

The West Bengal Human Rights Commission(Procedure) Regulations 2015, (hereinafter referred to as regulations) replaced the W.B. Human Rights Commission(Procedure) Regulations 1995 dated 12.09.1995 at the instance of the Hon'ble Member(A) himself when he was the Acting Chairperson.

He by his note dated 3rd September, 2020 has challenged legality of the said regulations without indicating any source of sudden discovery that they are illegal. If the regulations are illegal they were illegal on the day the same were notified. The order dated 06.08.2020 ostensibly challenged as illegal is based on the regulations. The order cannot be faulted so long as the regulations are not struck down by a Court of competent jurisdiction. Even if the regulations are Struck down the order would remain valid subject however to the question whether the order could have been passed within the frame work of the protection of Human Rights Act, 1993(hereinafter PHR Act) Act. Since exercise of power by the Chairperson by his order dated 06.08.2020 has been challenged by the learned Member(A) who is also former Acting Chairperson of the Commission, it is necessary, I think to place on record the background which necessitated the said order.

BACKGROUND

Shortly after I took over the reins of the WBHRC from Mr, Mukherjee on 21st December, 2016 I came across a case () which had been directed to be dropped. The facts briefly stated, as I remember, were that the petitioners being 3 sisters had complained to the Commission that their ailing aged father had wrongfully been confined by their only brother. They were not allowed to see him or to render any service including medical assistance to the ailing father. They in the circumstances sought for intervention of the Commission. An order was passed directing the Commissioner of Police, Kolkata to look into the matter and to furnish a report. After quite sometime a report was received indicating that the old man had already died and it was a case of dispute between

Mukherjee
23/9/20

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sisters and the brother over the property left by the deceased father. Since it was a matter concerning civil disputes no action, it was observed, was called for. No one however noticed that the order passed by the Commission was despatched nearly after four months and the victim of alleged wrongful confinement had died in the meantime, could be unattended. This act of gross negligence had naturally remained unnoticed. I directed the then CEO to call for an explanation from the then Ld. Registrar for delayed despatch of the order. A report was furnished to me stating that the delayed despatch of the order was due to the fault of a dealing assistant who had already left the office on routine transfer.

In order to avoid recurrence of such incident I passed an order dated 06.04.2017 which reads as follows:

Date: 06.04.2017

General Order of the Chairman under Regulation 13.

1. Cases involving suo motu cognizance shall be taken up for consideration jointly by the Chairman and the Hon'ble Member(A), Shri Naparajit Mukherjee.
2. Mr. Naparajit Mukherjee, Hon'ble Member(A) shall continue to deal with the complaints received by the Commission from the Presidency and Kolkata Division. He shall, however, not finally dispose of the matter one way or the other without placing the papers before the Chairman for his views,
3. Mr. M.S, Dwivedy, Hon'ble Member(J) shall continue to deal with the complaints arising out of Burdwan and Jalpaiguri Division. He shall not, however, finally dispose of the matter one way or the other without placing the papers before the Chairman for his views.

Sd/-

(G.C. Gupta)
6/4/2017

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Based on the written request of the Hon'ble Member(A) the order was modified as follows:-

General Order under Regulation 13.

In deference to the views expressed by Mr. Mukherjee, the earlier order is modified to the extent that the suo motu cognizance matters shall be dealt with by the full Commission

Circulate.

Sd/-

(G.C. Gupta)

Seen. Thanks to Chairman

Sd/-

N. Mukherjee

The aforesaid step was resented by the Hon'ble Member(J) as would appear from his notes set out herein

Seen. Circular should not have been issued without discussion.

Sd/-

(M.S. Dwivedi) 12/4/17

Chairman is not required to discuss any matter which is left to his discretion.

Upload the entire thing in the website.

Sd/-

(G. C. Gupta) 13/4/17

Both the Hon'ble Members thereafter continuously flouted the order dated 06.04.17 and 12.04.17. The practice followed was that the order passed by Hon'ble Member(J) would be sent to the Hon'ble Member(A) rather than sending the same to me as per the order dated 06.04.17.

Similar practice was followed by the Hon'ble Member(A). The files were thus

presented to me after they had been signed by the aforesaid members endorsing each other's

Handwritten:
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Handwritten signature

order. Usually they were orders rejecting the petition. When an enquiry or any other step in any case was considered necessary by me and an order to that effect was passed, they would resent stating that I was bound by the majority view. There were many such incidents, as would appear from the records of the Commission. There were occasions when the Hon'ble Members refused to participate in the hearing on the ground that they had already disposed of the matter. On an occasion the then Member(J) in the presence of the Member(A) brazenly told me that they had not accepted my order dated 6th and 12th April, 2017. Keeping me (File No. 121/WBHRC/SMC/2018) wholly in the dark both the Members(A) and (J) took suo motu cognizance, in respect of a matter already pending before NHRC by ante dating their order and subsequently had the file produced to me for signature. My refusal to oblige was ridiculed by both of them.

The CEO used to initial the files supposedly after reports were received and note was prepared by the Registrar or his deputy as the case might be. Not on one occasion did it appear to me that he had applied his mind to any of the files. It was often noticed that the report concerning mater 'X' had been tagged with the file 'Y,' yet no one including the CEO noticed the same which could lead to the only inference that the signature was not preceded by application of mind.

There was no mechanism to find out as to which report called for by the Commission had been received and which was yet to be received. The Dak remained unnoticed for months. The orders passed including the orders for enquiry were not despatched for months together. Then it dawned upon me that the omission to serve the order based on the complaint of the three sisters for about four months was a regular affair. The orders passed by the Hon'ble Members or the Chairperson calling for reports were altered by the Asstt. Secretary without their knowledge because the time within which a report was called for had already expired. Therefore a new order prescribing the time for submission of report was inserted.

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Majority of the Members of the staff were averse to work. Attending the office was a matter of choice. A few group 'D' staff members, a few Stenographers, some daily rated workers, a few data entry operators and some members of the regular staff were active and kept the Commission alive as it were a patient on life support. On one occasion when a hearing was in progress in the Conference Room an irritant sound was noticed. When I asked as to the source thereof Hon'ble Member(A) informed that the members of staff were playing carom board in the neighbouring room carved out by a wooden partition. He directed and the sound thankfully stopped.

Such an unhealthy and suffocating atmosphere, which I had never experienced either at the Bar or at the Bench was there. I sent a feeler in the circumstance to the State Govt seeking to know whether I could be relieved of the burden. No response did I receive. I remember whenever there was a gathering to bid farewell to someone I would yearn for the day when I would similarly be relieved. Confinement in this unhealthy atmosphere took toll on my health; caused severe complication of heart and I had to undergo instant open heart surgery in March 2018.

After I resumed office sometime in May, 2018 I tried to go in for E-Complaint Management System with the help of NHRC. Even in that I had to face tremendous opposition and severe noncooperation. The software was however successfully installed. The working of the Commission has thereby only marginally been improved. Earlier I had toyed with the idea of developing software for our official work when I was told that except for NIC no other agency could be appointed. The officers of NIC including one Mr. Sashi were contacted but no fruitful result ensued because everyone kept passing the buck. Many of the active members of staff have either since been transferred or retired without any replacement. The pandemic has added fuel to the fire. It transpired during a check up that the complaints received in early December, 2019 were not even taken on record till 24th July, 2020. The

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instances of flouting the order dated 06.04.17 as indicated above, I believed, had stopped, after the expiry of the term of the Member(J). The practice however had already been revived in a different form. The Hon'ble Member(A) had stopped directing the files to me for my perusal as per order dated 06.04.2017. This was discovered by me sometime in July/August, 2020. When I demanded reason for this, the sum and substance of the reply was that when the files, pertaining to the determination of Mr. Dwivedi, dealt with by me were not sent to him for signature, he was under no obligation to send the files to me.

My attention was drawn to a recommendation dated 09.04.2020 made by the Hon'ble Member(A) in respect of a complaint arising out of district Nadia made by Sri Subimal Sengupta, Secretary, CPI(ML) Liberation.

Report was submitted by the DSP on 09.04.20 which was received by the Hon'ble Member(A) from the ADG on the same day. Recommendation was drafted by the Hon'ble Member(A) and finalized and my signature obtained in hot haste and communicated to the Chief Secretary, Govt of West Bengal on 9th April, 2020.

It transpired that the recommendation was patently opposed to law. I signed without applying my mind relying on his judgment which in hindsight, it is clear, a trick was played upon me. It is in these circumstances that need for the general order dated 6th August, 2020 was felt and actually issued.

The ADG who held the charge of CEO was directed to firmly deal with the members of the delinquent staff. I am told that the absentees have been directed to have their unauthorised absence during the pandemic regularised by submitting applications for leave. I am further told that some steps have been taken against two persons and further steps are contemplated unless applications for post facto sanction of leave are forthcoming.

For updating the pending work I have taken upon myself to do the clerical and the works of the Registrar and Dy. Registrar. I am now functioning in a reverse process. The

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target is still very far away but I hope to overcome before I lay down office on the midnight of 21st December, 2021. I have learnt the lesson that quitters are not winners.

My brief respectful point wise reply to the note dated 03.09.2020 submitted by the Hon'ble Member(A) is as follows:

The subject matter of challenge principally is the legality of the regulations and only incidentally the order dated 06.08.20. The said order is strictly based on the regulations. The reasons assigned are all fallacious and do not lead to a logical conclusion that formation of bench/benches is illegal. A detailed discussion to demonstrate the fallacy of the reasoning may be postponed till the matter is taken to the Hon'ble Court for a declaration as sought for by the Hon'ble Member. I reserve my right to deal with the same at the appropriate stage.

Without prejudice to the aforesaid it may be pointed out that –

- a) No convention nor any custom has been identified which goes to show that advocates are not allowed to appear at any hearing of the Commission. As a matter of fact in Case No. 841/WBHRC/GEN/2017 a lady police officer had prayed for leave to allow her advocate to remain present during her examination. The prayer was allowed. Mr. Laltu Mitra, Advocate, Barrackpur Court remained present during the hearing.
- b) The Apex Court commenting upon the utility of the Commission opined in the case of D.K. Basu Vs. State of West Bengal & Ors(2015) 7 SCC 744. That "The Commission is meant to be a watchdog for the protection of the human rights of the citizens and effective instrument for redressal of grievances and grant of relief wherever necessary".

Such an august statutory body cannot be reduced to the position of a fact finding body having no role besides making recommendation except by resorting to heresy. The suggestion amounts to a gross underestimate of the functions of the

Commission .In the case of Ram Krishna Dalmia & Ors Vs. Justice Tendolkar & Ors

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reported in A1959 SCR 279: AIR 1958 SC 538 relied upon by the Hon'ble Member by a notification dated 11.12.1956 the U.O.I. in exercise of power under Section 3 of the Commission of Enquiry Act 1952 constituted a Commission to find out whether the funds of the shareholders had been embezzled by those managing the affairs of the Company. The Petitioners prayed for quashing the notification which was dismissed both by the High Court & Supreme Court. The observations made therein, from which inspiration appears to have been taken have no applicability to the Human Rights Commission which is intended to act as a watchdog for the protection of human rights enshrined in the Constitution of India and international treaties.

- c) Just because the PHR Act has contemplated two members and a Chairperson for a SHRC it does not follow that the provisions of the Election Commission (Conditions of Service of Election Commission and Transaction of Business) Act, 1991 shall automatically become applicable. The judgment in the case of T.N. Seshan reported in (1995) 4 SCC 611 contains a recital that "the President promulgated the Ordinance whereby a new chapter comprising Sections 9 and 10 was added to the Act indicating how the Election Commission will transact its business. Section 9 merely states that the business of the Commission shall be transacted in accordance with the provisions of the Act. Section 10 has three sub-sections. Sub-section (1) says that the Election Commission may, by unanimous decision, regulate the procedure for transaction of its business and for allocation of its business among the CEC and the ECs. It will thus be seen that the legislature has left it to the Election Commission to finalise both the matters by a unanimous decision. Sub-section (2) says that all other business, save as provided in sub-section (1), shall also be transacted unanimously, as far as is possible. It is only when the CEC and the ECs cannot reach a unanimous decision in regard to its business that the decision has to be by majority".

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- d) There is no general law, as erroneously assumed, which requires the Commission to act on the basis of consensus as contended.
- e) The Hon'ble Member appears to have missed the fact that rules were framed by the State Government under Section 41 of PHR Act.
- f) The Judgment in the case of Justice D.P. Sarkar leaves much to be desired. Not a word has been spent about the merits of the matter. The Ld. Member Justice Sarkar in that case was aggrieved because his salary was withheld by the Chairperson for a period during which he was absent and leave to his credit had already been enjoyed by him. Ordinarily in such a case the authority may grant special leave without pay provided a prayer to that effect has been made and the authority is inclined to take a sympathetic view. Far from applying for special leave without pay the Ld. Member insisted upon payment of salary. When the Chairperson refused to oblige, his order containing the refusal was challenged on the ground that the rule leaving the matter to the Chairperson was hit by article 14. Absence from work, after expiry of permissible leave, unless regularised by grant of special leave, would amount to breach of service or break in service which would mean that the Warrant, issued to him stood revoked or lost its force which could not have been revived without the consent of the Governor. The Judgment is altogether silent on this aspect of the matter. The views expressed in paragraph 21 of the judgment are ex facie based on misreading the provisions of PHR Act. The Ld. Judge fell into an error in appreciating the argument of the late, lamented, Ld. Advocate general. Neither the act nor the rules framed under the PHR Act define a "Member" to mean and to include the Chairperson. Such an impression might have been gathered from the Procedural Regulations of 1995 which were repealed with the introduction of the Regulations 2015. With great respect it is submitted that the judgment in the case of Justice D.P. Sarkar was erroneous, based

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on an error and even that error now stands repealed. The correctness of the judgment may fall for examination in case an appeal has been preferred or if occasion arises in future. For the present the judgment is valid for what it decides namely quashing of the rule subject to the result of appeal if any.

Any observation made in that judgment cannot be put to any use whatsoever.

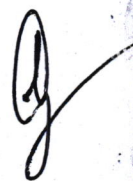
The indiscipline rampant in the Commission may have been encouraged by this decision. Even a game cannot be played enjoyably if the players adopt an attitude defying the authority of the captain. The Apex Court in the case of Tarak Singh Vs Jyoti Basu reported in (2005) 1 SCC 201 opined inter alia as follows:

"21. It must be grasped that judicial discipline is self-discipline. The responsibility is self-responsibility.

Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that we occupy and the enormous power we wield, no other authority can impose a discipline on us. All the more reason judges exercise self-discipline of high standards. The character of a judge is being tested by the power he wields. Abraham Lincoln once said: "Nearly all men can stand adversity, but if you want to test a man's character give him power." Justice-delivery system like any other system in every walk of life will fail and crumble down, in the absence of integrity.

22. Again, like any other organ of the State, the judiciary is also manned by human beings — but the function of the judiciary is distinctly different from other organs of the State — in the sense its function is divine. Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside

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23. Since the issue involved in the present controversy will have far-reaching impact on the quality of the judiciary, we are tempted to put it on record which we thought to be a good guidance to achieve the purity of administration of justice. Every human being has his own ambition in life. To have an ambition is virtue. Generally speaking, it is a cherished desire to achieve something in life. There is nothing wrong in a judge to have ambition to achieve something, but if the ambition to achieve is likely to cause compromise with his divine judicial duty, better not to pursue it. Because if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be tendency to compromise between his divine duty and his personal interest. There will be conflict in between interest and duty. This is what exactly has happened in this case. With due respect to the learned Judge, Justice-B.P. Banerjee, he has misused his divine judicial duty as liveries to accomplish his personal ends. He has betrayed the trust reposed in him by the people. To say the least, this is bad. The matter could have been different if the learned Judge got allotment from the Chief Minister's quota simpliciter like any other citizen."

Edmund Burke in his "Reflections on the French Revolution" made an observation which I quote:

"All persons possessing any position of power ought to be strongly and awfully impressed with an idea that they act in trust: and that they are to account for their conduct in that trust to the one great Master, Author, and Founder of Society."

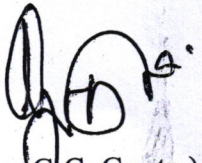
- g) It is ridiculous to suggest that the amendment of the PHR Act has in any way dented or diminished the status of the Chairperson.
- h) Every proceeding before the Commission is deemed to be a judicial proceeding.
- i) The Chairperson retains the authority to allocate any business to any member or to have it laid before him. He can also withdraw wholly or partly any business assigned to any member. He is the master of the roster.
- j) The judgment in the case of State of Karnataka Vs. U.O.I has not been identified by a correct citation. The citation given is incomplete. The judgment could not be located.

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The reasons indicated above are illustrative and not exhaustive to show that the order dated 06.08.2020 is legal, valid and justified. There is presumption in favour of legality of the regulations unless struck down by law.

The matter is thus disposed of.

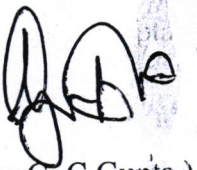
23rd September, 2020


(Justice G.C. Gupta)

Chairperson

Joint Secretary, WBHRC is directed to have the note dated 3rd September, 2020 and the present order, in that behalf, duly numbered as received and issued and to furnish an authenticated copy hereof to Hon'ble Member(A) without any loss of time.

Since the manuscript of this order meant for typing and mailed to my Stenographer has unauthorisedly and without my permission been accessed and circulated, the Ld. Registrar is directed to have both the note dated 3rd September, 2020 and this order dated 23rd September, 2020 be uploaded in the website.


(Justice G. C. Gupta)

Chairperson

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