

Manohar Lal Sharma

v.

Union of India

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE JAGDISH SINGH
KHEHAR

Writ Petition (Civil) No. 60 Of 2011 With W.P.(C) No. 35 Of 2012 | 07-05-2012

W.P. (C) No. 60/2011

1. This writ petition has been filed for seeking the following directions:-

1. To issue writ of mandamus/writ order to the Union of India to initiate judicial inquiry to get prove misbehaviour of Chairman of NHRC, K.G. Balakrishnan, to discharge its function under the Constitution, and

2. To issue writ of mandamus/writ order to the Union of India to perform their constitutional duty under Art. 74 of Constitution to advice for presidential reference to get prove misbehaviour of the Chairman of NHRC, K.G. Balakrishnan, to discharge its function under constitution obligation, and

3. Be pleased to restrain the Chairman concerned K.G. Balakrishnan from holding/performing function as Chairman of NHRC during the pendency of the State investigation initiated upon criminal complaint filed in the State of Kerala and also during pendency of the judicial enquiry/reference under Art. 317 of the Constitution of India.

4. Pass such other order or further orders, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

2. Mr. M.L. Sharma, petitioner-in-person, submits that in spite of the fact that a large number of persons/societies/associations have raised a similar demand before the Central Government, no action has been taken. The petitioner himself has visited Kerala and collected evidence to substantiate allegations against the present Chairman, NHRC and it is a fit case where this Court should exercise its extraordinary jurisdiction under Article 32 of the Constitution and grant the aforesaid relief(s).

3. Mr. M.L. Sharma, has submitted that provisions of Section 5(2) of the Protection of Human Rights Act, 1993, provide for the procedure for this purpose. Relevant part thereof reads:

"Resignation and removal of Chairperson and Members:-

1.

2. Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

3. "

4. Mr. M.L. Sharma is not in position to explain as how the proceedings in this regard could be initiated. Mr. Sharma could not point out any statutory rules/Rules of Business of the Central Government etc. in this regard. Thus, according to the aforesaid procedure prescribed under the statute, the matter perhaps ought to have been agitated before the competent authority, i.e., the Central Government or the Council of Ministers which could have considered the grievance of the petitioner and in case the said Competent Authority was satisfied, it could have advised the Hon'ble President of India to make a reference to this Court for holding inquiry in the alleged misbehaviour and it could have been only on that reference, that this Court could have proceeded and conducted the inquiry and the findings so recorded could be the basis to proceed further in accordance with law.

5. Mr. Sharma is not able to render proper assistance to the Court pointing out any procedure and further wants the Court to proceed on the presumption that a large number of other persons have raised the similar grievance in this regard. There is nothing on record, so far as this case is concerned, as who are the persons who had filed such complaints, and what is the authority before whom such complaints have been filed, what is the material which has been placed by those persons to substantiate their allegations. In such a fact-situation, the petition is liable to be rejected.

6. In the instant case, as the petitioner has approached this Court directly without approaching the Competent Authority, we are not inclined to entertain the petition. It is dismissed accordingly. However, the petitioner may approach the appropriate forum, if so desires, with the material which is in his possession in this regard.

7. In view of above, I.A. No. 2 of 2011 for impleadment filed by M. Furquan is dismissed.

W.P.(C) No. 35 of 2012

8. Heard learned counsel for the petitioner.

9. Order reserved.