



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 829/WBHR/COM/748/15-16

Date: 28.3.16

Recommendation No 38,39,40,41 & 42/15-16/WBHR/COM/748/15-16

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 16.03.2016 in connection with a complaint of Shri Utpal Roy, U.R, Automobiles, 228 A P C Roy Road, Pharia Pukur, Kolkata-700004 made by the West Bengal Human Rights Commission alongwith the copies of the report of the Commissioner of Excise, West Bengal and complaint 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 four months.

Yours faithfully,

Enclosures: As stated above.

Secretary & CEO.

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

File No. 748/WBHRC/COM/2014-15

Present

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

Brief Facts of the Case:

A complaint was received by the West Bengal Human Rights Commission on September 10, 2015 from Sri Utpal Roy, proprietor of U.R. Automobiles located at 228, A.P.C. Road, Phoria Pukur, Kolkata-700 004. The complainant alleged that one Sri Saikat Choudhury, Joint Commissioner of Excise, Barrackpur Division had given his private Maruti Gypsy bearing registration No. WB-02A-0431, for repairing and painting job on 18th May, 2015 to him. Accordingly, he carried out the repairing/maintenance job including painting work and completed the same on July 12, 2015 and delivered the same vehicle at the owner's residence at FD 412, Bidhannagar, Kolkata-700106. The petitioner claimed that the total bill amount was Rs. 53,800/- (Rupees Fifty three thousand eight hundred only) which was delivered along with the vehicle to its owner Sri Saikat Choudhury. The petitioner informed that he received Rs. 30,000/- out of Rs. 53,800/- raised as bill. Since July 12, 2015 he attempted to contact Sri Choudhury in various manner to obtain the balance payment of Rs. 23,800/- but latter refused and avoided him. On September 4, 2015 at about 4:00 to 4:30 p.m. a Bolero vehicle alongwith a lorry full of uniformed Excise and police personnel arrived at his garage, they stormed into his garage and exited all staff and vacated the garage and served him a 6 page letter from Saikat

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Choudhury on his letter head. The petitioner alleged that he was not allowed to read the contents of the letter but was forced to sign the copy of the same. He further alleged that they were armed and very aggressive and threatened to shut down his garage completely if the petitioner did not sign the copy immediately. As such, the petitioner signed the copy and received the letter without getting any opportunity for reading the same. The petitioner further alleged that he tried several times since July 13, 2015 to contact Sri Saikat Choudhury about the balance payment but Sri Choudhury refused to do the same. The petitioner claimed that the letter served on him have many allegations against him and the letter demands return of Rs. 30,000/- paid to him and an additional payment of Rs. 30,000/- as compensation within 7 days. Sri Utpal Roy, the petitioner requested for an appropriate action and also has given a copy of this letter to the Commissioner of Excise as well as the Commissioner of Police, Kolkata.

2. On receipt of this letter, the Commission took cognizance of the same on 21.09.2015 and directed the Commissioner of Excise as well as the D.C. North Division, Kolkata Police to submit a report separately.

3. **Report of the Commissioner of Excise:**

The Commissioner of Excise submitted his report to the Commission on 28th December, 2015. The Commissioner of Excise had formed an enquiry committee headed by Sri S.R. Saifi, Addl. Excise Commissioner, Sri Subrata Biswas, Addl. Excise Commissioner, Special Section and Sri Goutam Ghosh, Addl. Excise Commissioner, Distillery & Warehouse. In their report the enquiry committee examined Sri Utpal Roy, the complainant and one Sri Ranjan Auddy who claimed to be a witness to the visit of such Excise officials on September 4, 2015 to the garage of Sri Utpal Roy. They also examined Sri Saikat Choudhury, Joint Commissioner of Excise, Barrackpore Division and also examined various documents relating to the movement of the

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raiding team on that particular date. There is a mention that they examined the three Officers i.e. Sri A.K. Karfa, Dy. Excise Collector of Barrackpore Excise Division, Sri Basudev Sarkar, Addl. Superintendent of Excise, Barrackpore Division and Sri Kazi Jiaul Hassan, Dy. Excise Collector of Barrackpore Division, currently posted at Herald Printing & Packaging Pvt. Ltd., but their names have not been written in the report. The report further stated that Sri Saikat Choudhury had indeed repaired his personal vehicle WB02A-0431 at U.R. Automobiles and also admitted that he had asked the same garage for additional repairs to be done. Sri Choudhury also admitted to a dispute regarding payment of the bill, but in absence of supporting documents from Sri Utpal Roy, the exact nature of monetary claims and dispute could not be ascertained. Therefore, the enquiry team restricted itself regarding misuse of official machinery by Sri Choudhury for personal purpose. The Enquiry report stated that Sri Choudhury had requested Sri A.K. Karfa, Dy. Excise Collector of Barrackpore Division to deliver the letter to Sri Utpal Roy as he had earlier made attempts to do the same but had failed. On September 4, 2015, Sri A.K. Karfa carried the letter when he was a part of raiding team and delivered the same to Sri Utpal Roy. The fact of the raid was verified by way of movement register of Excise officials. It was confirmed that the Barrackpore Excise Division conducted raid on September 4, 2015 in the afternoon in the vicinity of North Kolkata consisted of a team of 8-9 persons led by the Addl. Superintendent of Excise in which two other DEC's including Sri A.K. Karfa, DEC were present. Following this, the enquiry committee spoke to all the three gazetted officers and found that two officers were not in uniform while the rest were in uniform. It was ascertained that Sri Karfa had visited the garage and handed over the letter to Sri Utpal Roy and that Sri Karfa interacted with Sri Utpal Roy. The enquiry committee observed that it could not be ascertained whether there was any aggressive behavior on the part of the Excise Official at the juncture. The enquiry report

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also observed that every member of the team got down from the vehicle and visited the garage while Sri Karfa had got down from the vehicle to hand over the documents to Sri Utpal Roy.

4. Further, the enquiry committee observed that there was no design on the part of Sri Choudhury to threaten Sri Roy or humiliate him by his subordinate officials. He wanted to deliver the letter to Sri Utpal Roy through one of his officials who was moving in the area. The enquiry committee confirmed that the officials under control of Sri Choudhury did visit the garage of Sri Utpal Roy under certain circumstances which apparently could have been avoided. The Excise Commissioner in her official report observed that there was no design on the part of Sri Choudhury to threaten or humiliate, Sri Utpal Roy. However, Sri Choudhury was cautioned not to use any official machinery in personal work in future. On receipt of the enquiry report of the Excise Commissioner, the Commission tried to clarify certain facts whether the vehicle No. WB-02A-0431 was a privately owned and the balance amount of Rs. 30,000/- has been received by the complainant. Subsequently, the Commission discussed the matter on 15.02.2016 and sought a clarification from the S.P., Investigating Wing of the Commission to ascertain result of the raid, names of the officers of the raiding party and whether Phoria Pukur where the garage of U.R. Automobiles located falls under the jurisdiction of Barrackpore Excise Division. On getting the necessary replies i.e. U.R. Automobiles located at Phoria Pukur falls under Barrackpore Excise Division and raiding party consisted of Sri Basudeb Sarkar, Addl. Superintendent of Excise and Supervising Officer of the raid, Sri Amiya Kumar Karfa, Dy. Excise Collector, Kazi Jiaul Hassan, Dy. Excise Collector, Sri Hara Prasad Bhattacharyya, S.I. of Excise, Sri Arun Sil, A.SI of Excise, Sri Sambhu Karmakar, ASI of Excise, Sri Rathindra Nath Sarkar, Sri Ajit Mondal, Sri Suraj Chandra Nag – all Excise Constable and five police personnel assisted the

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assisted the raid. Two vehicles bearing registration No. WB-19B-8720 and WB-31-6415 were used in the raid.

5. **Action Taken by the Commission:**

The Commission decided to issue notice for hearing under Section 16 of the Protection of Human Rights Act to (1) Sri Saikat Choudhury, Joint Commissioner of Excise, Barrackpore Division, (2) Sri Amiya Kuamr Karfa, Dy. Excise Collector, Barrackpore Division and (3) Sri Basudeb Sarkar, Addl. Superintendent of Excise, (4) Kazi Jiaul; Hassan, Dy. Excise Collector, (5) Sri Hara Prasad Bhattacharyya, SI of Excise, (6) Sri Arun Sil, ASI of Excise, (7) Sri Sambhu Karmakar, ASI of Excise, (8) Sri Ajit Mondal, Excise Constable and (9) Sri Suraj Chandra Nag, Excise Constable.

The Commission also issued notice to Sri Utpal Roy, the petitioner to attend hearing on 08.03.2016.

6. Sri Utpal Roy, owner of U.R. Automobiles in his statement before the Commission stated that he was the owner and proprietor of M/s. U.R. Automobiles located at Phoriapukur More, Shyambazar and had undertaken repairing job of Maruti Gypsy bearing registration No. WB-02A-0431 of Sri Saikat Choudhury and had delivered the same at his residence following completion of the job. When he telephoned Sri Choudhury in the last week of August, 2015 regarding payment, Sri Choudhury conveyed that he was sick and would come and talk to Sri Roy later. On September 4, 2015 between 9-9:30 a.m. he again telephoned Sri Saikat Choudhury for balance payment but he did not receive his call. An Excise team on the same day come to the shop of U.R. Automobiles and stayed there for about 10 minutes. The Excise personnel got down from a Tata 407 vehicle & were armed. Two officers were in plain cloth and one in uniform. A letter was delivered by one officer in plain cloth whose name he did not know. This man

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threatened Sri Utpal Roy to return Rs. 60,000/- within 7 days or face the consequences. Sri Utpal Roy submitted a letter of complaint to the O.C. Ultadanga P.S. over this incident where he narrated the incident and requested the O.C. Ultadanga P.S. to start an FIR over this incident as mentioned. Sri Roy also stated that on March 7, 2016 one Ganguly Babu from Ultadanga P.S. came to the establishment to enquire into the matter. Earlier, one Sri S.S. Ghosh, an officer of Ultadanga PS had come to enquire the matter on October 25, 2015.

7. Sri Saikat Choudhury, Joint Commissioner of Excise in his statement informed that he had sent his vehicle bearing registration No. WB-02A-0431 to U.R. Automobiles for repairing but had not received any written estimate for such repairs. Verbally he was told by the owner that a total expenditure would be between Rs. 20,000 to 25,000/- Sri Choudhury gave the vehicle for repairs on May 18, 2015 and got it back on July 12, 2015 and he had paid the amount of Rs. 30,000/- whereas U.R. Automobiles raised the bill of Rs. 53,800/- and the balance amount of Rs. 23,800/- was pending on the side of Sri Saikat Choudhury. Sri Choudhury admitted that he had drafted a 6 page letter on his official pad addressed to Utpal Babu of U.R. Automobiles and got it delivered by one of his officers Amiya Kumar Karfa which was duly received by Sri Utpal Roy on 04.09.2015. He had requested the three officers, namely Sri Basudev Sarkar, Sri Amiya Kumar Karfa and Kazi Jiul Hassan to deliver the letter to Sri Utpal Roy who were going for raid in the area but had not requested these officers to do anything else. He also directed U.R. Automobiles to hand over two Fog Lights to the bearer of this letter. In the raiding team there were nine persons from Excise Department including Officers and Constables and five from State Armed Police. They were moving in one Bolero and one Tata 407 vehicle both belonging to Excise Department.

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8. Sri Basudev Sarkar, Addl. Superintendent of Excise was examined on 03.03.2016 when he stated that on 04.09.15 the team conducted the last raid at Dakshineswar Railway Station and were returning to Barrack at Kankurgachi. On the way Sri A.K. Karfa, Dy. Collector of Excise handed over a letter of Sri Saikat Choudhury to Sri Utpal Roy in his presence on 04.09.2015. The letter was duly received by Sri Utpal Roy.

9. Sri Amiya Kumar Karfa, Dy. Excise Collector of Excise was examined who stated that on 04.09.2015 one 6 page letter of Sri Saikat Choudhury was handed over to Sri Utpal Roy by Sri Basudev Sarkar, Addl. Superintendent of Excise in his presence while the team was returning after conducting the raid. He thereby denied the fact that he had delivered the letter. There were 14 personnel including Excise Officers, Constables and Police personnel. He also claimed that Sri Saikat Choudhury had handed over the letter to Sri Basudev Sarkar to deliver it in his presence and that of Kazi Jiaul Hassan.

10. Kazi Jiaul Hassan, Dy. Excise Collector who is posted in Barrackpore Division was examined on 10.03.2016 by the Commission who stated that he participated in the raid which was conducted at different places ending at Dakshineswar. Thereafter, the team went to U R Automobiles, Phoriapukur, Shyambazar. The three officers namely, Sri Basudev Sarkar, Addl. Superintendent of Excise, Sri A.K. Karfa, Dy. Excise Collector and himself were travelling in a Bolero vehicle while a Tata 407 were carrying the other Excise staff and police personnel. Five police personnel participating in the raid were carrying arms. Sri Amiya Kumar Karfa, Dy. Excise Collector, handed over the letter to Sri Utpal Roy. Sri Basudev Sarkar, Addl. Superintendent of Excise was in uniform but Sri Amiya Kumar Karfa and Kazi Jiaul Hassan, Dy. Excise Collector were in plain clothes during the entire processes.

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11. Sri Hara Prosad Bhattacharyya, S.I. of Excise was examined on 10.03.2016 where he admitted that he participated in the raid on September 4, 2015 which ended at Dakshineswar Railway Station from which they went to Shyambazar U.R. Automobiles. They were travelling in a big vehicle, blue in colour which was following the Bolero vehicle in which Excise officers and staff were travelling. Sri Basudev Sarkar, Sri Amiya Kumar Karfa and Kazi Jiaul Hassan who were travelling in Bolero vehicle got down and walked towards the garage. The Excise staff and police personnel who were travelling in a blue colour vehicle sat inside the vehicle. He admitted that one or two persons from this team might have got down from the vehicle.

12. Sri Arun Sil, ASI of Excise was examined on 10.03.2016 who admitted to participating in the raid which ended at Dakshineswar Railway Station. He admitted that three officers were travelling in a Bolero car and they were following that vehicle and they did not get down from the car at Shyambazar/Phoria Pukur.

13. Sri Sambhu Karmakar, ASI of Excise, Barrackpore Division was examined on 11.03.2016 who informed that on September 4, 2015 he was posted as ASI and on the date he participated in the Excise raid which ended at Dakshineswar Railway Station. Thereafter, they went to one U.R. Automobiles garage at Phoria Pukur, near Shyambazar along with Bolero vehicle in which officers were travelling and they (Officers) got down. He, however, stated that he did not get down from the Tata 407 vehicle.

14. Sri Ajit Mondal, Excise Constable of Excise, Barrackpore Division was examined on 11.03.2016 where he admitted to participating in the raid which ended at the vicinity at Dakshineswar Railway Station following which they came to Shyambazar in a vehicle which was trailing the vehicle carrying Excise officers. Three officers got down from the vehicle but they directed them to remain their vehicle.

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15. Sri Suraj Chandra Nag, Excise Constable, Barrackpore Division was examined where he admitted to participating in the raid on September 4, 2015 which ended at Dakshineswar Railway Station. They were in a vehicle which was following a Bolero vehicle which was carrying Excise officers and they stopped at Shyambazar. He claimed that the Excise personnel did not get down from the vehicle and they stayed there for 5/6 minutes.

16. Sri Rathindra Kumar Sarkar, Excise Constable, Barrackpore Division was also examined on 11.03.2016 who more or less corroborated the statement of Sri Suraj Chandra Nag.

17. **Findings of the Commission:**

Considering the petition of complainant regarding allegation against Sri Saikat Choudhury, Joint Commissioner of Excise, three members enquiry report submitted to the Commission by the Commissioner of Excise, statement of Sri Utpal Roy, the petitioner, Sri Saikat Choudhury, Joint Commissioner of Excise, Sri Amiya Kumar Karfa, Dy. Excise Collector, Sri Basudeb Sarkar, Addl. Superintendent of Excise, Kazi Jiaul Hassan, Dy. Excise Collector and the Sis/ASIs and all the Excise Constables, the Commission concluded that it is a fact that Sri Saikat Choudhury, Joint Commissioner of Excise gave his private vehicle Maruti Gypsy WB-02A-0431 for repairs to U.R. Automobiles owned by Sri Utpal Roy on May 8, 2015 but did not take any written estimate from him. This Maruti Gypsy was owned privately by Sri Choudhury and gave it for repairs in a private garage. Subsequently, following repairs, Sri Utpal Roy delivered the vehicle at his residence at FD Block, 412, Bidhannagar, Kolkata-700106 on July 12, 2015 with a Bill to the amount of Rs. 53,800/-. In the meantime, Sri Choudhury made a payment of Rs. 30,000/- but the owner of U.R. Automobiles demanded Rs. 53,800/- and the balance amount being disputed by Sri Choudhury was not paid. Sri Roy made several efforts to contact Sri Choudhury for the balance payment but latter avoided. Later, on the date i.e.

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September 4, 2015 morning (9-9:30 a.m.) Sri Roy tried to contact Sri Choudhury over his mobile but latter did not respond. Later, on the same date an Excise team consisting of the three officers, namely, Sri Basudeb Sarkar, Addl. Superintendent of Excise, Sri Amiya Kumar Karfa, Dy. Excise Collector, Kazi Jiaul Hassan, Dy. Excise Collector along with five State Armed Police personnel, one SI and two ASIs and five Constables came to the garage of Utpal Roy in two vehicles – one Bolero and one Tata 407 both owned by Excise Department. Tata 407 was painted in Blue colour which is standard official colour of Excise Department. Sri Saikat Choudhury had earlier handed over 6 page letter admittedly written on official pad to Sri A.K. Karfa with the request to give it to Sri Utpal Roy, get it receipted by him with his stamp and also collect two fog lights from the garage. Apparently, the team went out to conduct raids which ended at Dakshineswar Railway Station. Thereafter they were supposed to go to their Barrack at Kankurgachi. Instead of going to Kankurgachi the entire team came to Phoriapukur in Shyambazar in front of U.R. Automobiles. Out of the three officers two were in plain clothes and one in uniform and they all got-down, went into the garage and directed the owner, Utpal Roy to receive the letter and sign it without going through the contents. This task of physically handing over the letter was done by Sri A.K. Karfa. Sri Utpal Roy seeing the presence of armed police and Excise staff was overwhelmed psychologically, felt threatened and immediately signed the letter of Sri Saikat Choudhury which was written in his official letter head, disputing the claims of Sri Utpal Roy. Therefore, the Commission found that there was truth in the allegation of the petitioner Sri Utpal Roy that a team of officers of Excise Department did come to his garage to hand over a personal letter of Sri Saikat Choudhury written in his official letter head to the owner of a private garage relating to a matter which was totally private in nature.

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18. **Conclusion of the Commission:**

The Commission after examining all the facts laid before it found that there was gross misuse of official machinery by Sri Saikat Choudhury. He took the assistance of three very senior officers in the rank of Addl. Superintendent and also the Supervising Officer, Deputy Collectors to hand over his personal letter which was typed in his official letter head. The matter related to a dispute arising out of payment regarding repairs of his private vehicle by a privately owned garage. These tantamounted to a total misuse of official machinery, specially, when the raiding party consisted of armed personnel, which was directed to go to a private garage where there was no information about any Excise violation. This act of a very senior Excise officer using his subordinates to deliver a letter to a private garage owner caused considerable consternation in the mind of garage owner as well as caused public humiliation in the local area which led to his complaints to various authorities starting from the Chairman, West Bengal Human Rights Commission, Commissioner of Excise, Commissioner of Police and to the O.C. Ultadanga Police Station. The Commission also noted with concern that Excise Department, being a uniform department, officials were not putting on uniform during raids and Court appearances which is serious lapse and that the Excise Commissioner should take due note of it and also take appropriate corrective steps.

19. **Recommendations of the Commission:-**

In view of the fact findings done by the Commission, following recommendations are made to the Government of West Bengal:

- 1) Departmental proceedings be drawn up against Sri Saikat Choudhury, Joint Commissioner of Excise, Barrackpore Division for grossly misusing official machinery for his totally private and personal work and for causing threats and

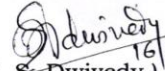
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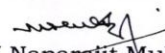

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consternation in the mind of an innocent private garage owner and humiliating him in public.

- II) A compensation of Rs. 20,000/- (Rupees Twenty thousand) only be paid to Sri Utpal Roy, owner and proprietor of M/s. U.R. Automobiles from the salary of Sri Saikat Choudhury, Joint Commissioner of Excise, Barrackpore Division for causing public humiliation and misusing official machinery for personal work.
- III) The Excise Commissioner may be directed to issue strict orders to all its units not to misuse official machinery for private work and also not to use official letter head for private work.
- IV) The Excise Commissioner may also be directed to instruct all its units to wear uniform while appearing for deposition in the Courts and Human Rights Commission as it was observed that when the Human Rights Commission called the Officers of Excise for their deposition they were not appearing in the uniform.
- V) The Excise Commissioner be further instructed to issue directives to all its units to wear uniform while conducting raids and appearing for deposition in the Courts.

20. The Chief Secretary Govt. of West Bengal is requested to communicate an action taken report on the above recommendations to this Commission within 4(Four) months time.


(M. S. Dwivedy)
Member


(Naparajit Mukherjee)
Acting Chairperson

Dated, March, 2016

Encl: A) Report of the Excise Commissioner, West Bengal.

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