

MINUTES OF THE MEETING OF THE NHRC WITH THE CHIEF SECRETARIES, DGPs, DM AND SPs OF SOUTHERN STATES (KARNATAKA, KERALA, TAMIL NADU AND ANDHRA PRADESH) ON PENDING ISSUES

15-16 SEPTEMBER, 2010 – VIDHANA SOUDHA, BANGALURU

A Camp Commission Sitting of the National Human Rights Commission to discuss the pending issues and other human rights issues with the Chief Secretaries, DGPs, District Magistrates, SPs and other State officers of Southern States (Andhra Pradesh, Tamil Nadu, Karnataka and Kerala) was held at Bangaluru from 15-16 September, 2010. The Camp Commission Sitting was attended by Justice B.C. Patel, Member, Shri Satyabrata Pal, Member, Shri P.C.Sharma, Member, Secretary General, Director General, Registrar (Law), Joint Secretary and official of the NHRC and the Chief Secretary and DGP, Andhra Pradesh; the Addl. Chief Secretary and DG & IGP, Karnataka, the Addl. DGP and Secretary (Public) Tamil Nadu and the DGP and Addl. Chief Secretary, Kerala as well as DMs and SSPs of the concerned districts of the States.

The proceedings started with the Full Commission meeting, presided over by Member Justice Shri B.C. Patel. Shri Satyabrata Pal and Shri P.C. Sharma were other members, constituting the Bench. Thereafter, the cases were taken up by two Division Benches and three Single Member Benches.

During the day-long sitting of the Commission, a total of 92 cases from four states were taken up. The Commission

recommended monetary relief to the tune of Rupees Nineteen lakhs Eighty Thousand (19,80,000) in nine cases from the four states and disposed off 22 cases.

The Full Commission Bench considered six cases – Andhra Pradesh (3), Karnataka (2) and Tamil Nadu (1).

In a case of death in police custody in Karnataka, the Commission, on consideration of the reports received from the authorities and hearing the Officers representing the State, held that the death occurred due to negligence of the police. The Commission awarded an interim relief of Rs.3,00,000/- to the next of kin of the deceased, Srinivas of Kolar.

In another case of child labour in Bellary mines, based upon the reports of its Investigation Division, the Commission rejected the claim of the State that there was no child labour involved. The Commission drew the attention of the State authorities to their own earlier reports and directed the Addl. Chief Secretary to re-examine the whole issue and ensure that benefits under the Child Labour laws are made available to the victim children. The Commission also took strong exception to the faulty investigation that lead to large-scale acquittals.

From Andhra Pradesh, the case of bonded labour in stone quarries came up for consideration. The Commission underlined the need for appointment of more prosecutors and special courts, and the

Chief Secretary of the State assured the Commission that the matter would be pursued.

The Commission also closed two cases, one each from Andhra Pradesh and Tamil Nadu, on receipt of compliance reports from the State authorities, providing proof of payment as per recommendations of the Commission.

I) DISCUSSION WITH THE CHIEF SECRETARIES, DGPs, DM, SPs AND OTHER CONCERNED OFFICERS ON HUMAN RIGHTS ISSUES.

The Secretary General welcomed the participants from the State Governments and drew the attention of the States to the cases pending in the Commission from the different States for want of reports. The SG called upon the States Authorities to adhere to all the guidelines issued by the Commission on issues of human rights.

The Commission discussed the issues regarding police action/inaction, non-forwarding of the reports, custodial and encounter death cases, compliance cases, bonded labour cases, and child labour cases during the interaction with the Chief Secretaries, DGPs, DMs, SSPs and other senior officers of the four states.

The Commission directed the State authorities to send timely reports to enable the Commission to dispose off the matters quickly.

- The State authorities were asked to adhere to the guidelines issued by the Commission from time to time on encounter and custodial deaths and other issues.
- The State authorities were requested to focus on the prevention of death in police custody and conduct compulsory medical check-up of all inmates at the time of their entry into the jail.
- The Commission emphasized immediate departmental action against the concerned officers responsible for human rights violations.
- For quick disposal of the cases, it has been proposed to hold video conferencing between the NHRC and State Governments on a quarterly basis.
- In future, a copy of the directions of the Commission will also be sent to the Nodal Officer for better coordination.

Participants were informed that in the cases relating to custodial and encounter deaths, the Commission was not receiving intimation about these incidents within 24 hours as directed by the Commission vide its letter dated 14 December, 1993. Therefore, the representatives were advised to send the intimation within the time prescribed by the Commission.

Justice B. C. Patel said that incomplete reports were resulting in a delay in the disposal of cases in the Commission, and thus, requested the State authorities to forward the reports to the Commission in time to ensure a quick disposal of cases.

The representatives of the government of the four States were informed that in many cases the Commission was not receiving legible copies of the reports and post-mortem reports. Sometimes hand written copies of the reports have been received in the Commission which are difficult to understand and have resulted in considerable wastage of the time of the Commission. It was suggested that this should be taken into account and that typed reports of post-mortem, magisterial enquiry etc. should be sent to the Commission.

It is also stated that in the case of encounter deaths or death in police custody, intimation should reach the Commission within 24 hours, as per the previous guidelines issued by the Commission.

The Member, NHRC also conveyed his displeasure about the cases in which the Commission had made recommendations and the States had taken a lot of time for compliance/ sanctioning the relief amount and disbursement of the monetary relief to the beneficiaries. The Member requested all the State authorities to quickly comply with the recommendations on the cases so that timely justice can be provided to the victim(s).

Member also drew the attention of the States representatives to the guidelines issued by the Commission and conveyed to them that these were not being followed strictly by the States. He also requested that these guidelines be strictly followed and informed the representatives that these guidelines were available on the website of the Commission.

The Member further pointed out that in the cases of death in police lockup and custody, some States were providing monetary relief of Rs.20,000/- to the next of kin while others were providing Rs.50,000/-. The Member suggested that at least Rs.One Lakh must be paid by the States.

Member P.C. Sharma raised several questions regarding encounter cases and suggested several remedial measures to the police officers of the States present at the conference, to be taken in the case of police encounters.

Member has suggested that only one crime can be prevented and that is death in police custody and requested all the representatives of the States to take strict action to prevent death in police custody.

The Member also drew the attention of the State representatives to the CB/CID enquiry. He has suggested that the CB/CID enquiry should be impartial and must be conducted expeditiously so that justice could be delivered.

Shri Satyabrata Pal, Member drew the attention of the State authorities to the cases of negligence of the Jail staff/police station at the time of handling of convicts. He was of the view that without the negligence of police it was not possible for a convict to escape from their custody. He also suggested that whenever a convict is brought to the Jail, his medical checkup should be done as per the rules.

The Secretary General, NHRC, drew the attention of the States to the cases pending in the Commission from different States for want of reports.

1. Andhra Pradesh 221 compliance cases 13
2. Karnataka 130 compliance cases 10
3. Kerala 155 compliance cases 7
4. Tamil Nadu 169 compliance case 14

The Commission observed that in many cases where appropriate monetary relief had been recommended by the Commission, delays were being made by the authorities in sanctioning the amount and disbursement of the monetary relief to the beneficiaries. All the Secretaries of the States were directed to take prompt action in submitting the compliance report so that the benefit reaches the victim at the earliest.

The representatives were informed that of late, the Commission had been receiving a large number of complaints from people of the SC/ST categories on various issues. They were advised to pay

special attention to the complaints of these weaker sections in rendering justice with respect to their grievances.

It has been observed by the Commission that in Tamil Nadu and Kerala, magisterial enquiry was not being conducted; however, inquest report was being prepared. The importance of the magisterial enquiry report was impressed upon the representatives from Tamil Nadu and Kerala since only in the magisterial enquiry can the Magistrate record the statement of witnesses to give his conclusion, which helps the Commission in the disposal of cases. They were also informed that magisterial enquiry and inquest are both different and were subsequently instructed to conduct magisterial enquiry wherever required. The revised guidelines regarding magisterial enquiry issued by the Commission in May, 2010 was also brought to their notice.

The Commission brought to the notice of the representatives that due to non-receipt of viscera reports, a large number of cases were pending in the Commission for finalization. They were all advised to take immediate steps in sending the pending viscera reports to the Commission.

It has been observed by the Commission in the case of encounter deaths that the weapons seized from the miscreants/assailants after the encounter were never sent to the forensic laboratory to find out whether or not the seized weapons were actually used by the miscreants in the encounter. It was

impressed upon them that while sending the required reports in respect of encounter deaths, a report from the forensic laboratory on whether the weapons had been used by the miscreants or not during the encounter, should also be sent to the Commission to ascertain whether the encounter was genuine or otherwise.

Apart from awarding appropriate monetary relief, in some cases, the Commission also recommends departmental action and prosecution of the errant/guilty public servants. It is regrettable to note that at the conclusion of the departmental action, minor punishments like censure and warnings were awarded to the delinquent persons and no stern action was taken against them.

In cases where the Commission does not agree with the reports submitted by the State and orders for a CB CID enquiry, it has been noticed that in the CB CID investigation reports, an approach is adopted that seeks to shelter the guilty police personnel, which is not expected from an independent agency such as the CB CID of the State. The representatives of the State were directed to ensure that the CB CID enquiry ordered by the Commission to unravel the truth must be absolutely objective and help the Commission take the case to its logical conclusion.

Regarding suicidal death by consuming poisonous substances in custody, the representatives of the Government were informed that these incidents can be prevented if proper search of the prisoner is carried out at the time of his/her admission in prison. Further, to avert

incidents of prisoner escape from custody while escorting the prisoner, they were advised that the prisoner should be properly secured by the escort party to avoid any such untoward incident..

DGP, Karnataka informed the Commission that the State had always been serious about deaths in police custody and encounter deaths and that they did not support any guilty police officers where the veracity about the encounters claimed by the police was in doubt. The DGP further informed the Commission that whenever any death in police custody takes place, the matter is thoroughly investigated; no order is required to be passed for conducting the investigation and it is conducted automatically and where the guilt of the police officers is established, they are charge-sheeted and accordingly brought to book. He also informed the Commission that during the last three years, the incidents of death in police custody and encounter deaths had reduced. He assured the Commission that the other directions and suggestions made by the Commission will definitely be followed.

Secretary (Home), Govt. of Karnataka submitted that they were finding it difficult to modernize prisons and requested that the matter regarding the modernization of prisons be taken up with the Central Government so that better facilities like medical facilities, space, etc. could be provided to the prisoners.

Day II

DISCUSSION WITH CHIEF SECRETARIES, DISTRICT MAGISTRATES AND ON THE ACTION TAKEN ON THE RECOMMENDATIONS FOLLOWING THE VISIT OF DR. L. MISHRA, SPECIAL RAPPORTEUR

At the outset, Justice Shri B.C.Patel, Hon'ble Member NHRC briefed the representatives of the State Governments of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala on the following points:-

He pointed out to the representatives that the Commission had come across the fact that in various States and Districts there was no Vigilance Committee under the Bonded Labour Act and emphasized the need for implementation of the provisions contained in the Act.

Justice Shri B.C.Patel informed the representatives that the Commission was getting many complaints of child labour and requested the representatives to ensure that the instructions issued on the subject be strictly adhered to by the concerned authorities for abolition of child labour in their respective States. The State agencies should ensure that the owners are prosecuted for violating the law and the released children are properly rehabilitated. He also pointed out that as per the Right to Education, the right place for the children was in schools and asked the representatives to ensure that the children are not found in working places and instead have the opportunity to go to school.

Justice Shri B.C.Patel further brought to the notice of the representatives present that it had been found that when some bonded labourers or child labourers are rescued from bondage, complete documentary evidence is not produced in the court for the prosecution of the employers. Due to non-availability of enough evidence against the employers, the Court may not be able to punish the guilty owners. Hence, he reiterated to the representatives that they should direct all their District Magistrates/SDM that in cases of bonded labour and child labour, enquiry should be conducted strictly in accordance with the provisions contained in the Child Labour (Prohibition and Regulation) Act and Bonded Labour System (Abolition) Act.

Regarding Juvenile justice cases, Justice Patel pointed out that the Commission had noticed that the States were not complying with the directions given by the Hon'ble Supreme Court with regard to juvenile justice. The Commission had also received reports that the juveniles were being kept with adult, hardened criminals in the jails. He advised the representatives to ensure that the juveniles are not kept with the adult prisoners and that a separate cell is provided to them. Besides this, he also informed that during visits to juvenile homes, it has been seen that the homes are overcrowded, conditions of the toilets are not up to the mark, health facilities are not good and due to these reasons, the juveniles run away from these homes.

Justice Shri B.C.Patel informed the representatives that the Commission had not received the half-yearly reports on bonded

labour, child labour, juvenile justice cases and mental health cases from any of the States. He asked the Chief Secretaries and other senior officers representing their States to ensure that these reports are sent to the Commission regularly and without delay.

Shri P.C. Sharma, Member stated that care for old age persons was the latest human rights concern. He stated that many schemes for the elderly had been initiated by the Government, and requested the representatives to implement these schemes in their States so that the elderly do not suffer. He further asserted that it was the duty of the State Government to ensure their security as so many incidents of attacks on senior citizens were taking place. He also pointed out that there is an old-age pension scheme initiated by the Central Government and requested the representatives to ensure that the senior citizens are given their pensions on time.

Dr. L. Mishra, Special Rapporteur, NHRC briefed the representatives about the Bonded Labour Act, Child Labour Act and mental health. He informed them about the procedure to be followed vis-à-vis the rehabilitation of the bonded labourers and child labourers after their rescue and release from bondage. He informed the participants that the Commission has been receiving several cases of bonded labour and suggested to the representatives how to make enquiries into cases of bonded labour. He pointed out that to identify, rescue and release bonded and child labourers, the government could take the help of the NGOs which are actively functioning in the area. The Judgment of M.C. Mehta Vs Tamil Nadu & Others in the

Hon'ble Supreme Court was also brought to the notice of the representatives who were present. They were also apprised of the various schemes of the Ministry of Labour on the subject matter. While concluding his remarks, Dr. Mishra made certain suggestions for the abolition of bonded and child labour such as compliance with the directions of the Hon'ble Supreme Court in the M.C. Mehta Vs State of Tamil Nadu case; prompt action in providing relief and rehabilitation to the affected labourers; presentation of all documentary evidence before the Court for prosecution of the errant employer; and awareness about the Act among the people, among others.

COMPLIANCE ON ACTION TAKEN REPORTS BY STATES

1. REPORTS

Andhra Pradesh

It was informed by the representative of the Government of Andhra Pradesh that they had submitted the half-yearly report to the Government in the last week. Further, the Commission was informed that the reason they had not sent the half-yearly report to the Commission was that they were receiving "Nil" reports from the Districts. However, they assured the Commission that henceforth all reports including "Nil" reports would be sent to the Commission.

During the period, ten bonded labourers and three child labourers had been identified. Necessary steps were being taken for their rehabilitation.

Karnataka

The representative of the State Government informed the Commission that they had sent the report in October last year. However, the Commission was given the assurance that the half-yearly reports would be sent to the Commission regularly without delay.

Tamil Nadu

The representative of the State of Tamil Nadu informed the Commission that on 9 September 2010, they had sent all the reports to the Commission.

Kerala

The representative of the State of Kerala assured the Commission that henceforth all the reports will be sent to the Commission, including "Nil" reports.

The representative further informed the Commission that bonded labour is non-existent in the State; while there are some labourers from Orissa and Andhra Pradesh who come to the state for

employment, no such complaint or cases had come to the notice of the State regarding bonded labour.

He also assured the Commission that the action taken report on the visit of the NHRC to Waynad would be sent shortly.

OLD AGE PENSION

Karnataka

Regarding old age pension, it was informed that the same is being disbursed to the concerned persons regularly as per the schemes of the government.

Tamil Nadu

It has been informed that the government is disbursing Rs.400/- (Rs.200/- Centre's share and Rs.200/- State's share) to every beneficiary who is in the BPL category. Besides this, the Government is serious about giving protection and care to the senior citizens.

Kerala

It was brought to the notice of the Commission that old age pension is being disbursed to the concerned people. The

Government is paying Rs.300/- (Rs.200/- central government's share and Rs.100/- - State Government's share).

Karnataka

The representative of the State of Karnataka informed the Commission that the State was disbursing the old age pension to the concerned senior citizens regularly. There are about thirty lakh beneficiaries.

However, it was stated by the representatives of all the States that since the number of beneficiaries of old age pension are increasing every year, the fund received from the Centre is inadequate and requested the Commission to take up the matter with the Centre in this regard. It was suggested to them that they should write to the Centre directly enumerating the problems faced by them with a copy to the Commission so that the Commission may pursue the matter with the Centre.

DGP, Karnataka informed the Commission that a Child Help Line had been established for the protection of children. A Special Juvenile Police Unit had also been created. Police officers were also being sensitized about their jobs.

MANUAL SCAVENGING

The representatives of all the four States informed the Commission that they were serious about adoption and implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act and making all out efforts for the replacement of dry latrines by pour-flush latrines. Regular surveys in this regard are also being carried out with the help of NGOs.

MENTAL HEALTH

Karnataka

The representatives of the State of Karnataka informed the Commission about the conditions of NIMHANS. It was brought to the notice of the Commission that they have made tremendous improvement in the standard of the hospital like the up-gradation of wards, beds, infrastructure; filling up of vacant posts of doctors; and proper care being given to the mentally ill patients.

Tamil Nadu

It was brought to the notice of the Commission that all the wards in the institution of mental health had been renovated. The institution has been given the status of an autonomous body. Recently a new hospital had also been constructed for patients. Diet

amount had also been increased. All out efforts were being made to improve the conditions in the hospital.

Andhra Pradesh

The representative of the State of Andhra Pradesh informed the Commission that proper care was being given to mentally ill patients. Recently, the number of para medical staff had been enhanced to 920 from 653 and the guidelines/circulars issued by the Commission in this regard were strictly being followed by the State.

Suggestions for Early Compliance with Reports

It was informed to the Commission by the representatives of the State Governments that the Commission was directly corresponding with the SPs and DMs for seeking reports and the State Government was not aware of any such correspondence due to which the State Government found it difficult to comply with the directions of the Commission. It was suggested that while corresponding with SPs and DMs, a copy of the same should be marked to the Governments to enable them to take requisite actions.

It was decided that a nodal officer be nominated by the State under intimation to the Commission so that while corresponding with the SPs/DMs, a copy could also be endorsed to the nodal officer of the State Government for necessary action at their end.

RECORD OF DISCUSSION / INTERACTION WITH THE NGOs
CAMP COMMISSION SITTING, BANGALORE 15-16 SEPTEMBER,
2010

During the meeting with the NGOs, on a query raised by one of the NGOs regarding non-prosecution of erring employers in bonded labour cases, the Commission informed the NGOs present that in a number of cases where the bonded labourers were rescued and released from bondage, the District Magistrates/SDMs were not properly conducting the enquiry as per the Bonded Labour System (Abolition) Act and the required documentary evidence to prove the offence of the employer was not being produced in the Court as a result of which it had become difficult for the Court to pass a judgment for prosecution of the offending employer. It was further informed to the NGOs that in the day's meeting with the Chief Secretaries, DGPs, District Magistrates and other officers of the States, this point was specifically brought to their notice and the procedures required to be followed in the cases of bonded labour as per provisions contained in Bonded Labour System (Abolition) Act were informed to them.

Shri Satyabrata Pal, Member stated that States must launch the prosecution against the delinquent employers and that the NHRC was encouraging the States to do so.

One of the NGOs enquired that apart from awarding compensation what action was being taken against the guilty public

servants. The Commission informed them that wherever the guilt of the police officials has been established, apart from recommending compensation, the Commission has also recommended departmental/legal action to be taken against the delinquent police personnel. In many cases, the amount of compensation recommended by the Commission is recovered from the guilty police personnel.

It was also stated by some of the NGOs that they were not very aware of other Acts. A request was made by them that they should be sensitized about different types of Acts for their smooth functioning.

It was decided by the Commission that this would be taken into consideration.

South India Human Rights Organization:

The representative from the above NGO complained that a meeting of NGOs & NHRC was held in 2007 and minutes of that meeting were not forwarded to the NGO.

He further stated that orders of legal action, prosecution, etc. had not been passed by the Commission; only compensation cases had been settled by the NHRC.

He suggested that the Education Departments of various States should incorporate Human Rights education in their syllabi. He also made certain observations regarding Prevention of Torture Bill.

Member, Shri P.C.Sharma informed the NGO representative in question that although the minutes of the meeting had already been circulated, they would be circulated again.

On the point regarding the powers of the NHRC, the Commission informed those present that wherever the negligence of the police officials is established, apart from recommending compensation, the Commission also recommends departmental/legal action to be initiated against the delinquent police personnel. In many cases, the Commission stated, it had been seen that the compensation amount recommended by the Commission was recovered from the guilty police personnel.

Manav Charity NGO, Bangalore

Narrated a case of an NRI woman and said that while for the last three years she had been pursuing the matter, neither the Home Ministry nor External Ministry had responded.

The Commission suggested the NGO to send the complaint in writing to the Commission for appropriate action.

PUCL:

It complained to the Commission that the police were targeting Human Rights Defenders. They had even filed a complaint with the SHRC, but no response had been received.

Member, Shri Satyabrata Pal informed them that the Commission was concerned about human rights defenders and had also conducted a seminar on human rights defenders the previous year. The Member further informed that the Commission had established a Focal Point for Human Rights Defenders and that for any problem or complaint they could contact Shri A.K.Parashar, Nodal Officer of NHRC.

Concern for Working Children (NGO)

The representatives of the NGO informed the Commission that thousands of migrant workers were migrating to the city for employment in construction projects. She mentioned a case of 2007 in which the NGO has rescued 28 children from a brick kiln where they had been locked up in a room. The NGO regretted that nothing had been done in that case.

Justice B.C. Patel, Member, suggested that the NGO give its complaint in writing to the Commission, since on a verbal complaint the Commission would be unable to do anything. The Member suggested that the complaint be written out properly, clearly

mentioning the specific violation of human rights. The Commission further stated that it sends notices to various authorities and after receiving reports from authorities the report is sent to the complainant for his/her comments. Therefore, the Commission stays in constant touch with the complainant and thus, it would not be fair to say that the Commission was not engaging in any correspondence with the complainant.