

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**(SB : SHEEL NAGU J.)**

**W.P. No. 963/12**

**Amarnath Verma**

**Vs.**

**State of M.P. & ors.**

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**For Petitioner**

Shri D.S. Raghuvanshi, learned counsel for the petitioner.

**For Respondents**

Shri Ajay Bhargava, Government Advocate for the respondents  
No.1 and 2/State.

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**WHETHER REPORTABLE :**      **Yes**       **No**

**Law Laid Down:**

1. The provisions of Protection of Human Rights Act, 1993 textually and contextually reveal the same to be of recommendatory/suggestive nature conferring no power on the Human Rights Commission to issue mandate/direction to the State or any functionaries under the State to comply with it's report.
2. The decision of Division Bench of the Allahabad High Court in **Writ- C No. 15570/2016 (State of U.P. and two others Vs. N.H.R.C. and three others)** while construing Protection of Human Rights Act, 1993 categorizing the recommendations of the Commission to be binding on the Government is *per incuriam* the decision of Apex Court in the case of **Shri Ram Krishan Dalmia Vs. Shri Justice S.R. Tendolkar AIR 1958 SC 538** (rendered while construing para materia provisions of the Commissions of Enquiry Act, 1952 to be recommendatory and not binding on the Government).

**Significant Paragraph Numbers:** 14 to 20.2

**J U D G M E N T****(07/01/2019)**

1. Quashment is sought herein of Annexure P/1 issued by the M.P. Human Rights Commission ("Commission" for brevity) dated 23/07/2011 directing the Additional Chief Secretary, Govt of M.P. (Department of Home) to implement the recommendations of the Commission constituted under the Protection of Human Rights Act, 1993 ("1993 Act" for brevity) recommending recovery of compensation amount from petitioner and institution of disciplinary proceedings against petitioner after recording a finding that while discharging investigative duties as SHO, P.S. Mau, District Bind, MP qua an incident dated 25 & 26/10/2018, petitioner indulged in violation of human rights.
2. After hearing learned counsel for the rival parties and perusing both the returns filed by the State, it is clear that the State and its functionaries have treated the recommendations of the respondent/Commission to be binding upon them, which is evident from paragraph 1 of the return of respondents No.1 & 2 filed 17/5/12, which is reproduced below for ready reference:-

*"1. That, the contents of Para 1 of this petition are not denied. So far with regard to order dated 23/7/11 Annexure P/1 passed by the Human Right Commission. The order Annexure P/1 is detailed and reasoned order whereby recommendation has been given to infringe the Human Rights by the petitioner. From the bare perusal of entire recommendation/order it reveal that the ample and adequate opportunity of hearing was given by issuing various notices, but petitioner did not appeared before the Human Right Commission and always avoided the hearing. Therefore he has no right to challenge the recommendations issued by the Human Right Commission against him. Answering respondents are bound to follow the recommendations of the Human Right Commission. Accordingly in compliance of the aforesaid recommendations a chargesheet has been issued to the petitioner and in preliminary conducted the S.D.O. (P) Mehgaon the petitioner was found in guilty, hence decision has been taken to establish the Departmental Enquiry. Copies of letters and chargesheet*

*in this regard are annexed herewith and marked as Annexure R/1."*

Nowhere in either of the returns, there is any averment that the State or any of its functionaries had independently applied their minds to the recommendations of the Commission before coming to a conclusion that the same deserve to be implemented.

3. The impugned order passed by the Commission directing the functionaries of the State to implement its recommendations appears to be dehors the nature of power available to the Commission under the 1993 Act.

4. Considering the relevant legal provision, it is seen that the 1993 Act was enacted to provide for constitution of National and State Human Rights Commission and Human Rights Courts for better protection of human rights and the matter connected therewith. Chapter IV of 1993 Act prescribes procedure to be followed by the Commission while conducting enquiry into allegation of human rights violation.

5. Relevant Section 18 of the 1993 Act which was substituted w.e.f. 23.11.2006 is reproduced below for ready reference and convenience:

**"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."*

The aforesaid provision postulates that Commission is a mere recommendatory body which after conduction of enquiry can recommend (finally or by interim arrangement) to the Government or the authority concerned to take steps within the enabling provision of clause (i) (ii) & (iii) of Section 18 (a). None of these three clauses of Section 18 (a) give an indication that the Commission after conducting enquiry can direct the Government to implement its recommendation, or that the government is bound by the recommendation of the Commission.

6. Pertinently, one of the steps which the Commission can take during or on completion of the enquiry contemplated u/S.18 of 1993 Act is to approach the Supreme Court or the High Court concerned for such directions, orders or writs as any of these two courts may deem necessary. This special power conferred on the Commission reveals a clear intention of the legislature to adorn the Commission with power to take recourse before the superior courts for not only ensuring completion of Inquiry u/S. 18 of 1993 Act but also for taking consequential action upon it's recommendations if the Commission finds the State or it's functionaries to be wanting, diffident or declining to implement it's recommendations. The obvious purpose of conferring this special power is to grant an exalted status and sanctity to the Commission and it's recommendations which is necessary in view of the composition of the Commission which is headed at the national level by a retired

Chief Justice of India with member being former Judge of Supreme Court or former Chief Justice of High Court. Even at the State level the Commission is headed by Chief Justice of a High Court with member being either a judge of a High Court or District Judge with atleast seven years experience. Therefore, it seems that the legislature considering the exalted status of Chairman and members of the Commission deemed it appropriate to vest the Commission with power to approach the superior courts (Supreme Court/High Court) to seek any direction, order or writ.

7. However, the aforesaid special power u/S. 18 (b) of 1993 Act by itself can not covert the Commission from an inherently recommendatory body to an adjudicatory body. Allowing this to happen would amount to doing offence to the scheme and object of the 1993 Act.

8. It is obvious from the scheme of 1993 Act that the Commission is constituted to look into incidents of human rights violation by conducting enquiry and thereafter make its recommendations in terms of provision of Section 18 of the 1993 Act as explained supra. Once recommendations are received by the Government or the competent authority applies its mind and reaches to a considered decision whether to implement the recommendations or not. Thus the recommendations of the Commission *per se* are not binding upon the Government. The reason is not far to see. The Commission conducts a fact finding inquiry with no element of adjudication involved and thus the outcome of the inquiry is a mere recommendation, suggestion or proposal which acts as an input with persuasive but not binding value for the government to take a final call while deciding upon the appropriate course of action pursuant to the recommendation of the Commission.

9. Moreso once the Commission renders its recommendation

and hands it over to the government, the Commission becomes functus officio qua the aspect of execution of its recommendations. However Section 18 (e) empowers the Commission to insist upon the government to furnish its comments upon the recommendation and the details about action taken or proposed to be taken by the government upon the Commission's recommendations. Thus the scheme of the 1993 Act though vests the Commission with jurisdiction to know the fate of its recommendations but does not confer any power to prevail upon the government to toe the line of its recommendations. It is thus vivid that Commission's views and findings are recommendatory having no binding effect on the government. Recommendation may have persuasive, corroborative or suggestive value, but the 1993 Act does not allow the same to become a mandate. The reason for the 1993 Act, not conferring the Commission with power to pronounce judgment or issue mandate, is clear from the scheme of the 1993 Act and has a purpose to serve as explained infra.

10. Any recommendation made by the Commission which is adverse to the government servant whose conduct is under scanner, is required to be considered by the appointing/disciplinary authority to decide whether penal or disciplinary action, as recommended by the Commission is necessary to be initiated or not. If the recommendations of the Commission are treated as binding on the government, then the government would be divested of its plenary power as appointing/disciplinary authority of dealing with its employees/officers on the penal/disciplinary side.

11. In other words the Commission cannot be allowed to step into the shoes of the government and assume the role of appointing/disciplinary authority.

12. Before this judgment could be signed the learned counsel for the State produced a division Bench decision of Allahabad High

Court dated 8/4/16 passed in Writ-C No. 15570 of 2016 taking a contrary view that the recommendations of the Commission under the 1993 Act are binding on the government.

13. It is thus imperative for this court to ascertain the precedential value of the said division Bench decision of Allahabad High Court. The relevant extract of the same are being reproduced hereunder:-

*"Section 18 vests wide powers in the Commission Under clause (a), it is empowered to recommend the payment of compensation or damages to the concerned government or authority where the enquiry has disclosed the commission of a violation of human rights or negligence in the prevention of a violation of human rights or abetment thereof. The provisions of Section 18 (a) correspond to the functions of the Commission specified in Section 12(a). The Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as that Court may deem necessary. The Commission under clause (c) of Section 18 can recommend to the concerned government or authority at any stage of the enquiry to grant interim relief to the victim or the members of his family. Under clause (e), the Commission has to send a copy of its inquiry report together with its recommendations to the concerned Government or authority which shall, within a period of one month or such further time as may be allowed, forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission."*

*These provisions emphasize three aspects. First, the enactment of this Protection of Human Rights Act, 1993 is an intrinsic part of the enforcement of the fundamental right to life and personal liberty under Article 21 of the Constitution. Equally, by enacting the legislation, Parliament has evinced an intention to enact legislation in compliance with India's obligations under the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations. Secondly, the Commission is a high powered body which has been vested with exhaustive powers to order an investigation, conduct enquiries and for which it is vested with all the powers of a civil court. Clauses (a) to (f) of Section 18 are not evidently an exhaustive enumeration of the powers of the Commission since the use of the expression "and in particular" would indicate that the powers which are enumerated are illustrative in nature. The Commission follows a procedure which is governed by Section 17 for the purpose of making inquiries upon which it has to take steps in conformity with Section 18.*

*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 and 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 of 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 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.*

*The order which has been passed by the Commission has been passed on a careful appreciation of materials which were placed on the record. The deceased was an under trial prisoner who has lodged in the district jail in Muzaffarnagar. The treatment record indicated that he was provided treatment only from 15 May 2012 and he died on 21 May 2012. Though he had been admitted to jail on 9 September, 2011, until 15 May 2012. no medical check up was carried out to control or treat his lung disease. He was not sent to a competent medical facility until his condition had deteriorated. Consequently, finding a case of negligence on the part of jail officials in providing medical treatment, the Commission has ordered the grant of compensation. The Commission is entitled to do so where it finds either a violation of human rights or a negligence in the prevention of a violation of human rights."*

*For these reasons, we find no substance in the petition. This writ petition is, accordingly, dismissed.*

14. From the above textual and contextual exposition of the



provisions of 1993 Act propounded by the division Bench of Allahabad High Court, it seems that the division Bench scrutinized 1993 Act from the point of view of the objective it seeks to achieve and by relying upon the concept of personal liberty under Article 21 of the Constitution and in this background held that if the term "recommend" employed by Section 18 is allowed to be construed as a mere suggestion or opinion then the State Government would ignore the recommendations of the Commission under the 1993 Act with impunity thereby rendering the Commission to a tooth-less tiger.

15. While construing the term "recommendation", the division Bench of Allahabad High Court lost sight of **Shri Ram Krishan Dalmia Vs. Shri Justice S.R. Tendolkar AIR 1958 SC 538** and **State of Karnataka Vs. Union of India (1977) 4 SCC 608** where the provisions of the Commissions of Inquiry Act, 1952 (para materia to the provision of 1993 Act) came up for consideration.

16. Before proceedings ahead, it would be apt to reproduce relevant extracts of the aforesaid two decisions:-

In Shri Ram Krishan Dalmia (supra) it was observed:-

*".....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..."*

In State of Karnataka (supra) it was observed:-

*"186.....On receipt of the Commission's report, the Central*

*Government may or may not take any action, depending upon the nature of the findings recorded by the Commission. If it decides to take any action, the validity thereof may have to be tested in the light of the-constitutional provisions. But until that stage arrives, it is difficult to hold that the Central Government is exercising any control or supervisory jurisdiction over the executive functions of the State Government. As observed by this Court in [Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Others](#), (a) "the Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore."*

17. It is pertinent to point out that **Ramkrishan Dalmia (supra)** case was followed by the division Bench of the Apex Court in **T.T. Anthony Vs. State of Kerala 2001 (6) SCC 181** where in para 33 it was held thus:-

*"33. It is thus seen that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly, it has endorsed to act upon it....."*

18. It may not be out of place to mention here that the aforesaid decisions of the Apex Court rendered in context of the provisions of Commissions of Inquiry Act, 1952 have been followed by the Single Bench of Madras High Court in **Rajesh Das I.P.S. Vs. Tamil Nadu State Human Right Comission 2010 (5) CTC 589** and further by the single Bench of Chhattisgarh High Court in **Chhattisgarh State Electricity Board Vs. Chhattisgarh Human Rights Commission AIR 2018 Chh 53** while dealing with provisions of 1993 Act. Madras High Court and as well as Chhattisgarh High Court have held that the Commission under the 1993 Act is a recommendatory body indulging in fact finding inquiry with no element of adjudication involved and therefore, it's recommendations are not binding upon the Government.

19. From the above, it appears that the division Bench of Allahabad High Court in (supra) did not take into account the aforesaid law laid down by the Apex Court where law was laid down in respect of para materia provisions of Commissions of

Inquiry Act and therefore, it has to be seen in this background as to whether the verdict of division Bench of Allahabad High Court can be said to have binding effect upon this Court in the present case.

20. A judgment of Apex Court rendered qua a particular statute which is textually or contextually para materia to another statute, then the said judgment can not only be an inspiration but also have binding effect upon High Court adjudicating upon that another statute.

20.1 A comparative scrutiny of Commissions of Inquiry Act, 1952 and 1993 Act reveals that though both the statutes are not textually para materia but from the point of view of the nature of power exercised by the Commission under the 1952 Act and the Commission under the 1993 Act both are more or less similar being recommendatory in nature having no adjudicatory or binding colour, especially in regard to it's report. In both the said statutes, the reports submitted by the respective Commissions are mere suggestion, recommendation or proposal which may or may not be accepted by the State. The only additional power given to the Commission under the 1993 Act is that it can seek information from the State as to the action taken or order passed by the State on the recommendations of the Commission. Further additional power is given to the Commission under the 1993 Act to seek directions, orders or writs by approaching Supreme Court/High Court which privilege is not available to the Commission under the Commissions of Inquiry Act, 1952.

20.2 From the above discussion what comes out loud and clear is that despite the Commissions of Inquiry Act, 1952 being contextually para materia to the 1993 Act and the the Apex Court having rendered an authoritative decision in the case of **Ram Krishan Dalmia (supra)** laying down the law that recommendations of the Commission under 1993 Act are not

binding upon the State, the Division Bench of Allahabad High Court inadvertently ignored the said verdict of the Apex Court in **Ram Krishan Dalmia (supra)** and therefore, the decision of Allahabad High Court to a considerable extent loses its precedential value relieving this court of its judicial responsibility to treat the said decision of division Bench of Allahabad High Court to be a binding precedent.

21. The M.P. Human Rights Commission which is respondent No.3 herein by the impugned order has directed the Government to implement its recommendations which runs contrary to the object and the scheme of the Act, 1993 and therefore, cannot be sustained in the eyes of law.

22. Consequently, the impugned order passed by the M.P. Human Rights Commission (Annexure P/1) stands quashed with liberty to the State to consider the recommendations of the Commission and thereafter by independent application of mind decide on the question of implementation of the recommendations or not and thereafter forward its comments to the Commission within one month or within such further time as the Commission may allow which would include action taken or proposed to be taken, if any.

No cost.

**(Sheel Nagu)**  
**Judge**  
**07/01/2019**