

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2970 of 2010**

Dr.Girdhari Lal Chandrakar, Age-57 years, S/o-Late
Lakhan Lal Chandrakar, By Post:- Medical Officer,
Distt. Hospital Mahasamund, R/o:- District Medical
Hospital Campus, Tahsil & Distt. Mahasamund
(Chhattisgarh)

----- Petitioner

Versus

- 1.State of Chhattisgarh, Through the Secretary,
Department of Medical-Health Family Welfare
Department, D.K.S. Mantralaya Bhavan, Raipur,
Distt.Raipur (CG)
- 2.The Director (Sanchalak), Directorate (Sanchanalaya)
Svashtahaya Sevaye, (Health Service) Raipur (CG)
- 3.The Presiding Officer, Chhattisgarh Human Rights
Commission, (Chhattisgarh Manav Adhikar Ayog) Raipur
(CG)
- 4.The Chief Medical & Health Officer, Chief Medical &
Health Office, District Mahasamund (CG)
- 5.Rekh Ram Baghel R/o Village & Post-Pacheda, Block-
Baghbahra, District Mahasamund (CG)

----- Respondents

For Petitioner	:	Mr.J.A.Lohani, Advocate
For Res.No.1, 2 and 4	:	Mr.Ravi Bhagat, Dy.G.A.
For Respondent No.3&5	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

28/07/2021

- 1.Proceedings of this matter have been taken-up through
video conferencing.
2. The petitioner herein calls in question legality and
validity of the order dated 26.10.2009 passed by
respondent No.3 by which the petitioner has been
directed to make a payment of ₹10,000/- on account of
professional negligence alleged to be committed by
him.

3. Mr. J.A. Lohani, learned counsel for the petitioner, would submit that the impugned order is unsustainable and bad in law as the Human Rights Commission has no right and authority to make an order directing payment of compensation and it could have only made recommendation to the competent authority. He would rely upon the judgment rendered by this Court in the matter of Chhattisgarh State Electricity Board, Raipur v. Chhattisgarh Human Rights Commission and Ors.¹.

4. On the other hand, Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate for respondents No.1, 2 and 4/State, would support the impugned order.

5. 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.

6. 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 others² 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

1 AIR 2018 Chhattisgarh 53

2 (2004) 2 SCC 579

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."

7. In the matter of Manohar s/o Manikrao Anchule v. State of Maharashtra and another³, while dealing with 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".

8. In the matter of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others⁴, 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 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, ..."

9. 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 014⁵ 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."

10. 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.

11. 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.

12. Thus, this Court in the matter of **Chhattisgarh Human Rights Commission** (supra) has clearly held that the Human Rights Commission has no jurisdiction to pass an order directing payment of compensation.

13. Reverting to the facts of the present case, in the instant case, the Human Rights Commission has directed for payment of compensation of ₹10,000/- on account of alleged professional negligence

committed by the petitioner to respondent No.5.

14. Accordingly, the impugned order dated 26.10.2009 (Annexure P-1) passed by respondent No.3/Chhattisgarh Human Rights Commission to the extent of directing payment of compensation to the extent of ₹10,000/- to respondent No.5 is hereby set-aside and said order will be only treated as recommendation of the Chhattisgarh Human Rights Commission.

15. The writ petition is allowed to the extent indicated hereinabove. NO order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-