

TRIPURA HUMAN RIGHTS COMMISSION
KUNJABAN: AGARTALA
PIN – 799006

Complaint No. 29 of 2024

**Anindita Saha
Vs
Dipak Saha**

FINAL ORDER
Dated, 26 of November-2024

One Smt. Anindita Saha, w/o Sri Dipak Saha of Chandrapur, Agartala set the law of motion by way of sending a complaint through e-mail addressed to the Secretary, Tripura Human Rights Commission, wherein, she alleged that her son Sri Debarup Saha had fallen seriously ill and was admitted at GBP hospital on 21/03/2024 and since his condition was critical, she and her husband Dipak Saha, the opposite party herein, shifted Debarup to Apollo Hospital, Kolkata and while under treatment at Apollo Hospital, Kolkata her husband was putting pressure on her to sell out their residential house at Agartala in order to meet the expenses of treatment of their son.

She has also alleged that her son was diagnosed as suffering from blood cancer and was shifted to Tata Medical Centre Hospital at Kolkata on 04/04/2024, but during treatment, her husband abandoned her and their son and was reluctant to spend anything for treatment of

26/11/24


their son. She has also stated that her husband is an employee of the State Government, an officer under the Registrar of Co-operative Societies, Govt. of Tripura and that she was in distress with her son in the hospital because her husband was not taking care of their son.

2. By order dated 06/04/2024, the Commission took cognizance of the matter and issued notice to Sri Dipak Saha, the opposite party, who is the husband of the complainant and father of Debarup for submitting his written response in respect of the allegations made in the complaint. A notice was also sent to the Registrar of Co-operative societies to inquire into the matter as alleged in the complaint and to submit a report.

3. Bereft of unnecessary details, it is stated by Sri Dipak Saha, the opposite party that the marriage between him and the complainant Anindita Saha was solemnized in the year 2004 and they were blessed with a baby boy in the year 2008 and his name is Debarup Saha, who is now aged about 16 years.

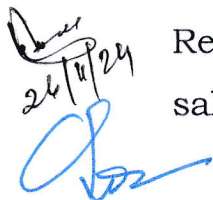
Since last 4/5 years, matrimonial dispute between husband and wife started and they have been living separately. It is also stated by Dipak Saha, that in the month of March-2024, his son had fallen ill and was admitted at GBP Hospital, Agartala and he was informed about the illness of Debarup and thereafter, he rushed to

Apollo Hospital, Kolkata and was treated there for blood cancer.

In his written response, he has challenged the jurisdiction of the Commission stating that it was a family dispute between a husband and wife and for that family dispute, the issue was dealt with under the provisions of the Family Court's Act and the Commission has got no jurisdiction to deal with the issue.

4. The complainant alleges that her husband is a public servant, working as a Co-operative officer under the Registrar of Co-operative Societies, Govt. of Tripura and while he knew that Debarup, their son has been suffering from cancer and admitted at TATA Medical Centre, Kolkata was not taking care of her and their son and was not ready to bear the expenses of treatment, and in such distressed condition she approached the Commission.

5. Considering the fact that for the purpose of treatment of the ailing son of the complainant and the opposite party Dipak Saha, by an order dated 27/05/2024, an interim recommendation was made, stating that Sri Dipak Saha, the husband of the complainant who is a public servant shall pay an interim compensation of Rs. 2,00,000/- (two lakhs) within 15(fifteen) days of receipt of the recommendation and it was also directed that the amount shall be paid by the Registrar of the Co-operative Societies from the salary/payables of Dipak Saha to the complainant and the


26/11/24

complainant shall maintain the accounts of the amount spent for the treatment and to submit the maintained accounts before the Commission.

6. The O/P Dipak Saha has submitted a written objection and prayed for an urgent hearing wherein, it is alleged that the issue cropped up between him and his wife is a family dispute and the Commission has no jurisdiction to entertain it. He has also referred to the provisions of section 13 of the Protection of Human Rights Act-1993 and also Section 8 of the Family Court's Act. A lawyer was also engaged by the O/P to present his case before the Commission and the Ld. Lawyer was also heard.

7. By order dated 06/06/2024, the objection made by Sri Dipak Saha was disposed. For ready reference, the order is reproduced here, which reads as follows:

"Mr. Dipak Saha, the Opposite Party is present with Ld. Counsel Mr. Elembrok Debbarma.

Heard Ld. Counsel Mr. Debbarma. In the process we have also heard Mr. Dipak Saha about the grievances so far stated in the written objection as well as his other grievances against his wife who is the petitioner before the Commission seeking relief for the treatment of their ailing minor son, who is suffering from cancer.

It is an admitted position that the minor son of the complainant and the OP Dipak Saha is a cancer patient and is under treatment in Tata Medical Centre, Kolkata. The complainant Anindita Saha has filed a complaint before the Commission, praying for treatment of their son, wherein, it has been alleged that the OP Dipak Saha is not helping her in the matter of treatment of their son and that a few lakhs of rupees is urgently required for treatment. The case is under

the process of inquiry before the Commission. Notice has been issued to the OP Dipak Saha and he submitted a written statement. A copy of the complaint was also sent to the Registrar of Co-operative Societies, Palace Compound, Agartala, the immediate superior authority of the OP Dipak Saha to inquire into the allegations made against Dipak Saha and to submit a report before the Commission.

The inquiry is in progress. In the meantime, the complainant sought immediate relief and considering the health condition and treatment issue of the minor son, the Commission under order dated 17/05/2024, an interim recommendation was made to pay a compensation of Rs. two lakhs to the complainant on some conditions and accordingly, the Registrar, Co-operative Societies was asked to ensure the payment.

Against that interim order, the present petition is filed stating that the Commission has got no jurisdiction to entertain a family dispute, which is between the husband and the wife.

The Commission has got jurisdiction to inquire into violation of human rights as defined under section 2(d) of the Protection of Human Rights Act-1993 and made appropriate recommendation.

Right to life is a precious right of every individual. Where the life of a minor boy is in distress and for his treatment, certain amount is required and it is on record that the father who is a public servant, not looking after the treatment, of course, prima facie, the Commission thought it appropriate to give interim recommendation pending final inquiry on the issue.

It is stated by Mr. Saha that he likes to dispose a plot of land which he purchased in the name of his wife to arrange the money for treatment, but the wife is not agreeing. In this respect, the Commission cannot give any direction, which the Commission explained to the Ld. Counsel, Mr. Debbarma.

Regarding the jurisdiction, it has been pointed out by Ld. Counsel Mr. Debbarma that section 8 of the family Courts Act prescribes that no other Court shall entertain a family dispute while

26/4/24
C. Saha

family Court is set up. He has also referred section 13 of the Protection of Human Rights Act and has submitted that this Commission is a civil Court and it cannot entertain such a dispute.

We cannot appreciate this argument of Ld. Counsel, Mr. Debbarma, since the strength of section 13 of the Protection of Human Rights Act is otherwise than what the Ld. Counsel has expressed. The Commission is out and out a Commission to inquire into violation of human rights. It is not a Court of law, but while exercising its jurisdiction in respect to inquiry about violation of human rights, it shall be deemed to be a civil Court and exercise such power as prescribed under section 13 of the act. Under the colour of that provision, the Commission cannot usurp the jurisdiction of a Court. Therefore, the Commission's jurisdiction to inquire into any allegation of violation of human rights cannot be put into a watertight compartment to say that it cannot entertain any issue if it is between the families.

Prima facie, we have found that the minor son of the complainant and the OP is a cancer patient and is under treatment in a cancer institute at Kolkata and the complainant who is the mother of the boy is looking after him, there. As it appears the matrimonial relation between the husband and wife has been soared and therefore, they are fighting tooth and nail. The precious life of their son cannot be in distress and this is the sanctity of Commission for which the Commission has entertained the complaint since the respondent, i.e. the OP Dipak Saha is a public servant and the Commission also issued notice to his superior authority.

Ld. Counsel Mr. Debbarma has also pointed out that the complainant has filed a case under the domestic violence act and also another case under section 125 of Cr.PC seeking maintenance before Court of law. No document is filed in support of those cases. The OP is at liberty to submit the documents about the payments made including that of the Court's order before the Commission on or before the next date.

*We find no reason to call back or modify the order passed by the Commission, dated, **17/05/2024**.*


The investigation wing headed by Dy.SP L.Molsom has submitted a petition stating that the complainant has expressed over telephone that she is not in a position to appear before the Commission for recording her statement, physically, pending condition of treatment of her son. If she cannot appear before the Commission, the investigation wing can prepare a questionnaire and send it to the complainant in her email address via e-mail, asking her to submit her response in writing by affidavit before the next date.

A copy of this order may be given to the complainant as well as the OP Mr. Dipak Saha.

*Fix it on **06/07/2024**".*

8. The Commission directed its Investigation Wing, headed by Dy.SP Sri Lalhim Molsom to inquire into the allegations made in the complaint and other related issues and to submit detailed report.

Accordingly, the Investigation Wing on 23/07/2024 has submitted a comprehensive report along with statements recorded and the documents collected during inquiry. The Commission very carefully examined the reports and the connected documents and also issued notices to both the complainant and the O/P, i.e. the husband and wife to appear before the Commission for their examination.

26/11/24


9. It is pertinent to mention here that the order of interim compensation was challenged before the Single Bench of the Hon'ble High Court in a writ petition which was dismissed and subsequently the O/P Dipak Saha again filed a writ appeal and the interim order directing payment of interim compensation was stayed by the order passed by the Hon'ble High Court of Tripura in the writ appeal.

10. The Commission examined the complainant as well as the Respondent on oath. The statement made by the complainant reads thus:

" I, Smt. Anindita Saha, W/O. Sri Dipak Saha, C/O. Sri Anil Chandra Saha, Dhaleswar, Road No.9, P.O. Dhaleswar, Agartala, West Tripura, aged about 44 years, by profession-House wife, do hereby say on oath as follows :-

The opposite party, Sri Dipak Saha is my husband. Our marriage was solemnized in the year 2004. We have a male child, namely, Sri Debarup Saha, born in the year 2008. Since July, 2021 myself and my husband are living apart from our matrimonial home. The matrimonial relation between me and my husband is ceased completely from 2021.

Sri Debarup Saha, our son, is living with us all along and from 2021 he is with me. Debarup is now aged about 16 years. While he was studying in Class-IX, he had fallen ill and was admitted in G.B. Hospital and it was found that he was suffering from blood cancer. Because of his illness his study was hampered.

In the month of March, 2024 my son was hospitalized and immediately my husband was informed through Sri Bappa Roy, a nephew of my husband. On the following morning, the husband came to G.B. Hospital and he was constantly whispering and putting pressure on my son to tell me so that our house is sold out to meet the


expenses of treatment or otherwise it will not be possible on his part to bear the expenses of treatment. While Debarup was under treatment at G.B. Hospital, myself and my husband were anxious and my husband also arranged blood for my son. Since the treatment was not in progress, I decided to take my son to Kolkata for better treatment. My father advised that we must go together for taking care of our ailing son to which my husband told me to ask my father to purchase Air Tickets and accordingly, my father purchased three Air Tickets and we together went to Kolkata and took my son to Apollo hospital.

During treatment for 5/6 days, my husband was with us, but constantly putting pressure on me to spend money while treatment of our son was going on. When it was finally diagnosed that my son was suffering from blood cancer, the doctor advised starting of immediate treatment. My husband told my sister's husband that he will not be in a position to spend so much money and he lost his hope as if our son would not survive. Thereafter, I have decided to take my son to TATA Medical Centre, Rajarhat, Kolkata and during that time my husband left leaving us helpless and thereafter he was not keeping any touch with us.

Thereafter I filed this complaint before this Commission for the sake of life of our son. I thought that the life of our son is in distress and that must be a matter to be looked after by this Commission and, therefore, I approached the Commission through email. My husband being a public servant was not taking care of treatment of our son and, therefore, I approached the Commission since right to life of our minor son was in question.

After prolonged treatment, my son is now a bit cure subject to periodical checkup. He is staying with me absolutely.

In Apollo Hospital, I do not know whether my husband has paid any amount or not (My husband might pay something, but I did not know what was the amount). I spent about Rs.90,000/- in the Apollo Hospital. Subsequently, when my son was admitted in TATA Medical Centre, my husband did not pay anything. Once he visited TATA Medical Centre to collect the documents of treatment and the bills and I gave him the documents for preparation of medical bills. He took photo copies of the medical bills. My husband approached my son for attending some medical officers here for the purpose of bill, but I was totally reluctant about his approach since I presumed that he was always involved in some sorts of his own notion and was reluctant about the treatment and maintenance purpose of our son. Myself and

20/11/24


my son living apart from my husband. We have no scope of having any reconciliation”.

Under order of the Court, we are receiving maintenance of Rs.15,000/- per month for myself and my son.

I have not received any amount from my husband in terms of the direction given by this Commission”.

11. The statement made by the O/P reads thus:

“I Sri Dipak Saha (51), S/o Sri Haripada Saha, Govt. Servant (Co-operative Officer) by profession under Co-operation Department, Govt. of Tripura and presently posted at Belonia, South Tripura, Indian by nationality, hindu by religion and a resident of Chandrapur under East Agartala Police Station, Agartala, West Tripura do hereby solemnly affirm and on oath say as follows:

My wife does not keep any touch with me. Even she is not receiving my phone calls, whenever I try to speak to her. For about 4(four) years or more, we are not living together. The matrimonial relation between me and my wife Smt. Anindita Saha is almost dead. I tried my level best to live together and I also instituted a case of restoration of conjugal rights. The case has been dismissed.

Our marriage was solemnized in the year 2004 and we were blessed with a baby boy. His name is Debarup Saha, who is now aged 16 years and is presently ill, suffering from blood cancer and at present he is under treatment.

Our matrimonial discord started about 4/5 years ago. My son had fallen ill about 8 months from now. In the month of March-2024 my son had fallen ill and he was admitted in AGMC & GBP Hospital. At that time, myself and my wife were living apart from matrimonial home. I was informed about the hospitalization of my son by relatives and the following morning I attended the hospital and found the Hb of my son was only 5, which is an indication of danger. I arranged blood for my son and it was injected. I spoke to my wife for his better treatment and also the relatives (my wife's elder sister's husband) at Kolkata for treatment purpose.

My son was taken to Apollo Hospital, Kolkata since he was suffering from blood cancer. My wife was not inclined to take me to Kolkata with them but still I went. I have rendered financial

assistance for the treatment of my son to the tune of Rs. 2,00,000/- (Two Lakhs) approximately.

The allegation made by my wife that I am not contributing and/or sharing the expenses of treatment of my son is not at all true.

My wife told me that if I can pay for the treatment of my son, then only she and our son will speak to me, otherwise, they shall not even speak to me. They are not receiving my phone calls and not allowing me to meet them. So, I cannot say what is the present physical or treatment condition of my son.

I have applied for Medical Re-imbursment of the cost of treatment of my son and the Medical Board wanted to see my son for having Ex Post Facto approval of medical reference, but even my request was turned down by my son and therefore, they declined to attend the Medical Board''

12. (i) It is an undisputed, rather an admitted position that the complainant Anindita Saha and the O/P Dipak Saha are husband and wife and their marriage was solemnized in the year 2004 and they lived and cohabited as husband and wife and as a result of their cohabitation, in the year 2008 their son Debarup was born.



(ii) Debarup had fallen seriously ill in the month of February/March-2024 and was hospitalized at GBP Hospital, Agartala, but his condition deteriorated and he was shifted to Apollo Hospital, Kolkata where it was detected that he was suffering from blood cancer and accordingly he was shifted to TATA Medical Centre, Kolkata for cancer treatment.

(iii) Dispute and difference copped up between the husband and wife, i.e. the complainant and O/P and they have been living separately since 2021.

(iv) Matrimonial relation between the husband and wife was soared. Debarup was living with his mother and Dipak Saha lives alone in his own house.

(v) While the matrimonial relation was completely seized between the parties, and they were living apart from each other, Debarup had fallen ill during the month of February/March-2024 and both the husband and wife had taken initial steps for his treatment at GBP Hospital. Thereafter, though there were disputes and differences, they together took Debarup to Apollo Hospital at Kolkata for treatment. It is alleged that while under treatment at Kolkata, the O/P abandoned the complainant and their son and was not paying the cost of treatment and cost of their maintenance etc.

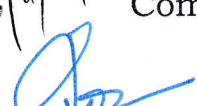
13. Right to life is a precious human right as defined under section 2(d) of the Protection of Human Rights Act-1993. The Commission has got the jurisdiction to entertain the complaint in respect of violation of human rights by a public servant as prescribed u/s 12 of the Act. The jurisdiction of the Commission extends to the subject matter as prescribed in list (ii) and list (iii) of the 7th Schedule.


**14.** To speak of jurisdiction, automatically it would appear in mind that it relates to territorial and pecuniary jurisdiction. The exercise of statutory power has to be determined on the facts which have been brought before the Commission or an authority to decide or to entertain.

15. The Tripura Human Rights Commission has got territorial jurisdiction of entertaining a matter of human rights violation which arises within the territorial area of the state. There is no question of any breach of jurisdiction.

16. Now so far the exercise of statutory power is concerned, the Commission has to see whether there is material brought before the Commission that the Human Rights of a person is violated by a public servant. The earthly relation between the complainant and the O/P are husband and wife, but as it appears from the statement made by both of them before the Commission, that matrimonial relation is dead prima facie. They are not living together, not sharing the bed and for all practical purpose they have become a foe of each other. These are all prima facie observation of the Commission.

The jurisdiction of the Commission cannot be put in a water tight compartment, even to see the personal relation. The personal relation is altogether immaterial so far in respect of violation of human right is concerned. The Commission is not required to see what is the earthly relation between the complainant and the OP. It has to see whether there is a genuine complaint and there is an allegation of violation of human rights, and if so, the Commission is of the opinion that there is no restriction or impediment in the exercise of statutory jurisdiction by the Commission.

26/4/24


17. The O/P misunderstood and misread the provisions of section 13 of the Protection of Human Rights. The Commission already explained the position in the order dated 06/06/2024. The provision prescribes that while exercising power of jurisdiction in course of inquiry, the Commission will be treated as if a Civil Court so far collection of materials during inquiry is concerned. Because of that provision Commission does not necessarily become a Civil Court.

Further, so far section 8 of the Family Court's Act, it relates to exercise of jurisdiction by a Court. The Commission is not a Court, it has got no adjudicatory jurisdiction or power. It has exclusive jurisdiction to inquire into any case of human rights violation and to make necessary recommendation if it is found that there was violation of human rights.

The strength of the recommendation and order and so far compliance of the recommendation so made has to be in accordance with the provisions prescribed under the Protection of Human Rights Act as envisage in section 18 of the Act.

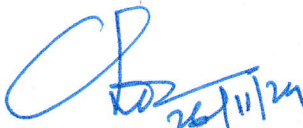
We are of considered opinion that the Commission has got its exclusive jurisdiction irrespective of the relation between the husband and wife or any member of the family or otherwise, if it is found that there is a case of human rights violation substantially by a public servant irrespective of the relationship between the victim and the supposed violator of the human rights.

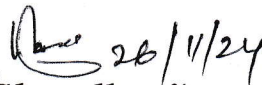
24/11/24

Ch

18. It appears, the complainant has returned after treatment of their son. The Respondent is also here, living in Tripura, working as a public servant. The Commission directed payment of interim compensation, since a young boy suffering from cancer was under treatment outside the state in a cancer hospital and it was the duty of the father, i.e. the Respondent to bear the expenses of the treatment and therefore, the order for interim compensation was passed. Now, since the complainant and their son has returned to Agartala and her son has recovered, as reported, they may resolve their disputes in accordance with law.

The Commission in the circumstances is pleased to close the inquiry initiated, and accordingly it is closed.


(Justice S. C. Das)
Chairperson


(U. Choudhuri)
Member