



WEST BENGAL HUMAN RIGHTS COMMISSION

PURTA BHAVAN (2ND FLOOR)
BLOCK-DF, SECTOR-I, SALT LAKE,
KOLKATA-700 091

PHONE: 2337-2655, FAX: 2337-9633

E-mail: wbhrc8@bsnl.in

Ref. No. 361/WBHRC/COM/12/15-16

Date: 5.11.15

Recommendations No. 12,13,14,15 & 16/15-16/WBHRC/COM/12/15-16

From: Shri Laima Chozah, IAS
Secretary & CEO

To: The Chief Secretary,
Government of West Bengal
NABANNYA
325 Sarat Chatterjee Street
Howrah, PIN- 711 102, West Bengal

Sir,

I am directed to enclose herewith an authenticated copy of the recommendations dated 03.11.2015 made by the West Bengal Human Rights Commission alongwith enclosures in connection with the news-items dated 23.04.2015 published in the **Sambad Pratidin & Times of India**. 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 three months from the date of communication.

Enclosure: As stated above.

Yours faithfully


Secretary & CEO

WEST BENGAL HUMAN RIGHTS COMMISSION
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 12/WBHRC/COM/2015-16

Present

- | | |
|-----------------------------|--------------------|
| 1. Shri Naparajit Mukherjee | Acting Chairperson |
| 2. Shri M. S. Dwivedy | Member |

A news item appeared in the Sambad Pratidin dated 23.04.2015 'অভিযোগ জানাতে এলে বেদম মার দুই ভাইকে' Similar news item appeared in the 'Times of India' dated 23.04.2015- Ekbalpore cops 'assault' brothers for misbehaving". The news item in Sambad Pratidin stated that on the forenoon of 'Tuesday' two persons went to Ekbalpore Police Station to lodge a complaint regarding theft of SIM card. Instead of recording the case, they were allegedly beaten up by the police of Ekbalpore Police Station, Adil Naser, a Law student of 3rd year, as a result of such assault was admitted to a Nursing Home in Ekbalpore area. Two cases have been registered in this connection in the local Police Station apart from theft of SIM card – quoting D.C. Port Division, Ekbalpore. The news item stated that the Sub Inspector concerned, Pijush Sarkar was 'Closed' and departmental proceedings commenced against him. On the basis of this news item as well as the report appearing in Times of India, the Commission took cognizance of the matter and called for a report within four weeks from the Deputy Commission of Police, Port Division, Kolkata Police.

Authenticated


Laima Chozah, I.A.S.
Secretary & C.E.O.
West Bengal Human Rights Commission

2 The Deputy Commissioner of Police, Port Division, Kolkata Police vide his Memo No. 790/PD dated 26.05.2015 forwarded the enquiry report conducted in this connection by the Assistant Commissioner of Police(IV)(Administration), Port Division, Kolkata Police which was received by the Commission on 27.05.2015. The Commission duly examined the report submitted by the Assistant Commissioner of Police and on 15.09.2015 the matter was discussed in full bench of the Commission. It appears that a Writ petition was filed in the Court of Hon'ble Justice I.P. Mukherjee of Calcutta High Court and certain orders were passed on the basis of which, Kolkata Police Authority transferred the concerned officers of Ekbalpore Police Station. Since the copy of the Order of the Hon'ble High Court was not submitted/enclosed in the report of the Deputy Commissioner of Police, Port Division, ADG, Investigating Wing of the Commission was requested to obtain the same which was duly done and placed before the Commission on 15.09.2015 itself. The Orders of the Hon'ble High Court was perused and the Commission decided to summon and examine Inspector Sri Siddhartha Dutta, the then O.C. of Ekbalpore Police Station. Probationer SI Pijush Sarkar, SI Swapan Kumar Saha, SI Sandip Kumar Paul and SI Joydeb Bairagi – all posted at Ekbalpore Police Station during the incident, under Section 16 of the Protection of Human Rights Act as their position was being prejudiced.

3. Inspector Sri Siddhartha Dutta, SI Sandip Kumar Paul, SI Joydeb Bairagi were examined on 09.10.2015 while Probationer SI Pijush Sarkar and SI Swapan Kumar Saha could not be examined as they did not appear before

Authenticated



Laima Chozah, I.A.S.
Secretary & C.E.O.,
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

the Commission on 09.10.2015. Further date was given and these two Officers were examined on 15.10.2015 and their statements were duly recorded.

4. The Assistant Commissioner of Police(IV)(Administration) in his report dated 26.05.2015 submitted through the Deputy Commissioner of Police, Port Division, Kolkata Police stated that Mr. Abu Naser, an Advocate by profession alleged that his son Adil Naser and his brother Aquib Naser came to Ekbalpore Police Station on 21.04.2015 to lodge a complaint to the effect that a mobile phone belonging to them was stolen and later recovered. They requested the police personnel of Ekbalpore Police Station to accept the complaint but the duty officer asked them to re-write the complaint by mentioning the fact of missing of SIM Card. At this point Adil Naser mentioned his father's name as Abu Naser, Advocate, the duty officer abused them in filthy language. Later, Pijush Sarkar, B.B. Das, Sandip Pal and 7-8 police personnel beat both of them with lathi, rod etc. The applicant went to the Police Station after being called by his son and under compulsion his son wrote an undertaking after which they were asked to leave the Police Station. Both of them received injuries but Adil Naser was admitted in Bellona Nursing Home on 22.04.2015 while his brother was given first aid and released. Abu Naser requested the police to take action against the defaulting Police Officers. During enquiry the Assistant Commissioner of Police apparently recorded the statements of police personnel and he stated in his report that Adil Naser along with his brother Aquib Naser came to Ekbalpore Police Station around 14:30 hrs., on 21.04.2015 and stated that a mobile phone belonging to them was stolen and later recovered. They

Authenticated


Leima Chozah, I.A.S.
 Secretary & C.E.O.,
 West Bengal Human Rights Commission
 &
 Principal Secretary to the Government of West Bengal


requested the police personnel of Ekbalpore Police Station to register a case and hand over a copy of FIR to them. Both were initially attended by Probationer SI Pijush Sarkar though few Police Officers were also present in the Police Station at that time. The Police Officer suggested them to lodge a detailed complaint regarding theft of mobile phone which was already recovered by them. At this, the complainant refused to do so and became agitated and started using derogatory language towards the police personnel alleging that they were ignorant of legal procedure. They also claimed that their father was an advocate and they knew the law. An altercation ensued between Adil Naser, Aquib Naser on one side and Probationer SI Pijush Sarkar on the other side and in the process Pijush Sarkar was punched by Adil Naser and Aquib Naser and they caught hold of his(Probationer SI's) uniform collar. According to the Assistant Commissioner of Police's report Pijush Sarklar, Probationer SI, tried his level best to resist but both of them were unstoppable. The other police personnel present at the spot intervened immediately and tried to resist them from causing further hurt to Pijush Sarkar. Finally, both the party could be restrained and considerable time was taken to calm them down and to normalize the situation. During the scuffle Pijush Sarkar, Adil Naser and his brother Aquib Naser received injuries and all of them were treated medically. Specific case was recorded on the basis of letter of complaint of Adil Naser regarding theft of mobile phone vide No. 140 dated 21.04.15 under Section 380 IPC. Another case was recorded on the basis of letter of complaint from Probationer SI Pijush Sarkar regarding assault on him by Adil Naser and Aquib

Authenticated


Laima Chozah, I.A.S.
Secretary & C.E.O.
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

Naser vide Case No. 141 dated 22.04.15 under Sections 353/506/114 IPC. Further, a case was recorded against police personnel of Ekbalpore Police Station on the complaint of Adil Naser for causing wrongful restrain and hurt to him and his brother vide No. 142 dated 23.04.15 under Sections 341/323/114 IPC. A departmental proceeding was also initiated against Probationer SI Pijush Sarkar on 23.04.15 on the same issue and he was transferred from Ekbalpore Police Station on 22.04.2015. Later, Inspector Siddhartha Dutta, O.C. Ekbalpore Police Station, SI Swapan Kumar Saha, SI Sandip Kumar Paul, SI Joydeb Bairagi all were transferred from Ekbalpore Police Station on 19.05.2015 in compliance with the Order passed by Hon'ble Justice I.P. Mukherjee of Calcutta High Court in connection with the Writ petition filed by Abu Naser over the aforesaid issue.

5. The Commission perused the Order passed by the Hon'ble Justice I.P. Mukherjee in connection with WP 9782(W) of 2015, Abu Naser Vs State of West Bengal & Ors. In the final order Hon'ble Justice observed that the photographs attached with the petition shows that one of the son of the Writ petitioner was mercilessly assaulted on the right lower back in the pelvis area and left lower back in the pelvis are. The other son was whipped with a belt on the back. The defence of the police is that one of the sons caught a police officer by collar. The Hon'ble Justice observed that if and when he did so, the police should have immediately arrested him without use of excessive force, on the charge of obstructing a police officer in the course of duty and for assaulting him. Counter assaulting the person amounted to a gross illegal act committed by the

Authenticated

Laima Chozah, I.A.S.
 Secretary & C.E.O.
 West Bengal Human Rights Commission
 &
 Principal Secretary to the Government of West Bengal

police officer or officers. The Counsel for the State submitted that the Officer-in-charge and most of the subordinate officers of the Police Station have been transferred and departmental proceedings have been started against the respondent No. 5(Pijush Sarkar). Finally, Hon'ble Judge gave direction to respondent Nos. 1, 2 and 3 to ensure that respondent Nos. 4 to 9 who were on duty on that time are transferred out of the Police Station as soon as possible i.e. by 31.05.2015. The investigation should be handled by the new set of officers to be in-charge of the Police Station. They should register an FIR, if not already registered and file a report under Section 173 Cr.P.C. before the appropriate Criminal Court.

6. Inspector Siddhartha Dutta, currently Inspector of Security Control Organization stated before the Commission (when summoned under Section 16 of Protection of Human Rights Act) on 09.10.2015 that on 21.04.2015 he was the O.C. of Ekbalpore Police Station and at the time of incident he was not present in the Police Station as he had gone to Bankshall Court as called by the Ld. Public Prosecutor. When he returned, the incident was over and neither Adil Naser nor Aquib Naser were present at the Police Station. They had already left the Police Station. He stated that he has been transferred as O.C. from the Enbalpore Police Station by the Police Administration.

7. SI Sandip Kumar Paul, currently posted at Nadial Police Station stated (on 09.10.2015) that on 21.04.2015 he was at Ekbalpore Police Station as SI. He was in the Police Station but did not see the occurrence or heard any

Authenticated


Laima Chozah, I.A.S.
Secretary & C.E.O.,
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

argument outside/inside the Police Station as he was in the rest room. He has since been transferred from Ekbalpore Police Station to Metiabruz Police Station.

8. SI Joydeb Bairagi stated (on 09.10.2015) that he is currently posted at Nadial Police Station. On 21.04.2015 he was in Ekbalpore Police Station. He was in the rest room of the Police Station and had not seen the occurrence. He heard some incident took place at the Serestha **“when he returned to the Officers room in the Police Station”**. He has since been transferred from Ekbalpore Police Station.

9. SI Swapan Kumar Saha, currently posted at Nadial Police Station was posted at Ekbalpore Police Station on 21.04.2015. He stated (on 15.10.2015) before the Commission that he was not present at the Police Station during the incident and he had gone to Bankshall Court to depose. He returned to the Police Station at around 03:30 P.M. and came to know the incident.

10. Probationer SI Pujush Sarkar of Taratala Police Station stated(15.10.2015) before the Commission that on 21.04.2015 he was posted at Ekbalpore Police Station and around 02:30 P.M. on the same day Adil Naser and Aquib Naser came to the Police Station. At that time he was on “practical duty”, assisting duty officer who had just left the Police Station. He requested Adil Naser to lodge a written complaint about the theft of mobile phone which they had subsequently recovered. Somehow they wrote a complaint reluctantly.

Authenticated


Leima Chozah, I.A.S.
 Secretary & C.E.O.
 West Bengal Human Rights Commission
 Principal Secretary to the Government of West Bengal

Probationer SI Pijush Sarkar pointed to the complainants that some important particulars about the mobile phone and other related matters to be incorporated in the complaint. At this, the complainant stated that the SI did not know anything about law and their father being an advocate they were well conversant about law. Since their father was an influential person they could harm his service career. An altercation ensued and Adil Naser caught hold of his uniform collar and started pulling and assaulted on his chest with blows of fist. Adil Naser kicked him from behind. Probationer SI became baffled with the situation and some persons who were at the Police Station rescued him. He could not remember the names of police officer who rescued him as he was very much perplexed. SI Swapan Kumar Saha , SI Joydeb Bairagi and others allowed Adil Naser and Aquib Naser to leave the Police Station. When they left the Police Station no case was recorded against them. A departmental proceeding has commenced against the Probationer SI Pijush Sarkar. SI Manik Banerjee was the duty officer at the initial stage of occurrence. He did not remember the name of the duty ASI.

11. FINDINGS OF THE COMMISSION

The Commission took cognizance of the news paper report, examined the report of the Assistant Commissioner of Police(IV) submitted through the Deputy Commissioner of Police, Port Division, Kolkata Police and perused the Order passed by the Hon'ble Justice I.P. Mukherjee in connection with the Writ petition 9782(W) of 2015 filed in the Hon'ble High Court of judicature at

Authenticated

Lajma Chozah, I.A.S.
 Secretary & C.E.O.,
 West Bengal Human Rights Commission
 Government of West Bengal

Calcutta and further scrutinized the statements of all police officers including Probationer SI Pijush Sarkar and came to the following conclusion:

It is a fact that Adil and Aquib Naser, whose father was an advocate had come to the Ekbalpore Police Station to lodge an FIR in connection with theft of mobile phone which they had subsequently recovered. At that point of time the duty officer was not in the chair and the Probationer SI Pijush Sarkar who was assisting the duty officer, was present. No cogent reason could be given by the Probationer SI Pijush Sarkar as to why duty ASI was not handling the Serestha in the absence of the duty officer who according to him had left for some urgent official work. Normally, the convention followed by Kolkata Police is that whenever duty officer goes to attend a situation, the duty ASI takes over his Serestha. It is not understood as to what prompted the thana administration to allow a greenhorn like Probationer SI to handle this important Serestha. Probationer SI suggested certain amendments to the complaint which the two complainants reluctantly agreed but in the process there has been some hot altercation between the two complainants Adil & Aquib Naser and the Probationer SI Pijush Sarkar. In the process they might have assaulted the Probationer SI as stated by him(Pijush Sarkar) in his statement. The officers present in the Police Station immediately intervened (as revealed in the report of the Assistant Commissioner of Police). In the process Adil and Aquib Naser were assaulted by the police officer as revealed from the Assistant Commissioner of Police's report though the Probationer SI Pijush Sarkar made a very constraint effort to refute the fact that he did not recollect

Authenticated


Laima Chozah, I.A.S.
Secretary & C.E.O.,
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

which of the Police Officer had intervened on his behalf. However, Probationer SI Pijush Sarkar stated that on the intervention of SI S.K. Saha, SI Joydeb Bairagi, who were both present at the Police Station Adil and Aquib Naser were allowed to leave without registering case or arresting them. Similar observation has been made by the Hon'ble Justice I.P. Mukherjee while passing the order on the Writ petition. Subsequently, police registered three cases – one relating to theft of mobile phone, another relating to assault on Pijush Sarkar, Probationer SI and the third assault on Adil and Aquib Naser.

12. CONCLUSION OF THE COMMISSION

The Commission is of the opinion that the duty officer Serestha is the nerve centre of the Police Station. Only experienced officers should handle such Serestha and it should not be left to the mercy of Probationer Sub Inspector. This shows total lack of management by the O.C. Sri Siddhartha Dutta. In the absence of the duty SI, the duty ASI, who being an experienced officer, should have handled the Serestha and the Probationer SI should have only assisted the main person. Unfortunately, this was not the case.

The Commission observes that there was an altercation between Probationer SI Pijush Sarkar and the complainants Adil & Aquib Naser over the issue already mentioned above. The complainants, during the course of altercation, might have assaulted the police officer on duty but it was the duty of the police to arrest them and register cases and take legal measures.

Authenticated


Lajima Chozah, I.A.S.
Secretary & C.E.O.
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

The Hon'ble Justice I.P. Mukherjee of Calcutta High Court in his orders have also observed the same and further stated that police should not have used excessive force or counter force against the assaulting persons inside the Police Station. The Commission fully concurs with this view and is of the opinion that the local police should have arrested the petitioners and started cases against them. It is very unfortunate that two senior Sub Inspectors namely, SI S.K. Saha and SI Joydeb Bairagi allowed the complainants Adil and Aquib Naser to leave the Police Station without registering any cases against them.

The Commission is of the view that the Inspector of Police Sri Siddhartha Dutta was quite negligent in performing of his duties and did not have proper control in management of the Thana administration. It is good that the senior officer and Administration of Kolkata Police immediately intervened, transferred the defaulting police officers including the O.C. and started departmental proceedings against the Probationer SI Pijush Sarkar.

13. The Commission makes the following recommendations :-

(a) In view of the assault on Adil Naser and Aquib Naser and the fact that Adil Naser was admitted in Bellona Nursing Home while his brother was discharged after first aid, the Commission recommends that a sum of Rs. 20,000/- (Rupees Twenty thousand) only be paid as compensation to Adil Naser who received greater amount of injuries (As also observed by the Hon'ble Justice I.P. Mukherjee in the Writ petition) and a sum of Rs. 10,000/- (Rupees Ten thousand) only to be paid to Aquib Naser.

Authenticated

Laima Chozah, I.A.S.
 Secretary & C.E.O.,
 West Bengal Human Rights Commission
 &
 Principal Secretary to the Government of West Bengal

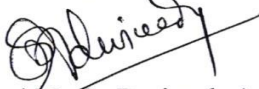
(b) The Commission further recommends that the Government has the liberty to recover this amount from the salary of Probationer SI Pijush Sarkar.


(c) The result of Departmental Proceedings against Probationer SI Pijush Sarkar may be communicated to this Commission in the next three months time.

(d) The Commission appreciates the action taken by the Commissioner of Police, Kolkata Police in transferring the defaulting police officers and ordering departmental proceedings against the Probationer SI Pijush Sarkar.

(e) The Commission is further constrained to observe that Kolkata Police Administration may consider in formalizing the role of Probationer SI while undergoing PS training and not get them involved in critical areas in order to avoid such situation in future.

13. The action taken report may kindly be communicated to the Commission in 3(Three) months time.


(M. S. Dwivedy)
Member


(Napanarajit Mukherjee)
Acting Chairperson

Dated: 3rd November, 2015

Encl: A) News item of Pratidin/Times of India.

B) Enquiry report submitted by the Deputy Commissioner of Police, Port Division, Kolkata Police.

Authenticated



Leima Chozah, I.A.S.
Secretary & C.E.O.,
West Bengal Human Rights Commission
&
Principal Secretary to the Government of West Bengal

SDB