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File No.4007/25/26/2021

Reference page 2 of Hon'ble Chairman's recommendation issued from file no.4007/25/26/2021 in which he has made following remarks against the Member "*the order dated 11 November, 2021 taking suo motu cognizance was produced to him which he chose not to sign. It is as such not correct to say that his consent was not considered necessary. It is also not correct to say that the entire process has been completed. The enquiry conducted by the Ld. Registrar is a step in aid of the process which has just begun. Even in the order dated 6 December, 2021 no reason has been disclosed why suo motu cognizance in this case was not necessary. Considering the statutory mandate requisite steps for the protection of human rights are not a matter of choice rather is a duty*". In this connection, I have already clarified the matter vide notes dt.06-12-2021 despite of which the Hon'ble Chairman chose to make certain remarks against the Hon'ble Member in a recommendation which is a quasi-judicial order and as per practice no adverse recommendations are made against a Brother Judge.

In this connection, I would like to draw attention of the Hon'ble Chairman to Section 12 of the Protection of Human Rights Act which clearly mentions that "*the Commission shall perform all or any of the following functions, namely :-*

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- (a) *Inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any Court], into complaint of*
- (i) *Violation of human rights or abetment thereof; or*
- (ii) *negligence in the prevention of such violation, by a public servant."*

Further, I would like to invite attention to Section 24 of Regulations of the Human Rights Commission in which procedure regarding suo motu action to be taken by the Commission has been stated. Section 24 (ii) "*provided that the Commission may cause a preliminary enquiry to be conducted before taking cognizance of any suo motu matter and suo motu cognizance shall be taken by full Bench of the Commission*". From these two as mentioned above i.e., provision of Section 12 of PHR Act and Section 24 of Regulation it is very clear that the suo motu cognizance has to be taken by the full Bench and not by a single individual Member of the Commission. Also, it is clear that prior to taking cognizance a preliminary enquiry about the veracity of such matter as to which cognizance is being taken must be conducted. The Hon'ble Chairman may kindly recall that on several occasions I had pointed this out to him on matter relating to suo motu cognizance but it is unfortunate that he had disagreed to my views and went ahead taking cognizance with the net result that following enquiry nothing tangible come out.

Therefore, I would like to state herein that it was mandatory on the part of the Commission that the Member should have approved the cognizance relating to suo motu matter as per above mentioned provisions and then only the

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Registrar should have proceeded for enquiry. In fact, the Registrar jumped the gun at the instance of the orders of the Chairman alone and proceeded to conduct enquiry without keeping the Member posted. Therefore, I humbly disagree with the views of Hon'ble Chairman as mentioned in his judicial orders / recommendation and submit my views once again accordingly.

It is also further stated that on perusal of the enquiry report of the Registrar the news item (in Ganashakti) claims that 65 farmers have committed suicide, has not been established. Also, the matter of any one committing suicide has not been established whether from the reports of the Registrar or from the report of D.M., Purba Bardhaman. There is a flaw in the report of the Registrar as copies of loan agreement by the borrowers have not been submitted and it has not been established as to who actually gave such loans to the borrowers i.e., name of agents, persons and institution. The enquiry reveals that it is just a claim of the borrowers that they have borrowed money from certain institution but the Registrar has failed to establish the same by corroborating this fact from respective institutions obtaining copies of loan agreements from borrowers or from concerned Banks and also taking statements of the Banks.. In fact, the version of the respective institutions has not been taken during the course of the enquiry making it one sided and partial. The true facts have not come out. Also, the claim of certain borrowers charging 20% as interest has not been established by colaterral and corroborative evidence excepting for the claims made by the

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borrowers. I strongly feel that this is a defective fact finding enquiry and no recommendations could be made on the basis of such enquiry full of laches unless above mentioned points are clarified. It would be a travesty of justice if Human Rights Commission start submitting recommendation which are not substantiated factually, incomplete and partial, besides violative of established legal procedures.


(N. Mukherjee)

Member

15/12/201

Additional Secretary