

Supreme Court Joint Bench

Honorable Justice Mr. Tahir Ali Ansari

Honorable Justice Dr. Bharatbahadur Karki

Order

Writ no. 067 (2010)WO.....1198

Re: - **Stay Order**

Advocate Sunilranjan Singh and others.....Applicant

Vs.

Prime Minister and Council of Ministers and others.....Defendant

Case: Certiorari

With regard to the writ application, lodged asking whether the interim order issued on 5 July 2011 and applicable till 11 July 2011 by the single bench of a justice from this court should be continued or not, on 11 July 2011, 12 July 2011 and 13 July 2011, learned senior advocates representing the applicant Laxmibahadur Nirala, Mahadev Yadav, learned advocates Bornabahadur Karki, Madhav Banskota, Surendrakumar Mahato, Kamalmani Niraula, Govinda Sharma "Bandi", Hari Phuyal, Shreekrishna Subedi, Rudra Sharma and applicant advocate Sunilranjan Singh and representing the defendants, Attorney General Yubaraj Sangraula, Deputy AG Premraj Karki, Surya Koirala, Pushparaj Koirala, Joint Attorney Yubaraj Subedi, Kiran Poudel, Mahesh Sharma Poudel and Deputy Attorney Dharmaraj Poudel and on behalf of defendant Kuber Singh Rana, senior advocate Shreeprasad Pandit, Ramankumar Shrestha, Ramnarayan Bidari, Bhimarjun Acharya and Rabindra Bhattarai, the court heard the arguments from both sides.

The writ application has demanded for a stay order to bar Kuber Singh Rana from executing his duties in the capacity of AIG as there is an FIR against him pinpointing him as a perpetrator, and the constitutional body, National Human Rights Commission (NHRC), has found him guilty for human rights violation. The government has failed to prosecute him as per the law of the land and has instead promoted him to a higher post, whereas the consequence of government's decision for his promotion can wrongly influence the investigation and prosecution against him as he can interfere with it.

NHRC is a constitutional body. There is no dilemma regarding its function of effectively implementing, protecting and promoting human rights as guaranteed by the constitution and law and maintaining its own independence and autonomy. Article 132 of Nepal's Interim Constitution has provided this commission's functions, duties and powers. These functions, duties and powers have been provided from Part (a) to Part (8) of Article 132, sub-article (2). Article 132 (2) (a) provides that NHRC conducts inquiries into, investigations of, and recommendation for action against the perpetrator of, instances of violation or abetment of violation of human rights of any person or a group of persons.

In the same manner, 132 (2) (b) mentions that the commission "forwards a recommendation to the authority concerned to take departmental action against any authority that has the duty or responsibility to prevent violations of human rights, if it failed to perform such duty or responsibility or showed recklessness or lack of interest in performing that duty." Similarly, 132 (2) (c) mentions of the commission making recommendation if necessary, to lodge a petition in the court, in accordance with the law, against a person who has violated human rights.

Now, NHRC's decision on 19 January 2008 and the letter sent to the Prime Minister on the same date shows that this defendant, the then DSP at Dhanusha District Police Office, SSP Chudabahadur Shrestha, army man Major Anup Adhikari and the then Chief District Officer Rewati Raman Kafle who headed the Unified Command have been found involved in human rights violation and the NHRC has recommended to the government to prosecute them after carrying out necessary investigation. It has been mentioned that this recommendation would be sent to the government in written form in pursuant to section 13 (1) NHRC Act, 1996. Thus, the phrase employed by the NHRC in its letter that the government should investigate into and prosecute defendant Kuber Singh Rana and three others clearly shows that it sent the letter in pursuant to the Part (2) of Article 132 (2) of the Interim Constitution.

The court heard the arguments forwarded by learned advocates representing the defendant government authorities and the advocates representing the defendant Kuber Singh Rana. They held that investigation into the case is ongoing following the recommendation by the NHRC and that investigation would continue. There was even an FIR against people including defendant Kuber Singh Rana, and acting on the writ no. 681 of 2006, the joint bench of this court had issued an order of mandamus against defendant District Police Office to register the FIR and carry out necessary investigation. In this situation, applicants including Jiwachhi Sah and Jaya Kishor Labh had filed an FIR about homicide against defendants including Kuber Singh Rana and the legal process of investigation and prosecution are in progress. But the charge sheet has yet to be filed establishing the defendant guilty of the crime and the court is yet to convict the defendant.

Under such circumstances, it is not appropriate just to label the defendant as a convicted offender only on the basis of a recommendation by NHRC to investigate and to take legal action against him for human rights violation.

Moreover, the issues of Kuber Singh Rana's violations of human rights and the procedural error in his promotion and its legality as raised by the writ applicants has yet to be answered from the final decision on the present writ application. Therefore, this writ application is not entitled to a stay order on defendant Kuber Singh Rana's execution of duties in capacity of AIG on the basis of balance of convenience and irreparable loss. The continuation of stay order issued on 5 July 2011 by this court is no longer necessary.

But since the court is serious and sensitive towards the protection of human rights and is committed to carrying out constitutional obligation to that effect, the court orders the defendant Prime Minister's Office, Home Minister and Police Headquarters to send progress report of investigation into the case to this court and to the NHRC every month. The FIR registered against the defendant Kuber Singh Rana and NHRC's recommendation letter dated 19 January 2008 to the Prime Minister to carry out investigation into this case and prosecute him has shown that the legal process is going on. This court should be informed about the progress of the investigation. If the investigation has not been taken further, the government should facilitate for fair, independent and effective investigation of the crime by appointing an officer with powers equivalent to that of a Deputy Superintendent of Police in pursuant to Rule 4(1) of State Cases Rules, 1998. Moreover, the government should see to it that Kuber Singh Rana, promoted by Nepal Government to the post of AIG, does not intervene and influence the investigation.

13 July 2011

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