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People

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Court : Supreme Court of India

Decided On : Jan-18-2005

Reported in : JT2005(1)SC283; (2005)2SCC436; (2005)2UPLBEC1249

Judge : Y.K. Sabharwal and; D.M. Dharmadhikari, JJ.

Acts : Protection of Human Rights Act, 1993 - Section 3(2)(d), 2(1)(f), 4(1), 11, 12, 14, 27; Indian Penal Code (IPC), - Sections 176 and 177

Appellant : People

Respondent : Union of India (Uoi) and anr.

Advocate for Pet/Ap. : Rajinder Sachar, Sr. Adv.,; Sanjay Parikh,; Ashok Bhan,;

Judgement :

Y.K. SABHARWAL, J.-

1. The National Human Rights Commission (NHRC) is a high-powered statutory body to act as an instrument for the protection and promotion of human rights. The credibility of such an institution depends upon a high degree of public confidence. In the present case, the important question that has been raised is whether a former member of the police force is eligible to become a member of NHRC.

2. NHRC has been set up under provisions of the Protection of Human Rights Act, 1993 (for short “the Act”). Its composition is provided for in Section 3(2) of the Act.

The question for consideration in this petition is about the interpretation of Section 3(2)(d), which stipulates that the Commission shall consist of two members to be appointed from amongst persons having “knowledge of, or practical experience in, matters relating to human rights”. The fundamental question is whether a police officer would fall in the category stipulated under this provision and is appointment of such a person consistent with the language of the section and the true intendment of the Act. For determining this fundamental question, it is necessary to note, in brief, the background relating to the concept of human rights, the provisions of the Act and the scheme thereof. First the facts which led to the filing of the petition may be briefly noticed.

3. A vacancy arose in NHRC in November 2003. It was in respect of the appointment to be made under Section 3(2)(d). The second respondent, a police officer, retired as Director of Central Bureau of Investigation (CBI) in December 2003. Every appointment is required to be made after obtaining the recommendations of a Committee as postulated by Section 4 of the Act. The notice was sent to the Committee members on 13-2-2004, convening a meeting for 19-2-2004. It seems that on 19th February, the Home Secretary spoke to the Joint Secretary to the Leader of Opposition who informed him that the Leader of Opposition in the House of the People would not be able to attend the meeting but she has conveyed her approval for recommendation of the name of Respondent 2. Likewise, the Speaker of the House of the People also expressed inability to attend the meeting but conveyed his approval to the appointment of Respondent 2. Insofar as the Leader of Opposition in the Council of States is concerned, his personal staff informed that being unwell and admitted in hospital, he would not be able to attend the meeting. A meeting was held on 19-2-2004 wherein it was decided to recommend the name of Respondent 2 to be appointed as a member of the Commission. The Committee noticed that the Leader of Opposition in the House of the People and the Speaker had both conveyed their approval for the said recommendation. Thus on 19-2-2004, Respondent 2 was selected to be appointed as a member of NHRC.

4. The appointment has been challenged mainly on the ground of ineligibility of a police officer for being considered for appointment under the category

contemplated by Section 3(2)(d). We may note that the challenge is based on the fundamental issue and not on any allegations of personal nature against Respondent 2. The contention is that none from police or security force is eligible to be a member of such a body and it is clear from the provisions of the Act, its scheme as also from the very concept which gave birth to protection of human rights.

5. The Act has been enacted to provide for better protection of human rights and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons notes that the human rights embodied in 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, stand substantially protected by the Constitution of India. However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and emerging trends in the nature of crime and violence, the Government has been reviewing the existing laws, procedures and system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation. Taking into account the views of all concerned, the Act was enacted.

6. “Human rights” mean 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 [Section 2(1)(d)]. “International Covenants” mean 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 [Section 2(1)(f)]. Besides two members to be appointed from amongst persons having knowledge of or practical experience in, matters relating to human rights as provided in clause (d) of Section 3(2), it is stipulated that the Commission shall consist of (a) a Chairperson who shall have been a Chief Justice of the Supreme Court; (b) one member who is, or has been, a Judge of the Supreme Court; and (c) one member who is, or has been the Chief Justice of a High Court. A High Powered Committee consisting of - (a) the Prime Minister; (b) Speaker of the House of the People; (c)

Minister in charge of the Ministry of Home Affairs in the Government of India; (d) Leader of the Opposition in the House of the People; (e) Leader of the Opposition in the Council of States; and (f) Deputy Chairman of the Council of States, has been entrusted with the responsibility to make recommendations for appointment of Chairperson and other members, as provided in Section 4(1) of the Act. In the event of the occurrence of any vacancy in the office of the Chairperson, any one of the members can be authorised to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

7. Section 11 of the Act provides that the Central Government shall make available to NHRC (a) an officer of the rank of Secretary to the Government of India who shall be the Secretary General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the function of the Commission.

8. The functions and powers of the Commission have been set out in Part III of the Act. Section 12 whereof, inter alia, provides that the Commission shall have power to review the safeguards provided by or under the Constitution or any other law for the time being in force for the protection of human rights and recommend measures for their effective implementation and study treaties and other international instruments on human rights and make recommendations for their effective implementation. The Commission is also empowered to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sections 176 and 177 of the Penal Code [Section 13(2)].

9. The power to conduct any investigation pertaining to the inquiry has been provided for in Section 14 of the Act. Special investigation teams can be constituted for the purposes of investigation and prosecution of offences arising out of violation of human rights in the manner provided in Section 27 of the Act.

10. Chapter V deals with constitution of the State Human Rights Commission and matters related thereto including appointment of Chairperson and other members and functions of the said Commission.

11. NHRC is a unique expert body in itself has been amplified in Paramjit Kaur v. State of Punjab1. The judgment sets out how the Chairman and other two members, postulated by clauses (a) to (c) of Section 3(2) of the Act, throughout their long tenure get opportunities to consider, expound and enforce the fundamental rights and how they are, in their own way, experts in the field.

12. Having noticed salient features of the Act, it can be seen that the aspect of investigation is only one part which has been dealt with separately, the other part being the decision-making power and functions of the Commission separately dealt with. Let us now note the development at the international level which ultimately led to the passing of the Act. The consideration at the international level on the establishment and functioning of national institutions can provide a backdrop to an understanding of the Act. Articles 1, 55, 56, 62, 68 and 76 of the UN Charter provide the basis for recognition, elaboration of the contents of the standards and the machinery for implementing the protection of human rights. The General Assembly of the United Nations on 10-9-1948 adopted a Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16-12-1966 form a bedrock of international recognition of human rights.

13. In the year 1991, the United Nations sponsored meetings of representatives of national institutions in Paris wherein a detailed set of principles on the status of national human rights institutions was developed. The principles developed therein are commonly known as “Paris principles”. The Paris principles were subsequently endorsed by the United Nations Commission on Human Rights and the United Nations General Assembly. The six criteria of national human rights institutions under the Paris principles are:

“(a) Independence guaranteed by the statute or Constitution.

(b) Autonomy from the Government.

(c) Pluralism in membership.

(d) Broad mandate based on human rights standards.

(e) Adequate power of the State.

(f) Sufficient resources.”

14. The Paris principles set out the principles relating to the status and functioning of national institutions for protection and promotion of human rights. In respect of composition and guarantees of independence and pluralism, it provides that:

“The composition of a national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, social and professional organisations concerned, for example, associations of lawyers, doctors, journalists and eminent scientists;

trends in philosophical or religious thought;

universities and qualified experts;

Parliament;

government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).”

15. In regard to structure of such institutions, the guidelines, inter alia, recommended that they would be so designed as to reflect in their composition, wide cross-sections of the nation thereby bringing all parts of that population into

the decision-making pr

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