

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18177 of 2014

Dr. Ranjit Kumar Son of Sri Raj Nandan Sharma, Sakshi Surgery Centre,
Sirhi Ghat Lane, P.S.- Bakhtiyarpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary.
2. Bihar Human Rights Commission, 9, Bailey Road, Patna through its Secretary.
- 3.1. Gopal Kumar S/o Ram Narayan Singh, Resident of village- Sabnima, P.S.- Athmalgola, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Saket Tiwary, Advocate Mr. Tarun, Advocate Mr. Animesh Gupta, Advocate Mr. Shivam Gupta, Advocate
For the State	:	Mr. Vivek Prasad, GP-7 Mr. Aman Priyadarshi, Advocate
For Respondent No.3	:	Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date: 28-07-2025

Heard the parties.

2. The present writ application has been filed for quashing of the order dated 25.07.2014 passed by the learned Member of the Bihar Human Rights Commission, Patna (hereinafter for brevity referred to as the ‘Commission’) in File No.BHRC/Comp.676/12 (Ram Narayan Singh vs. Dr. Ranjit Kumar).

3. For better appreciation of the case, the operative portion of the impugned order dated 25.07.2014 (Annexure-1) passed by the Commission is quoted herein below for needful.



“4. Commission in its order dated 02nd June, 2014 directed the Health Deptt. to send response to the Commission's proposal to award compensation to the victim. Health deptt. was told to send response by 02nd July, 2014 after which final orders will be passed. No response has come from the Health Deptt. Dr. Ranjeet Kumar was also asked to explain/submit his defence to the Commission. He has done so but he has miserably failed to rebut the charges levelled against him by the committee set up by Health Deptt..

5. Commission, therefore, directs following actions to be taken in the matter:-

(a) A compensation of Rs.1, 00,000 (One Lakh) be paid to the victim by the Health Deptt. within two months. The compensation be recovered from the Doctor in the manner deem fit by the government.

(b) Action taken by the Govt. regarding termination of the services Dr. Ranjeet Kumar (as recommended by the committee) to be communicated to the Commission within two months.

(c) A copy of the expert committee report is sent to the Chairman, Bihar Council of Medical Education for effecting ban on the Gynaecological practice and surgery by the Doctor. Action taken be communicated to the Commission within three months.

(d) A copy of the report from Director-in-Chief, Health Services, Bihar be sent to SSP, Patna for needful in regard to Bakhtiyarpur PS Case No. 112/11.

(e) Commission is of the view that the above two cases of serious criminal medical negligence (Barh G.R No. 473/11 & 1416/11) are fit cases for SPEEDY TRIAL by the special court set up by Bihar Government (notification no.1607 dated 18.3.2011) designating the court of Addl. District & Sessions Judge-I as the Court of Session for speedy trial of offences u/s 30 of the Protection of



Human Rights Act, 1993. Commission requests Hon'ble High Court, Patna to issue suitable directions in this regard."

[Emphasis Supplied]

4. Despite the fact that in the writ application the petitioner has prayed for quashing of the order dated 25.07.2014 (Annexure-1) but during the course of argument the learned counsel appearing for the petitioner confined his challenge only to the direction contained in paragraph-5(c) of the said impugned order on the following counts:

(a) The direction contained in paragraph-5(c) of the impugned order (Annexure-1) has been passed without considering the reply which was submitted by the petitioner vide Annexure-12 of the writ application before the Commission and,

(b) the direction given by the Commission as contained in paragraph-5(c) is illegal and without jurisdiction for the reason that while exercising power under Section 18 of The Protection of Human Rights Act, 1993, the Commission could only have given a 'recommendation' and not a direction.

5. In support of the ground (a), the learned counsel for the petitioner submits that in the proceeding before the Commission, the petitioner had submitted a detailed reply



(Annexure-12) in File No.676/2012, in which the petitioner had explained as to how the charges levelled by the Expert Committee in its recommendation dated 23.05.2014 (Annexure-10) were not correct. Learned counsel for the petitioner further submits that without proper consideration of the reply (Annexure-12) submitted by the petitioner before the Commission, the Commission has arbitrarily, erroneously and abruptly come to the conclusion that the petitioner had miserably failed to rebut the charges. This conclusion, as per the petitioner has been reached at without any reasoning and is, therefore, fit to be set aside, consequently the direction contained in paragraph-5 (c) based on such faulty conclusion is also fit to be set aside.

6. In support of ground (b) the petitioner has relied upon a judgment of a coordinate Bench of this Court passed on 06.03.2024 in the case of **Dr. Lalit Mohan Sharma vs. Bihar Human Rights Commission & Anr.** in CWJC No.13188 of 2012 in which in paragraph-14 & 15 it has been held as follows:

“14. From reading the provisions of Section 18 of The Protection of Human Rights Act, 1993 and also in the Judgment of Chhattisgarh State Electricity Board Vs. Chhattishgarh State Human Rights Commission and Ors. (Supra), it is held that the Human Rights Commission is only empowered to make a recommendation and it cannot adjudicate and thereafter pass an order for payment of compensation. Its



powers are codified in Section 18 of The Protection of Human Rights Act, 1993 and the State Government and the Authorities are obliged to consider the recommendation of the Commission in accordance with law, meaning thereby that the State Human Rights Commission is a recommendatory body and it can make recommendations only to the concerned State Governments or its officials for enforcement of its recommendations. The Bihar State Human Rights Commission could not have passed an order directing for payment of compensation to the complainant.

15. In view of the above discussions, the order dated 13.06.2012 passed by the Bihar Human Rights Commission in File No. BHRC/Comp. 957 of 2011 granting compensation, is hereby quashed.”

7. Learned counsel for the petitioner further submits that Section 18 of the Protection of Human Rights Act, 1993 also makes it very clear that the Commission can only give recommendation and not a direction. Section 18 of The Protection of Human Rights Act is quoted herein below for needful:

“[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.”]

8. From the reading of the aforesaid provision as contained in Section 18 of the Protection of Human Rights Act, 1993, it is clear that after conducting the inquiry, if 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, the Commission may **recommend** to the concerned government or authority. In the case of *Chhattisgarh State Electricity Board Vs. Chhattishgarh State Human Rights Commission and Ors.* reported in *AIR 2018 CHH 53* in paragraph-21, it has been held and observed as follows:

"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 case 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."

9. Relying on the aforesaid judgments, learned counsel for the petitioner submits that it is by now settled that Human Rights Commission is only a recommendatory body and it can only make recommendations to the concerned authority or government for enforcement of its recommendation. It has no jurisdiction to pass an order giving direction to do anything. Learned counsel for the petitioner, therefore, submits that from bare perusal of paragraph-5 (c) of the impugned order (Annexure-1), it is clear and beyond any shadow of doubt that the Commission has directed the Chairman, Bihar Council of Medical



Education for effecting ban on the gynecological practice and surgery by the petitioner based on Expert Committee's recommendation. Since this is in the nature of a direction and not a recommendation, therefore, the petitioner submits that it is illegal, without jurisdiction and therefore fit to be set aside.

10. Per contra; learned counsel appearing for respondent no.3 submits that in paragraph-5(c) of the impugned order (Annexure-1) no direction has been given by the Commission, rather it is in the nature of asking the Chairman of Bihar Council of Medical Education to implement the recommendation given by the Expert Committee for effecting ban on the gynecological practice and surgery by the petitioner. He, therefore, submits that there is no illegality committed by the Commission and hence as per him the recommendation given in paragraph-5(c) by the Commission need not be interfered.

11. Learned counsel appearing for the State also defended the impugned order (Annexure-1) particularly, what has been observed and stated in paragraph-5(c) of the said order. While advancing argument, learned counsel appearing for respondents-State relied upon a decision of *High Court of Allahabad* reported in *MANU/UP/1239/2016* wherein paragraph-15, it has been held and observed as follows:



“15. The basic question is whether the use of the expression "recommend" in [Section 18\(a\)](#) can be treated by the State Government or by an authority as merely an opinion or a suggestion which can be ignored with impunity. In our view, to place such a construction on the expression "recommend" would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority or a government which is aggrieved by the order of the Commission is entitled to challenge the order. Since no appeal is provided by the Act against an order of the Commission, the power of judicial review is available when an order of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under [Article 14](#) and of the basic principles of equality, it would not be possible to accept the construction that the State Government can ignore the recommendations of the Commission under [Section 18](#) at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of [Section 18](#) under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations



of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected.”

12. Learned counsel for the State also relied upon another decision of the **High Court of Madras (Madurai Bench)** reported in **MANU/TN/0767/2021** wherein in paragraph-9, it has been held and observed as follows:

“9. At this juncture, it is relevant to extract hereunder the relevant paragraphs of the decision of the Full Bench of this Court:

“(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of [Section 18](#) of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation?

Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of [Section 18](#) of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.



“(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?”

Ans: As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.”

13. So far the reliance placed by respondent-State on the judgment of High Court of Allahabad (Supra) is concerned, it appears to be misplaced for the reason that the issue involved in the present case for determination is different from the issue



discussed and decided in the said judgment. Hence this judgment is of no help to the respondent-State.

14. The judgment of the High Court of Madras (Supra) has simply held that the recommendation of the Commission under Section 18 is binding and enforceable and the Commission can order recovery of the compensation from the State and payable to the victims of the violation of Human Rights under Section 18(i) (a) of the Act and the State in turn could recover the compensation paid, from the officers of the State who could have been found to be responsible for causing Human Rights violation. There is absolutely no quarrel with this finding as it emphasizes the importance of the recommendation of the Commission and its binding nature on the State. The issue under consideration in this case is not about the importance of the recommendation of the Commission and its binding nature on the State, but whether instead of recommendation the Commission can give direction. Therefore, even this judgment is not directly on the legal proposition, which is being sought to be answered in the present case.

15. It is a fact that the Expert Committee has recommended for effecting ban on the gynecological practice and surgery by the petitioner. The question is whether this



recommendation given by the Expert Committee could have been directed by the Commission to be implemented by the Chairman, Bihar Council of Medical Education.

16. Given the mandate of law as prescribed in Section 18(a) and the judgment of the Coordinate Bench of this Court dated 06.03.2024 in CWJC No.13188 of 2012 in the case of Dr. Lalit Mohan Sharma vs. Bihar Human Rights Commission & Anr. and further the judgment of Chhattisgarh High Court (supra), no direction could have been given by the Commission to the Chairman, Bihar Council of Medical Education for effecting ban on the gynecological practice and surgery by the petitioner simply because such was the recommendation of the Expert Committee. Direction given by the Commission is therefore, completely illegal, without jurisdiction and contrary to the mandate of Section 18 of The Protection of Human Rights Act, 1993. The impugned order dated 25.07.2014 passed by the Commission in File No.BHRC/Comp.676/12 (Ram Narayan Singh vs. Dr. Ranjit Kumar) to the extent that the Commission has directed the Chairman, Bihar Council of Medical Education for effecting ban on the gynecological practice and surgery by the petitioner as contained in paragraph-5(c) of the said order, is therefore quashed and set aside.



17. The writ application, therefore, stands allowed to the extent as indicated above.

18. All pending I.As, if any shall be deemed to have been disposed of.

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	24.07.2025
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Transmission Date	NA

