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PEOPLE'S UNION FOR CIVIL LIBERTIES

v.

UNION OF INDIA AND ANR.

JANUARY 18, 2005

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[Y.K. SABHARWAL AND D.M. DHARMADHIKARI, JJ.]

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Protection of Human Rights Act, 1993—Section 3(2)(d)—National Human Rights Commission—Members—Eligibility of Police Officer to be appointed as Member—Held: Per Sabharwal, J.—Not eligible—Per Dharmadhikari, J.—Eligible—In view of difference of opinion, matter referred to a larger Bench.

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One post of Member in the National Human Rights Commission (NHRC) fell vacant. Respondent No.2, retired Director of Central Bureau of Investigation (CBI) was recommended for the post. The appointment was required to be made after obtaining the recommendations of a Committee. When a meeting was fixed, the Committee members informed their inability to attend the meeting but conveyed their approval to recommendation of the name of respondent No. 2. Thereafter, respondent No.2 was appointed a Member of NHRC. His appointment is under challenge on the ground that a Police Officer is not eligible to be member of such body in view of clear language of Section 3(1)(d) and the true intent of the Act, its scheme as also from the very concept which gave birth to protection of Human Rights; and that recommendation was in breach of established norm of consultation with Chairman of NHRC.

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Respondent No. 1 contended that respondent 2 has adequate knowledge and practical experience in matters relating to human rights, qualifying him for appointment to Commission; that Respondent No. 2 during his tenure as a Police officer had investigated cases such as Punjab Massacre case and Gujarat Riot cases which involved serious violation of human rights; and that he is also the Vice-President (Asia) of Interpol, an international police organization in which capacity, he is involved in developing mechanisms for police cooperation in investigation and prosecution of crimes across borders including terrorism, human safety and human trafficking, which are all offences against human rights.

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Referring the matter to larger Bench, the court

HELD: (By the Court): In view of the difference of opinion, the matter is referred to larger Bench. The matter deserves to be heard expeditiously. A

Per Y.K. Sabharwal, J:

HELD: 1. The appointment of respondent No.2 as member of the National Human Rights Commission is declared null and void. [515-C] B

2. The Protection of Human Rights Act, 1993 was enacted to provide for better protection of human rights and for matters connected therewith or incidental thereto. India is a party to international covenants on human rights. Indian Constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State Policy in Part IV which are fundamental in the governance of the country. Freedoms granted under Part III have been liberally construed by various pronouncement of this Court in last half a century in favour of the subjects also, keeping in view the international covenants. The object has been to place citizens at a central stage and State being highly accountable. These developments at international level ultimately led to the passing of the Act. [503-A; 506-E-F; 505-A] C
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3.1. Investigation under the Act has been separately dealt with in the manner provided in Sections 11, 14 and 37. A Police officer may be very good investigator. He may have vast experience in respect of the nature of commission of crime and consequentially its prevention. But, for the present purposes what is relevant is that number of cases reported to NHRC relate to acts of omission and commission by the members of such forces. In this regard, reference is made to NHRC Report for the year 2001-02 which shows that large number of cases relating to custodial deaths and police encounter deaths came up for enquiry and consideration before the Commission. The officers of these forces while being members of service necessarily come across such cases. An individual officer may be very good but something inbuilt in service as a class is the relevant consideration. The Commission has also to deal with type of cases, which officers had sometimes to defend, on account of nature of their service. Further, the knowledge or practical experience in relation to commission of crime, investigation and solving a crime which may show violation of human rights is one thing and the knowledge or experience relating to protection of life, liberty, equality and dignity of the individual guaranteed E
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A by the Constitution or embodied in the international covenants and enforceable by courts in India is altogether different. The requirement of the section is of latter and not former. [506-G-H; 507-A-C]

B 3.2. Question to consider is the eligibility of a person who has to become a part of the decision making process of NHRC and not the process of investigation which commission may direct to be conducted. The exclusion of the category under consideration seems evident when seen as to who are included in the light of Paris principles, namely, representatives of non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, C journalists eminent scientists; trends in philosophical or religious thoughts; universities and qualified experts; and parliament. Regarding the Government departments, their representation in the deliberations is only in advisory capacity. [507-D-F]

D 3.3. The scheme of the Act is to protect and implement human rights including those envisaged in Article 21 of the Constitution and International Covenants. The functions include understanding and dissemination of knowledge on human rights. The members referred in Section 3(2)(d) are required to have the knowledge and practical E experience in matters relating to human rights of the type expected from those covered under Section 3(2)(a),(b) and (c). Section 7 provides that in the event of the occurrence of any vacancy in the office of the Chairperson, any one of the members may be authorized to act as the Chairperson until the appointment of a new Chairperson. The person to be appointed under Section 3(2)(d) should also be one who can act as a Chairperson under F contingency contemplated by Section 7 of the Act. [507-F-H; 508-A]

Paramjit Kaur v. State of Punjab and Ors., [1999] 2 2 SCC 131, referred to.

G 3.4. The expertise in investigation cannot be confused with expertise in the matters relating to human rights. These two are entirely different. For investigation, police and investigating staff is available to the Commission. The Commission can also require any person to furnish information on such points or matters as may be useful for, or relevant to, the subject matter of inquiry. It may utilise services of any officer or H investigating agency as stipulated in Section 14 of the Act for the purpose

of conducting any investigation pertaining to the inquiry. The Central Government is required to make available to the Commission such police and investigating staff for the efficient performance of the functions of the Commission. [508-E-G] A

4.1. While construing the provisions of the statute, the object of the statute and the aspect of public perception cannot be altogether overlooked. The statute of the nature under consideration are based on public confidence. It cannot be overlooked that notwithstanding the exemplary role of police and security forces, there have been many instances of excesses by the members of the forces leading to public unrest and deteriorating public faith. The issue is not whether all are fully true or not but is what exists in the public mind and whether there is some justification. [508-H; 509-A] B C

4.2. An individual Police officer may be very good but his participation in decision making as a member of the Commission is likely to give rise to a reasonable apprehension in the minds of the citizens that he may sub-consciously influence the functioning of the Commission. Such reasonable perception of the affected parties are relevant considerations to ensure the continued public confidence in the credibility and impartiality of institution like NHRC. [509-B-C] D

P.K. Ghosh, IAS and Anr. v. J.G. Rajput, [1995] 6 SCC 744, relied on. E

4.3. Assuming two constructions of Section 3(2)(d) are reasonably possible, the construction which promotes public confidence, advances the cause of human rights and seeks to fulfill the purpose of international instruments has to be preferred than the one which nullifies it. Ambiguity, if any, in the statutory provision is required to be removed by judicial process to advance the cause of protection of human rights. [509-E] F

Ranjit Thakur v. Union of India and Ors., [1987] 4 SCC 611, referred to. H

Public Utilities Commission of the District of Columbia, Capital Transit Company & Washington Transit Radio, Inc. v. Franklin S. Pollak & guy Martin, [343 US 451], referred to. G

4.4. When a Police officer is a member of NHRC, the question to be asked is not to his bias but is the impression of a reasonable right minded H

A person and the confidence the Commission would generate as a result of participation of a person of such a background. [510-D]

D.K. Basu v. State of West Bengal, [1997] 1 SCC 416 and *N.C. Doundial v. Union of India and Ors.*, [2004] 2 SCC 579, referred to.

B 4.5. Respondent No.2 has been a Police Officer throughout his service career. Assuming that he was a very efficient officer and investigated many cases including complicated and sensitive cases but what is relevant for the present purpose is the 'sanskar', i.e., conscious or sub-conscious bias in favour of investigating agencies. [511-D]

C *P.N. Duda V.P. Shiv Shanker and Ors.*, [1988] 3 SCC 167, relied on.

5. The question can also be examined from another angle. The knowledge or experience of a police officer of human rights violation, represents only one facet of human right violation and its protection, namely, arising out of crime. Human Right violations are of various forms which besides Police brutality is - gender injustice, pollution, environmental degradation, mal-nutrition, social ostracism of Dalits etc. Police officer can claim to have experience of only one facet. That is not the requirement of the section. [511-G]

E *Makinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, [1987] SCC 469; *Sheela Barse v. Secretary, Children's Aid Society*, [1987] 3 SCC 50; *Vishaka v. State of Rajasthan*, AIR (1997) SC 3011 and *People's Union for Civil Liberties, v. Union of India and Anr.*, [1997] 3 SCC 433, referred to.

F 6.1. While construing any provision in domestic legislation which is ambiguous, in the sense that it is capable of more than one meaning, the meaning which conforms most closely to the provisions of any international instrument is to be preferred, in the absence of any domestic law to the contrary. In this view, Section 3(2)(d) is to be read keeping in view Paris Principles. Further, the proposal to appoint police officers on two earlier occasions was dropped when Chairperson of NHRC expressed his opinion against appointments of such persons. Thus, construing Section 3(2)(d) of the Act, police officer would be ineligible to be appointed as a member of NHRC. [513-F-H]

H 6.2. The fact that the opinion of the Chairperson was sought on earlier two occasions would not tantamount to setting up of a convention requiring the Chairperson to be mandatorily consulted. The requirement

of Section is not of 'consultation' but of recommendation of the Committee. Since notice of the meeting had been given to Committee Members, it cannot be said that the recommendations of the Committee would stand vitiated as a result of non-participation. There is nothing to even suggest that any request for deferring the meeting was made. Undoubtedly, for meaningful and purposeful recommendation, there ought to be complete disclosure of relevant factors considering that the appointment is being recommended for a highly expert body in relation to protection of human rights. The members of the Committee were not informed that on earlier two occasions, the views of the Chairperson of the NHRC were asked and since the Chairperson was opposed to the appointment of a member of the force, the proposal was dropped. [514-F, B, C-D]

Per D.M. Dharmadhikari, J:

1. The statutory provisions under Section (3)(2)(d) from its plain language, do no disqualify respondent No. 2 from holding the position of member of the NHRC. [515-E]

2.1. Judges by the very nature of their office and duties, render them almost 'cut off' from society. They lose touch with ground realities existing in the society. Their knowledge in matters relating to human rights is hearsay i.e. through the cases that happen to come before them in the law courts and which they get chance to deal and decide as judges in the seat of the court. Their lack of practical experience in the field of human rights is required to be supplemented by such members of the Commission who are either active in public life or directly dealing with the incidents and occurrences of violations of human rights. Such persons, as envisaged by use of a wide language in Section 3(2)(d), may include reputed Human Rights Activists or high ranking police officers who have acquired experience in investigation and prevention of human rights violations.

[515-F-H; 516-A]

2.2. Human Rights violations, to a great extent, are crimes punishable under different kinds of Criminal Laws. Police Officers dealing with such crimes as investigators, as protectors of law or as preventors of such crimes cannot be held to be disqualified or considered unsuitable for membership of the Commission. [516-C-D]

2.3. Public perception, of police as a force, can change only if the high ranking police officers with exemplary record of service and of

A integrity are given chance to act as members of the Commission. [516-G]

B 3. 'Paris Principle' is merely in the nature of guidelines to be followed by covenanting countries who are parties to the resolutions taken in the international conferences on human rights. There is no obligation on acceptance of 'Paris Principle', to incorporate it word by word in statutory law. In the 'Paris Principle', a pluralistic composition of Commission has been advised. Contrary to Paris Principle of a pluralistic composition of the Commission, under the Act, in respect of membership, judges have a majority. A real pluralistic composition ought to include in its membership with judges; human rights activists, scientists, academicians and even the experienced police officers and social researchers. Merely because there are instances of human rights violations by some members of the police is no ground to exclude all police officers as a class from the membership of the Commission. [517-B-D]

D 4. Police officers from the very nature of their job and function acquire knowledge as to how and where human rights are violated. They also know what preventive action is required to be taken and what course has to be adopted for protection of human rights. A police officer with necessary knowledge and experience in matters of human rights cannot be held to be disqualified merely because he is a police officer. There are instances in India itself where police officers working in terrorist areas or for jail reforms have received national and international recognition and awards. Construing Section 3(2)(d) narrowly by excluding from its purview police officers altogether would deprive chance of serving as members of the Commission to even police officers with record of exemplary service in the field of human rights. To disqualify them completely would have a demoralizing effect on the police force as such. [518-B, C-D]

G 5. Selection Committee is a pluralistic body comprising of elected representatives of the people and political parties in power and in opposition. The perception of the Selection Committee regarding fitness of a particular person chosen for membership, by considering him to be possessing required knowledge and practical experience in the matters relating to human rights, cannot be faulted by the court by substituting its own opinion. Such a course of actions is not legally permissible to the court. The court cannot sit over the selection of the Selection committee unless there is found to be any infraction of law under which the selection

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was made. [518-E-F]

6. Record of service of respondent no. 2 shows his knowledge and practical experience in matters relating to human rights. It is another thing to make a general statement that for membership under Section 3(2)(d), well-known human rights activists or members of the reputed NGOs who are actively involved in the field of human rights would have been better choices but the court is concerned only with the legality of the appointment and not the wisdom of the selection body. Merely because, a more suitable person ought to have been chosen is no ground to invalidate the appointment of respondent No. 2 who cannot be held to be disqualified under Section 3(2)(d). [520-A-C]

ORIGINAL APPELLATE JURISDICTION : Writ Petition (C) No. 105 of 2004.

(Under Article 32 of the Constitution of India).

Rajinder Sachar, Sanjay Parikh, Ashok Bhan, A.K. Misra and A.N. Singh for the Petitioner.

Goolam E. Vahanvati, Solicitor General, Gopal Subramaniam, T.S. Doabia, A. Subba Rao, Devadatt Kamat, Ms. Lavanya Raghunathan Fischer, Chinmoy Pradip Sharma and Ms. Sushma Suri for the Respondent No. 1.

Maninder Singh, Ms. Pratibha M. Singh, Angad Mirdha, Kritiman Singh and Saurabh Mishra, for the Respondent No. 2.

Ms. Indira Jaisingh. Mrs. Farheen Syeed Kapra and Badri Prasad Singh. for Intervenor.

The following Judgments/Order of the Court were delivered by

Y.K. SABHARWAL, J. 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 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.

NHRC has been set up under provisions of the Protection of Human Rights Act, 1993 (for short 'the Act'). Its composition is provided in Section 3(2) of the Act. The question for consideration in this petition is about the

- A 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.
- B 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.
- C 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.
- D The notice was sent to the Committee members on 13th February, 2004, convening a meeting for 19th February, 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 to recommendation of the name of respondent No.2. Likewise, the Speaker
- E of the House of People also expressed inability to attend the meeting but conveyed his approval to the appointment of respondent No.2. Insofar as 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 19th February, 2004 wherein
- F it was decided to recommend the name of respondent No.2 to be appointed as a member of the Commission. The Committee noticed that the Leader of Opposition in the House of People and the Speaker had both conveyed their approval for the said recommendation. Thus on 19th February, 2004, respondent No.2 was selected to be appointed a Member of NHRC.
- G 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 No.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
- H the provisions of the Act, its scheme as also from the very concept which

gave birth to protection of Human Rights.

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 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 16th December, 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, 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.

The "Human Rights" means 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" means 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 the 16th December, 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 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 authorized to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

A Section 11 of the Act provides that Central Government shall make available to the NHRC (a) an officer of the rank of the 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.

B 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 Indian Penal Code [Section 13(2)].

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E The power to conduct any investigation pertaining to the inquiry has been provided for in Section 14 of the Act. The 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.

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

G The NHRC is a unique expert body in itself has been amplified in *Paramjit Kaur v. State of Punjab and Ors.*, [1999] 2 SCC 131. 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.

H 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 Commission separately dealt with. Let us now note the development at international level which ultimately led on 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 adopted on 10th September, 1948 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 16th December, 1966 formed a bedrock of international recognition of human rights.

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'. 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 Paris principles are:-

- “(a) Independence guaranteed by the Statute or constitution.
- (b) Autonomy from Government.
- (c) Pluralism in membership.
- (d) Broad mandate based on human rights standards.
- (e) Adequate power of State.
- (f) Sufficient resources.”

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 the 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

- A (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, representative of:
- non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- B Trends in philosophical or religious thought;
- Universities and qualified experts;
- C Parliament;
- Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity)."

D 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 part of that population into the decision making process in regard to the human rights.

E India is a party to aforesaid covenants. Indian Constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State Policy in Part IV which are fundamental in the governance of the country. Freedoms granted under Part III have been liberally construed by various pronouncement of this Court in last half a century in favour of the subjects also, keeping in view the international covenants. The object has been to place citizens at a central stage and State being highly accountable.

F The main question is whether Section 3(2)(d), is to be read keeping in view Paris principles. If it is to be so whether a former member of Police force or member of any Security Forces as a class, are ineligible to become members of the Commission.

G The investigation under the Act has been separately dealt with in the manner provided in Sections 11, 14 and 37. A Police officer may be very good investigator. He may have vast experience in respect of the nature of commission of crime and consequentially its prevention. But, for the present purposes what is relevant to be borne in mind is that number of cases reported

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to NHRC relate to acts of omission and commission by the members of such forces. In this regard, reference can be made to NHRC Report for the year 2001-02. That report shows that large number of cases relating to custodial deaths and police encounter deaths came up for enquiry and consideration before the Commission. The officers of these forces while being members of service necessarily come across such cases. An individual officer may be very good but something inbuilt in service as a class is the relevant consideration. The Commission has also to deal with type of cases, which officers had sometimes to defend, on account of nature of their service. Further, the knowledge or practical experience in relation to commission of crime, investigation and solving a crime which may show violation of human rights is one thing and the knowledge or experience relating to protection of life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India is altogether different. The requirement of the section is of latter and not former. *Paramjit Kaur's case* (supra), gives an indication as to what type of knowledge or practical experience in matter of human rights, the Act has in contemplation so as to make a person eligible to be appointed as a member of the Commission. We have to consider the eligibility of a person who has to become a part of the decision making process of NHRC and not the process of investigation which commission may direct to be conducted. The exclusion of the category under consideration seems evident when seen as to who are included in the light of Paris principles, namely, *representatives of non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists eminent scientists; trends in philosophical or religious thoughts; universities and qualified experts; and parliament*. Regarding the Government departments, their representation in the deliberations is only in advisory capacity. The scheme of the Act is to protect and implement human rights including those envisaged in Article 21 of the Constitution and International Covenants. The functions include understanding and dissemination of knowledge on human rights. The members referred in Section 3(2)(d) are required to have the knowledge and practical experience in matters relating to human rights of the type expected from those covered under Section 3(2)(a),(b) and (c). Reference may also be made to Section 7 which provides that in the event of the occurrence of any vacancy in the office of the Chairperson, any one of the members may be authorized to act as the Chairperson until the appointment of a new Chairperson. The person to be appointed under Section 3(2)(d) should also be one who can act as a

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A Chairperson under contingency contemplated by Section 7 of the Act.

The Union of India, in its counter affidavit, has mentioned certain cases investigated by respondent No.2 during his tenure as a Police officer, which includes among other Punjab Massacre case. It has also been stated that respondent No.2 is a Vice-President (Asia) of Interpol, an international police organization in which capacity, it is claimed, he is involved in developing mechanisms for police cooperation in investigation and prosecution of crimes across borders including terrorism, human safety and human trafficking, which are all offences against human rights. Union of India in the counter affidavit claims that :

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C “During the course of their careers, police officers garner in vast practical experience in police methodology, investigative techniques and other practical matters relating to human rights. It is submitted that such experience would inter alia aid the Commission in identifying cases of police mal-practice and the Commission would be able to look behind cases of cover up and attempts to shield guilty police officers. It is, therefore, submitted that Respondent No.2 has adequate knowledge and practical experience in matters relating to human rights, qualifying him for appointment to the Commission under Section 3(2)(d) of the Act.”

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E The expertise in investigation cannot be confused with expertise in the matters relating to human rights. Two are entirely different. For investigation, police and investigating staff is available to the Commission. The Commission can also require any person to furnish information on such points or matters as may be useful for, or relevant to, the subject matter of inquiry. It may utilise services of any officer or investigating agency as stipulated in Section 14 of the Act for the purpose of conducting any investigation pertaining to the inquiry. The Central Government is required to make available to the Commission such police and investigating staff under an officer not below the rank of Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.
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H While construing the provisions of the statute, the nature and object of the statute cannot be overlooked. In these matters, the aspect of public perception cannot be altogether overlooked. The statute of the nature under consideration are based on public confidence. It cannot be overlooked that notwithstanding the exemplary role of police and security forces, there have

been many instances of excesses by the members of the forces leading to public unrest and deteriorating public faith. The issue is not whether all are fully true or not but is what exists in the public mind and whether there is some justification. A

An individual Police officer may be very good but his participation in decision making as a member of the Commission is likely to give rise to a reasonable apprehension in the minds of the citizens that he may sub-consciously influence the functioning of the Commission. Such reasonable perception of the affected parties are relevant considerations to ensure the continued public confidence in the credibility and impartiality of institution like NHRC. B C

What has been said about the institution of judiciary in *P.K. Ghosh, IAS and Anr. v. J.G. Rajput*, [1995] 6 SCC 744 can also be applied for considering the institution like NHRC. It was said that credibility in the functioning of justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. D

Assuming two constructions of Section 3(2)(d) are reasonably possible, the construction which promotes public confidence, advances the cause of human rights and seeks to fulfill the purpose of international instruments has to be preferred than the one which nullifies it. Ambiguity, if any, in the statutory provision is required to be removed by judicial process to advance the cause of protection of human rights. E

The observations in *P.N. Duda v. P. Shiv Shanker and Ors.*, [1988] 3 SCC 167 that 'After all it cannot be denied that predisposition or subtle prejudice or unconscious prejudice or what in Indian language is called 'sanskar' are inarticulate major premises in decision making process' are quite apt in the present context. F

On the aspect of sub-conscious mind, what Justice Frankfurter said for not participating in the decision of *Public Utilities Commission of the District of Columbia, Capital Transit Company & Washington Transit Radio, Inc. v. Franklin S. Pollak & Guy Mart*, [343 US 451], is quite enlightening. It reads:- G

"The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for H

A ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is *also true that reason cannot control the subconscious influence of feelings of which it is unaware*. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." (Emphasis supplied)

D The aforesaid passage has been quoted with approval in *Ranjit Thakur v. Union of India and Ors.*, [1987] 4 SCC 611.

E When a Police officer is a member of NHRC, the question to be asked is not to his bias but is the impression of a reasonable right minded person and the confidence the Commission would generate as a result of participation of a person of such a background.

The principles laid in aforesaid decisions can be reasonably applied for considering the question in issue in relation to NHRC which is headed by a person who held the position of the head of the judiciary and has the assistance of a former Chief Justice and Judge of the highest court of the country.

F In respect of violations of human rights during investigation, in *D.K. Basu v. State of West Bengal*, [1997] 1 SCC 416, grave concern was expressed by this Court in respect of persons who were supposed to be the protectors of the citizens and committed violence under the shield of uniform and authority in the four walls of a Police Station or lockup, the victims being totally helpless. It will be useful to note what was said in para 18 which reads

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H "However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take

place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportion that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder."

The Court also took note of various other security forces and other agencies where too there were instances of torture and death in custody. *N.C. Doundial v. Union of India and Ors.*, [2004] 2 SCC 579 was a case where the Commission enquired into violation of human rights by officials of CBI.

Respondent No. 2 has been a Police Officer throughout his service career. We assume that he was a very efficient officer and investigated many cases including complicated and sensitive cases but what is relevant for the present purpose is the 'sanskar', to borrow, words from *P.N. Duda's* case, i.e., conscious or sub-conscious bias in favour of investigating agencies.

Once again, we wish to make it clear that neither we are condemning any force nor upright officers of which there is no dearth, but are examining the confidence the community at large is likely to generate on officers of such services being appointed as member of the Commission, particularly, when the language of Section 3(2)(d) does not admit of only one interpretation. When two interpretations are possible, the interpretation which promotes the object of the Act and public confidence deserves to be adopted.

The question can also be examined from another angle. The knowledge or experience of a police officer of human rights violation, represents only one facet of human right violation and its protection, namely, arising out of crime. Human Right violations are of various forms which besides Police brutality is - gender injustice, pollution, environmental degradation, mal-nutrition, social ostracism of Dalits etc. Police officer can claim to have experience of only one facet. That is not the requirement of the section.

Let us also note some of the decisions, in which drawing aid from

A international covenants, law enacted by Indian Parliament was construed and relief of protection of human rights was given.

B In *Makinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, [1987] SCC 469, this Court considered the case of a "confidential lady stenographer" who complained that she and other women stenographers who are in the service of a company were being paid lower emoluments than their male counterparts. Taking note of the fact that India is a party to the international convention concerning equal remuneration for men and women for work of equal value (the Equal Remuneration Convention, 1951), the Court adopted a principle embodied in the Convention to construe a law enacted by the Parliament, the C Equal Remuneration Act, 1976 to grant relief to the petitioner therein by holding the action of the employer to be an unconstitutional violation of the principles of equal pay for equal work.

D In *Sheela Barse v. Secretary, Children's Aid Society*, [1987] 3 SCC 50 at 54, the petitioner complained about the state of affairs in an observation home for children. While issuing directions to the State of Maharashtra, it was held by this Court that the international instruments which had been ratified by India and which elucidated norms for the protection of children cast an obligation on the State to implement their principles. The Court said:

E "Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realized. In 1959 the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations in Article 24 of the International Covenant on Civil and Political Rights, 1996, the importance of the child has been appropriately recognized. F India as a part to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way."

G In the aforesaid case, this Court traveled one step further than in *Makinnon Mackenzie* and made not merely a reference to an international convention but a stronger expression of the binding nature of its obligations.

The endeavour of this Court to ensure a virtual judicial incorporation of treaty law into the *corpus juris* is demonstrated by its opinion in *Vishaka v. State of Rajasthan*, AIR (1997) SC 3011 at 3015, in the following words:

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"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law."

Again in *People's Union for Civil Liberties v. Union of India and Anr.*, [1997] 3 SCC 433, dealing with the criticism against reading of conventions and covenants into the national laws, it was opined :

"For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such. So far as multilateral treaties are concerned the law is, of course, different - and definite."

Thus, international treaties have influenced interpretation of Indian law in several ways. This Court has relied upon them for statutory interpretation, where the terms of any legislation are not clear or are reasonably capable of more than one meaning. In such cases, the courts have relied upon the meaning which is in consonance with the treaties, for there is a *prima facie* presumption that Parliament did not intend to act in breach of international law, including State treaty obligations. It is also well accepted that in construing any provision in domestic legislation which is ambiguous, in the sense that it is capable of more than one meaning, the meaning which conforms most closely to the provisions of any international instrument is to be preferred, in the absence of any domestic law to the contrary. In this view, Section 3(2)(d) is to be read keeping in view Paris Principles. Further, the proposal to appoint police officers on two earlier occasions was dropped when Chairperson of NHRC expressed his opinion against appointments of such persons.

Thus, construing Section 3(2)(d) of the Act, police officer would be ineligible to be appointed as a member of NHRC.

The challenge to the appointment of respondent No.2 was also made on

A two other grounds, namely, (1) Absence of effective consultation with the Committee members and, therefore, the recommendation was not in accord with Section 4 of the Act and (2) breach of established norm of consultation with the Chairperson of NHRC.

B Facts relevant for considering aforesaid grounds have already been noticed. Under Section 4 every appointment has to be made after obtaining the recommendations of a Committee. The requirement of Section is not of 'consultation' but of recommendation of the Committee. It is true that the recommendations are required to be made after taking into consideration all relevant factors eschewing irrelevant factors. Since notice of the meeting had
C been given to Leader of Opposition in the Council of States, it cannot be said that the recommendations of the Committee would stand vitiated as a result of his non-participation. There is nothing to even suggest that any request for deferring the meeting was made. Undoubtedly, for meaningful and purposeful recommendation, there ought to be complete disclosure of relevant factors considering that the appointment is being recommended for a highly expert
D body in relation to protection of human rights. The members of the Committee were not informed that on earlier two occasions, the views of the Chairperson of the NHRC were asked and since the Chairperson was opposed to the appointment of a member of the force, the proposal was dropped. It is, however, unnecessary to examine its effect in view of the answer to the main
E question.

Regarding the second ground, namely, the requirement of consultation with the Chairperson of the NHRC for appointment of members under Section 3(2)(d), the fact that the opinion of the Chairperson was sought on earlier two occasion would not tantamount to setting up of a convention requiring the
F Chairperson to be mandatorily consulted. Section 4 also does not postulate consultation with the Chairperson. However, having regard to the position of the Chairperson and the laudable objects the Commission is serving, its functions being of far reaching public impact, we hope that till the amendment of the Act, the Central Government would consider developing a healthy
G convention of consulting the Chairperson regarding the appointment of the members and placing the opinion of the Chairperson before the Committee. We may also note that long time back the Commission had written to the Government suggesting amendments in the Act and incorporating a provision for mandatory consultation with the Chairperson regarding appointment of the members, but the matter still seems to be pending consideration of the
H Government. It deserves to be expedited.

Before parting, we reiterate that this Court should not be understood to have condemned, in any manner, the Police officers or members of Security Forces. They are, indeed, doing great service to the nation. Many of the officers in these services have dealt with most difficult and intricate situations and problems and have contributed a lot in their solution. The question considered by us is only in the context of their expertise in the matters relating to human rights within the meaning of Section 3(2)(d) read with Paris principles. We also wish to place on record our appreciation for the assistance rendered by Mr. Gulam E. Vahanvati, learned Solicitor General on request made by this Court.

In view of the aforesaid discussion, the appointment of respondent No.2 as member of the National Human Rights Commission is declared null and void but it shall not affect the validity of the decisions taken while he was a member of the Commission.

The petition is allowed accordingly and the rule made absolute.

DHARMADHIKARI J. With utmost respect, I am unable to endorse all the views and the conclusion recorded in his opinion by learned Brother Sabharwal J.

The statutory provision under Section 3(2)(d) from its plain language, in my considered opinion, do not disqualify respondent No.2 from holding the position of member of the National Human Rights Commission.

The composition of the Commission as provided in Section 3(2) of the Act with Judges on its membership in majority, is not as pluralistic as indicated in 'Paris Principle.'

Judges, by the very nature of their office and duties, with the life of seclusion expected of them not only for independence but also for appearance of independence, render them almost 'cut off' from society. They lose touch with ground realities existing in the society. Their knowledge in matters relating to human rights is *hearsay* i.e. through the case that happen to come before them in the law courts and which they get chance to deal and decide as judges on the seat of the court. Their lack of practical experience in the field of human rights is required to be supplemented by such members of the commission who are either actively in public life or directly dealing with the incident and occurrences of violation of human rights. Such person, as

A envisaged by use of a wide language in clause (d) of sub-section (2) Section 3, may include reputed Human Rights Activists or high ranking police officers who have acquired experience in investigation and prevention of human rights violations.

B The expression 'from amongst person having knowledge of, or practical experience in matters relating to human rights' as used in clause (d) of sub-section (2) of Section 3 is wide enough to allow the Selection Committee constituted under section 4 to select any suitable person, who in the opinion of the Selection Committee, possesses knowledge and the language used in clause (d), neither expressly nor by implication, exclude suitable police officers with high record of experience and integrity.

C Human Rights violations, to a great extent, are crimes punishable under different kinds of Criminal Laws. Police Officers dealing with such crimes as investigators, as protectors of law or as preventors of such crimes cannot be held to be disqualified or considered unsuitable for membership of the Commission.

D In accordance with Section 11(1)(b) of the Act, the Commission has to be aided and assisted by a team of police and investigative staff 'under an officer not below the rank of a Director General of Police'. The Central Government is obliged by section 11 to provide suitable police officers and staff for efficient performance of the functions of the Commission. In their capacity as members of the staff for aiding and assisting the commission in discharge of its functions, there are several police officers of that category attached to the Commission who are directly dealing with human rights violations and thereby get a chance to acquire necessary knowledge and practical experience in the field of human rights. Such police officers who have aided and assisted the Commission in discharge of its functions, gain knowledge and experience in the same field for being chosen to act as member under clause (d) of sub-section (2) of Section 3.

E Public perception, to which learned Brother has given great importance, of police as a force, can change only if the high ranking police officers with exemplary record of service and of integrity are given chance to act as member of the commission.

F Learned Brother has referred to 'Paris Principle' which was accepted by the countries which were parties to international covenants on civil, Social

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and Political Rights. International Law and guidelines have been taken aid of by this Court in interpreting the Domestic Law only if it has found some gap to be filled in the latter or the provisions of Domestic Law are not clear and do not wholly carry the meaning and effect of International Law which it intends to implement. 'Paris Principle' is at best merely in the nature of guidelines to be followed by covenanting countries who are parties to the resolutional taken in the international conferences on human rights. There is no obligation on acceptance of 'Paris Principle', to incorporate it word by word in statutory law. In the 'Paris Principle', a pluralistic composition of Commission has been advised. Contrary to Paris Principle of a pluralistic composition of the Commission, under the Act, in respect of membership, judges have a majority. A real pluralistic composition ought to include in its membership with judges; human rights activists, scientists, academicians and even the experienced police officers and social researchers.

Merely because there are instances of human rights violations by some members of the police is no ground to exclude all police officers as a class from the membership of the Commission. The 'Paris Principle' can at best be taken aid of to understand and interpret the provision of the Act but not to substitute or supplement it.

In my view, selection of a high ranking police officer known for high integrity and character with record of commendable service cannot be held to be beyond the purview of sec 3(2)(d) of the Act. Section 3(2)(d) empowers the selection committee to induct 2 members other than judges, having knowledge and practical experience in matters relating to human rights. Judges by the very nature of their office and conduct, no doubt, as members not only make the commission an independent body but also impart it an appearance of independence. Yet, as the membership of the Commission has to be of a pluralistic complexion, induction by selection of members, either from the police force or public would in no manner adversely affect the independence, efficacy or functioning of the commission. A police officer, on his appointment to the Commission, would enjoy same rights and independence of action as other members do.

With utmost respect, I fail to agree with the observations and conclusion of learned Brother that under the provision of sub-section (2) of section 3, police officers are not intended to be included in the membership of the National Human Rights Commission.

- A There are and would be police officers who have gained and are likely to gain knowledge and practical experience in matters relating to human rights by virtue of their duties. They are seen working courageously on occurrences and events relating to human rights. Apart from the knowledge of investigative techniques, from the very nature of their job and functions, they acquire knowledge as to how and where human rights are violated. They also know what preventive action is required to be taken and what course has to be adopted for protection of human rights. A police officer qua purely a police officer, with no knowledge or practical experience in handling matters of human rights, may be found unfit to be chosen as member but a police officer with necessary knowledge and experience in matters of human rights cannot be held to be disqualified merely because he is a police officer.

- D There are instances in India itself where police officers working in terrorist areas or for jail reforms have received national and international recognition and awards. Construing Section 3(2)(d) narrowly by excluding from its purview police officers altogether would deprive chance of serving as members of the Commission to even police officers with record of exemplary service in the field of human rights. To disqualify them completely would have a demoralizing effect on the police force as such.

- E The selection Committee, provided in section 4(1) of the Act, which has to recommend appointment to the membership of the Commission, is a pluralistic body comprising of elected representatives of the people and political parties in power and in opposition. The perception of the Selection Committee regarding fitness of a particular person chosen for membership, by considering him to be possessing required knowledge and practical experience in the matters relating to human rights, cannot be faulted by the court by substituting its own opinion for the opinion of the Selection Committee. Such a course of action is not legally permissible to the court. The court cannot sit over the selection of the Selection Committee unless there is found to be any infraction of Law under which the selection was made.

- G The credentials and bio-data of respondent No.2 who has been chosen for membership of the Commission have been highlighted by the Union of India in its counter affidavit. The relevant portion reads thus:-

- H "Respondent No.2 is a distinguished officers of the Indian Police Service, having retired as Director of the Central Bureau of investigation (CBI). In the courses of his career from 1966 to 2003, he has had occasion

to supervise the conduct of investigation and prosecution of several offences, including serious offences against Human Rights. Among the cases investigated by the CBI was during the tenure of respondent No. 2 as Director where the Punjab Mass Cremation cases and the Gujarat riots cases both of which involved serious violation of human rights. The investigation of the Punjab Mass Cremation case by CBI on the direction of this Hon'ble Court and the case has now been transferred to the commission for deciding the issue of compensation. The Gujarat riot cases are also pending before this Hon. Court, in which the CBI investigation reports are being placed before this Hon. Court. Other human right cases handled by CBI during third period including *inter alia* cases on police encounter such as the death of Vashish Narayan Singh in Azamgrah, U.P. and Varghese in Kerala. Cases of police torture in West Bengal (torture of minor boys named Manjeet Gowala and Pinter Jadav in Darjeeling) and cases of picking up of a citizen Shri Kuldip Singh in Amritsar in treating him as untraced, have also been investigated by CBI. In many of these cases CBI has commenced prosecution against police officers. Further Respondent No.2 is also the Vice President (Asia) of Interpol, an international police organization. In this capacity also, he has been involved in developing mechanisms for police cooperation in investigation and prosecution of crimes across borders, including terrorism, human safety and human trafficking, which are all offences against human rights. The function of the Commission under the Act include inquiry and investigation function. For this purpose, the Commission has been given the power of investigation under section 14 including the power of utilize the service of any officers or investigation agency of the Government and consider the report of such investigation. The staff of the Commission, since its inception include a senior officer of the Indian Police Service as Director General (Investigation) of the Commission and the function of the investigation division of the Commission are carried on under the supervision and direction of the Commission itself. It is submitted that there is no illegality in an officer of the Indian Police Service being considered for appointment as a member of the Commission. During the course of their careers, police officers garner in vast practical experience in police methodology, investigative techniques and other practical matters relating to human rights. It is submitted that such experience would *inter alia* aid the Commission in identifying cases of police malpractice and the Commission would be able to look behind cases of cover up and attempts to shield guilty police officers. It is, therefore, submitted that respondent no.2 has adequate knowledge and practical experience in matters relating to human rights, qualifying him for appointment to the Commission under section 3(2)(d) of the Act.

- A I do not think that the above mentioned record of service of respondent No. 2, in any manner, makes him disqualified for appointment as member of the Commission. His record of service shows his knowledge and practical experience in matters relating to human rights. It is another thing to make a general statement that for membership under section 3(2)(d), well-known human rights activists or members of the reputed NGOs who are actively
- B involved in the field of human rights would have been better choices but the court is concerned only with the legality of the appointment and not the wisdom of the selection body. Merely because, a more suitable person ought to have been chosen is no ground to invalidate the appointment of respondent No.2 who cannot be held to be disqualified under section 3(2) (d). He has,
- C in fact, served on the Commission for a period of almost one year.

So far as the observations made by learned Brother suggesting the need of developing a healthy convention of consulting the chairperson for appointment of members of the Commission are concerned, I am in respectful agreement with him.

- D In view of my dissent on the main issue of validity of appointment of respondent no. 2, I do not consider it necessary to elaborate my views in any greater detail particularly on the interpretation of section 3(2)(d) of the Act, because in any event, on disagreement between us, the case will have to be decided by the larger Bench of this Court.

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ORDER

In view of difference of opinion between us, the matter is referred to a larger Bench. We are of the view that the matter deserves to be heard expeditiously.

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D.G.

Referred to the larger bench.