

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2585 of 2008**

Chhattisgarh State Electricity Board through its Executive Engineer,
Division 2, District Durg, having its Headquarters at Danganiya,
Raipur (CG)

---- Petitioner

Versus

1. Chhattisgarh Human Rights Commission Through its Chairman,
Near Mantralaya, Raipur, District-Raipur (CG)
2. Joint Secretary, Chhattisgarh Human Rights Commission, Near
Mantralaya, Raipur, District-Raipur (CG)
3. The Collector, Durg, District-Durg (CG)
4. Jai Shankar Verma, S/o not known to the petitioner, Aged about
Adult, R/o Shikshak Colony, Danganiya, Raipur, District Raipur
(CG)

---- Respondents

For Petitioner	:	Mr.Sunil Otwani and Mr.Anshuman Shrivastava, Advocate
For Respondent No.3	:	Mr.Arun Sao, Dy.A.G.
For Res.No.1, 2 & 5	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/11/2017

1. Invoking jurisdiction of this Court under Article 226 of the
Constitution of India the petitioner herein-Chhattisgarh State
Electricity Board (now Company) has filed this writ petition
calling in question legality, validity and correctness of order
dated 19.5.2006 (Annexure P/6) passed by the Chhattisgarh
Human Rights Commission (hereinafter called as
"Commission") and consequential orders, whereby the
Commission has directed the petitioner to pay an amount to
the tune of ₹ 6,22,000/- to respondent No.4 as compensation
towards illegal and forceful installation of six electricity polls
and electricity line in the agricultural field owned by

respondent No.4.

- 2.** Mr.Jai Shankar Verma/respondent No.4 herein made a complaint to the Commission that he has 2.5 acres of the land at village Amleshwar, Tahsil Patan, District Durg in which he is willing to have vermiculture cultivation, but the petitioner herein has installed six electricity polls along with electricity line without his consent on his land and thereby he has been deprived to undergo vermiculture cultivation and suffered huge loss in the said work and that is violation of Human Rights. Therefore, he is entitled for compensation under the provisions contained in Section 18 of the Protection of Human Rights Act, 1993 (hereinafter called as “the Act of 1993”). The Commission noticed the petitioner herein. In reply, the petitioner Company has stated that work has been carried out under the provisions of the Electricity Act, 2003 and on account of erection of electricity polls, work of vermiculture cultivation is not affected and no crop has been damaged, therefore, he is not entitled for compensation.
- 3.** The Chhattisgarh Human Rights Commission by its impugned order held that the petitioner Company has erected six electricity polls and electricity line in the field owned by respondent No.4 without his prior consent, therefore, he is entitled for compensation to be quantified by the Collector, Durg and consequently, the Collector, Durg on 8.5.2007 (Annexure P/13) quantified the compensation as ₹ 6,22,000/- and the Commission on 20.6.2007 (Annexure P/14) directed the

petitioner to make payment of ₹ 6,22,000/- to respondent No.4 herein as compensation.

- 4.** Feeling aggrieved and dissatisfied with the said order, this writ petition has been filed by the petitioner herein stating inter-alia that the Commission has no jurisdiction and authority to grant compensation. It is only a recommendatory body, therefore, impugned order is liable to be set aside.
- 5.** Respondents No.1 and 2 have filed their return stating inter-alia that order has been passed by the Commission in accordance with the record available and power vested under the Act of 1993.
- 6.** Mr.Sunil Otwani, learned counsel appearing for the petitioner, would submit that the Commission has no jurisdiction and authority to grant compensation and it can only make a recommendation under Section 19(a) of the Act of 1993 to the concerned authority or Government to make payment of compensation and damages to the complainant or to the victim or the members of his family as the Commission may consider necessary.
- 7.** Though reply has been filed on behalf of respondents No.1, 2 and 4, but no one has entered into appearance.
- 8.** Mr.Arun Sao, learned Deputy Advocate General appearing for respondent No.3, would support the impugned order.
- 9.** I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also

gone through the records with utmost circumspection.

- 10.** The State Human Rights Commission has been constituted under Section 21 of the Act of 1993. Human Rights has been defined under Section 2(d) of the Act of 1993 which states as under:-

“2(d) “human rights “ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”

Thus, it appears human rights consists of rights of human relating to their life, liberty, equality and dignity as against the rights with regard to their properties. Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislations of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to the rule of law put into force mechanisms for their enforcement and protection. (See **Ram Deo Chauhan alias Raj Nath Chauhan Vs. Bani Kanta Das and others**¹).

11. Right to property is human right as well as Constitutional right (See **Indian Handcrafts Emporium Vs. Union of India**² and **Chairman Indore Vikas Pradhikaran Vs. Pune Industrial Coke & Chemical Ltd.**³).

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(2010) 14 SCC 209

2 (2003) 7 SCC 589

3 (2007) 8 SCC 705

12. Section 18 of the Act of 1993 provides steps during and after inquiry which states as under:-

“18. Steps during and after inquiry.—The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:— “

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority—

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit.”;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”

13. The word "Recommendation" is defined as under in Black's Law Dictionary, Sixth Edition: -

"Recommendation. In feudal law, a method of converting allodial land into feudal property. The owner of the allod surrendered it to the king or a lord, doing homage, and received it back as a benefice or feud, to hold to himself and such of his heirs as he had previously nominated to the superior.

The act of one person in giving to another a favorable account of the character, responsibility, or skill of a third.

Recommendation refers to an action which is advisory in nature rather than one having any binding effect. *People v. Gates*, 41 C.A.3d 590, 116 Cal.Rptr. 172, 178.

Letter of recommendation. A writing whereby one person certifies concerning another that he is of good character, solvent, possessed of commercial credit, skilled in his trade or profession, or otherwise worthy of trust, aid, or employment. It may be addressed to an individual or to whom it may concern, and is designed to aid the person commended in obtaining credit, employment, etc. See *Letter of credit*."

14. According to Merriam-Webster's Collegiate Dictionary, Eleventh Edition, recommendation means the act of recommending or something that recommends or expresses commendation.
15. A careful perusal of the aforesaid provision would show that after completion of an inquiry if the Commission finds that inquiry discloses the commission of violation of human rights

may recommend to the concerned Government or authority to make payment of compensation or damages to the complainant, but the Commission has no authority and jurisdiction to pass an order directing payment of compensation.

16. The Supreme Court has delineated the scope of power and jurisdiction of the Human Rights Commission in the matter of **N.C. Dhoundial Vs. Union of India and others**⁴ and held as under:-

“14. We cannot endorse the view of the Commission. The Commission which is an “unique expert body” is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.”

17. Recently, in the matter of **Manohar s/o Manikrao Anchule v. State of Maharashtra and another**⁵, while dealing with

4 (2004) 2 SCC 579

5 (2012) 13 SCC 14

Section 20 (2) of the Right to Information Act, 2005, the Supreme Court has held that recommendation must be seen in contradistinction to direction or mandate, and observed as under: -

“... Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a “recommendation” and not a “mandate” to conduct an enquiry. “Recommendation” must be seen in contradistinction to “direction” or “mandate”.

18. In the matter of **Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others**⁶, Their Lordships of the Supreme Court while dealing with function of the Enquiry Commission constituted under the provisions of the Commissions of Enquiry Act, 1952, have held that function of the Commission is only recommendatory in nature, and observed as under: -

“... In the first place neither Parliament nor the Government has itself undertaken any inquiry at all. Parliament has made a law with respect to inquiry and has left it to the appropriate Government to set up a Commission of Inquiry under certain circumstances referred to in S. 3 of the Act. The Central Government, in its turn has, in exercise of the powers conferred on it by the Act, set up this Commission. It is, therefore, not correct to say that

⁶ AIR 1958 SC 538(1)

Parliament or the Government itself has undertaken to hold any inquiry. In the second place the conclusion that the last portion of cl. (10) is bad because it signifies that Parliament or the Government had usurped the functions of the judiciary appears to us, with respect, to be inconsistent with the conclusion arrived at in a later part of the judgment that as the Commission can only make recommendations which are not enforceable *proprio vigore* there can be no question of usurpation of judicial functions. As has been stated by the High Court itself in the latter part of its judgment, the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called and consequently the question of usurpation by Parliament or the Government of the powers of the judicial organs of the Union of India cannot arise on the facts of this case and the elaborate discussion of the American authorities founded on the categorical separation of powers expressly provided by and under the American Constitution appears to us, ...”

19. In the matter of **Rajesh Das, I.P.S., S/o Pranabandhu Das, Superintendent of Police, T.N.U.S.R.B., Chennai Vs. Tamil Nadu State Human Rights Commission, rep. by its Secretary, Chennai 600 014**⁷ the Madras High Court has considered the power and jurisdiction of the State Human Rights Commission and has as under:-

“41. To sum up:-

(i) What is made under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission is only a recommendation and it is neither an order nor an adjudication.

(ii) Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government.

(iii) But, the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution within a reasonable time.

(iv) In the event of the Government tentatively deciding to accept the recommendation of the State Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission.

(v) Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant(s) nor the respondent (s) in the human rights cases can challenge the recommendation of the commission as it would be premature except in exceptional circumstances.

(vi) On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by police which will culminate in a final report under Section 173 of the Code of Criminal Procedure.

(vii) On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate disciplinary proceeding against him under the relevant service rules, if it so empowers the Government.”

20. In view of the aforesaid principle of law laid down by the Supreme Court in the above-stated judgments (supra), if the facts of the present are examined, it is quite vivid that the Human Rights Commission is a recommendatory body and it only makes a recommendation to the concerned authority or Government for enforcement of its recommendation. It has no jurisdiction to pass an order directing payment of compensation. Therefore, the impugned order is vulnerable to the extent of directing payment of compensation.
21. There is an additional reason for upholding so. Laying of electrical transmission lines by licensee/deemed licensee under the Act of 2003 is not required. Recently, in the matter of **Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others**⁸ the Supreme Court has held so and further held that power and jurisdiction to grant compensation lies with the District Magistrate. It was observed as under:-

“27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court.

⁸ (2017) 5 SCC 143

Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vested with the District Judge.”

22. Thus, on the basis of above-stated analysis, I am of the considered opinion that under Section 18 of the Act of 1993 the Human Rights Commission is only empowered to make a recommendation. It has no adjudicatory jurisdiction and the Government/its authority has an obligation to consider the recommendation of the Commission in accordance with law.
23. As a fallout and consequence of the above-stated discussion, the impugned order dated 19.5.2006 (Annexure P/6) passed by the Chhattisgarh Human Rights Commission to the extent of directing payment of compensation to the tune of ₹ 6,22,000/- to respondent No.4 is hereby set aside and said order will be treated only as a recommendation of the Chhattisgarh Human Rights Commission. However, it will open to the petitioner to consider the said recommendation in accordance with law.
24. The writ petition is allowed to the extent sketched hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No.2585 of 2008

Petitioner

Chhattisgarh State Electricity
Board

Versus

Respondents

Chhattisgarh Human Rights
Commission and others

HEAD NOTE

(English)

Chhattisgarh State Human Rights Commission is only a recommendatory body and has no power and jurisdiction to direct payment of compensation.

(हिन्दी)

छत्तीसगढ़ राज्य मानव अधिकार आयोग केवल एक अनुशंसा करने वाला (सिफारिशी) निकाय है तथा इसके पास अनुकम्पा के भुगतान हेतु निर्देश देने की शक्ति तथा क्षेत्राधिकार नहीं हैं।