IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (PIL) No. 1252 of 2020

Himanshu Agrawal, S/o Shri Rajesh Kumar Agrawal, aged about 21 years, R/o Mata Jee Bhawan, RRB Colony, Sukhdev Nagar, Ratu Road, P.O. Hehal, P.S. Sukhdev Nagar, District Ranchi 834005

... Petitioner

Versus

1. State of Jharkhand, through the Chief Secretary, 1st Floor, Project Bhawan, P.O. & P.S. Dhurwa, Ranchi 834004
2. The Secretary (Law & Legislative Affairs), Government of Jharkhand, Project Bhawan, P.O. & P.S. Dhurwa, Ranchi 834004

... Respondents

With
W.P (PIL) No. 460 of 2022

Shashi Sagar Verma, aged about 51 years, S/o Late Bishram Sagar Prasad Verma, R/o HI-148, Harmu Housing Colony, Ranchi, Jharkhand 834002

… Petitioner

Versus

1. Secretary, State of Jharkhand, Project Building, HEC, P.O. Dhurwa, P.S. Dhurwa, Distt-Ranchi
2. Jharkhand State Human Rights Commission, Golchakkar, HEC, Dhurwa, P.O and P.S Dhurwa, Ranchi

…. Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners: Mr Shashank Shekhar, Advocate
Mr Shailesh Poddar, Advocate
For the Resp.-State: Mr Manish Kumar, Sr. S.C-II
For the Vidhan Sabha: Mr Anil Kumar, Advocate
Ms Vidhika Sabod, Advocate

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09 / Dated: 17.09.2026 Per: M. S. Sonak

1. Heard the learned counsel for the parties.

2. The learned counsel for the parties agree that both these petitions can be disposed of by a common judgment and order.

3. Accordingly, we issue Rule. The Rule is made returnable immediately at the request of and with the consent of the Learned counsel for the parties.

4. In both Public Interest Litigations, the petitioners seek a mandamus directing the Respondents to fill the posts of Chairperson and other Members of the Jharkhand State Human Rights Commission [JSHRC]. They also seek a writ to fill vacancies among the supporting staff so the JSHRC can function effectively.

5. The petitioners pointed out that Justice R.R. Prasad was the Chairperson of the JSHRC. After his unfortunate demise on 03rd June 2018, Mr S.K. Satpathy (IAS), one of the Commission's members, was given charge of the JSHRC Chairpersonship. Under this in-charge arrangement, the JSHRC barely functioned until 2022. Thereafter, the State has taken no steps to appoint any Chairperson or, for that matter, to fill the vacancies of Members. As a result, the State Human Rights Commission has not been functioning to date.

6. Mr Manish Kumar, learned Sr. S.C-II, on instructions, states that, in terms of Section 22 of The Protection of Human Rights Act, 1993 (said Act), for the appointment of the Chairperson and Members of the said JSHRC, a recommendation has to be made by the Committee consisting of the Hon'ble Chief Minister (Chairperson), the Hon'ble Speaker of the Legislative Assembly (Member), the Hon'ble Minister In-charge of the Department of Home (Member) and the Leader of the Opposition of the Legislative Assembly (Member).

7. Mr Manish Kumar submitted that the process of appointing the Chairperson and Members is ongoing and, presently, the matter is with the Hon'ble Chief Minister. He, however, was unable to indicate any timeline within which the appointments would be made, and the JSHRC could function.

8. In these petitions, the Court has, from time to time, issued orders requiring the Respondents to furnish a timeline for completing the process of appointing the Chairperson and Members of the State Commission. However, each time, the State Government has responded by stating that "the *matter is receiving attention at the highest level and that it will file a counter-affidavit indicating the timeline for filling the vacancies*". Despite such responses, no firm timeline is forthcoming. Even today, Mr Manish Kumar's submission is no different.

9. On 06.082026, we made the following orders.

> *"1. Mr Manish Kumar, learned Sr. SC-II, submits that the matter is receiving attention at the highest levels and a counter affidavit will be filed giving the timeline for filling up the vacancies at the Jharkhand State Human Rights Commission within three weeks from today.*
> *2. The above statement is accepted.*
> *3. Learned counsel for the petitioners points out that since 2018, the vacancies have not been filled-up.*
> *4. Accordingly, we expect that the vacancies are filled-up at the earliest.*
> *5. Stand over to 17.09.2026."*

10. Despite our order and the solemn statement made on behalf of the State Government, we regret to say that no counter-affidavit has

been filed setting out a timeline for filling the vacancies at the Jharkhand State Human Rights Commission within the prescribed time or otherwise. Therefore, it appears that the State Government is not serious about complying with the legislative mandate in Section 21 of the Said Act, which requires the State Government to constitute the State Human Rights Commission.

11. Although Section 21 of the Said Act uses the expression '*may constitute'*, the Hon'ble Supreme Court, in the case of **D.K. Basu versus State of West Bengal and Others [(2015) 8 SCC 744],** after elaborately dealing with the history, establishment, functioning and scope of the State Human Rights Commission, has held that the setting up of a State Human Rights Commission is mandatory and not dependent on the discretion of the State Government.

12. In this regard, we refer to the observations in paragraphs 10 and 11 of **D.K. Basu (Supra),** which are transcribed below for convenience of reference.

> *"**10.** In the Statement of Objects and Reasons of the Protection of Human Rights Act, 1993, it is, inter alia, mentioned that India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16-12-1966. It is further stated that the human rights embodied in the said Covenants are substantially protected by the Constitution and that there is a growing concern about the changing social realities and the emerging trends in the nature of crime and violence. The Statement of Objects and Reasons also refers to the wide ranging discussions that were held at various fora such as the Chief Ministers' Conference on Human Rights, seminars organised in various parts of the country and the meetings with leaders of various political parties, which culminated in the presentation of the Protection of Human Rights Bill, 1993 that came to be passed by both the Houses of Parliament and received the assent of the President on 8-1-1994 taking retrospective effect*

from 28-9-1993. The significance of the human rights and the need for their protection and enforcement is thus beyond the pale of any debate. The movement for the protection of such rights is not confined only to India alone. It is a global phenomenon. It is, in this backdrop that the provisions of Section 21 of the Act need to be examined. ***It is true that a plain reading of the provisions may give the impression that the setting up of a State Human Rights Commission rests in the discretion of the State Government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression.***

11. *Section 21 of the Act, which deals with the setting up of the State Human Rights Commission, is in the following terms:*

> *"**21. Constitution of State Human Rights Commission**.—(1) A State Government may constitute a body to be known as the …… (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.*
> *(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—*
> *(a) a Chairperson who has been a Chief Justice of a High Court;*
>
> *(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge;*
>
> *(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.*
>
> *(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.*
>
> *(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.*
>
> *(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:*
>
> *Provided that if any such matter is already being inquired into by the Commission or any other Commission duly*

constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures 'List II and List III in the Seventh Schedule to the Constitution', the words and figures 'List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the legislature of that State has power to make laws' had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of Section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed."

A plain reading of the above would show that Parliament has used the word "may" in sub-section (1) of Section 21 while providing for the setting up of a State Human Rights Commission. In contrast Parliament has used the word "shall" in Section 3(1) while providing for constitution of a National Commission. The argument on behalf of the defaulting States, therefore, was that the use of two different expressions which dealing with the subject of analogous nature is a clear indication that while a National Human Rights Commission is mandatory a State Commission is not. That argument is no doubt attractive, but does not stand close scrutiny. The use of the word "may" is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The legal position on the subject is fairly well settled by a long line of decisions of this Court. The stated position is that the use of the word "may" does not always mean that the authority upon which the power is vested may or may not exercise that power. Whether or not the word "may" should be construed as mandatory and equivalent to the word "shall" would depend upon the object and the purpose of the enactment under which the said power is conferred as also related provisions made in the enactment. The word "may" has been often read as "shall" or "must" when

> *there is something in the nature of the thing to be done which must compel such a reading.* ***In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise****."*

13. The Hon'ble Supreme Court, in paragraphs 20 and 28, observed that the power of the State Government under section 21 to set up a State Human Rights Commission in its respective State is not a power simpliciter but a power coupled with the duty to exercise it, especially when it is not the case that any of the defaulting States has no violation of human rights within its State limits. The Hon'ble Supreme Court had, in fact, issued directions for the prompt filling of vacancies to the posts of Chairperson and other Members of the State Human Rights Commission.

14. Accordingly, the observations in paragraphs 20 and 28 of **D.K. Basu (Supra)** are transcribed below for the convenience of reference:

> ***"20. The upshot of the above discussion that the power of the State Governments under Section 21 to set up the State Human Rights Commissions in their respective areas/territories is not a power simpliciter but a power coupled with the duty to exercise such power especially when it is not the case of anyone of the defaulting States that there is no violation of human rights in their territorial limits.*** *The fact that Delhi has itself reported the second largest number of cases involving human rights cases would belie any such claim even if it were made. So also, it is not the case of the North-Eastern States where such Commissions have not been set up that there are no violations of human rights in those States. The fact that most if not all the States are affected by ethnic and other violence and extremist activities calling for curbs affecting the people living in those areas resulting, at times, in the violation of their rights cannot be disputed. Such occurrence of violence and the state of affairs prevailing in most of the States cannot support the contention that no such*

Commissions are required in those States as there are no human rights violations of any kind whatsoever.

28. There is, in our opinion, considerable merit in the submission made by the Amicus that the very purpose of setting up of the State Human Rights Commission gets defeated if vacancies that occur from time to time are not promptly filled up and the Commission kept functional at all times. There is hardly any explanation much less a cogent one for the failure of the State to take immediate steps for filling up of the vacancies wherever they have occurred. The inaction or bureaucratic indifference or even the lack of political will cannot frustrate the laudable object underlying the parliamentary legislation. *With the number of complaints regarding breach of human rights increasing everyday even in cities like Delhi which is the power centre and throbbing capital of the country, there is no question of statutory commissions being made irrelevant or dysfunctional for any reason whatsoever.* ***The power available to the Government to fill up the vacancies wherever they exist is, as noticed earlier, coupled with the duty to fill up such vacancies. The States ought to realise that the Human Rights Commissions set up by them are not some kind of idle formality or dispensable ritual. The Commissions are meant to be watchdogs for the protection of the human rights of the citizens and effective instruments for redressal of grievances and grant of relief wherever necessary. Denial of access to the mechanism conceptualised under the Act by reason of non-filling up of the vacancies directly affects the rights of the citizens and becomes non-functional. It is in that spirit that we deem it fit and proper to direct that all vacancies against the post of Chairperson and Members of the State Human Rights Commission shall be filled up by the State Governments concerned as expeditiously as possible but, in any case, within a period of three months from the date of this order.*** *We only hope and trust that we shall be spared the unpleasant task of initiating action against the defaulting State in case the needful is not done within the time allotted. We also recommend to the State Governments that since the dates on which vacancies are scheduled to occur are known well in advance (save and except where an incumbent dies in office), the process for appointment of the incumbents against such vacancies should be initiated well in time in future so that no post remains vacant in any State Human Rights Commission for a period or unfilled for any period for more than three months from the date the vacancy arises."*

15. Despite these clear statutory provisions and the Hon'ble Supreme Court's strong and clear directions, we regret to state that for the past four years the Jharkhand State Human Rights Commission has not been effective or functional due to unfilled vacancies for the Chairperson and other Members. Moreover, the State has not countered the petitioners' allegations about a lack of support staff or proper infrastructural facilities. This inaction, whether deliberate or not, amounts to a negation or frustration of the legislative mandate and intent to protect human rights.

16. The responses we have received to date are extremely vague and lack any firm assurances or timeline. There have been several instances of custodial deaths and other human rights violations reported, or at least alleged, in the state of Jharkhand. Therefore, it cannot be the case of the State Government that such a Commission is not required to be instituted in the State, on the basis that this is a State where there are no Human Rights violations. In any event, even such a plea is not open to the State of Jharkhand, given the strong observations made by the Hon'ble Supreme Court in the case of **D.K. Basu (Supra).**

17. Furthermore, there is no dispute that JSHRC was constituted and functioned until 2018 under the chairmanship of Justice Prasad, and after his demise, an ad hoc arrangement was made, which continued for almost four years until 2022. But after 2022, the functioning of JSHRC has been brought to a grinding halt due to the failure to fill the vacancies in complete disregard of the statutory mandate and the directions of the Hon'ble Supreme Court.

18. In **Dalit Manavadhikar Kendra Samiti v. State of Rajasthan**, **(2015) 17 SCC 214,** the Hon'ble Supreme Court, noting that the post of Chairperson of the Rajasthan State Human Rights Commission had been vacant for the past five years, made the following strong observations in paragraphs 1 to 5:

> *"1. We have gone through the affidavits filed by the State of Rajasthan as well as the Rajasthan State Human Rights Commission. We have also heard the learned counsel for the parties.*
> *2. We are distressed to note that the Rajasthan State Human Rights Commission has been without the services of the Chairperson since 16-7-2010 i.e. for the last more than five years. This is totally unacceptable and in a sense subverts the Protection of Human Rights Act, 1993 (for short "the Act"). We also find that Human Rights Courts that are required to be set up under Section 30 of the Act have apparently not been set up. In any event, there is no mention of the setting up of these courts in the affidavit filed by the State of Rajasthan.*
> *3. The learned counsel for the State of Rajasthan says that he will check up the position and let us know the progress made and the steps taken in the appointment of the Chairperson of the Rajasthan State Human Rights Commission and for setting up of Human Rights Courts.*
> *4. The affidavit of the Rajasthan State Human Rights Commission indicates that there is a tremendous staff shortage and in spite of several letters having been sent to the State Government, no steps have been taken to fill up the vacancies and the draft recruitment rules sent to the State Government have also not been finalised by the State Government.*
> *5. This is an extremely sad state of affairs insofar as human rights in Rajasthan are concerned."*

19. The position in the State of Jharkhand is no different. The post of Chairperson of the JSHRC has remained vacant for the past 8 years. Through ad hoc arrangements, the JSHRC barely functioned between 2018 and 2022. Such ad hoc arrangements over long

periods are also improper and amount to a ploy to defeat the statutory mandate and the directions of the Hon'ble Supreme Court. Therefore, such ad hoc arrangements over long periods cannot be countenanced. In any event, since 2022, the JSHRC has been non-functional for want of a chairperson, members and adequate staff. This cannot be allowed to persist any further.

20. For all the above reasons, we are left with no alternative but to issue a writ of mandamus to the Respondents to fill up the vacancies to the posts of Chairperson and Members of the JSHRC by taking all necessary steps as may be prescribed under the law, as expeditiously as possible and in any event, within three months from today.

21. The Chief Secretary, State of Jharkhand, will be personally responsible for complying with this mandamus. We are constrained to record that usual excuses, such as the matter receiving attention at the highest level or Members of the Committee not being readily available to make a recommendation, etc., will not be accepted, given the position that for the last four years there has been a dereliction in the discharge of statutory duties, not to mention the failure to comply with the directions of the Hon'ble Supreme Court in the case of **D.K. Basu (Supra).**

22. Similarly, the statutory mandate to constitute the JSHRC cannot be frustrated by the State by failing to fill vacancies or provide supporting staff for the effective functioning of the State Human Rights Commission. Accordingly, we also direct the State Government to not only fill up the vacancies within three months but also to take all necessary steps to ensure that the JSHRC is fully

functional within this period of three months. Again, we reiterate that the Chief Secretary, State of Jharkhand, will be personally responsible for complying with these directions.

23. These Public Interest Litigations are allowed on the above terms, without any order as to costs. The Chief Secretary, State of Jharkhand, without delegating this function to any other official, must file an affidavit of compliance in this Court on or before 08th January, 2027, and provide an advance copy to the learned counsel for the petitioners.

24. Though these Public Interest Litigations are disposed of, we place the matters on 15th January 2027 to consider the compliance report filed by the Chief Secretary.

(M. S. Sonak, C.J.)

(Rajesh Shankar, J.)

September 17, 2026

A.F.R.
Ranjeet/R.Kr./Cp.2
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