

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road

File No BHRC/COMP. 2665/10

Case of RAJENDRA SINGH

Applicant Rajendra Singh has approached the Commission complaining of violation of his human rights In course of the search & seizure operations conducted by officials of the Income Tax Department in his residential premises from 8.9.2010 to 10.9.2010.

The grievance of the applicant is that he belongs to the minority Sikh community. He is earning his livelihood by doing timber business in the name and style of M/s Bhargo Saw Mill at Mithapur in the town of Patna. On 8.9.2010 Shri Saurabh Kumar, Shri Suman Jha, Shri Kanakji and Shri Achutan along with six associates - all of Income Tax Department - came to his house and closed the main gate which is the only point of ingress and egress. They took the mobile phones of the applicant and others and did not allow them to contact any person outside during the course of raid. They did not allow them to cook the food. They misbehaved and abused members of the family including the female inmates. They smoked with impunity; they also threw cigarette butts and empty packets of cigarette on the images of Sikh Gurus and the Golden Temple which hurt their religious feelings. They did not even allow them to go to the toilet. The applicant sent for his lawyer and he was made to leave the place. They also In course of the raid held out threats of punitive action.

Notice was issued to the Chief Commissioner of Income Tax, Bihar who referred it to the Director General of Income Tax (Inv.) as the search & seizure operations were conducted by the Investigation Wing of the Department. In the report which was ultimately submitted, the allegations made by the applicant have been denied. After a few adjournments the matter was finally heard on 18.4.2011 in presence of the applicant (who appeared along with his advocate) and Shri Vijay Kumar, the Addl. Commissioner of Income Tax (Central) Patna on behalf of Income Tax Department.

The applicant reiterated the allegations made in the complaint, as referred hereinabove. He questioned the validity and justification of the search & seizure operations. He submitted that the operation was carried out to harass the applicant. It was stated that not satisfied with the search & seizure operations, and the follow-up action which is continuing till date, the Department approached the Forest Department and the Registration Department (of the State Government for action against the applicant. Shri Vijay Kumar, Additional Commissioner (hereinafter referred to as a departmental representative) refuted the allegations of the applicant.

On consideration of the submissions and the counter submissions the Commission is of the opinion that the allegation as regards misbehaviour with the family members including the female inmates and hurting the religious sentiments of the appellant involves determination of facts. The Commission is not empowered to adjudicate upon any issue which may involve determination of question of fact. There are statements vs. statements on either side and it would be difficult for the Commission to arrive at any conclusion one way or the other. As regards the Applicant's submission about the letters of the Income Tax Department to the Forest Department or the Registration Department, the Commission would observe that where in course of raid or search & seizure, officials of the raiding party come across materials suggesting violation of some law of which they cannot take cognizance, they can certainly make reference to the concerned Department for necessary action, and therefore if, in the instant case, the Income Tax Department made any reference to the Forest Department or the Registration Department, prima facie it cannot be said to be an act of bad faith. In course of hearing the Commission clarified that it

would not go into merits of search & seizure operations, the validity etc. of which can be gone into under the relevant provisions of the Income Tax Act at the appropriate stage. It transpired that the applicant has filed criminal case being Jakkanpur P.S. Case no.246/10 which is pending.

The Commission, however, is not able to appreciate the manner in which the applicant was subjected to interrogation during the search and seizure operations from 8 to 10 September 2010.

The Department's representative submitted that the search & seizure operations may continue for days together - longer than the duration of the operations in the instant case - depending on the facts and circumstances. The Commission would broadly agree. There cannot be any time limit as to the overall period of search & seizure operations but in the opinion of the Commission, the search & seizure operations should be consistent with the human rights of the person concerned.

It is the admitted position that the search & seizure operations commenced at 9:30 AM on 8.9.2010 and concluded at 9:20 PM on 10.9.2010. The grievance of the applicant is that he was continuously interrogated during this period for more than 30 hours. The applicant referred to his statement (recorded on oath) under section 132 of the Income Tax Department. The exact time of the commencement of interrogation is not mentioned in the statement but question no. 15 gives an idea about the duration. Vide question no. 15 the Officer (Shri Saurabh Kumar, AO) told the applicant that he was being asked to produce the books of account etc but despite passage of more than 36 hours the same had not been produced. The operations having admittedly commenced at 9:30 AM on 8.9.2010 it is clear that question was being asked at about 10 PM on 9.9.2010. This becomes further evident from question no.16 by which while giving three hours additional time to produce the records, the expiry time of three hours time was mentioned as "AM 01:00 (10.9.10)". The interrogation and recording of statement was "temporarily concluded", to be resumed in the morning, after the 31st question at 3:30 AM on 10.9.2010. The date and time has been so mentioned in the endorsement by the officer along with his signature.

The departmental representative was at pains to submit that the fact that only 15 questions were asked by 10 PM on 9.9.10 shows that the length of interrogation was not long enough to warrant any adverse inference as to the duration of interrogation. He also submitted that the interrogation was not continuous. There were temporary breaks in between.

It is not possible to accept this plea. Had intervals or breaks been allowed, It would have been reflected in the body of the statement as was done after the 31st question. The Commission is inclined to think that whatever be the exact time of the commencement of the interrogation or the recording of statement, it was done continuously - the first break being at 3:30 AM. Indeed, the number of questions cannot per se indicate the period of interrogation. The fact that question no. 15 was asked about 10 PM or question no. 31 was asked at 3:30 AM on 10.9.2010 cannot be the basis to conclude that the interrogation took place for a few hours. The statement under section 132 of the IT Act is the result of sustained interrogation which in the instant case apparently commenced from the morning of 9.9.2010. And even if anyone were to visualise the sequence of events liberally in favour of the Income Tax Department, there is no basis for taking the view that the interrogation/ recording of statement was with breaks / intervals.

In any view of the matter, the Commission is not able to appreciate the fact that the Interrogation and recording of statement should continue at odd hours in the night of 9/10.9.2010. As seen above, the time of interrogation/recording of statements was stopped temporarily only at 3:30 AM.

The Commission is of the view that the members of the raiding party may take their own time to conclude the search & seizure operations but such operations must be carried out keeping in view the basic human rights of the Individual. They have no right to cause physical and mental torture to him. If the officer-in-charge of the Interrogation/recording of statements wanted to continue with the process he should have stopped the same at the proper time and resumed it next morning. But continuing the process without any break or interval at odd hours up to 3:30 AM, forcing the applicant and/ or his family members to remain awake when it is time to sleep was torturous act which and can not be countenanced in a civilised society. It was violative of their rights relating to dignity of the individual and therefore violative of human rights. Even die-hard criminal offenders have certain human rights which can not be taken away. The applicant's position was not worse than that.

In the opinion of the Commission, the Income Tax Department should ensure that the search & seizure operations at large In future are carried out without violating one's basic human rights.

To conclude the Commission is prima facie satisfied that there has been violation of the applicant's human rights by the concerned officials of the Income Tax Department while continuing the search and seizure operations for which he is entitled to be monetarily compensated.

Having held, thus, the Commission would give an opportunity to the Department to submit its response as to why monetary compensation be not awarded to the applicant - recoverable from the salary of the concerned officials in accordance with law.

Let copy of this order be sent to the Chief Commissioner of Income Tax, Bihar as well as the Director General of Income Tax (Inv.) Bihar for their response, If any within four weeks.

Copy of the order may also be sent to the applicant.
(sd)

Justice S.N. Jha
Chairperson