

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 16386 of 2018.

In the matter of:

An application under Article 102(1) and 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Children's Charity Bangladesh Foundation
(CCB Foundation).

..... Petitioner.

Vs.

National Human Rights Commission and
others.

..... Respondents.

Mr. Md. Abdul Halim, Advocate (in person).

Ms. Ishrat Hassan with

Mr. Jamiul Hoque Faisal, Advocates

..For the petitioner

Mr. Md. Mokleshur Rahman, DAG

..For the respondent No.05.

Ms. Fawzia Karim Firoze, Advocate

..For the respondent Nos.1, 2, 3 and 6.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Razik-Al-Jalil

**Heard on 16.05.2019, 10.07.2019 and
24.07.2019.**

Judgment on: 11.11.2019.

SHEIKH HASSAN ARIF, J

1. At the instance of the petitioner, Children's Charity Bangladesh Foundation (hereinafter called 'Children's Charity'), represented by its Chairman, Advocate Md. Abdul Halim, Rule Nisi was issued calling upon the respondents to show cause as to why the failure of the respondent No.5 (Senior Secretary, Ministry of Home) to

comply with the direction issued by the respondent No.1 [National Human rights Commission (NHRC)], vide its Order Nos. 12 and 28 dated 05.08.2014 and 25.06.2018 respectively, in respect of Compliant No. NHRCB/Complaint/405/13-1223 dated 26.07.2018 (Annexures-D and H), for taking legal actions against officers responsible and inform the same to the respondent No.1, should not be declared illegal, without lawful authority and is of no legal effect being contrary to the provisions under Sections 18(2) and 18(4) of the NHRC Act, 2009, and as to why the failure of the respondent No.1 to invoke the jurisdiction under Article 102 of the Constitution of the Peoples' Republic of Bangladesh in accordance with the mandate under Section 19(1) (Kha) of the NHRC Act, 2009, should not be declared to be without lawful authority and is of no legal effect.

2. **Back Ground Facts:**

2.1. Facts, relevant for the disposal of the Rule, are that the Children's Charity (petitioner), being a registered non-profit and charitable organisation, is engaged in rendering services to poor children as well as in promoting and defending their rights. Children's Charity has in the meantime attained reputation for its activities in defending the cause of children in this country and has been acknowledged by the Bangladesh Supreme Court as having locus-standi to move writ petitions in favour of the children of this country. With such recognition and

reputation, Children's Charity has moved this writ petition alleging various irregularities, negligences, in activities and abdication of legal responsibilities by the National Human Rights Commission of Bangladesh (hereinafter called "Commission") (respondent No.1).

- 2.2. It is generally alleged by the petitioner that since its inception in 2010, the Commission has not been discharging its proper duties and obligations under the National Human Rights Commission Act, 2009 (Act No.53 of 2009) by which the Commission was constituted. In particular, it is alleged that, the Commission has, on various occasions, abdicated its statutory as well as other obligations and duties as a National Human Rights Commission of a sovereign democracy. According to the petitioner, such inactivities, negligence and abdication of duties by the Commission have been glaringly reflected in the case of a victim child named 'Khadiza' who was a domestic-aid in a household. That, on 10.12.2013, which happened to be the International Human Rights Day, the Daily Star reported that the said 'Khadiza' became victim of torture in the said household. Accordingly, the Children's Charity, being satisfied that the said case was a case of gross violation of human rights of a child domestic aid, filed a formal Complaint on the same day before the Commission. Thereupon, respondent Commission, on the next day, registered the same as

Complaint Case No. 405 of 2013 and directed the Officer-in-Charge of the Police Station concerned, namely Mirpur Police Station, Dhaka, to report by 12.01.2014. Thereafter, Mirpur Police sent a report to the Commission denying any such incident of violation of human rights. The Commission then sought petitioner's reply on the report which the petitioner gave. Thereafter, upon insistence from the petitioner, the Commission sought a report from the Dhaka Medical College Hospital, wherein the victim was admitted, as regards treatments provided to her. Dhaka Medical College Hospital then reported that they had found multiple injuries on the right leg and cut injury on the tongue of the victim, in addition to some skin disease.

- 2.3. With that report being received, the Commission, by its order dated 05.08.2014, formed an opinion that the Mirpur Police Station was trying to suppress the allegations of torture as well as violation of fundamental rights in respect of the said victim. The Commission then sought a report from the Senior Secretary of the Home Ministry (respondent No.5), Government of Bangladesh upon conducting enquiry by a Deputy Secretary of the Ministry as regards such allegations and incidents and to report on 04.09.2014. Thereafter, it is stated, dates after dates were fixed by the Commission for such report, but nothing was sent by respondent No.5. At the

same time, it is alleged, the Commission remained almost inactive as regards compliance of its direction by respondent No. 5 and passed various orders repeating the same allegations followed by same actions of the Commission as against such allegations. In the meantime, two years elapsed and, in 2016, the Commission again sought reply of the petitioner as against the report sent by the Mirpur Police Station.

- 2.4. The petitioner, it is contended, then realized that the Commission was in fact wasting time and was not taking any proper steps as mandated by law within reasonable time. It then approached the High Court Division with this writ petition under Article 102 of the Constitution and obtained the aforesaid Rule. At the time of issuance of the Rule, when this Court prima-facie found that the Commission in fact was not acting properly and that the repeated directions of the Commission were not being complied with by respondent No.5, it issued similar direction on respondent No. 5 to submit report within a period of 30 (thirty) days stating legal actions taken against responsible officers as per directions as contained in Order Nos. 12 and 28 dated 05.08.2014 and 25.06.2018 respectively passed by the Commission. Thereupon, respondent No.5 submitted a report before this Court through the learned Deputy Attorney General by way of affidavit-of-compliance dated 07.04.2019 stating that in fact no case of torture of the

said domestic aid Khadiza took place and that there was no such incident of violation of human rights took place in respect of the said victim. Surprisingly, in the said affidavit-of-compliance, no explanation has been put-forward by respondent No. 5 as to why he did not comply with the direction given by the Commission at the earliest or as to why his ministry took about five years to complete such enquiry and submit such report.

- 2.5. It is contended by the petitioner that the Commission has miserably failed to comply with the provisions of law, namely the Human Rights Commission Act, 2009, in discharging its function as a national human rights institution of a sovereign democracy. According to the petitioner, it will be apparent from the orders passed by the Commission that no reason has been assigned by the Commission as to why the steps taken by the Commission as regards conducting enquiry and investigation as to the allegation filed by the petitioner took such a long time, which was about five years. It is also contended by the petitioner that though the law has equipped the Commission with various powers and duties as well as responsibilities, the Commission miserably failed to use such power for protection of human rights of said Khadiza. It is also contended that the Commission, in particular the Chairman of the Commission, has repeatedly made it public that it does not have any power

under the law to conduct inquiry as regards violation of human rights committed by the members of the law enforcing agencies, whereas, the said Act of 2009 has given ample power to the Commission to do so. It is further contended that when the Commission, upon enquiry, formed an opinion that the Mirpur Police has tried to suppress the incident of torture on the victim Khadiza, the respondent No.5, after about 5/6 years, furnished a report before this Court saying that no such incident or violation of human rights took place, which, according to it, is a direct contradiction with the opinion formed by the Commission itself. It is also contended by the petitioner that when the Act of 2009 has empowered the Commission to move the High Court Division of the Supreme Court of Bangladesh under Article 102 of the Constitution for enforcing its orders and/or for compelling the government officials to comply with its directions, not a single case may be found or referred to by the Commission wherein the Commission has ever used such opportunity to approach the High Court Division under writ jurisdiction. Under such circumstances, it is contended, the petitioner approached this court under writ jurisdiction.

- 2.6. The Rule is opposed by the Commission by filing affidavit-in-opposition and supplementary affidavit-in-opposition mainly contending that in case of allegations of violation of human

rights by the law enforcing agencies, the power of the Commission is very much limited as provided by Section 18 of the said Act, which is that it can only send some recommendations. Therefore, it is contended by this respondent that though the Commission has made recommendations for amendment of law on several occasions, such amendment has not yet been done and as such the Commission has remained almost inactive in such cases of alleged violation of human rights by the law enforcing agencies or its members. It is also contended that apart from the issue of violation of human rights by the law enforcing agencies, Commission has been very active in other area and has been successfully raising issues of violation of human rights in those area. It is contended that the Commission has framed a draft Rules proposing provisions as regards enquiry and hearing of allegations and sent the same to the Law Ministry for approval of the government, but no such approval has yet been received by it.

- 2.7. By such affidavit-in-opposition, the Commission has, however, categorically admitted the allegations of the petitioner in the writ petition as regards delay in conducting the entire proceedings before it on the Complaint lodged by the petitioner merely saying that those are “matters of record”. Under such circumstances, we have taken up this matter for hearing and

heard Mr. Md. Abdul Halim, learned advocate and Chairman of the petitioner Charity, who himself prepared and argued the case at length for the petitioner. We have also heard Ms. Fowzia Karim, learned advocate appearing for respondent Commission and the learned Deputy Attorney General.

3. Submissions:

3.1. Mr. Abdul Halim, learned advocate for the petitioner, at the outset, has taken us to various provisions of the Human Rights Commission Act, 2009 and has tried to make out a case that with the powers given by such different provisions of the said Act, the Commission could have done much more better than it has done in respect of the complaint lodged by the petitioner. According to the learned advocate, though there is a non-obstante Clause at the beginning of Section 18(1) of the said Act, Commission has not been categorically debarred from performing its functions in exercise of its powers given to it by the Legislature through other provisions.

3.2. By referring to the provisions under Section 16 of the said Act, learned advocate submits that the Commission has even been given the power of the Civil Court under the Code of Civil Procedure, 1908 to ensure presence of a witness before it and to compel any individual to depose before it, along with necessary documents, in the course of an investigation or inquiry to be

conducted by it. However, he submits, the orders passed by the Commission in the case concerned will reflect how negligent the Commission was during the entire period of three/four years and to what extent the Commission did not apply its mind at all in passing different orders in the said long period. Learned advocate argues that by such delay in conducting the enquiry and investigation and/or in disposing of the complaint lodged by the petitioner, the Commission has in fact allowed the concerned police officers and officials in the Ministry concerned to frustrate the entire cause of violation of human rights. According to him, with such a delay in conducting the proceedings without any effective orders being passed by the Commission, the respondent Police Officials and the violators of human rights in respect of the said domestic aid Khadiza have become successful in manipulating the case as well as the witnesses which ultimately resulted in the concocted report submitted by respondent No.5 after about five years, and that also, only after a direction given by this Court.

- 3.3. Learned advocate draws our attention to different orders passed by the Commission directing respondent No.5 to submit report. According to him, these orders and repetition of same orders in the same form will clearly establish that the Commission was not even desirous of reaching any conclusion as regards complaint lodged by the petitioner. Learned advocate points out that when a

Charity like the petitioner has brought such allegations against members of law enforcing agencies, and when such allegations and complaint are dealt with in such a negligent way, it may easily be inferred as to how the allegations of violations of human rights lodged by common people are being dealt with by the Commission. Therefore, he submits that appropriate orders should be passed by this Court reminding the Commission that it is not powerless, rather it is one of the most powerful Commissions in the sub-continent and it has every ability to assert its position as such.

- 3.4. Mr. Halim further submits that, now a days, the Commission has become a retirement club of retired bureaucrats and this is one of the reasons that the Commission has repeatedly failed to rise to the occasion of violation of human rights in this Country. He submits that when the civil servants, who have served for 30/35 years under the direct dictation of senior officers of the concerned Ministry or the Ministers of the Ministries concerned, are not fit individually to act independently and as such, according to him, appropriate direction should also be given by this Court as to which types of people should be appointed as the Chairman and members of the Commission. Learned advocate argues that when a statutory body has failed to exercise its power conferred by law, such failure amounts to abuse of power. In this regard, he has referred to a case decided by the U.K. House of Lords in **Regina**

Vs Secretary of State for Home Department ex parte Fire Brigades Unions and ors (1995) 2 WLR 465.

3.5. Mr. Halim further submits that when the Commission, at one stage, found that the Mirpur Police was trying to suppress the incident of violation of human rights, it should have immediately made recommendations to award compensation in favour of the victim Khadiza as she hailed from a very poor family and was somehow surviving at that time. According to him, had such compensation under Section 19 of the said Act been given immediately in favour of the victim, the concerned Police Officials would not have been successful in manipulating the entire incidents.

3.6. As against above submissions, Ms. Fowzia Karim, learned advocate appearing for the Commission, submits that the law itself has not given enough power to the Commission to conduct such enquiry/investigation in respect of violation of human rights allegedly committed by the members of the Law enforcing agencies. In this regard, she has drawn this Court's attention to the special provision under Section 18 of the said Act which starts with a non-obstante Clause. According to her, the procedures to be adopted by the Commission in respect of violation of human rights by the members of law enforcing agencies from the procedure, as may be adopted by the Commission, are quite

different violation of human rights by other individuals, establishments or government agencies etc. Therefore, according to her, unless proper power is given to the Commission to investigate the violation of human rights by the law enforcing agencies by amending the law, the Commission will always remain inactive whenever the issue of violation of human rights by the law enforcing agencies will arise.

3.7. However, as regards the delay committed by the Commission in the concerned proceedings initiated at the instance of the petitioner, she found herself in a very difficult position to defend by the Commission. Ms. Karim submits that the Commission is still a new institution in Bangladesh and as such it will take some time to develop courage and other abilities to function like the Commission in India and other countries. Therefore, according to her, while the Commission has been relentlessly trying to develop the Human Rights conditions in Bangladesh, it is still in difficulty to perform properly in case of such violation by the members of law enforcing agencies.

3.8. Mr. Md. Mokleshur Rahman, learned Deputy Attorney General (as he then was) appearing for the respondent No.5, has referred to the report submitted by respondent No. 5 pursuant to a direction of this Court. He submits that the enquiry conducted by the Ministry found no such incident of violation of human rights in

respect of the said domestic aid Khadiza and as such, according to him, the Rule issued in this writ petition does not have any merit. However, as regards delay in submitting such report only after the ad-interim direction given by this Court and the non-compliance of different directions of the Commission to submit such report, learned Deputy Attorney General has remained silent.

4. **Deliberations, Findings and Orders of the Court:**

- 4.1. Let us, at the outset, examine the steps taken by the Commission as regards Complaint lodged by the petitioner alleging violation of human rights in respect of a domestic aid named 'Khadiza'. For reaching our conclusion as regards activities of the Commission, we do not need to examine anything except the relevant orders of the Commission themselves. It appears that, pursuant to the said Complaint dated 10.12.2013 annexing a report published in the Daily Star on the same day, which happened to be the International Human Rights Day, the Commission, on 12.12.2013, registered the same as Complaint No. 405 of 2013. The then Hon'ble Chairman, Prof. Dr. Mizanur Rahman, then passed an order referring to the said report of the Daily Star by mentioning some contents of the said report to the effect that the victim had told the doctors that she was tortured and that she was burned by hot iron. The Chairman then directed the Mirpur Police Station to submit a report as to whether any case was lodged in respect of

the said incident. Thereafter, it is apparent from the orders, as annexed to the writ petition as part of Annexure-C, that on 11.02.2014, the Commission received a report from Mirpur Police Station and, accordingly, the Commission fixed 13.02.2014 as the next date.

- 4.2. It appears from the order sheet of the Commission (Annexure-D) that there is nothing therein as to who were hearing the matter or who was/were signing the orders. These orders only show that a proceeding took place before the Commission and certain orders were passed with initials only, which were put on a seal “আমার কথিত মতে লিখিত ও সংশোধিত”. It further appears from the said orders that the Commission, vide order dated 13.02.2014, referred to the report of Mirpur Police to the effect that no such incident or violation of human rights took place and that the said Mirpur domestic aid was suffering from skin problems and, as such she was admitted to the Dhaka Medical College for treatment of such problem. The Commission then sought the statement of the complainant. The complainant, accordingly, gave statement as regards the said report submitted by police. The Commission, thereupon, vide order dated 05.04.2014, sought report from the Dhaka Medical College Hospital to determine as to what treatment was provided to the said victim and as to why she was admitted to the Hospital on the day concerned. Thereupon, Dhaka Medical College Hospital authority sent a report to the Commission and upon

receipt of such report, the Commission recorded an elaborate order on 05.08.2014 and finally concluded that the statement of the Police of Mirpur Police Station was inconsistent with the report of the Dhaka Medical College. The Commission further concluded that the police of Mirpur Police Station were trying to suppress the incident of torture on the said domestic aid and as such they had committed violation of human rights. Accordingly, the Commission, vide same order dated 05.08.2014, directed the Senior Secretary of Home Ministry (respondent No.5) to arrange an enquiry to be conducted by an officer of the rank of Deputy Secretary and report accordingly to the Commission as regards actions taken against the responsible individuals (দায়ী ব্যক্তিদের বিরুদ্ধে আইনগত ব্যবস্থা গ্রহণপূর্বক কমিশনকে অবহিত করার জন্য বলা হোক).

- 4.3. This order dated 05.08.2014 reveals that the Commission in fact came to the conclusion that the Police was trying to suppress the said incident of violation of human rights and, accordingly, they should be dealt with by the Ministry in accordance with law. Upon such finding, the Commission asked the Ministry to report as to what actions it had taken against the said responsible individuals. This is not the end. After this order was passed on 05.08.2014, the Commission passed about fourteen orders spanning a period of 02 (two) years (05.08.2014 to 09.06.2016) and repeatedly directed the respondent No.5 to submit report as per its order dated 05.08.2014. However, the Commission did not receive any

such report during the said period of 02(two) years. No further actions or steps were taken by the Commission apart from reminding the respondent No.5 again and again to submit such report. No communication has been made to the Cabinet Secretary or any other high officials of the government as regards such blatant and flagrant non-compliance of the specific direction of the Commission by the respondent No.5. There is nothing in the Act of 2009 which prohibited the Commission from making such formal communication with the Cabinet Secretary or even with the Hon'ble President or Prime Minister as regards such non-compliance of its direction by respondent No.5. It could have also directly written to the Hon'ble Speaker of the Parliament alleging that respondent No.5 was not complying with its direction. Instead, the Commission, in a very sarcastic way, made repetitions of its order on various occasions.

- 4.4. It further appears from orders dated 22.07.2015, 24.02.2016, 28.03.2016, 08.05.2016 and 09.06.2016 that the Commission almost retyped it's own order again and again narrating the same back-ground of the case as well as steps taken by the Commission, report of police, report of Dhaka Medical Hospital and reply of the petitioner, but finally did nothing except helplessly sending reminders to respondent No.5 to submit report. Irritatingly, vide order No. 27 passed on 09.06.2016 (Annexure-H), the Commission again sought the statement of the petitioner

as regards report of police and Dhaka Medical College Hospital. On 25.06.2018, vide order No.28, the Commission again reminded the respondent No.5 to submit report. The Order Nos. 27 and 28 dated 09.06.2016 and 25.06.2018 respectively (Annexure –H) have been signed by the fulltime Member of the Commission (সার্বক্ষনিক সদস্য). This shows a total non-application of mind and abdication of duty by the Commission, its Chairman and Members concerned.

- 4.5. It is true that some restrictions have been imposed on the Commission by Section 18 of the said Act, which will be dealt with later. However, we do not find any reason as to how a statutory body like the National Human Rights Commission of Bangladesh has been so negligent, inactive and insensitive in dealing with this particular case for about a period of five years. As stated above, no restriction has been imposed by Section 18 or any other Sections of the said Act on the Commission to write formal letters to the Cabinet Secretary complaining non-compliance of its direction by respondent No.5. No restriction has been imposed by the said Act preventing the Commission from writing and/or reporting to the Hon'ble President, Hon'ble Speaker of the Parliament or the Hon'ble Prime Minister as regards non-compliance of respondent No.5. No restrictions have been imposed by Section 18 preventing the Commission from approaching the High Court Division under Section 19 of the said

Act seeking a mandamus on respondent No.5. No restrictions have been imposed by Section 18 preventing the Chairman of the Commission to speak out before the press or media as regards such non-compliance of respondent No.5. There is a saying which says: you can wake up a man/woman who is asleep, but you cannot wake up a man/woman who is asleep being awake. This case clearly reveals that the Commission is asleep being awake (কমিশন জেগে ঘুমায়). No words of excuses can justify such negligence and abdication of responsibility as well as delay committed by the Commission in this particular case. We do not need other evidence to reach such conclusion about inactivity, negligence as well as abdication of statutory duty of Commission. The orders passed by the Commission in this particular case are enough to show such state of the Commission. Therefore, we have no other option but to hold that Commission, its Chairman and members have in fact abused their powers.

- 4.6. The question in this writ petition is not whether the allegation of violation of human rights was true or not. Rather, the petitioner has come-up before this Court with larger issue i.e. to show how inactive the Commission has become and how negligent a National Human Rights Commission of a country can be in a particular case. The people of our country, through the preamble of our Constitution, have pledged that it shall be a fundamental aim of the State to realize, through the democratic process,

socialist society, free from exploitation-a-society in which the rule of law, fundamental rights and freedom, equality, justice, political, economic and social, will be secured for all citizens. Protection against any action detrimental to life, liberty and body has been ensured in favour of citizens of this country as one of the fundamental rights under Article 31 of the Constitution. Article 35 of the Constitution ensures that no one shall be punished except for violation of law. These constitutional mandates led the Parliament to enact NHRC Act, 2009 for establishment of the Commission with the mandate for protection of human rights of the citizens.

- 4.7. It cannot now be said that the Commission is new institution. The Human Rights Commission in Bangladesh was first established during the caretaker government in 2007 under the National Human Rights Commission Ordinance, 2007 (Ordinance No.40 of 2007). The first Commission was headed by a retired judge of the Appellate Division of Bangladesh Supreme Court. Thereafter, when the elected government took over, the Parliament passed this legislation i.e. National Human Rights Commission Act, 2009, and thereby ratified the acts done by the earlier Commission. The first line of the preamble of this Act of 2009 recognizes the guarantee for protection of fundamental rights as provided by the very preamble of our Constitution. The term 'human rights' has been defined by Clause (Cha) of Section 2 of the said Act

encompassing therein right to live, liberty, equality, dignity etc. and the rights declared by different international human rights instruments. Section 5 provides as to how the Commission shall be constituted comprising of its Chairman and not more than six members, who are to be selected through a scrutiny committee as provided by Section 7. Section 8 provides the same protection to the members and Chairman of the Commission as is provided by the Constitution to the Hon'ble Judges of the Supreme Court. Section 10 has provided the Chairman with the equal salary and benefits of a judge of the Appellate Division of the Supreme Court. Equal benefits of a Judge of the High Court Division have been provided to the full time member of the Commission. Section 16 of the said Act has even empowered the Commission with the power of Civil Court in respect of ensuring the presence of a witness or production of any documents and it can direct any one to appear before it as a witness and to produce any documents required by it. This means that, in view of the provisions under Section 32 of the Code of Civil Procedure, it can issue warrant of arrest in case of failure of any individual to attend before it to depose. Thus, with these protections and benefits as given by the Legislature to the Commission, its Chairman and permanent members, there should not be any reason on the part of the Commission to become indolent, inactive, insensitive and/or dormant. Rather, they should become much more vigilant and vibrant like the Human Rights Commission in India, Nepal and Malaysia.

4.8. It is contended by the Commission that Section 18 of the said Act has restricted their powers as regards enquiry and investigation to be conducted on the allegations of violation of human rights committed by the disciplined forces and their members. For our ready reference, Section 18 is reproduced below:

১৮। শৃঙ্খলা বাহিনীর ক্ষেত্রে অনুসরণীয় পদ্ধতি।-(১) এই আইনের অন্যান্য বিধান যাহা কিছুই থাকুক না কেন, শৃঙ্খলা বাহিনীর বা ইহার সদস্যের বিরুদ্ধে মানবাধিকার লংঘনের অভিযোগের ক্ষেত্রে কমিশন নিজ উদ্যোগে বা কোন দরখাস্তের ভিত্তিতে সরকারের নিকট হইতে প্রতিবেদন চাহিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন প্রতিবেদন চাওয়া হইলে সরকার সংশ্লিষ্ট বিষয়ে কমিশনের নিকট একটি প্রতিবেদন দাখিল করিবে।

(৩) উপ-ধারা (২) এর অধীন প্রতিবেদন প্রাপ্তির পর কমিশন,

(ক) সন্তুষ্ট হইলে, এই বিষয়ে আর কোন উদ্যোগ গ্রহণ করিবে না;

(খ) প্রয়োজন মনে করিলে সংশ্লিষ্ট বিষয়ে করণীয় সম্পর্কে সরকারের নিকট সুপারিশ পেশ করিতে পারিবে।

(৪) উপ-ধারা (৩) এর অধীন কমিশনের নিকট হইতে কোন সুপারিশ পাণ্ড হইলে উক্তরূপ সুপারিশপ্রাপ্ত হইবার ছয় মাসের মধ্যে সরকার ইহার গৃহীত কার্যক্রম সম্পর্কে লিখিতভাবে কমিশনকে অবহিত করিবে।

(৫) উপ-ধারা (৪) এর অধীন প্রতিবেদন প্রাপ্তির পর কমিশন উক্ত প্রতিবেদনের অনুলিপি অভিযোগকারী বা ক্ষেত্রমত, তাহার প্রতিনিধির নিকট সরবরাহ করিবে।

It appears that this provision has in fact made the Commission a teeth-less tiger to some extent. While the law enforcing agencies in Bangladesh, in particular RAB and Police, are allegedly the main violators of human rights of the citizens (see different reports in print and electronic media about fake encounters and forced disappearances), this provision has given them protection from any enquiry or investigation by the Commission as regards their such alleged violation. By this provision, in particular the non-obstante Clause in sub-section (1) of Section 18, the powers given to the Commission by other provisions of the said Act, including the power given under Section 16, have intended to be taken away in case of alleged violation of human rights by the law

enforcing agencies and their members. Literally, under this provision, the Commission can only seek report from the government and send recommendations after receipt of such report. The government, after receipt of such recommendations, shall inform the Commission as regards steps taken by it pursuant to such recommendations.

- 4.9. Though this impediment as provided by Section 18, has not been mentioned by the Commission in its orders referred to above, probably it was under this provision that the Commission directed the respondent No.5 to inform it as regards actions taken by respondent No.5 against the Police Officials concerned. While sub-section (4) of Section 18 mandated that upon receipt of recommendations, the government shall report to the Commission within 06(six) months, in the case concerned the respondent No.5 has taken more than five years to submit such report, though not to the Commission, but to this Court and this has also happened only after it has been directed to do so by this Court at the time of issuance of the Rule. This specific minimum provision specifying the time limit for informing the Commission in writing under sub-section (4) of Section 18 has also been violated in this case by respondent No.5. But, as stated above, the Commission has not taken any effective steps as regards violation of such provision or direction of the Commission by respondent No.5. By such negligence or inaction on the part of the Commission, it has

clearly abdicated its statutory responsibility as provided under Section 12 of the said Act to take necessary steps in respect of alleged violation of human rights in this country. Not only that, it has also failed to approach the High Court Division of the Supreme Court of Bangladesh under Article 102 of the Constitution for seeking a mandamus on respondent No.5.

4.10. While the Act of Parliament has equipped the Commission with so many apparatus to act in order to ensure prevention of violation of human rights or to ensure effective steps against such violation of human rights, the Commission has miserably failed to use those apparatus in this particular case. This suggests that the criticism of the Civil Society against appointment of retired bureaucrats as Chairman and/or Members of the Commission has some substance. In a seminar recently organized by the Ain-O-Shalish Kendro, it has been opined by the Human Rights activists not to appoint any retired public servant as Chairman of the Commission. In one of the reports of Ain-O-Shalish Kendro, released in December, 2018 and authored by one of such activist Tamanna Hoque Riti under the title **“National Human Rights Commission, Bangladesh: Existing Challenges and Expectations of Civil Society”**, it was observed:

“Those who come from the government have loyalties to the government in some way or the other”.

For this and other reasons, it has also been reported that our Commission holds the status 'B' in accordance with the status given by the Global Alliance on National Human Rights Institutions (GANHRI), as against Nepal and India who have obtained status 'A'. (Source: An Article by Maliha Khan, Daily Star, 11.11.2019).

4.11. Be that as it may, while we are not directly concerned with such larger issues as dealt with by the said human rights activists in the said seminar, this particular case before us has made it clear that the problem is in fact not with the law. Rather, the problem is with the mindset of the people who are at the helm of the affairs of the Commission. As stated above, if the individuals at the helm of the Commission do not wake up and desire to become active, or if they do not have the minimum courage to use the apparatus given by the law, the mandate of the present law, which has given minimum power to the Commission as regards investigation of human rights violation by the law enforcing agencies, will also be frustrated. This has exactly happened in the above referred case of victim Khadiza. The Chairman and permanent member of the Commission have been given the benefits and protection of the service like a Judge of the Supreme Court. Therefore, if they do not act proactively, we cannot compel them except in exceptional cases. One bold public statement by the Chairman of the Commission may make huge change in the activities of the

members of the law enforcing agencies in Bangladesh. One proper training of the members of law enforcing agencies may bring about huge improvement in their attitude towards the citizens of this country. We cannot dictate the Commission as to how they should use such apparatus, but the Commission should frame and publish rules under Section 30 not only for dealing with the complaints on human rights violations but also for effective use of all apparatus in the law. The ball is always in their Court and it is they who will have to play with it so that the human rights of the citizens of this country get the expected protection from them. Parliament has given them such opportunities.

4.12. As stated above, through sheer negligence, inactivity and non-application of mind by the Commission in the above mentioned Khadiza's case, which has ultimately become a frustrated one, it may not be possible now to move in a reverse direction, as, in the meantime, six years have elapsed. Victim or the father of the victim has lost interest in the case or they may have been manipulated or managed by the violators of human rights. They may have also lost their faith in the total system. The report finally submitted by respondent No.5 (Annexure 3 Series to the supplementary affidavit-of-compliance of respondent no.5) has some reflections of such failure. This report has been submitted, upon being compelled by an ad-interim direction of this Court, after 5/6 years, particularly when the same was supposed to be

sent to the Commission within six months. It further appears from this report that no statement of the concerned doctors of the Dhaka Medical College Hospital was taken by the enquiry officer, particularly when the Commission reached its conclusion regarding suppression of violation of human rights by the police officials concerned basing on the report of the Dhaka Medical College Hospital. Therefore, it appears that, the victim of human rights violation in this particular case will never get justice, or the victim will never want to get justice, because of the above mentioned failure of the Commission itself.

4.13. When the report itself says that no such incident of violation of human rights took place, we cannot assume that such incident took place given that we do not have any contrary evidence before us. Nevertheless, the delay, negligence, inactivity and abdication of responsibilities by the Commission and the concerned authorities in this case have clearly proved one thing, which is that: numerous number of such violation of human rights in this country are being suppressed either by the violators and/or by the negligence/inactivity of the protectors of such human rights. With the expression of above frustration as regards abdication of statutory responsibilities by the Bangladesh Human Rights Commission, we are undone but to ask them to become proactive and try their level best to use different available apparatus of law

and not to concentrate themselves only on the restrictions provided by Section 18 of the said Act.

4.14. Besides, upon examination of the provisions under Section 18 of the said Act, we have not found anything therein which has prevented the Commission from exercising its power of enquiry and investigation as provided by other provisions of law. In order to formulate a 'সুপারিশ' or 'recommendation' to be sent to the government on the basis of the report sent by the government, the Commission is required to hold enquiry and/or investigation. Without such enquiry/investigation, no সুপারিশ or recommendation can be made. Therefore, whenever the question of enquiry and/or investigation will arise, the Commission will automatically be equipped with its power provided by Section 16 of the said Act. Thus, it may require any witness to appear before it as well as it can require any one to produce any document before it and, in doing so, it has the power as provided to the Civil Courts under the Code of Civil Procedure, 1908. This being so, whenever allegations of violation of human rights by the members of law enforcing agencies is lodged with the Commission, it cannot just hold the view that because of Section 18 of the said Act it cannot do anything.

4.15. In view of above discussions of law, facts and circumstances in this case, we are of the view that we should pass orders, observation as well as directions in the following terms:

- a) In this particular case, being Complaint Case No. 405 of 2013, the Commission has miserably failed in performing and discharging its statutory responsibilities by delaying the proceedings for about 4/5 years without taking any proper steps.
- b) In this particular case, the Commission has repeatedly failed to apply its mind as to the facts and other circumstances, in particular the duty of the Commission to dispose of the complaint within reasonable shortest possible time.
- c) The Commission has not even given any indication in the orders in question that the decision or orders were passed by the Commission or by any member of the Commission. This sort of orders by giving only initials by one of the members is not expected of the Commission when the Commission is mandated by law to act either as Commission under Section 11(3) of the said Act or through its Chairman, Member or Secretary, being authorized by the Commission under Section 28 of the said Act. The orders passed by the Commission in this case have not given any clear picture as to who has passed those orders. Therefore, it may safely be held that the proceedings of the Commission were not done in a transparent and lawful manner.
- d) The Commission is directed to pass order in any proceeding by explicitly naming the member or members in clear terms who are passing such orders and it is further directed not to pass any order by mere putting an initial under the order.
- e) Though the Commission has annexed a Draft Rules, as prepared by it, we are of the view that such Draft Rules should be prepared after consulting the human rights

activists and NGOs of this country by formally inviting them to come up with their recommendations.

- f) The Commission is directed to use its powers provided under Section 16 of the said Act in respect of any investigation or inquiry to be conducted by it, even when such investigation or inquiry is necessary before sending any recommendation to the government under Section 18 of the said Act in respect of alleged violations of human rights by the law enforcing agencies and/or their members.
- g) The Commission is directed to approach the High Court Division of the Supreme Court of Bangladesh under Article 102 of the Constitution in order to seek mandamus or appropriate orders on the government officials, whenever it is found that such government officials and/or agencies are not complying with the lawful directions of the Commission.
- h) The Commission is directed to work-out a modus operandi to issue certified copies of its orders in any proceedings to the parties of such proceedings and/or human rights organizations and organizations like the petitioner.
- i) It has to be borne in mind that when continuing with a proceeding on the basis of complaint, the Commission is acting as a quasi judicial body and as such the norms of judicial body has to be adopted by the Commission gradually. The Commission is thus directed to dispose of the Case, being Complaint Case No. 405 of 2013, within a period of 60(sixty) days from receipt of the copy of this order upon hearing the parties. In such disposal, if it is found that the allegations of violation of human rights has substance and such allegations have been suppressed by the police or

other officials, Commission should recommend for awarding appropriate compensation in favour of the victim to be paid by the government in view of the provisions under Section 19 of the said Act.

4.16. At the end, we appreciate the job done by the Children's Charity and it's Chairman Mr. Md. Abdul Halim, learned advocate and others in this particular case.

4.17. With the above observation, discussions and directions, the Rule is disposed of.

Communicate this.

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(Sheikh Hassan Arif,J)

I agree.
(Razik-Al-Jalil ,J)