

Bihar Human Rights Commission, Patna

9, Bailey Road, Patna, 800015.

Miscellaneous Case No. 01/2024

(Arising Out of Case No. 2215/4/26/2024- AD)

Rajeev Mishra

Applicant

Versus

Shree Ram Singh

Opposite Party

Order dated : 01.08.2024

Coram : Justice A M Badar (R), Chairperson,

Bihar Human Rights Commission, Patna.

Counsel for Applicant: Mr. Prince Kumar Mishra, Advocate.

Counsel for Opposite Party: Mr. Madhav Kumar a/w Mr. Pintu

Kumar and Mr. Shiv Nandan Bharti



ORDER

A. BACKGROUND

1. Applicant being aggrieved and dissatisfied with Report-cum-Order dated 20/06/2024, (hereinafter referred to as an 'Order') in Case No. 2215/4/26/2024-AD passed by the Chairperson, Bihar Human Right Commission, Patna, has invoked jurisdiction of the Commission, stating inter alia that serious prejudice has been caused to him due to order passed by this Commission. The applicant has pleaded that the directions as contained in the clause Nos. IV and V of the operative order of the Report-Cum-Order dated 20.06.2024 be recalled and observations contained in the body of the report and more particularly in *paragraphs 20, 39 & 40*, which are prejudicial in nature and are having an effect of casting aspersion on him, be expunged.
2. Upon receipt of the petition from applicant, notice was sent to opposite party/respondent on 09.07.2023, for giving him an opportunity to hearing. Matter was posted on 23.07.2024 for hearing.
3. On 23.07.2024 both sides were in attendance. Mr. Prince Kumar Mishra learned counsel for applicant and Mr Madhav Kumar, learned for opposite party Shree Ram Singh were heard. Thereafter the matter has been posted for order with consent of the parties.

B. SUBMISSIONS ON BEHALF OF THE APPLICANT :-



4. At the outset, Mr. Prince Kumar Mishra, learned counsel for the applicant has stated that he has limited his prayer, to only expunge/modify/recall of the directions contained in Clause Nos. IV and V of the operative order dated 20.06.2024 and to expunge adverse observations contained in the in the body of the report, which are causing serious prejudice to applicant, for no fault on his part.
5. Mr. Prince Kumar Mishra, learned Counsel for applicant, has taken this Commission through the entire order dated 20.06.2024 and connected papers to demonstrate that serious prejudice has been caused to applicant on account of some of the directions contained in the Report-Cum-Order dated 20.06.2024, and has prayed to modify/recall the same in the interest of justice. In order to make out his case, Mr. Prince Kumar Mishra, has pointed out the following facts for consideration of the Commission, which according to him, have not been noticed while passing the original order or that those were not brought before the Commission.
 - 5.1. Mr. Mishra, learned Counsel for applicant has submitted that even though applicant, being the Senior Superintendent of Police, Patna, has taken all the steps and complied with all legal as well as procedural requirements in the case of custodial death, those



unmissable facts have not been noticed or brought to the notice of the Commission. As a result, the Commission has reached factually erroneous conclusions, causing grave prejudice and irreparable consequences to the applicant. Therefore the order of Commission needs to be modified/recalled.

5.2. Referring to the documents filed before the Commission, it is contended by Mr. Mishra, learned Counsel for applicant that on 31/03/2024, upon the death of Jitesh Kumar, vide Memo No. 851 dated 31/03/2024, issued by City Superintendent of Police (West), Patna, a request was made to Sub Divisional Magistrate, Sadar, Patna, for deputation of the Magistrate for preparation of inquest report. Thereafter, vide Memo No. 852 dated 01.04.2024, issued by the City Superintendent of Police (West), Patna, a request was made to the District Magistrate, Patna, for constitution of the Medical Board for conducting post-mortem examination of the dead body of Jitesh Kumar.

5.3. It is stated that, vide Memo No. 1512 dated 01.04.2024, the applicant had requested to the learned District and Session Judge, Patna, to hold a Judicial inquiry into unfortunate death of Jitesh Kumar. Apart from it, vide Memo No. 1522 dated 01.04.2024, the applicant had directed the City S.P. East, Patna, to carry out



investigation in scientific and transparent manner. Vide said letter, 12 different directions were issued for proper and fair investigation of the case including compliance with the directions issued by the Hon'ble Supreme Court of India and the National Human Rights Commission, in relation to custodial death.

5.4. By taking the Commission through the steps taken by the applicant, it is submitted by Mr. Mishra, learned Counsel for applicant that in compliance of guidelines/directions in the matter of **D. K. Basu Vs State of West Bengal, AIR 1997 SC 610**, the matter was reported to the National Human Rights Commission, New Delhi as well as to the Bihar Human Rights Commission, Patna. However, these crucial facts have not been noticed by this Commission in its order and adverse observations and conclusions have been reached against applicant. Referring to the Letter No.1525 dated 01.04.2024 (Annexure-5), issued by the applicant, it is submitted that report with regard to custodial death of Jitesh Kumar was sent to the Registrar, National Human Rights Commission, New Delhi, along with copies of the postmortem report, inquest report and the copy of the F.I.R. registered at Phulwari Shariff P.S. vide crime No. 487/2024, along with the copy of the letter sent to the learned Judicial Magistrate for Judicial inquiry, Videography of postmortem examination was also



forwarded. It is also submitted that the copy of the said report was also sent to the Registrar, Bihar State Human Rights Commission, vide email on 01.04.2024 and proof thereof is marked as Annexure-5 of the instant Petition. Apart from it, physical copy of the same was also submitted to office of Bihar Human Rights Commission, Patna under acknowledgement and the same was received on 24.04.2024 by the Bihar Human Rights Commission.

5.5. It is further submitted that in compliance of guidelines/directions of in the matter **D. K. Basu (supra)**, again the applicant vide Letter No. 3299 dated 01.05.2024, had sent a report to the Registrar, National Human Rights Commission, New Delhi, with regard to unfortunate death of Jitesh Kumar.

5.6. It is further submitted that it was sheer inadvertence on the part of sub ordinate officer of the applicant dealing with concerned section that the Commission could not be apprised with regards to relevant facts/steps taken by applicant by filing the reply/report at the time of hearing. As a result, the Commission was not having the full picture of the case. For such a lapse, vide Patna Ziladesh No. 3000/2024, dated 02.07.2024, Police inspector Kapil Dev Prasad, dealing with Human Right Section, in the Office of the applicant has been suspended.



5.7. Belabouring on this point, it is submitted by Mr. Mishra, learned counsel for applicant that even though there has been complete compliance with directions in the matter of D. K. Basu (supra), said aspect has been completely overlooked by the Commission, in Report-Cum-Order dated 20.06.2024 and adverse inference has been drawn against the applicant may be because of lapses on the part of employers of the Commission. Placing reliance on the judgments of Hon'ble Apex Court in Bhupinder Singh Vs Unitec Limited reported in 2023 Live Law (SC) 263: (Order dated 23.03.2023 passed in I.A. No. 88960 of 2020 and 47525 of 2021 in Civil Appeal No. 10856 of 2016), Karnataka Rare Earth &Anr. v. Senior Geologist Department of Mines & Geology &Anr. 2004 (2) SCC 783, Inderchand Jain (dead) through LRs Vs Motilal (dead) through LRs reported in (2009) 14 SCC 663&M/S. U.P.S.R.T.C vs Imtiaz Hussain (2006)1 SCC 380, it is contended that an act of court shall prejudice no one and in such fact situation, the court is under obligations to undo the wrong done to a party by the act of court. In this background, it is argued that any undeserved or unfair order against applicant is required to be neutralised in the interest of Justice.



5.8. Lastly, Mr. Mishra has submitted that the Commission has got inherent power to recall its orders in order to meet ends of justice or to prevent abuse of process of court. It is further argued that every court has got inherent power to recall an order, if sufficient cause is shown. In order to fortify his submission, Mr. Mishra has placed reliance on the judgements of Apex Court in the case of **Budhia Swain Vs. Gopinath Deb, reported in (1999) 4 SCC 396, Sunitadevi Singhania Hospital Trust. Vs. Union of India reported in (2008) 16 SCC 365, Grindlays Bank Ltd. Vs Central Government Industrial Tribunal reported in (1980) Supp. SCC 420, Asit Kumar Kar Vs. State of W.B. reported in (2009) 2 SCC 703, HDFC Bank Ltd. v. Union of India, (2023) 5 SCC 627.**

C. Submission of Opposite Party

6. Mr. Madhav Kumar, the Learned Counsel appearing for opposite party/respondent has stoutly opposed the prayer of the applicant saying that same is not maintainable and contended that the application should be dismissed. Raising technical pleas of maintainability, it is argued that petition should not be entertained as Police has committed extreme brutality with deceased Jitesh Kumar and till date nothing has been paid to his family members. However, upon a pointed query with regards to factual position pointed out in



the petition, the learned Counsel for Opposite Party has not disputed the same.

D. RULES OF PROCEDURE FOR CONDUCT OF PROCEEDING IN COMMISSION

7. It is required to be stated that the Protection of Human Rights Act, 1993, has conferred upon this Commission, power to devise its own procedure and to regulate it, as the interest of justice demands. The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the objects of the Protection of Human Rights Act, 1993. It is a well-known rule of statutory construction that a Tribunal or a Commission discharging judicial or quasi judicial functions should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing complete justice between the parties.
8. There is no gainsaying that, even in absence of a specific provision empowering the Commission to recall /review/modify its order, it has got power to do so ex debito justitiae, if facts of the case so warrant. Apart from it, the Commission is also required to observe principles of natural justice, equity and good conscience, while

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passing Orders. Needless to state that principles found in general procedural laws like the Code of Civil Procedure would be also applicable.

9. At this juncture, it is relevant to state that the office has reported that the Rules of Procedure i.e Regulations for conduct of proceeding, framed by this Commission have yet not been approved by the State Government. However, it is worth noting that parimateria rules of procedure namely, 'National Human Rights (Procedure) Regulations, 1994,' framed by the National Human Rights Commission, do empowers that Commission to review its Orders. In terms of Regulation No. 32 (2) of National Human Rights (Procedure) Regulations, 1994, power of review has been conferred upon the National Human Rights Commission. Although, said Rules of procedure i.e. Regulations are not applicable or binding on the State Human Rights Commission, but still, principles of law, flowing from the said Regulation framed by National Human Rights Commission can be relied upon and can be taken as aid in appropriate cases by this Commission.

E. PRINCIPLES OF LAW FOR EXERCISE OF POWER BY THE COMMISSION

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10. Before proceeding further, this Commission will also bear in mind the principle of law, exposited through the maxim "actus curiae neminem gravabit", which means that no party should suffer due to the act of Court. Hon'ble Supreme Court of India, in the case of Bhupinder Singh Vs Unitec Limited Reported in 2023 Live Law (SC) 263: (Order dated 23.03.2023 passed in I.A. No. 88960 of 2020 and 47525 of 2021 in Civil Appeal No. 10856 of 2016), while explaining the contours of the maxim has stated that the act of the Court shall prejudice no one and in such fact situation, the Court is under obligations to undo the wrong done to a party by the act of the Court. As per the settled law, any undeserved or unfair advantage gained by a party invoking the jurisdiction of court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the court. Any wrong or harm caused to a party on account of unwarranted actions of court, must be neutralised.
11. While explaining this principle, Hon'ble Apex Court in the case of Karnataka Rare Earth & Anr. v. Senior Geologist Department of Mines & Geology & Anr. 2004 (2) SCC 783, has held as under: -
- "The doctrine of actus curiae neminem gravabit is not confined in its application only to such acts of the Court which are erroneous; the doctrine is applicable to all



such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted.” (emphasis is mine)

12. In the case of Inderchand Jain (dead) through LRs Vs Motilal (dead) through LRs reported in (2009) 14 SCC 663, the Apex Court observed that this maxim is founded on principles of equity and justice and is helpful in administration of the Court. The Court observed thus: -

“This well settled position need not detain us, when the second point urged by the appellants is focused. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court. There is a well-recognised maxim of equity, namely, actus curiae neminemgravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law.” (emphasis supplied is mine)

13. The maxim of “*Actus Curiae Neminem Gravabit*” finds its application also in Section 151 of the Civil Procedure Code (CPC),

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according to which if there is any error due to the negligence on the part of the Court, it must be rectified by the Court. It would be appropriate to refer to the judgment of the Apex Court decision in M/S. U.P.S.R.T.C vs Imtiaz Hussain (2006)1 SCC 380, wherein the Court elucidated the maxim as the foundation of Section 151 of CPC and observed thus:

“The basis of the provision under Section 151 of the Code is founded on the maxim 'actus curiae neminem gravabit' i.e. an act of Court shall prejudice no man. The maxim “is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law”, said Cresswell J. in *Freeman v. Tranah* (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified.”

F. INHERENT POWER TO RECALL/REVIEW OF COMMISISON

10. At this juncture, it is significant to notice that that inherent power of recall, which, though not expressly granted under any legislation, will be deemed to exist or be inherent in every Court so as to enable it to make such orders as necessary in order to meet the end of justice or to prevent the abuse of process of Court.

11. Under Section 151 of the Code of Civil Procedure, power to review or recall by a Tribunal and Court of its earlier order, could be exercised :-

(i) if such order suffered from the inherent lack of jurisdiction and such lack of jurisdiction was patent, (ii) there existed fraud or collusion in obtaining the judgement, **(iii) there had been a mistake of Court prejudicing the party** or a judgement was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the state was not represented.

12. Hon'ble Apex Court, in the case of **Budhia Swain v. Gopinath Deb,** reported in (1999) 4 SCC 396, while expounding the power and scope of recall, has observed thus:

"6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order

(i) obtained by fraud practised upon the court,

(ii) when the court is misled by a party, or

(iii) when the court itself commits a mistake which prejudices a party.



In *A.R. Antulay v. R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531, para 130] (vide para 130), this Court has noticed motions to set aside judgments being permitted where

- (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,
- (ii) a judgment was obtained by fraud,
- (iii) a party has had no notice and a decree was made against him and such party approaches the court for setting aside the decision *ex debito justitiae* on proof of the fact that there was no service.

7. In *Corpus Juris Secundum* (Vol. XIX) under the chapter "Judgment —Opening and Vacating" (paras 265 to 284, at pp. 487-510) the law on the subject has been stated. The grounds on which the courts may open or vacate their judgments are generally matters which render the judgment void or which are specified in statutes authorising such actions. Invalidity of the judgment of such a nature as to render it void is a valid ground



for vacating it at least if the invalidity is apparent on the face of the record. Fraud or collusion in obtaining a judgment is a sufficient ground for opening or vacating it. A judgment secured in violation of an agreement not to enter a judgment may be vacated on that ground. However, in general, a judgment will not be opened or vacated on grounds which could have been pleaded in the original action. A motion to vacate will not be entered when the proper remedy is by some other proceedings, such as by appeal. The right to vacation of a judgment may be lost by waiver or estoppel. Where a party injured acquiesces in the rendition of the judgment or submits to it, waiver or estoppel results.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party,

or (iv) a judgment was rendered in ignorance of the fact that a



necessary party had not been served at all or had died and the estate was not represented.

"The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."

13. Hon'ble Apex Court in the case of **Sunitadevi Singhania Hospital Trust. v. Union of India reported in (2008) 16 SCC 365**, had set aside the order of the Central Excise and Service Tax Appellate Tribunal (CESTAT) by which it had dismissed an application for rectification of mistake which was effectively an application for recall and had also refused to condone the delay in filing the said application. The Supreme Court, affirming its judgment in *GrindlaysBank Ltd.Vs Central Government Industrial Tribunal* reported in (1980) Supp. SCC 420, reiterated that the Industrial Tribunal had an inherent power to set aside the ex parte award subject to the condition that the same had not been published in the Gazette. The Court thereafter went on to hold that the CESTAT had

failed to notice that it had sufficient powers to recall its own order if sufficient cause was shown. Consequently, the appeal was allowed and the impugned judgment of the CESTAT was set aside.

G. POWER OF RECALL WHEN ORDER IS PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

14. It is trite law to state that violation of principle of natural justice by any Court of law or authority would render the order nullity. It is fundamental principal of law that no adverse order can be passed against a party without granting sufficient opportunity of hearing and consideration of records.

15. In *Asit Kumar Kar v. State of W.B.* reported in (2009) 2 SCC 703, Hon'ble Apex Court recalled its judgment, which was passed in violation of Principles of Natural Justice. Relevant portions of judgment are being reproduced for better appreciation.

“4. It is a basic principle of justice that no adverse orders should be passed against a party without hearing him. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence. In the seven-Judge Constitution Bench of this Court in *A.R. Antulay v. R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] it has been observed in para 55 thereof: (SCC p. 660)

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“55. ... So also the violation of the principles of natural justice renders the act a nullity.”

5. One of the counsel relied upon another five-Judge Constitution Bench decision in *Rupa Ashok Hurra v. Ashok Hurra* [(2002) 4 SCC 388] . It is true that in para 9 of the judgment it has been observed that this Court under Article 32 of the Constitution cannot hold as invalid a judgment of this Court by treating it as a nullity. However, the aforesaid judgment does not say that we cannot pass a recall order when that order has been passed without hearing a party.

6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.”

16. Similarly, in the case of *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal*, 1980 Supp SCC 420, Hon'ble Apex Court upheld the Order passed by the Central Government Industrial Tribunal, which has recalled/set aside ex parte order, as

respondents were prevented by sufficient cause from appearing when the reference was called out of hearing. Relevant paragraphs thereof are being reproduced hereinunder:

"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

10. When sub-section (1) of Section 11 expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with



all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh."

H. ANALYSIS & CONSIDERATION

17. Now, the facts of the present case are required to be tested on the anvil of aforesaid legal principles and authorities to see, (i) whether, applicant has been prejudiced on account of Report-cum-Order dated 20.06.2024 passed by this Commission and same is required to be recalled to the extent, else grave injustice would be caused to him (ii) Whether applicant has made out a case for recall of certain observations and directions in the Report-cum-Order dated 20.06.2024 or not (iii) if yes, then to what extent, the observations



and directions in the Report-cum-Order dated 20.06.2024 are required to be recalled/reviewed.

18. Turning to facts of case, Commission has minutely perused the materials brought on record and has given anxious consideration to the facts and supporting documents presented by the applicant. The Commission has also examined the entire records of the case and connected papers, in order to reach a just and fair conclusion. The Commission has also called for the record and reports pertaining to Inward Department and E mails.

It can be seen that many of the facts, which had been presented by the applicant, were not brought to the notice of this Commission by the office at the time of passing of order dated 20.06.2024. In-fact some misleading information from the Information Technology Manager of this Commission regarding downloading of the Emails was there. For cross checking the averments made in the instant application for modification of the original order, record of the Commission is checked and counter checked. The applicant herein has stated on affidavit that intimation of custodial death of Jitesh Kumar was given to the National Human Rights Commission as well as to the Bihar Human Rights Commission by him on 01.04.2024 itself i.e within few hours of custodial death of Jitesh Kumar. From the report dated 09.07.2024 which was given in normal course by the learned Registrar of



this Commission, it is reflected that email I'd dysec-bhrc@nic.in was obtained after a long lapse of time on 04.07.2024 by securing password from the mobile phone of the Deputy Secretary of this Commission Shri Mahesh Kumar Das and it was found that the Email sent from the office of the Senior Superintendent of Police on 01.04.2024 bearing letter No. 1525 was in-fact received by the Bihar Human Rights Commission. By this letter No. 1525, the Senior Superintendent of Police had informed the learned Registrar of the Bihar Human Rights Commission as well as to the learned Registrar of the National Human Rights Commission that Jitesh Kumar died while in custody of the police and necessary documents in respect of this custodial death are being forwarded. Thus on 01.04.2024 itself intimation of custodial death of Jitesh Kumar was in-fact received by the Bihar Human Rights Commission from the Senior Superintendent of Police, Patna but unfortunately till the date of disposal of the case, it was not downloaded by the contract workers provided by the State to this Commission. As a result it was not placed before the Commission prior to passing the order on 20.06.2024

19. Unfortunately this intimation of custodial death of Jitesh Kumar received on Email was not downloaded and placed before this Commission because of negligence of the Information Technology Manager Mrs. Supriya Kumari who was a contract worker provided by the State Government to



the Bihar Human Rights Commission. On 15.05.2024 and 16.05.2024 this Commission has obtained reports from the said Information Technology Manager Mrs. Supriya Kumari as to how many emails received by the Commission are yet to be downloaded. By two separate reports dated 15.05.2024 and 16.05.2024 said Mrs. Supriya Kumari, Information Technology Manager had informed the Joint Secretary of the Bihar Human Rights Commission that pendency of downloading of the emails as of 5 P.M of 14.05.2024 and 15.05.2024 is zero. That is how because of sheer negligence and inaction on the part of this contract worker Mrs. Supriya Kumari despite receipt of email regarding custodial death from the Senior Superintendent of Police, Patna, the same was not downloaded and put up before this Commission. Instead a misleading report was submitted by the Information Technology Manager Mrs. Supriya Kumari that not a single Email is pending. That contract worker Mrs. Supriya came to be relieved on 28.06.2024 from the Bihar Human Rights Commission and she is now no more working with the Bihar Human Rights Commission from that date. As such this Commission can not even to take any administrative action for lapses on her. Moreover she was an employed by a Contract Agency of the State of Bihar. However, the fact remains that this Commission had in-fact received the intimation of custodial death of Jitesh Kumar on 01.04.2024 and as such the observations of this Commission order dated 20.06.2024



that no intimation regarding custodial death was given to the Commission by the Senior Superintendent of Police, Patna deserves to be expunged being factually incorrect.

20. Similarly considering the averments made in this application that even intimation of custodial death of Jitesh Kumar was given in physical form to this Commission, a report was called from the office. It is seen from the report given by Nutan Lata, the Data Entry Operator that letter No. 3035 dated 22.04.2024 of the Senior Superintendent of Police, Patna addressed to the Assistant Registrar and copy endorse to the Bihar Human Rights Commission was received her on 24.04.2024 and she had submitted the said letter to Shri Abhishek Kumar, Assistant Section Officer of Bihar Human Rights Commission on 03.05.2024. Said Abhishek Kumar had endorsed that as this letter No. 3035 dated 22.04.2024 was not related to his work and as file No. 2215/4/26/2024-AD was not entrusted to him, he is not annexed the said report to the said complaint file. This makes it clear that the intimation regarding custodial death of Jitesh Kumar in physical form vide letter No. 3035 dated 22.04.2024 was in-fact received by the staff of this Commission and because of inaction of the contract workers so also that of the Assistant Section Officer, the same was not brought to the notice of this Commission while deciding the subject complaint by order dated 20.06.2024. Necessary administrative action is being taken on Mrs. Nutan



Lata and Shree Abhishek Kumar. Thus it is crystal clear that intimation of custodial death of Jitesh Kumar was in-fact sent by the Senior Superintendent of Police and it was received by the Bihar Human Rights Commission well within time. Resultantly adverse inference drawn against the Senior Superintendent of Police, Patna with regard to non sending of the report of custodial death and the consequential directions are apparently erroneous and unwarranted deserving recall.

21. Similarly, it can be noticed from the facts brought before this Commission that applicant Shri Rajeev Mishra, Senior Superintendent of Police has taken timely steps for getting the inquest report prepared, conducting the post mortem examination of deceased as well as holding judicial inquiry in the matter of death of Jitesh Kumar and direction to Investigating Officer for proper investigation of the case. The documentary evidence of the steps taken by him is available at Annexure- 1, 2, 3 & 4 to this petition. Apart from it, it can be also seen that applicant has taken the steps to get the investigation transferred to Criminal Investigation Department in order to allay fears of improper investigation as serving Policeman are involved. Therefore, observations and inferences drawn with respect to the applicant as being negligent in discharge of his professional duties and slack supervision of the police force does not appears to be correct and those were the result of non



filing of the reply by the Senior Superintendent of Police for clarifying his stand in the matter. From the facts narrated above, it can be safely concluded that the applicant has complied with statutory and administrative guidelines/directions contained in **D. K. Basu** as well as and to that extent, observations and directions made in the order dated 20.06.2024, are uncalled for and requires to be recalled. For negligence of his subordinate Officer in taking steps for filing reply before the Commission, the Senior Superintendent of Police, Patna who has in-fact taken all legal steps in the matter, cannot be stigmatized. In-fact recently, all the Police Officials concerned with the custodial death are reportedly suspended by him.

22. Justice is above all. It is a virtue which transcends all barriers Neither the rule of procedure nor the technicalities of law can come in its way. The law has to bend before Justice. Rectification of an order stems from the fundamental principle that Justice is above all. It is an exercise to remove an error and not to disturb the finality. **[(See Lilly Thomas Vs Union of India(2000)6 SCC 224), Common Cause, Registered Society Vs. Union of India (1999) 6 SCC 667].**

23. It would be profitable to bear in mind the observations made by the Hon'ble Apex Court in the case of **HDFC Bank Ltd. v. Union of India, (2023) 5 SCC 627** that- **"... the concern of this Court for rendering**

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justice in a cause is not less important than the principle of finality of its judgment. The Court has to balance ensuring certainty and finality of a judgment of the Court of last resort on one hand and dispensing justice on reconsideration of a judgment on the valid grounds on the other hand". The court further observed that though the Judges of the highest court do their best, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. It has been held that in such a case it would not only be proper but also obligatory both legally and morally to rectify the error. This Court further held that to prevent abuse of its process and to cure a gross miscarriage of justice, the Court may reconsider its judgments in exercise of its inherent power.

19. The net result of foregoing discussion requires me to hold that applicant has made out a case for recalling & expunging the adverse observations and directions qua him. Hence the following order: -

ORDER

The application is allowed, in the following terms :-

- I. The Clause No. IV of the operative order dated 20.06.2024 in case No. 2215/4/26/2024-AD whereby, the State of Bihar through its Chief Secretary or other competent officer was directed to initiate the departmental inquiry against the incumbent of the post of



Senior Superintendent of Police, Patna as of 31.03.2024 (the applicant herein) under relevant rules including the All India Services (Discipline and Appeal) Rules 1969, is hereby recalled and expunged and it is further made clear that no action in that regard is called for.

- II. The Direction contained in the clause No. V of the operative order dated 20.06.2024 in case no. 2215/4/26/2024-AD, with regard to Senior Superintendent of Police, Patna (the applicant herein) regarding initiation of proceedings under the Contempt of Courts Act is hereby recalled and expunged.
- III. Observation of this Commission in para 20 of the Report-cum-order dated 20.06.2024 to the effect that the Senior Superintendent of Police, Patna has failed to report custodial death of Jitesh Kumar to this Commission is hereby recalled. Similarly, all observations in Paragraphs 39 and 40 of the Report-cum-order dated 20.06.2024 in Case No. 2215/4/26/2024-AD stands expunged.
- IV. The Registrar, Bihar Human Rights Commission, Patna shall forward copies of this order to the Chief Secretary, State of Bihar, Additional Chief Secretary, Home Department State of Bihar, Patna,



the learned Registrar General, Patna High Court, Patna and to the Additional Director General of Police (CID), Patna, Bihar.

- V. Modifications/ Recall made in this order be read as part of Report-cum-Order dated 20.06.2024.
- VI. The copies of this order be forwarded to both parties.

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Ananta Manohar Badar
1-8-24.
(Justice Ananta Manohar Badar, Retd.)
Chairperson