

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10707 of 2011

=====

1. Chief Commissioner of Income Tax (CCA), Patna
2. The Director General Of Income Tax (Inv.) 9, Bailey Road,
Patna Through Its Deputy Secretary

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of
Bihar Old Secretariat Patna
2. The Bihar Human Rights Commission Patna Through
Deputy Secretary.
3. Rajendra Singh S/O Of Late Sardar Charan Singh C/O
Bhargo Saw Mill, Mithapur PS-Jakkanpur Distt.Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : M/s Sandeep Kumar,
Alok Kr. Shahi, Advocates
For the Respondent/s : Mr. K.P. Gupta SC16
For Respondent No.3 : Mr. Mrigank Mauli, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE
SAMARENDRA PRATAP SINGH**

CAV ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH)**

Order

8 2.2.2012

The present writ petition has been filed against the order dated 28.4.2011 passed by the Chairperson, Human Rights Commission by which the learned Commission has held that there has been violation of human rights of respondent no.3 (Rajendra Singh) by the concerned officials of the Income Tax

Department while continuing search and seizure operation, for which he would be entitled to monetary compensation and has further asked the department to submit its response as to why the monetary compensation be not awarded to the applicant recoverable from the salary of the concerned officials of the department.

2. One Rajendra Singh made a complaint before the Bihar State Human Rights Commission (hereinafter referred to as 'the Commission') that during the search and seizure operation the raiding party committed various acts of omission and commission including violation of his human rights. Some of the broad features of the complaint which is also summarized in paragraph 2 of the writ petition are as follows:

- i) The officials of the Income Tax Department confined them in their house for two days in course of search and seizure operation in their business and residential premises almost uninterruptedly.
- ii) The search team confined his family members and did not allow him to cook food, thereby compelling them to purchase the same from outside.
- iii) The members of the search team misbehaved, abused and tortured respondent no.3 and his family members.

iv) The members of the search team used methods of coercion for recording statements and obtaining signatures forcibly.

v) The members of the search team hurt the religious sentiments of the Sikh community by throwing butts of used cigarettes on the photograph of Golden temple and Sikh Guru

vi) The members of the search team stole two Mobile Phones before leaving the premises.

A copy of the complaint petition is at Annexure-1.

3. The Commission issued show cause notice to the Income Tax Department to reply to the allegations of respondent no.3. The department filed its reply and report on 25.11.2010 and 3.2.2011. The reply of the department is contained in Annexure-2 series. The Commission came to a finding that there was continuous interrogation without a break for more than 36 hours commencing at 9.30 A.M. on 8.9.2010 and the first break was given only at 3.30 A.M. on 10.9.2010 forcing the applicant and his family members to remain awake at hours which was meant for sleeping. The continuous interrogation at odd hours in night is a torturous act being violative of basic human rights of an individual. The Commission broadly agreed that the department if need be may conduct such search and seizure operation for days together but then they have to stop the same at proper time

and resume again at an appropriate time in the morning. The Commission observed that the search and seizure operation have to be carried out keeping in view the basic human rights of an individual as every individual has inherent human rights which ought not to be infringed upon.

4. Being aggrieved by the order of the Commission, the petitioners have preferred this writ petition mainly on the grounds mentioned hereinbelow:

i) The order of the learned Single Member is without jurisdiction being Coram non-judice. In short, in absence of any rules and regulations prepared by the State or the Commission, the order could have been passed only by all the three members sitting together and not by an individual member.

ii) The complainant had not come to this court with clean hands as he had filed a complaint before the NHRC, National Commission of Minorities and the criminal case being Jakkanpur P.S. Case no.246 of 2010.

iii) The Commission ought not to have heard the matter as the department had preferred Cr. Misc. No.43811 of 2010 for quashing of the F.I.R. and the criminal case itself being sub-judice before the Chief Judicial Magistrate, Patna.

iv) The Commission ought not to have held the concerned

officials of the Income Tax guilty of violating human rights without affording an opportunity of hearing them personally under section 16 of the Protection of Human Rights Act, 1993 (hereinafter referred to as 'the Act, 1993').

v) The officer had acted in good faith and in discharge of their official duty.

vi) The Commission erred in holding that the complainant was not given sufficient break as it was not possible for one officer to keep interrogating for 42 hours. Further more, the search and seizure manual permitted continuous interrogation.

5. The petitioners in support of their submissions relied upon the case of Rajendran Chingaravelu Vs. R.K. Mishra, Addl. CIT & Ors, reported in (2010) 1 SCC 457, wherein the Hon'ble Apex Court did not find any fault with long detention and interrogation of appellant.

6. The petitioners in short submitted that the search operation resulted in disclosure of undisclosed income of Rs.86,66,220/- from respondent no.3 and Rs.4,81,66,220 in total from all the four brothers including respondent no.3. The search and seizure protected the interest of the State and revenue.

7. Now I will take up the points raised by the petitioners one by one.

Refer: Issue No.(i): The order of the learned Single Member is without jurisdiction being Coram non-judice.

The petitioners have argued that the Hon'ble Chairperson sitting singly was not competent to hear the complaint of violation of human rights. According to them, all the three members of the Commission sitting together could have heard the complaint.

On the other hand, counsel for respondent no.3 submits that the doctrine of Coram non-judice speaks about inherent or complete lack of jurisdiction in respect of subject matter which would not be the case here. All other questions are but an "exercise of jurisdiction". He relied upon decisions in the case of Hiralal Patni Vs Srikalinath, reported in A.I.R. 1962 SC 199 Para 4 and in the case of Official Trustee West Bengal & Ors Vs Sachindranath Chatterjee & anr, reported in A.I.R. 1969 SC 823 paragraphs 13, 14 and 15. He submits that the question relating to pecuniary or territorial jurisdiction would not make an order Coram non-judice.

8. Before I deal with the issue, it would be relevant to notice some of the provisions of the Protection of Human Rights Act, 1993 (hereafter referred to as 'the Act, 1993). Section 29 of the Act states that the provisions of sections 9, 10, 12, 13, 14, 15,

16, 17 and 18 shall apply to State Commission. Section 10 confers power on the Commission to lay down by regulations its own procedure. Section 40-B confers power on Commission to make regulations to carry out the provisions of the Act including procedure to be followed by Commission under section 10(2). Section 10(2) of the Protection of Human Rights Act, 1993 read as under:

“10. Procedure to be regulated by the Commission- (1) The Commission shall meet at such time and place as the Chairman may think fit.

(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure”.

In exercise of power under section 10(2) read with section 40-B, the National Human Rights Commission (in short 'NHRC') has made regulations being the National Human Rights Commission (Procedure) Regulation, 1994. Rule 8 lays down the procedure for dealing with the complaint. Sub-rule(1) of Rule 8 lays down the criteria for a case to be taken by a Single Member bench or bench of two members or more than two members. Rule 8(1) is quoted hereinbelow for each reference.

“8. Procedure for dealing with complaints – (1) All complaints in whatever form received by the Commission, shall be registered and assigned a number

and placed for admission as per the special or general directions of the Chairperson before a Single-Member Bench constituted for the purpose, not later than one week of receipt thereof. If the Single-Member Bench dealing with the case, either for admission or for final disposal, having regard to the importance of the issues involved, is of the opinion that the case should be heard by a Bench of not less than two Members, he/she may refer the case to a Bench of two Members. On receipt of the reference, the case shall be assigned to a Bench of two or more Members, as may be constituted by the Chairperson, Ordinarily, complaints of the following nature are not entertainable by the Commission:-

- (a) in regard to events which happened more than one year before the making of complaints;
- (b) with regard to matters which are sub-judice;
- (c) which are vague, anonymous or pseudonymous;
- (d) which are of frivolous nature; or
- (e) those who are outside the purview of the Commission.

9. From bare perusal of the regulation, it appears that rule 8(1) of Regulations, 1994 contains the procedure for dealing with a complaint by a Commission. It states that a Single Member bench dealing with complaint may refer the matter to a bench of two members, or more than two members if he considers that the issue is of considerable importance to be heard so. On receipt of reference, the case shall be assigned to a bench of two or more members, as may be constituted by Chairperson. In such circumstances, it cannot be said that the Single Member Bench is not competent to hear a complaint

regarding violation of human rights.

10. Furthermore, the matter is one of procedure and not of jurisdiction. The respondent no.3 has rightly relied upon the case of Hiralal Patna (supra) and Official Trustee West Bengal & Ors (supra). The Hon'ble Apex Court in cases referred above, observed that if a court has jurisdiction to try a case and has authority to pass an order of a particular kind, the fact that it has passed an order which it normally should not have made in the given circumstances would not indicate total want or loss of jurisdiction so as to render the order nullity. Thus, I reject the contention of the petitioner that the order passed by the learned Single Member was without jurisdiction.

11. **Refer: Issue No. (ii) &(iii):**

- (ii) The complainant did not disclose in his complaint before the State Human Rights Commission that it has filed a complaint before the NHRC, National Commission of Minorities and also lodged a criminal case being Jakkanpur P.S. Case No.246 of 2010.
- (iii) The Commission ought not to have heard the matter as the department had preferred Cr. Misc. No.43811 of 2010 for quashing of the F.I.R. and the criminal case itself being sub-judice before the Chief Judicial Magistrate, Patna.

Answer: The National Commission of Minorities or a Criminal Court exercises different jurisdictions. One single incident may have wide ramifications e.g. a person apart from being proceeded for intrusions of right of a minority, can also be proceeded for violation of human rights as well as for committing a penal offence, if the facts, so justify. The respective complaint to the National Commission of Minorities or to the police, addresses different and distinct concerns. Respondent no.3 ought to have mentioned in his complaint that he has written to the NHRC, which complaint was subsequently transferred to the SHRC. The non-mentioning of writing of such complaint to NHRC, which eventually is to be endorsed to the competent body e.g. SHRC would be an irregularity and in no way obviate or wipe off the act of violation of human rights. Thus though it is desirable that such facts are stated, the same cannot be a ground for rejection of the complaint filed before the State Human Rights Commission.

12. This takes us to issue nos. (iv), (v) & (vi) which are taken up together as they are inter linked:

- iv) The Commission ought not have held the concerned officials of the Income Tax guilty of violating human

rights without affording an opportunity of hearing to them personally under section 16 of the Act.

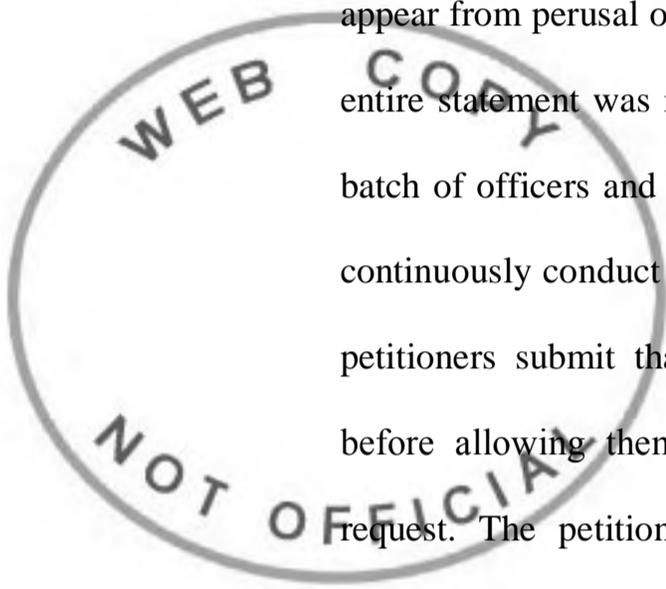
v) The officer had acted in good faith and in discharge of their official duty.

vi) The Commission erred in holding that the complainant was not given sufficient break as it was not possible for one officer to keep interrogating for 42 hours. Further more, the search and seizure manual permitted continuous interrogation.

The petitioners submit that Bhargo Saw Mill Compound is a huge compound of about 5000 Sq. ft. in area.

The apartment comprises of four residential floors in which respondent no.3 and his other brothers live separately. The building also has an office of M/s Bhargo Saw Mills. The open area of the premises was used to store huge quantity of timber inside the residential premises. The two open premises across the road was also used to store timber and another premise was rented out to a school. The petitioners submit that the search and seizure operation of such a large residential and business place would involve a large number of officers and staffs. Thus, the team included three authorized officers (2 Assistant Director) and one Income Tax Officer and 11 staffs to cover up the entire

place to conduct the search and seizure operations. The same set of officers apart from conducting search and seizure had to prepare the inventory of books of accounts, documents, jewellery and cash etc. The petitioners submit that it would appear from perusal of the statement of respondent no.3 that the entire statement was recorded by a Single officer and not by a batch of officers and it is humanly impossible for an officer to continuously conduct interrogation for more than 30 hours. The petitioners submit that in fact only 31 questions were asked before allowing them rest for nearly 7 hours on assessee's request. The petitioners further submit that the search and seizure operation were conducted in two other business premises but there has been no complaint of violation of Human rights from any other partner or the brothers except respondent no.3. The petitioners submits that the case of Pooran Mal Vs. Director of Inspection (Inv), reported in 96 ITR 505(SC)(1974) would apply mutatis mutandis to searches made under section 41 of the Income-tax Act, 1922 now section 132 of the Income-tax Act, 1961. It is further the case of the petitioners that search and seizure is a temporary interference with right to hold the premises and the articles seized. They also state that any reasonable restrictions cannot be held to be unconstitutional.



Reliance has been placed on the following passage from the case of M.P. Sharma Vs. Satish Chandra which is quoted herein below:

“A search & seizure is only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot per se be considered to be unconstitutional”.

The petitioners submit that in the case of Rajendran Chingaravelu Vs Mr. R.K. Mishra, Addl. CIT & Ors, reported in 2010(1) SCC 457, the Hon’ble Apex Court upheld the detention of the applicant for 15 hours who was carrying a cash of Rs.65 lacs along with a Bank certificate certifying the source and withdrawals. The Hon’ble Apex Court observed that though the individual has right to carry money, the same is subject to verification or seizure by Intelligence authority to ensure that the said money is not intended for illegal activities. The Hon’ble Apex Court further held as follows:

“Any bonafide measures taken in public interest, and to provide public safety or to prevent circulation of black money, cannot be objected as interference with the personal liberty or freedom of a citizen”.

13. Mr. Mrigank Mauli, learned counsel for respondent no.3 submits that the Commission found that the search and seizure operation commenced at 9.30 A.M. on 8.9.2010 and he was

continuously interrogated for 36 hours till 10 P.M. on 9.9.2010. He further submits that the Commission noted that though the exact time of commencement of interrogation is not mentioned in the statement but question no.15 gives an idea about the duration. The officer interrogating respondent no.3 while asking question no.15 told the applicant that he was being asked to produce books of accounts, but despite passage of more than 36 hours, the same had not been produced. Learned counsel further submits that the Commission rightly observed that the operation commenced at 9.30 A.M. on 8.9.2010 and the question no.15 was being asked about 10 P.M. on 9.9.2010. Further, it would appear from question no.16 that three hours additional time was granted to the respondent no.3 to produce the records and the expiry time was mentioned as 1 A.M. of (10.9.2010). He submits that the Commission noticed that recording of statement was temporarily suspended to be resumed in the morning after 31st question at 3.30 A.M. on 10.9.2010. The date and time has been endorsed by the officer along with his signature.

14. Controverting the stand of respondents, the department submits that in fact only 15 questions were asked by 10 P.M. on 9.9.2010 would show that interrogation was not long enough and there were temporary breaks in between. He submits that

the search and seizure manuals do not lay down any time limit of search and seizure operation.

15. The Commission held that interrogation and recording of statement at odd hours in the night of 9/10.9.2010 was in violation of basic human rights of an individual which obviously would cause physical and mental torture. The department cannot force an individual to remain awake when it is a time for sleep.

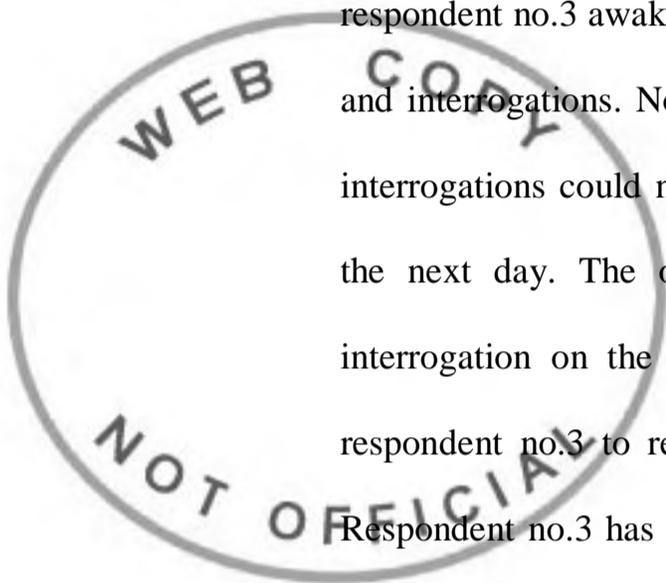
16. The respondent no.3 submits that the order of the Commission is in consonance with the objectives and purpose for which Protection of Human Rights Act, 1993 has been enacted. He submits that all laws must confirm to the charter of human values and dignity. In support of his submission, he relied upon a decision in the case of Ireland Vs the United Kingdom, reported in (1978) ECHR 1 and in the case of Kalashnikov Vs Russia, reported in (2002) ECHR 596.

17. It appears that the learned Commission has concluded that question no.15 would show that despite passage of more than 36 hours, the books of accounts were not produced. The Commission as such inferred that the question was being asked at about 10 P.M. on 9.9.2010, as the operation had begun on 8.9.2010 at 9.30 A.M.. The Commission was of the view that in case if a break was given, the same would have been duly

entered in the record. The Commission observed that it becomes evident from question no.16, that 3 hours further time was granted to produce the books of accounts, which time would expire at 1 A.M. on 10.9.2010. The Commission also noticed that the temporary break was given only after 31st question, which concluded at 3.30 A.M. on 10.9.2010.

18. The non-mentioning of breaks in the record may not be conclusive proof of the fact that interrogation and search operation continued unabated for more than 36 hours. It may also not be humanly possible for an official to interrogate continuously for 36 hours. However, one fact remains undisputed that the interrogation continued till 3.30 A.M. on the second night of search and seizure as per the own record of department. The search and seizure manual of the Income Tax does not prescribe any time limit for search and survey operation and the same may continue for days if required, but it has to be in keeping with the basic human rights and dignity of an individual. The purpose of the Act is to give effect to the process of execution of actions of executive and bureaucratic machinery in line of accepted standard of basic human rights which are internationally recognized. The laws, and approach to law for its execution must confirm to the charter of human

values and dignity. Even a person accused of a serious offence has to be produced before the nearest Magistrate within 24 hours minus the time taken in reaching the Court. There is no possible justification to continue interrogation and keep the respondent no.3 awake till 3 A.M. on the second night of search and interrogations. No reason has been assigned as to why the interrogations could not have been deferred till the morning of the next day. The officials could have continued with the interrogation on the next day in the morning after allowing respondent no.3 to retire at an appropriate time in the night. Respondent no.3 has rightly relied upon the decisions rendered in the case of Ireland Vs United Kingdom (supra), where in the court held that sleep deprivation as part of methods of interrogation amounted to inhuman treatment and violation of Article 3 of the European Convention on Human Rights. In the case of Kalashnikov (supra), the European Court of Human Right (in short 'ECHR') noticed that the complaint related to lack of facility to the prison inmates on account of shortage of which, the inmates slept taking turns, while one slept the others would lie or sit on the floor and card boxes. In case of Salmouni Vs France, reported in (2000) 29 EHRR 403, the court went to the extent of stating that Convention prohibits in absolute terms



Torture or Inhuman or Degrading Treatment or Punishment and went on to the extent of stating that no exception to Article 3 can be made even in the event of Public Emergency threatening the life of the Nation. The human rights belong to all of us equally and would apply no less to an intruder of law, as to a law enforcing agency.

19. The term 'human rights' has been defined in section 2(d) of 1993 Act as the right relating to life, liberty, quality and dignity of the individual granted by the Constitution as provided in Part III of the Constitution and as embodied in International Covenants. The International Covenants has been defined in section 2(f) of the Act which means International covenants on civil and political rights and international covenants on economic, social and cultural representations adopted by the general assembly of the United Nation. Article 7 of the International Covenant on Civil and Political Rights states that no one shall be subject to torture or to cruel inhuman or degrading treatment or punishment. Article 10(1) states that all persons deprived of liberty shall be treated with humanity and with respect to inherent dignity of human person. The word "Torture" has been defined in the 'Convention Against Torture and other cruel, inhuman or Degrading treatment or

punishment'. in Article-1, which reads as follows:

“ For the purposes of this Convention, the term Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in any official capacity.....”

The preamble specifically provides that while drafting the said Convention, regard had been made to Article 5 of the ‘Universal Declaration of Human Right and to Article 7 of the International Covenant on Civil and Political Rights, as the same are in recognition of the universal respect for an observance of Human Rights and fundamental freedoms.

20. Even assuming that there were temporary breaks in course of interrogation which continued for 42 hours, it is not in dispute that even on the second night of search and survey on 10.9.2010, the interrogations continued till 3 A.M. and the respondent no.3 and his family members were made to remain awake when it was time for sleep. No cause has been shown as to why it was necessary to continue the interrogations till deep in the second night of interrogations. The case relied by the

department in the case of Rajendran Chingaravelu (supra) would not be of much help, as in the aforesaid case the petitioner was detained for 15 hours on the first day itself, as he was carrying Rs.60 lacs at the Airport which could have been used for the illegal activities. In the instant case, the interrogation have continued for 42 hours and undisputedly at the odd hours of second night, which could easily have been avoided and deferred. No reason has been recorded for not deferring the interrogation till morning.

21. The department would consider issuing appropriate instruction in future raids to record the duration of interrogation and breaks.

22. I am in agreement with the submissions of the petitioners that if required, the search and seizure can continue for days but at the same time due regard to human dignity and value cannot be ignored. In the instant case, no reason has been assigned as to why it was absolutely imperative to continue with the interrogations at 3 A.M. on 10.9.2010, when search and seizure has commenced on 8.9.2010 at 9.30 A.M. Even if I agree with the submissions of petitioners that there were breaks and there were no continuous interrogation for 36 hours as held by Commission, still the department has no plausible excuse for

making interrogations till odd hours of second night till 3 A.M. Thus I partially affirm the order of learned Commission holding the department guilty of violating human rights but only to the extent indicated in paras 18 and 22. I am conscious of the fact that the efforts of the team led to unearthing of undisclosed income from petitioner and his three brothers totaling over Rs.4,81,00,000/-. I even agree with the submissions of petitioners that operations were conducted in best interest of revenue and good faith.

23. The other aspect is that the learned Commission has not issued any notice to the officials/staff engaged in search, seizure and interrogation. Nonetheless the Commission has issued notice to them to submit their response as to why monetary compensation be not awarded and be recoverable from the salary of the concerned officials. The issuance of such notice would tantamount to pre-judging the officials/staff engaged in search and seizure operation of being guilty of violation of human rights, without affording them an opportunity of hearing. Section 16 of the Protection of Human Rights Act, 1993 prohibits passing of an order by the Commission which may prejudicially injure the reputation of a person without providing a reasonable opportunity of being heard in the enquiry and to produce the

evidence in his defence. Section 16 is quoted herein below for easy reference:

“16. Persons likely to be prejudicially affected to be heard- If, at any stage of the inquiry, the commission-

(a) consider it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached”.

24. In the instant case admittedly no notice has been issued to the individual officials who now by the impugned order have been asked to submit their response as to why monetary compensation be not awarded from their salary. The law at the first instance prohibits the very passing of an order adjudging an individual guilty of violation of human rights without affording an opportunity of hearing. Only when an individual is first judged to be guilty of violation of Human Rights, the question of inflicting penalty would arise. In the instant case, no opportunity was given to the officials to countenance the charge of violation of human rights. In absence of an opportunity to defend themselves against such charge in an enquiry, the learned

Commission erred in issuing notice to the officials to show cause or respond as to why penalty may not be levied for awarding compensation to the complainant and is accordingly quashed.

25. As held in the foregoing paragraphs, I affirm the findings of the learned Commission that the Income Tax Department violated Human Rights of the complainant (Respondent No.3) but only to the extent indicated in this order.

26. In the result, this writ application is only partially allowed so far response of officials were sought for levying monetary penalty; it's challenge against findings of violation of Human Rights is dismissed.

Md.Jamaluddin Khan
AFR

(Samarendra Pratap Singh,J)