

File No. BHRC/COMP – 105/09

This file initiated on the complaint of Jaldhari Chaudhary of village Dhamhara P.S. Mansi, district Khagaria and others relates to homicidal death of eight persons in the night of 13/14.12.2007 in village Takari Vihar within Mansi P.S. of Khagaria district in the State of Bihar. It may be mentioned at the outset that Mansi P.S. Case No.105/07 was instituted with respect to the incident on the incident of SHO Khagaria P.S. Shri B.K. Singh. As per the FIR the victims had come to collect levy. They attacked the police party when they went for their arrest. In the retaliatory fire by the police they died. In other words, according to the police they died in an encounter.

As per the complaint version of Jaldhari Chaudhary, the victims were killed in cold blood by the police party led by the then SP Khagaria when they were sleeping in the house of one Surendra Yadav. They had come to the village to attend a marriage related function, namely 'Dwiragaman' of the cousin sister of Vijay Yadav. After dinner while they were asleep, they were killed.

Report was called from DGP Bihar. On consideration of the report, the Commission vide its order dated 23.12.2009 noticed that there were several loopholes in the police version. The Commission did not spell out the loopholes as it did not wish to influence the course of proposed investigation. Observing that the allegations in the complaint are ex facie grave and shocking, and it was desirable to get the incident investigated, the IG of Police, Bihar State Human Rights Commission (BHRC) Shri A.K. Seth was asked to make investigation under section 14 of the Protection of Human Rights Act, 1993, and submit his report by 31.1.2010. Shri Seth commenced investigation but did not make any headway. On his transfer from the BHRC the matter was entrusted to his successor Shri R.C. Sinha, ADG of Police but he did absolutely nothing to even take up the investigation. On his transfer the investigation was entrusted to Shri Shafi Alam, ADG of Police on 14.2.2011 but he too has done nothing. The Commission is of the view that irrespective of the outcome of the enquiry/investigation there should be a fair and proper enquiry – considering that eight persons died in the occurrence and allegations have been made against the police officials including district S.P. of killing them in cold blood.

Under section 12 read with section 17 of the Protection of Human Rights Act, the State Human Rights Commission is required to enquire into a complaint of violation of human rights. The Act contemplates an Investigation Wing headed by an officer not below the rank of Inspector General of Police (in the case of State Commissions) as part of the infrastructure of the Commission. Section

14(1) of the Act provides that "the Commission may, for the purpose of conducting any investigation pertaining to the enquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be". It is to be clarified here that the investigation under section 14 of the Act is different from investigation under the Criminal Procedure Code; it is incidental to and in aid of the 'enquiry' which the Commission is required to make under section 12 read with section 17 of the Act.

A question arose in the case of Chander Singh (Case No. 44044/ 24/ 2007/07) before the National Human Rights Commission (NHRC) as to the meaning of the term 'concurrence' in section 14(1) of the Act. In that case the Government of UP had declined consent for investigation by the CBI when the NHRC sought the concurrence of the Central Government as required under section 14(1) of the Act (supra) construing the term to mean consent under the Delhi Special Police Establishment Act. Dealing with the issue the NHRC explained the position in these words:-

"CBI is an independent investigative agency under the Delhi Special Police Establishment Act. While investigating criminal offences under Delhi Special Police Establishment Act, CBI discharges the investigative functions of police and it exercises powers and jurisdiction under Cr.P.C. Since the police or policing is within the exclusive jurisdiction of the State (Entry 2, List II, Schedule VIIth of the Constitution of India), Section 6 of the Delhi Special Police Establishment Act provides that the consent of the Government of the State, in which the investigation is to be conducted, shall be necessarily obtained before commencement of CBI investigation in that State. The position is, however, different when CBI conducts investigation under the provisions of Section 14 of Protection of Human Rights Act, 1993. While making investigation u/s 14 of the Act, CBI works under the direction of NHRC and it exercises limited powers enumerated in Subsection 2 of Section 14. Therefore, the term 'concurrence' in section 14(1) of the Act has a different connotation. It simply means concurrence in respect of borrowing and utilizing the services of any officer or investigation agency. If the Officer or investigation agency is under the control of the Central Government, the concurrence of the Central Government is required and if it is under the control of the State Government the concurrence of the State Government has to be asked for."

The Government of India was accordingly asked to communicate its concurrence for lending the services of CBI in investigation of the relevant case. Again, in a suo motu case relating to killing of a young MBA graduate (Ranvir Singh) by the Uttarkhand Police, the NHRC entrusted investigation to the CBI vide decision dated 6/7.7.2009 in case no.482/35/5/09-10-AFE/0C. This Commission

believes that in some other cases too investigation has been entrusted to CBI on receipt of concurrence from the Central Government i.e. Department of Personnel & Training (Ministry of Home Affairs).

This Commission is aware that the hands of the CBI are full (they are full at any given point of time). It is a matter of common knowledge that it is awfully occupied with investigation of cases of national importance causing overburden on its resources. However, this Commission has come to the view – after some initial hesitation but due deliberations – that the ends of justice demand that the incident which is subject matter of the present complaint before this Commission be investigated by the CBI. The Commission has reasons to believe that for some reason or the other – may be, because of involvement of high police officials – not only the state/district police but the officials of the Investigative Wing of the Commission are not willing to investigate into the case. But it goes without saying that in order to put an end to the controversy surrounding the incident, a fair and honest investigation must be made. If that is not done the lurking suspicion will remain which will result in not only the letting off of guilty persons but also loss of faith in and credibility of the justice system. The Commission would accordingly appreciate if the concurrence of the Central Government is accorded and the suitable officials are spared and a team is constituted for completing the investigation into the incident within a time frame.

At the cost of repetition the Commission would again clarify that the investigation to be made by the CBI will not be an investigation within the meaning of Cr.P.C.; it will be an investigation pertaining to enquiry within the meaning of section 14 of the Protection of Human Rights Act to aid and assist this Commission in making the enquiry and deciding the complaint.

Let copy of this order be sent to the Secretary, Department of Personnel & Training, Ministry of Home Affairs, Government of India, North Block, New Delhi. The matter may be put up in the third week of July 2011 awaiting the concurrence of the Central Government.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member