CASE NO.:
Writ Petition (civil) 105 of 2004

PETITIONER:
People's Union for Civil Liberties

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 29/04/2005

BENCH:
S.B. Sinha, N. Santosh Hegde & B.P. Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

In this writ petition filed under Article 32 of the Constitution of India, the petitioner is challenging a decision of the first respondent Union of India appointing the respondent No.2 as a member of the National Human Rights Commission (the Commission). The primary basis of the challenge to his appointment is on the ground that prior to the impugned appointment the second respondent was holding the post of Director, Central Bureau of Investigation and was also holding the post of Vice-President (Asia) Interpol. According to the petitioner, the appointment of a person who served in the police force as a Member of the N.H.R.C. is contrary to the provisions of the Protection of Human Rights Act, 1993, (the Act), apart from being opposed to the very aims and objects for which the said Commission was constituted. The petitioner urges that such appointment would undermine the status and international recognition of the Commission as an institution for protection of human rights. It is also urged that the appointment of the second respondent is also opposed to the Constitution of India on the grounds that it is arbitrary and violative of Article 14. It is submitted that it is also violative of international covenants. For this purpose the petitioner has heavily relied on the principles laid down in the meeting of representatives of the national institutions in Paris wherein certain principles were evolved in regard to protection of human rights which principles came to be known as "Paris Principles". According to the petitioner, these principles were subsequently endorsed by the U.N. Commission of Human Rights and the U.N. General Assembly. The petitioner further contends that the U.N. Resolution dated 19.12.1993 concerning national institutions for protection of human rights, the compliance of the Paris Principles has become mandatory and since the Paris Principles prohibited the appointment of a civil servant like a Police Officer to such a Commission, such appointment of the second respondent would send wrong signals to the international community as well as to the United Nations. The petitioner also urges that the appointment of the second respondent has been made without consulting the Chairperson of the Commission which was the practice since the inception of the Commission. It is also urged that such appointment would have a direct impact on the effective implementation of human rights and fundamental rights enshrined in the Constitution including the right to life under Article 21. According to the petitioner, under Section 3 (2) (d) of the Act, two members of the Commission should have knowledge of, and practical experience in matters relating to human rights; which

definition has been defined under section 2(d) of the Act to mean :
"Human Rights means the rights relating to life, liberty, equality and dignity of the individual granted by the Constitution or embodied in the International Covenants and enforceable by Courts in India."

According to the petitioner, a person who headed a prosecution agency cannot be taken as a person who has knowledge of, or practical experience in matters relating to human rights. The petitioner also urges that the appointment of second respondent as a member of the Commission could lead to potential conflict of interest between the CBI and the Commission as the Commission is often called upon to decide on complaints of violation of fundamental rights by the CBI and also the police. According to the petitioner, the appointment of respondent No.2 destroys the independence of the Commission.

The first respondent, Union of India, in its counter opposed the writ petition contending that the appointment of the second respondent as a Member of the Commission is in accordance with the Act and the second respondent is qualified to be a member of the Commission under the Act. The first respondent contends that the composition of the Commission is provided under section 3(2)(d) of the Act which provides that a person having knowledge of and practical experience in matters relating to human rights is eligible for such appointment. It is further submitted that respondent No.2 is a distinguished Officer of the Indian Police Service, having retired as the Director of CBI. It is submitted that in the course of his career between 1966 and 2003, he has had occasions to supervise the investigation and prosecution of several offences including the serious offences against human rights. As an example the first respondent has stated that as the Director of CBI, the second respondent was responsible for investigating the Punjab mass cremation cases and the Gujarat riot cases; both of which involved serious violation of human rights. It was also submitted that as an institution, the CBI is often entrusted by this Court to conduct inquiries into sensitive matters where violation of human rights is involved and the second respondent has been a part of such investigations. It is also pointed out by the learned Solicitor General appearing for the Union of India that the petition does not make any personal allegation against the second respondent as to any act of violation of human rights either by him personally or as being party to such violation. It is also submitted that the second respondent as the Vice-President (Asia) Interpol has been involved in developing mechanism in Police cooperation and prosecution of crimes across borders including terrorism, human safety and human trafficking which are all offences against human rights. The first respondent has submitted that there is no illegality in appointing an Officer of the Indian Police Service as a member of the Commission. It is further stated that on the contrary, very often during the course of their careers Police Officers garner vast practical experience in Police methodology, investigative techniques and other practical matters relating to human rights enforcement. It is submitted that such experience would, inter alia, aid the Commission in identifying the areas of Police malpratices and the Commission will be able to look behind the causes of cover-up and attempts to shield the guilty Police Officers.

It is denied that the appointment of second respondent would send wrong signals to the international community or to the United Nations. The first respondent states that though on a prior occasion the Chairperson of the Commission was consulted in regard to the appointment of a former police officer of the Indian Police Service

and the said Chairperson had expressed his disagreement on such appointment, such consultation is not mandatory in all cases; more so in the background of the fact that statute does not require any such consultation. Therefore, non-consultation with the Chairperson of the Commission would not in any manner vitiate the appointment of the 2nd respondent. The first respondent also denied the argument advanced by the petitioner that there has been a violation of Article 14 of the Constitution in the appointment of the second respondent. Relying on the judgment of this Court in R.K. Jain v. Union of India, (1993 4 SCC 119), it is submitted that the judicial review in the matter of appointments is confined to the area of examining whether the appointee possesses the statutory qualifications or not and such power of judicial review does not extend to re-assessing the merit of the particular appointee. It is also contended that the provisions of the Act are in conformity with the Paris Principles and neither Paris Principles nor the U.N. Resolution prohibit a former civil servant or a Police Officer from becoming a member of the Human Rights Commission. More importantly, it is submitted that once the Indian Legislature enacts a law pursuant to an international convention then the legislative area in that field being covered it is the municipal law alone that prevails hence, the validity of the appointment of second respondent can only be examined with reference to the provisions of the Act.

This petition came up for consideration before a Bench of two learned Judges of this Court. Since the said two learned Judges had a difference of opinion in regard to the question involved, by their reasoned order, they referred the matter to a larger Bench because of which the matter is now before this Bench of three Judges.

Having heard learned counsel for the parties and on the basis of their pleadings and arguments recorded hereinabove, at the outset we must notice that neither the Paris Principles nor the U.N. Resolution and much less the Act does either expressly or impliedly exclude the inclusion of a Police Officer in the Commission. The argument of the petitioner is that taking into consideration the object of the Act and the public perception of the Police as violators of human rights, Section 3 (2) (d) should be so interpreted to exclude Police Officers from becoming members of the Commission. We do not think such an interpretation is permissible when the statute is express in its language. We should note herein that there is no challenge to the validity of the Act, therefore, we will have to proceed on the basis that the Act is intra vires. From the argument of the learned counsel for the petitioners, the question for consideration is whether Section 3 (2) (d) of the Act requires any interpretation or a construction which would exclude Police Officers from becoming member of the Commission. Section 3(2)(d) which refers to two members to be appointed to the Commission reads thus :

> "two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights."

A plain reading of this Section does not give any room for interpretation because the language is quite clear. In our view it only means that any two persons having knowledge of, or practical experience in, matters relating to human rights are eligible to be Members of the Commission. This clear language of the Section cannot be distorted by any inference based on any public perception or prejudice. It is relevant to note herein that this Section does not exclude any class of persons so long as they have the knowledge of, or practical experience in, matters relating to human rights which is a requirement to be satisfied by the

Selection Committee. In the absence of any clear and specific exclusionary provision in the statute, the court should plainly treat it as a general provision instead of delving in search of any possible hidden or implied exclusion. It was so said in A.R. Antulay v. Ramdas Sriniwas Nayak & Anr. (1984 2 SCC 500). While so saying this Court in para 18 of the said judgment held that "It is a well-established canon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose. x x x The Legislature provided for both the positive and the negative. It positively conferred power on Special Judge to take cognizance of offences and it negatively removed any concept of commitment. It is not possible therefore, to read Section 8(1) as canvassed on behalf of the appellant that cognizance can only be taken upon a police report and any other view will render the safeguard under Section 5-A illusory."

If we apply the said principle of law to the facts of the case, there being no exclusion in section 3(2)(d) of the Act and the language being clear, we cannot by looking back into the Paris Principles or the U.N. Resolution interpret an exclusionary clause to keep the Police Officers from being the Members of the Commission in spite of the Act not providing for the same.

Having dealt with the provisions of the Act in regard to the qualification of two members to be appointed under section 3(2)(d) of the Act, we will now refer to the argument of public perception about the Police about which lengthy arguments supported by various judgments of the Court have been addressed by the learned counsel for the petitioner. Learned counsel for the petitioner submitted that it is a well known fact that Police force all over the world especially in India are the biggest violators of human rights hence it would be doing violence to the object of the Act if a Police Officer is selected as a Member of the Commission. Having very carefully gone through the entire Statement of Objects and Reasons of the Act, we do not find that the objects as reflected in the Act indicate towards a perception of the Police force of the country as a violator of human rights. Further the objects of the Act do not envisage an exclusion of the members of any force from being considered for membership of the Commission. Learned counsel for the petitioner did place reliance on a number of reported cases of this Court, in support of his contention that the judicial and public perception of the Police force in India is such that the Police force is considered as the biggest violator of human rights. He relied on the judgment of this Court in Paramjit Kaur v. State of Punjab & Ors. (1999 2 SCC 131), D.K. Basu etc. v. State of West Bengal etc. (1997 1 SCC 416), Munshi Singh Gautam (D) & Ors. v. State of M.P. (2004 10 JT 547), N.C. Dhoundial v. Union of India & Ors. (2004 2 SCC 579). He also placed reliance on the report of the National Human Rights Commission (Annual Report 2001-02 at page 362). Learned Solicitor General opposing this contention of the petitioner submitted that the cricism of the Police in the abovesaid judgments of the Court is based on the facts of each one of those cases and none of the judgments cited hereinabove has in terms said that the Police force in India as an institution is a violator of human rights. He submitted that the Police force has more than 2.2 million personnel working under various conditions prevailing in different parts of the country. It is possible that some of them commit violation of human rights but that would not ipso facto make each and every police personnel by presumption, a violator of human rights. Such an inference, according to learned Solicitor General, would amount to expressing an institutional bias in regard to an institution which many a times has rendered meritorious service to

the nation, both in maintaining law and order, investigation of crimes and facing various other internal and external threats. He submitted that such a general condemnation of an institution like the Police force would only demoralise the said force, consequence of which could be disastrous. In our opinion the learned Solicitor General has rightly relied on certain passages from the judgment of this Court in The State of Uttar Pradesh v. Mohammad Naim (AIR 1964 SC 703) wherein this Court had deprecated the practice of courts making sweeping and general observations against the entire Police force of a State though the case related to only one Police Officer. In such a situation, this Court held that such general remarks were neither justified on the facts of the case nor were they necessary for disposal of the said case, hence, expunged such general remarks.

While we cannot take exception in regard to the remarks made against the Police in each one of the above cases relied on by the learned counsel for the petitioner, we certainly feel that these remarks cannot be so generalised as to make every personnel of the force, consisting of nearly of 2.2 million people, violators of human rights solely on the ground that out of thousands of cases investigated and handled by them, in some cases the personnel involved have indulged in violation of human rights. Learned counsel for the petitioner, however, contended that the judgments apart, the public perception of the Indian Police force as a whole is so poor that it considers the Police as an organisation to be a violator of human rights. Therefore, selecting a retired police officer as a member of the Commission would lead to erosion of confidence of the people in the Commission. We are sincerely unable to gauge this public perception or its magnitude so as to import this concept of institutional bias. There are no statistics placed before this Court to show that there has been any census or poll conducted which would indicate that a substantial majority of the population in the country considers the Police force as an institution which violates human rights nor do we think that by such generalisations we could disqualify a person who is otherwise eligible from becoming a member of the commission.

Public displeasure as presently perceived is not confined to the Police force only. The views expressed in the media very often show that this displeasure is reflected against many a Department of the Government including constitutional bodies and if public displeasure or perception were to be the yardstick to exclude people from holding constitutional or statutory offices then many such posts in the country may have to be kept vacant.

Then again what is the yardstick to measure public perception. Admittedly, there is no barometer to gauge the perception of the people. In a democracy there are many people who get elected by thumping majority to high legislative offices. Many a times public perception of a class of society in regard to such people may be that they are not desirable to hold such post but can such a public opinion deprive such people from occupying constitutional or statutory offices without there being a law to the contrary ? There is vast qualitative difference between public prejudice and judicial condemnation of an Institution based on public perception. At any rate, as stated above, public perception or public opinion has no role to play in selection of an otherwise eligible person from becoming a member of the Commission under the Act.

A perusal of Section 4 of the Act shows that the appointment of Chairperson and other members shall be made after obtaining the recommendations of the Committee consisting of

? The Prime Minister
? The Speaker of the House of People
? The Minister Incharge of the Ministry of Home Affairs in the Government of India
? Leader of Opposition in the House of People
? Leader of Opposition in the Council of States
? Deputy Chairman of the Council of States.

Proviso to the above section further stipulates that no sitting Judge of the Supreme Court or sitting Chief Justice of the High Court shall be appointed except after consultation with the Chief Justice of India. There is absolutely no requirement under the Act that this Committee consisting of such high office holders of this country should further consult the Chairman of the Commission before appointing a member. The entire argument of the petitioner in this regard rests on the fact that on some previous occasion the Committee did consult the Chairperson of the Commission and in the present case this was not done. We are in agreement with the learned Solicitor General on this point that when a statute vests a function in a Committee comprising of such high dignitaries holding high constitutional positions, it would be impermissible to read into the statute the requirement of consultation with the Chairman of the Commission. The provision for appointment of Chairperson and other members of the Commission contemplate a self-contained procedure and no other mandatory provision can be imported into the Act where none actually exists. The allegation made by the petitioner in regard to non-consultation with the Chairman in the appointment of second respondent is vague and from the counter affidavit filed the same cannot be accepted.
It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact that one of the members who was then the leader of the Opposition in the House of the People did not respond to the intimation sent to him in regard to the selection of the members since he was in the hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor any particular procedure has been provided.
Under the Act, consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five Members. On the contrary sub-clause 2 of section 4 specifically says that no appointment of a Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the instant case the Prime Minister, the Speaker of the House of the People, Minister Incharge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent.
In the ordinary course the above analysis itself would have been sufficient to dispose of this petition. However, since this matter has been referred to this Bench due to the divergence of views between Hon. Sabharwal and Dharmadhikari, JJ. it is in the fitness of things that we note their judgments also and particularly the judgment of Hon. Sabharwal, J. as our conclusions are different from his conclusions.
In arriving at his decision Hon. Sabharwal, J. has treated the Paris Principles and the U.N. General Assembly Resolutions as covenants. Thereafter, he has applied the law applicable to international covenants and imported the obligations under the Paris Principles and the U.N. General Assembly Resolution as if they are binding as legal obligations on India even in the municipal context. While doing so he has relied upon the judgments of this

Hon'ble Court in Mackinon Mackenzie v. Audrey D'Costa, AIR 1987 SC 1281; Sheela Barse v. Secretary, Children's Aid Society, (1987) 3 SCC 50; PUCL v. UoI, (1997) 3 SCC 433; Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

Having noted the above we would with respect like to point out that neither the Paris Principles nor the subsequent U.N. General Assembly Resolution can be exalted to the status of a covenant in international law. Therefore merely because India is a party to these documents does not cast any binding legal obligation on it. Further, all the above cases which Hon. Sabharwal, J. has relied upon deal with the obligations of the Indian State pursuant to its being a party to a covenant/ treaty or a convention and not merely a declaration in the international fora or a U.N. General Assembly Resolution.

Apart from the above, the fact that the field in relation to the constitution of the NHRC is covered by an Act of the Indian Parliament, it follows that neither the Paris Principles nor the U.N. General Assembly Resolution can override the express provisions of the Act. Therefore, we are not in agreement with the decision of Hon. Sabharwal, J. After considering the views expressed by Hon. Dharmadhikari, J. on this aspect of the case, we are in agreement with the same.

For the reasons stated above this petition fails and is dismissed.