Respondent :- Shikhar Anand, C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Brij Raj Singh, J.

1. Heard Sri Gaurav Mehrotra, learned counsel for the petitioner, Sri Aproova Tiwari, learned counsel appearing for the opposite party no. 4, Sri Shikhar Anand, learned counsel for the respondent no. 1- Human Rights Commission and Sri Ratnesh Singh Tomar, learned Additional Chief Standing Counsel for the State. Sri Aproova Tiwari says that he will also file vakalatnama on behalf of the opposite party no. 5, who is wife of the opposite party no. 4.

2. The facts of the case in brief are that the daughter-in-law of the petitioner nos. 1 and 2, who was the daughter of opposite party nos. 4 and 5 died on 6.11.2024. As per the private opposite parties, she died in mysterious circumstances, which led to initiation of a criminal case against the son-in-law of the private opposite parties i.e. son of the petitioner no. 1, who is at present lodged in jail. A criminal case bearing no. 750 of 2024 under Sections 103 (1), 115 (2), 852 and 351 (2) BNS, 2023 was lodged by the opposite party no.4 at Police Station- P.G.I., District- Lucknow East (Commissionerate Lucknow) and is pending investigation.

3. The petitioner nos. 3 and 4 are the children born of the wedlock of the deceased- daughter/daughter-in-law of the private parties herein and the son/son-in-law, who has lodged the impugned F.I.R. An application was filed by the opposite party no.4 before the Director General of Police, U.P. dated 11.11.2024 referring to the aforesaid criminal case and the two

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minor children i.e. petitioner nos. 3 and 4 herein, who according to the opposite party no. 4 were important witnesses of the incident involving death of their mother. In the application, it was alleged that the whereabouts of the children was not known and that the applicants and his wife were the only persons, who care about their welfare and that the life of the children was in danger. A request was made for tracing out the children and handing them over to the opposite party no. 4 and his wife. A copy thereof was sent to the Chairman, Human Rights Commission. According to Sri Mehrotra there is no allegation of violation of any human right in this application yet, based on this copy received by the Human Rights Commission, Member of the Commission took cognizance of the matter and an order was passed requisitioning a report from the Investigating Officer regarding the aforesaid criminal case, who submitted a report inter-alia to the effect that the two minor children were in custody of Sri Sarju Prasad Dwevedi, Advocate-petitioner no. 2 and cousin- Sri Ashwani Kumar, Advocate. They were the brother/cousin of the petitioner no. 1. This report was considered on 14.11.2024 by the Commission and a detailed order was passed. In the said order, it is mentioned that the complainant i.e. opposite party no. 4, who in-fact had not submitted any independent complaint but had merely submitted an application to the D.G., U.P., Lucknow dated 11.11.2024 as already noticed hereinabove and this fact has not been denied as of now by the counsel for the private opposite parties, has sought custody of the children and, noticing this fact, a direction was issued to the Investigating Officer to produce the minor children on 19.11.2024 before the Commission as it was necessary to record their statements in connection with their custody with a further direction that custody of the children should be taken immediately by the

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Investigating Officer on that itself i.e. 14.11.2024 and they should be lodged in a Child Care Home and should be produced on 19.11.2024. Thereafter, certain other orders were passed, which are on record as annexures from page nos. 79 to 83 reiterating what had earlier been stated on 14.11.2024. The only difference in these orders was that instead of the earlier order for lodging them in Child Care Home, the petitioner nos. 1 and 2 were ordered to produce the children and probably they gave some undertaking in this context before the Commission, however, ultimately on 5.12.2024 another order was passed noticing the ill health of the petitioner no. 2 on account of which he could not appear before the Commission with the children and direction was issued to the I.O. to get this fact verified.

4. Now, this petition has been filed challenging the aforesaid orders dated 14.11.2024 and 5.12.2024 and also seeking a writ of prohibition directing the opposite party no. 1 not to proceed with case bearing no. Case No. 15867/24/48/2024. Subsequent to filing of this writ petition on 6.12.2024 when the factum of filing of this petition was brought to the notice of the Commission with a request not to proceed further another order dated 9.12.2024 was passed wherein the Commission as suggested by the learned counsel for the petitioner has tried to justify the earlier orders and has given an explanation as to why the same were passed.

5. The contention of Sri Gaurav Mehrota, learned counsel for the petitioner in nutshell is that the jurisdiction of the State Human Rights Commission is defined in the Protection of Human Rights Act, 1993 (hereinafter referred to as "the Act, 1993"). He invited out attention to the Section 2 (d) and Section 12 of the said Act, 1993 to submit that custody of the minor children is not an issue which can be gone into or

adjudicated by the Human Rights Commission as is evident from the recitals contained in the order dated 14.11.2024. He also invited our attention to the term 'complaint' defined in Regulation 2 (c) the National Human Rights Commission (Procedure) Regulations, 1994 (hereinafter referred to as " the Regulations, 1994). He placed reliance upon a decision of Hon'ble Supreme Court rendered in the case of ***N.C. Dhoundial Vs. Union of India and others; reported in (2004) 2 SCC 579.*** His contention was that issues pertaining to custody etc. are to be seen by the appropriate court/forum as prescribed in law such as the Guardians and Wards Act, 1890, the Commission for Protection of Children Rights Act, 2005, Juvenile Justice Act etc. The meaning of Human Rights as given in section 2 (d) and function as prescribed in Section 12 cannot be stretched to include issues pertaining to custody of minor children, as specific provisions are contained in this regard in various other statutes and special courts have jurisdiction in this regard, as it is not one of the functions to be performed by the State Human Rights Commission. Even consent cannot confer jurisdiction where the statutes does not confer it.

6. Per contra, Sri Aproov Tiwari, learned counsel appearing for the opposite party no. 4 submitted that it would be covered under Section 12 (a) and (j) of the Act, 1993 read with Section 2 (d). He also placed reliance upon a decision of Hon'ble the Supreme Court as rendered in the case of ***Ram Deo Chauhan @ Raj Nath Vs. Bani Kanta Das and other; reported in (2010) 14 SCC 209*** wherein it has been held that a restrictive meaning to the term " Human Rights" should not be given. He further submitted that the minor children are not being produced before the Investigating Officer for recording. Sri Aproov Tiwari, learned counsel appearing for the opposite party no. 4 further submitted that the children are not being produced before the

Investigating Officer for recording of their statements to which Sri Mehrotra submitted that the Investigating Officer is regularly visiting the petitioners and he is free to record the statement of the children whenever he wishes to do so. No hurdle would be created by the petitioners in this regard nor is it being created as of now. At this stage, Sri Mehrotra also submitted that the statement of children has already been recorded once, as is mentioned at Page no. 51 but, if a further recording of their statement is deemed necessary by the Investigating Officer then the petitioner nos. 1 and 2 have absolutely no objection in this regard.

7. Learned counsel for the Commission also sought to justify the impugned orders.

8. At this stage, Sri Tiwari submitted that the children, one of whom is 3 years old and another is 11 years old, were studying in Jaipuria School but now it appears from the address given in the writ petition that they have been taken to Hardoi, which is not in the interest of welfare of children to which Sri Mehrotra responded that the three year child does not go to School and as far as 11 years old minor i.e. petitioner no. 3 is concerned, he is still regularly going to attend classes at Jaipuria School and even today he has gone to school. Only for some period after the unfortunate incident involving the death of his mother, he could not go to school.

9. After hearing the parties and perusing the record, we find that important questions pertaining to jurisdiction of the State Human Rights Commission have been raised in this writ petition in the context of custody of the children etc. As far as the apprehension of the private opposite parties herein with regard to the children being witnesses, the Investigating Officer appears have already recorded their statements once, but, if, as

is stated by Sri Tiwari that the investigation has been transferred to the Crime Branch of District Police and Investigating Officer wants to record their statements further, it is always open for him to take a decision in the matter and the petitioners will not create any hindrance in this regard but so far as the question of custody is concerned, prima facie, at least, at this stage we find that State Human Rights Commission appears have exceeded its jurisdiction while making observations in the order dated 14.11.2024 and 5.12.2024 that the statement of the children was necessary to be recorded before the Commission for the purposes of custody and seeing their attendance for the said purpose. The Commission, prima facie, may not have jurisdiction so far as custody of children is concerned, as there are specific remedies prescribed in this regard in other statutes.

10. In view of the above, we stay the orders dated 14.11.2024 and 5.12.2024 in so far as the Commission proposes to proceed in the matter with regard to custody of petitioner nos. 3 and 4 and their production before it in this regard. We may also make it clear that it is open for the Investigating Officer to take all steps necessary to investigate the criminal case and the petitioner nos. 1 and 2 shall co-operate in the same. So far as the issue of custody is concerned, private opposite parties are at liberty to initiate such proceedings as they may be advised to do, as per law, as also for a fair investigation in the criminal case, if required.

11. Let pleadings be exchanged between the parties within eight weeks.

12. List thereafter.

[Brij Raj Singh, J.] [Rajan Roy, J.]

Order Date : - 16.12.2024

Anuj Singh