

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File Nos. **BHRC/COMP.** 3139/12 & 3323/12

Case of **Mukesh Kumar & Sanjeev Kumar of Prabhat Khabar, Patna.**

Complaint in this matter is about human rights violation of the applicants in an incident which took place in the Block Education Office, Phulwarisharif on 27.8.2012.

Applicants Mukesh Kumar and Sanjeev Kumar are reporter and cameraman, respectively, of Prabhat Khabar, Patna, a Hindi daily. Their case is that there was information about disturbances in the Block Education Office, Phulwarisharif over submission of application for appointment of Block Teachers, and they went there to cover the incident. It transpired that candidates were being asked to pay rupees thirty towards postage charges failing which the applications were to be rejected but the candidates were not willing to pay the amount since there was no such condition. Sanjeev Kumar took photographs of the BEO, Smt. Savita Kumari Lakshmi, in action which infuriated her. The applicants told her that they would take her version after talking to the candidates. In the meantime, she slapped applicant Mukesh Kumar; one Manoj Singh snatched the camera from Sanjeev Kumar and threw it on the ground, and it broke into pieces. The office staff further assaulted the applicants and locked them in a room. Mukesh Kumar's cellphone broke in the process. Sanjeev Kumar somehow informed Prabhat Khabar office from his cellphone. On information Phulwarisharif police came there after two hours and got the applicants released. Mukesh Kumar lodged FIR which was registered as case no.328/12 at Phulwarisharif P.S. under sections 342, 323, 427, 379, 506/34 IPC.

Applicants have enclosed with the complaint copies of prescriptions, reports etc. of PMCH, ESIC Model Hospital, Phulwarisharif, Ford Hospital & Research Center, Khemeni Chak (Ram Krishna Nagar), Patna, Shiva Hearing Aid Centre, Sheikhpura, Patna and IGIMS with respect to their injuries some of which are grievous in nature. Among other things, applicant Mukesh claims to have suffered permanent internal injury in his left ear drum.

It may be mentioned here that Smt. Savita Kumar Lakshmi, DEO Phulwarisharif also lodged FIR at the Phulwarisharif Police Station which was registered as Case no.327/12 under sections 323, 427, 379, 353 and 504 IPC and section 3(x) SC/ST (Prevention of Atrocities) Act against the applicants.

The Commission called for reports from District Magistrate Patna and Sr.S.P. Patna. Sr.S.P. Patna submitted enquiry report of SDPO Phulwarisharif

dated 29.10.2012. As per the report, there was scuffle between "two sides" on the issue of payment of thirty rupees for postage, and on investigation both the cases were found to be true. While the case lodged by the applicant (case no.328/12) was found to be true under sections 341, 323, 427, 504/34 IPC, the case lodged by the BEO (case no.327/12) was found to be true under sections 341, 323, 186, 504/34 IPC. It may be mentioned here itself that at later stage, section 2(x) of the SC/ST Act was added to the array of offences in case no.327/12 against the applicants.

District Magistrate, Patna also submitted report dated 14.2.2013 enclosing therewith documents from which it appears that Smt. Savita Kumari Lakshmi was transferred from Phulwarisharif on administrative ground and a departmental proceeding has been initiated against her by Director, Primary Education. Besides her, Sri Jitendra Singh, Assistant Teacher, Primary School, Block Colony, Phulwarisharif, Sri Manoj Kumar Singh, Assistant Teacher, Middle School Phulwarisharif and Sri Manoj Kumar Priyadarshi, Assistant Teacher, Primary School, Murgia Chak, Phulwarisharif – involved in the occurrence – were placed under suspension and departmental proceedings have been initiated against them by District Programme Officer, Patna.

When this matter was taken up for hearing on 18.2.2013 the Commission was not able to appreciate as to how the incident can be called 'scuffle between two sides' and the case found true against the applicants. If there was any scuffle, it was between the teachers and staff of the Block Education Office, Phulwarisharif including Smt. Savita Kumari Lakshmi, Block Education Officer on the one side and the candidates on the other side. Applicants had gone there simply to cover the incident as press reporter/cameraman of a newspaper. In that view of the matter, Sr.S.P. Patna was directed to personally appear and the matter was heard in his presence on 21.2.2013. Applicants of course were present on both dates.

The Commission reiterated its reservations about the case being found true against the applicants on the basis of a totally misdirected investigation. It is highly improbable that the applicants – two in number – would engage in physical fight with the teachers and staff of the Block Education Office at large. Apparently, they were in no position to offer any fight. They had gone there to cover the happenings. It is indeed ironical that case no.327/12 was registered earlier as if it was the main case and the applicants' case was the counter case.

The admitted position is that the action of the Block Education Officer in demanding sum of rupees thirty towards postage from the candidates – which was the genesis of the trouble with the candidates – was wrong and without any

authority because there was no such stipulation. It is to be kept in mind that the proceedings at the level of the Director, Primary Education against Smt. Savita Kumari Lakshmi, and at the level of the District Programme Officer against three Asstt. Teachers (named above) have been initiated for their insistence on realizing rupees thirty/pasting of postage stamps on the application form and, also their conduct in assaulting the applicants, which is one of the items of charge memo. The disciplinary action already taken, viz, transfers on administrative ground and suspension and initiation of departmental proceedings is a vindication of the case of the applicants.

In the above view of the matter, the Commission observed in course of hearing that it is an appropriate case in which the police should make further investigation in Phulwarisharif P.S. Case No.327/12.

The Commission is inclined to think that no serious and honest investigation was made in the case and treating the incident as one of the run-of-the-mill cases involving fracas between groups of persons, both the cases have been found to be true and charge sheet submitted. The possibility of the police being biased against the media – for reasons too obvious – also cannot be ruled out. The Commission is satisfied in the facts and circumstances that the trial of the applicants on the basis of charge sheet, as it stands, would be an abuse of the process of law and the police would do well to undo justice at this stage itself rather than compel the applicants to undergo the ordeal of trial.

The Commission accordingly directs Sr.S.P. Patna to make further investigations in terms of section 173(8) Cr.P.C.

It is made clear that the police has power to make further investigation under section 173(8) Cr.P.C. without any express order from the magistrate provided he has not accepted the charge sheet/final form. Nevertheless, if final form has been submitted it would be in the fitness of things to file an application informing the magistrate of its intention to make further investigation, and proceed with the same.

Let copy of this order be sent to Sr.S.P. Patna for information and compliance.

Compliance report be submitted within six weeks.

Copy of this order be also sent to the applicants and District Magistrate, Patna for information.

Put up on 29.4.2013 awaiting compliance report.

Date: 11.03.2013

Justice S.N. Jha
Chairperson