

## Champak Mukherjee Vs State of West Bengal

**Court:** Calcutta High Court

**Date of Decision:** March 31, 1998

**Acts Referred:** Penal Code, 1860 (IPC) " Section 176, 177  
Protection of Human Rights Act, 1993 " Section 10, 10(2), 12, 13, 14

**Citation:** (1999) 2 ILR (Cal) 27

**Hon'ble Judges:** Ruma Pal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Ruma Pal, J.

The issue involved in this writ application is the scope and effect of proceedings before the State Human Rights Commission.

2. Smt. Zarina Bibi filed a complaint before the Commission alleging that on April 14, 1997, her son Samu Khan had been deliberately hit by a car.

It was alleged that the Petitioner along with some others alighted from the car, beat up Samu, dragged him inside the car and went to the Budge

Budge Police Station, where the Petitioner is the Office-in-Charge. It was further alleged that Samu was assaulted in the Police Station by the

Petitioner along with his associates and tortured severely. He was then removed to M.R. Bangur Hospital where he was admitted as an

unidentified man. Samu succumbed to his injuries.

3. The Commission directed an investigation by the Superintendent of Police 24-Parganas. The Superintendent of Police called for documents in

respect of Samu Khan's death inter alia from the Petitioner as Officer-in-Charge of Budge Budge P.S., the Officer-in-Charge, Maheshtala P.S.,

within whose jurisdiction the alleged car accident took place, the Superintendent of M.R. Bangur Hospital, the Regional Transport Authority and

also examined various persons including the complainant, eye witnesses, the persons who took Samu Khan to hospital, the doctors who admitted

Samu Khan as well as the Petitioner. Twenty seven witnesses were examined by the Commissions Investigating Officer. The statement made by the

each of these persons were duly recorded and signed: The statement of the Petitioner was taken in the vernacular and also signed by him.

4. The statements of the witnesses and the documents collected by him were submitted along with a report to the Commission. In the enquiry

report the investigating Officer has discussed the evidence of the witnesses examined by him as well as the documents in detail. He also records

independent inquiries made by him to verify the statements. The Inquiry Officer has come to the conclusion that the Petitioner "did the entire

episode in a planned way to eliminate Samu Khan in cool (sic) blood with the said anti-socials and fabricated all the documents and records of

police station to pass over the incident of death of Samu Khan as due to a road accident".

5. After obtaining the Inquiry Officer's report the Commission directed notices to be served on the Petitioner directly and also through the

Superintendent of Police 24-Parganas to ensure the Petitioner's attendance for a hearing before the Commission on January 16, 1998. The

Petitioner appeared before the Commission on January 16, 1998. The note sheet of the Commission contains the following endorsement of the

Chairperson of the Commission on January 16, 1998.

Shri Champak Mukherjee, O.C. Budge Budge Police Station appears. The Commission heard him. He submitted that he has already stated during

the investigation whatever he wanted to place before the Commission.

6. It appears from the recommendation, a copy of which has also been annexed to the writ application that the Commission independently

assessed the evidence gathered by the Inquiry Officer. The Commission came to the conclusion on the assessment of the evidence that the writ

Petitioner:

was personally involved in the case of Samu Khan. Samu Khan was the activist of a certain political party and he was eliminated in a planned

manner by the O.C. in association with Basudeb Das S/o. Shri Ananta Das of R.N. Thakur Road, Biplab Chakraborty S/o. Shri Bipad Bhanjan

Chakraborty of Vill. Nischintapur, Bablu Dutta S/o. Sachin Dutta of Kazipara, 2nd lane and Sankar Banerjee S/o. Late Sadhan Banerjee of

Budge Budge Mills Babu Quarter. This seems to be an act of homicide having been carried out in cold blood with the help of certain anti-socials.

The relevant records of the police station were fabricated and false cases initiated by Shri Champak Mukherjee to pass off the death of Samu

Khan as a road accident. This type of conduct on the part of a police servant is a disgrace. This is what brings bad name to the police and the

government.

The Commission accordingly recommended that:

(i) Criminal prosecution should be started against Shri Champak Mukherjee, O.C. Budge Budge Police Station in the appropriate court having

jurisdiction in the matter for relevant offences as outlined in this report.

(ii) S.I. Champak Mukherjee, D.C., Budge Budge Police Station should immediately be withdrawn from the said police station and he should not

be given charge of any police station till he is acquitted in the criminal case.

(iii) An interim compensation of Rs. 50,000/- (Rupees Fifty thousand only) should be paid to the wife of the deceased Samu Khan. It will be open

to the government to recover the amount from the delinquent officer.

17. Government should confirm compliance with the recommendations within a period of two months.

7. The Commission then submitted its recommendation under cover of a letter dated January 20, 1998 to the State Government.

8. The writ Petitioner has challenged the recommendation of the Commission primarily on two grounds. First that the recommendations directed

implementation of its views by the State Government and that this was contrary to Section 18(5) of the Protection of Human Rights Act, 1993

(hereinafter referred to as the 1993 Act). Secondly it is submitted that the recommendations of the Commission was not a recommendation

simpliciter as it could have penal consequences since the Government could not ignore the finding of the Commission. It is submitted that the

Petitioner was therefore to be given a reasonable opportunity to defend himself. Such reasonable opportunity was a mandatory requirement u/s 16

of the 1993 Act and the reasonableness of the opportunity should be determined with reference to the nature of the consequences as far as the

Petitioner is concerned. According to the Petitioner the Commission failed to give the Petitioner a reasonable opportunity to defend himself by not

furnishing a copy of the complaint of Zarina Bibi at any stage despite requests, by examining witnesses without giving the Petitioner an opportunity

to cross examine them, by relying upon the statements of the witnesses who had not been produced before the Commission and by not furnishing a

copy of the inquiry report as submitted by the investigating Officer.

9. Appearing on behalf of the Commission the Learned Counsel submitted that the recommendations of the Commission was meant to assist the

Government in making up its mind. It was conceded that whatever the language of the recommendation may be, it was not meant to be anything

more than a recommendation to the State Government in terms of Section 18(5) of the 1993 Act. It has also been submitted on behalf of the

Commission that the nature of the proceeding before the Commission was really investigative in nature and that the materials at the stage of

investigation are not required to be disclosed to the Petitioner. It is submitted that at the investigation stage there is no question of cross

examination of the witnesses nor was the Petitioner entitled to a copy of the inquiry report. It is submitted that in any event the Petitioner was in fact

given a reasonable opportunity of being heard in terms of Section 16 of the 1993 Act. He was called for a hearing but he chose not to" say

anything other than what he had stated in his statement before the Inquiry Officer. It is stated that the Petitioner had not asked for any copy of the

complaint but it was clear that he knew of the complaint both in fact and in substance as was apparent from the written statement in his own hand

writing submitted before the Inquiry Officer.

10. On the merits of the actual recommendations made, no submission was made by either party. However, it was clarified by the Learned

Counsel appearing on behalf of the Commission that the recommendation giving an option to the State Government to recover the interim relief

from the Petitioner would arise only if the Petitioner were found guilty in the criminal prosecution which had been recommended to be initiated

against him.

11. Before determining the issues raised, a brief history of the Act and the background in which it was enacted is required to be considered.

12. The 1993 Act is the culmination in the Indian Context of a world wide recognition of the need for all nations to promote observance of human

rights which had found expression in the Universal Declaration of Human Rights in 1948. India was a part of the General Assembly which adopted

and proclaimed the resolution. As a follow up to the 1948 Declaration, the International Covenant on Civil & Political Rights, 1966 and the

International Covenant on Economic, Social and Political Rights were adopted by the United Nations on December 16, 1966. Both the

instruments entered into force in 1976. Both the covenants require member states to enact appropriate legislative measures to promote and protect

the rights recognised of both the covenants. India acceded to the covenants but till the 1993 Act there was no special enactment dealing with the

issue.

13. Given that the law in India is that international instruments are not enforceable in the domestic courts unless there is an appropriate domestic

legislation, the courts in India advanced the cause of human rights by interpreting existing domestic laws with reference to the International

Covenants. For example while deciding whether an undertrial Prisoner could be handcuffed under the Prisoners (Attendance in Courts) Act, 1955

the Supreme Court in *Prem Shankar v. Delhi Administration* AIR 1960 S.C. 1535 observed:

While discussing the relevant statutory provisions and constitutional requirements, court and counsel must never forget the core principle found in

Article 5 of the Universal Declaration of Human Rights, 1948:

xxxxxxxxxxxxxxxx and (read) Article 10 of the International Covenant on Civil and Political Rights.

14. The lacuna was sought to be filled in 1993. The Human Rights Commission Bill 1993 was introduced in Parliament but was not passed. The

President in exercise of powers under Article 123(1) of the Constitution then promulgated the Protection of Human Rights Ordinance 1993 on

September 28, 1993. This was succeeded by the 1993 Act. Although the 1993 Act was assented to by the President on January 4, 1994 it is

deemed to have come into force on September 28, 1993.

15. The preamble to the Act as well as the Ordinance both state that the object for issuing the Ordinance and subsequently the Act was for better

protection of Human Rights by the Constitution of National Human Rights Commission, State Human Rights Commissions in States and Human

Rights Courts. These facts indicate not only that the Human Rights violations in the country needed immediate attention but also that the existing

provisions of law were inadequate to deal with such violations.

16. Perhaps because of the recent enactment of the Act, there appears to be a lack of judicial precedent construing its provisions. It is necessary

therefore to consider the scheme of the Act and construe the relevant provisions on the basis of their plain meaning to see to what extent the

principles of natural justice are expressly provided for are to be implied therein.

17. There are eight chapters in the Act. Chapter I deals with preliminary matters including the section on definitions. Section 2(d) of the 1993 Act

defines human rights.

2(d) "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.

18. The International Covenants referred to mean the International Covenant on Civil and Political Rights and the International Covenant on

Economic, Social and Political Rights (vide Section 2(f)). By virtue of the 1993 Act the rights recognised in the International Covenants have

graduated from being inchoate rights to enforceable ones.

19. There is no dispute that the complain of Zarina Bibi relates to a violation of human rights in respect of her son within the meaning of the Act.

20. Chapter II relates to setting up of the National Human Rights Commission. Chapter v. deals with setting up of the State Commissions. The

Commission in this case has been constituted under Chapter V, Section 21 which requires that the State Commission should consist of five

members of which the Chairperson should be an erstwhile Chief Justice of a High Court; a member who is or was a Judge of a High Court, a

member who is or was a District Judge in the State of West Bengal and two members who have knowledge of or practical experience in matters

relating to Human Rights. The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 & 18 of the Act have been made applicable mutatis mutandis to

the State Commissions by Section 29.

21. Section 10(2) provides for the Commission regulating its own procedure. Chapter III deals with the functions and powers of the Commission.

The functions of the Commission prescribed u/s 12 are wide-ranging. For the purposes of this case we are concerned with the powers of the

Commission u/s 12(a) which reads:

12. Functions of the Commission.-- The Commission shall perform all or any of the following functions namely:

(a) inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of -

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant.

22. The procedural power of the Commission relating to enquiring u/s 12(a) has been provided for in Section 13. This section vests the

Commission with inter alia powers of a Civil Court trying a suit as well as the powers u/s 176 and Section 177 of the Indian Penal Code only for

the purposes of the enquiry into the complaints under the Act. For conducting the enquiry the Commission can also investigate into any matter

pertaining to the enquiry u/s 14 and for this purpose can utilise the services of any officer of the Central or State Government with the concurrence

of the respective government. The officer so appointed to investigate is also authorised by Section 14(2) (a) to summon and enforce the attendance

of any person and examine him; (b) to require the discovery and production of any document; and (c) requisition any public record or copy thereof

from any office. However, the Officer has to exercise these powers only subject to the direction and control of the Commission. The Officer or

agency whose services are utilised is required to submit a report within the period specified by the Commission. Section 14(5) however, casts a

duty on the Commission to independently satisfy itself about the correctness of the facts stated and the conclusion if any arrived at in the report

submitted to it by such Officer or Agency. For this purpose the Commission can itself make a further enquiry including the examination of the

person or persons who conducted or assisted in the investigation as it thinks fit.

23. The Commission is also required by Section 16 to give any person likely to be prejudicially affected an opportunity of being heard. The

provisions of Section 16 are quoted:

16. Persons likely to be prejudicially affected to be heard.- If, at any stage of the inquiry, the Commission

(a) considers it necessary to inquire into the conduct of any person ; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry.

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence ;

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

24. It is noteworthy that there is no reference to any right to cross examine any witness.

25. By virtue of Section 15 any statement by a person either to the Commission or the Investigating Officer or Agency cannot be utilised against

him in any civil or criminal proceeding. It is not all statements which are so protected. Only that statement which

15. Statement made by persons to the Commission.-

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(a) is made in reply to the question which he is required by the Commission to answer ; or

(b) is relevant to the subject matter of the inquiry.

26. In other words, if the statement is made voluntarily and not in reply to the question which he was required to answer or if the statement is not

relevant to the subject matter of the inquiry, the protection u/s 15 of the Act will not apply. The protective provisions of Section 15 have been

specifically extended to cover statements before the Investigating Officer/Agency by Section 14(3).

27. Chapter IV deals with greater particularity with the enquiry which is to be conducted by the Commission itself. It can call for information or a

report from the Central Government or the State Government or any authority or organisation subordinate thereto and can decide on the basis of

such information or report either that further inquiries are required, or decide that action has been taken on the complaint lodged and inform the

complainant accordingly.

28. Once this stage is over and the inquiry is completed the Commission is empowered by Section 18 of the Act to take any of the following steps:

18. Steps after inquiry.- The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

(1) where the inquiry discloses, the commission of violation of human rights by a public servant, it may recommend to the concerned Government

or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or

persons.

(2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family

as the Commission may consider necessary;

(4) subject to the provisions of Clause (5) provide a copy of the inquiry report to the Petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the

concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments

on the report, including the action taken or proposed to be taken thereon, to the Commission;

(6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action

taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

29. In this particular case the Commission has acted under Sections 18(1), (3) and (5). It has recommended the initiation of proceedings or

prosecution against the petitioner under Sub-section (1) of Section 18 and recommended the grant of interim relief under Sub-section (3).

30. One of the questions raised by the Petitioner is whether the direction to recover the interim relief recommended to be paid to the victim's family

came within the powers of the Commission u/s 18. Having regard to the ambit of the powers of the Commission u/s 18(3) I would answer the

question in the negative. It is however, noted that Counsel for the Commission has said that the recovery from the Petitioner would be optional and

only upon a finding of guilt by the Court.

31. Chapter VI deals with the setting up of Human Rights Courts for providing speedy trial of offences arising out of violation of Human Rights.

The other provision which is of some relevance is Section 36 in Chapter VIII which contains miscellaneous provisions. Section 36 provides:

36. Matters not subject to jurisdiction of the Commission.- (1) The Commission shall not inquire into any matter which is pending before a State

Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act

constituting violation of human rights is alleged to have been committed.

32. Three basic premises must be kept in mind while dealing with the questions of natural justice. The first is that:

the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function and



the question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions, but in the

light of the statutory rules and provisions.

33. This view has been held by the Supreme Court in *New Prakash Transport Co. Ltd. v. New Suwarra Transport Co. Ltd.* AIR 1957 S.C. 98

and reiterated in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, .

34. The second premise is:

The degree of proximity between the investigation in question and an act or decision directly adverse to the interests of the person claiming

entitlement to be heard may be important. Thus, a person empowered to require to conduct a preliminary investigation with a view to

recommending or deciding whether a formal inquiry or hearing (which led to a binding and adverse decision) should take place is not normally

under any obligation to comply with the rules of fairness.

See: De Smith, Woolf and Jowell *In re: Jud. Rev. of Adm. Action* (5th Edn.) p. 492.

35. Thus, in *Meenglas Tea Estate v. The Workmen* AIR 1963 1219 cited by the Petitioner, where the result of an inquiry was accepted without

more and penal action taken on the basis thereof it was held:

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which

the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by

way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an

enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

36. In the light of the decision in *Meenglass Tea Estate* it is doubtful that the observations of the Privy Council in *University of Ceylon v. Fernando*

(1960) 1 All. E.R. 631 (P.C.)" cited by the Respondents would apply in this country. In that case the Vice Chancellor of the University of Ceylon

had suspended a student on the basis of an enquiry. The student challenged the inquiry on the ground that the evidence of various witnesses who

appeared before the Commission of inquiry was taken in his absence and he was not aware of what evidence was led against him, and that, in the

circumstances, one of the essential elements of natural justice was not observed. Although the finding of the Commission was accepted and acted

on by the Vice Chancellor (who himself sat in the Commission of Inquiry), it was held that the requirements of natural justice had sufficiently been

complied with.

37. However, it cannot be doubted that where the action does not by itself result in penal action it is necessary to follow the principles noted in the

Meenglass Tea Estate's Supra case. This was clarified in State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, : where the Supreme

Court was considering a challenge to an enquiry report under the Jammu & Kashmir Commission of Inquiry Act, 1962. The Supreme Court

negated the submission that the report was vitiated because no opportunity was given to cross examine persons who had sworn affidavits against

the party. It was held:

[In] Meenglas Tea Estate Vs. Its Workmen, , the Court was not dealing with a fact finding body as we are. Rules of natural justice require that a

party against whom an allegation is being inquired into should be given a hearing. Bakshi Ghulam Mohammad was certainly given that. It was said

that the right to hearing included a right to cross-examine. We are unable to agree that that is so. The right must depend upon the circumstances of

each case and must also depend on the statute under which the allegations are being inquired into.... We have to remember that we are dealing

with a statute which permits a Commission of Inquiry to be set up for fact-finding purposes. The report of the Commission has no force proprio

vigore. This aspect of the matter is important in deciding the rules of natural justice reasonably applicable in the proceedings of the Commission of

Inquiry under the Act."

38. The third premises is a corollary to the second viz. when the proceeding is merely investigative. There can be no right in any person to be

informed midway, during an investigation, of the material collected in the case against him". See I.J. Rao v. Bibhuti Bhusan Bagh AIR 1989 S.C.

1184.

39. As far as the first premise is concerned, there is no provision in the 1993 Act which requires the party to be given any right to cross examine

any witness or to obtain a copy of the inquiry report.

40. As far as the second and third premises are concerned it is clear from a scrutiny of the provisions of the 1993 Act that the function of the

Commission is investigative and recommendatory. It investigates and recommends action on the basis of its enquiry report. As said in State of

Bihar and Another Vs. J.A.C. Saldanha and Others, .

There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the

field exclusively reserved for the executive through the police department" [It is for the] Court to take cognizance. The adjudicatory function of the

judiciary [is] to determine.....and to award adequate punishment according to law for the offence proved to the satisfaction of the Court.

41. The Commission has no power to directly enforce its recommendation. That power has been given to Human Right Courts. All that the

Commission can do is to recommend the steps to be taken to the State and it is for the State to take steps on the basis of the recommendations or

not. It is true that in terms of Section 18(5) the State Government is required to give its comments on the report as well as the action taken or

proposed to be taken thereon to the Commission within the time specified. This only ensures that the State Government cannot shelve the

recommendation to gather dust. If the State Government does not accept the recommendation it must give its reasons. These are then to be

published along with the recommendation u/s 18(6). The person against whom action is recommended will therefore, be entitled to the full

advantage of a trial if the State accepts the recommendation. The Commission can also approach the regular courts for implementation of its

recommendation and it is the court which may take action on the recommendation u/s 18(2) as it may deem necessary. There is no compulsion on

the State Government or the Court to implement the recommendation of the Commission. There is thus no lis before the Commission and the

Commission does not itself act in a judicial capacity. It is a fact finding body manned by persons of experience appointed by the State

Government. While their recommendation must be given due weight, the recommendation remains in the end just that namely recommendatory in

nature. The submission of the writ Petitioner that the recommendation of the Commission was not a "mere recommendation" cannot thus be

supported.

42. Therefore, apart from the fact that Section 16 does not expressly provide for furnishing of a copy of the complaint, applying to three premises

enunciated earlier. It is clear that there was no question of making available the enquiry report or allowing the Petitioner to cross-examine the

witnesses who had made statement either before the Investigation Officer or the Commission. In the circumstances, compliance with the rules of

natural justice as claimed by the Petitioner is not required.

43. Apart from the express language of the statute, the 1993 Act is to a large extent in parimateria with the Commission of Inquiries Act, 1952

(hereafter referred to as the 1952 Act). Both the Acts provide for the independent investigation into matters by a Commission set up by the

Government. The provisions relating to the procedure and the powers of the Commission both under the 1952 Act and the 1993 Act are virtually

identically framed. For the sake of convenience the corresponding provisions are tabulated.

1993 Act 1952 Act

Section 10(2) Section 8

Section 13 Sections 4 and 5

Section 14 Section 5A

Section 15 Section 6

Section 16 Section 8

44. At this stage it may be noted that even the limited right of cross examination given in 8-C of the 1952 is absent in the 1993 Act.

45. The Commission under the 1952 Act is required to submit a report to the appropriate Government which in turn is obliged to cause the same

to be laid before each House of Parliament, if the Central Government is the appropriate Government, and the Legislature of the State, if the

Appropriate Government is the State Government, together with a memorandum of the action taken thereon. Under the Section 18(5) of the 1993

Act the concerned Government is required to report back to the Commission forwarding its comments including the action taken or proposed to

be taken on the report.

46. It would be an acceptable principle of construction in these circumstances to rely on the interpretation of the similar provision in the 1952 Act

to interpret the expressions in the later statute.

47. In *Karnataka State v. Union of India* AIR 1978 S.C. 88: the Supreme Court considered the role of a Commission of Inquiry under the 1952

Act. It said:

a Commission of Inquiry appointed under the Act is a purely fact finding body which has no power to pronounce a binding or definitive judgment.

It has to collect facts through the evidence led before it and on a consideration thereof it is required to submit its report which the appointing

authority may or may not accept. There are sensitive matters of public importance which, if left to the normal investigational agencies, can create

needless controversies and generate an atmosphere of suspicion. The larger interests of the community require that such matters should be inquired

into by high powered commissions consisting of persons whose findings can command the confidence of the people.

48. In connection with 1952 Act the points which have been raised by the writ Petitioner in this case has also been raised and negated. See *State*

of *Jammu & Kashmir v. Bakshi Ghulam Mohammed*(Supra).

49. The Division Bench of the Andhra Pradesh High Court in *Md. Ibrahim Khan v. Susheel Kumar* AIR 1983 A.P. 89: in rejecting a challenge to

an inquiry under the Commissions of Inquiry Act also held:

The Commission is purely a fact finding body and it performs no judicial or quasi-judicial functions. There is no lis to be decided. The decision

does not prejudicially affect rights. Therefore, the use of the accolade judicial or quasi-judicial to such inquiries is inappropriate.... The Commission

is not an adjudicating body, but an assisting body that assesses the facts and assists the Government in the arrival at an appropriate decision.

50. It was held that therefore, the Commission was under no duty to allow cross examination of witnesses except to the extent expressly provided

in the statute.

51. I would therefore, hold that there is no obligation on the part of the Commission to make available a copy of the preliminary inquiry report to

the writ Petitioner or to allow him to cross examine any person who had given evidence.

52. As far as the alleged failure of the Commission to make available a copy of the complaint to the writ Petitioner is concerned there is no record

that the writ Petitioner had asked the Commissioner for it. As already noted, the Chairman has noted that the Petitioner only stated that he did not

wish to add anything to what he had said before the Investigation Officer.

53. Also there can be no doubt that the petitionee was aware of the complaint made against him when he gave his statement to the investigating

Officer and before he appeared before the Commission. An approximate translation of his statement to the Investigating Officer is given below:

Q. Who are you? Where are you posted? Since when?

A. I am a Sub-Inspector of Police. At present I am posted at Budge Budge Police Station as the O.C. I am posted at Budge Budge since

November 1995.

Q. On 14.4.97 last what duty did you discharge at the Police Station?

A. On 14.4.97 I was at the Police Station.

Q. On 14.4.97 last at about 6:15 in the evening who brought whom in what condition? Where were you then? How was he injured did he say?

A. At that point of time, I was in my office at the Police Station. On hearing some people shouting, I came out and saw that some people had

brought a man with injury on his head and forehead, in bleeding condition, in a white Ambassador. At that time, some more people were present in

front of the Police Station. The said people told that the man was injured due to a car accident. The injured man was driving a scooter and a

private ambassador had hit him from behind and escaped.

Q. Whom do you refer to as the said people? What are their names? What was the number of the car that came? Did you note the same in the

general diary?

A. By the "said people" I mean those who had brought the injured man. Only one out of them, had given his name as Guddu. The number of the

car could not be observed. A brief description of the incident was recorded in the diary by the duty officer.

Q. Why did you not record the names of those people in the diary at the Police Station? In answer to the previous question you have stated that

some people had brought an injured man in an ambassador car and they had informed you that while the said man was travelling in a scooter, an

ambassador car had hit him from behind, for which the man had been injured. Then why did not you take, down the names of those people who

had come to you in a car and the number of the car?

A. I was inside the office. On hearing the noise I came out and found that the injured man was bleeding profusely from around his face, head and

forehead. His condition was grave. There were many other people outside the police station. I asked "the duty officer to make an injury report and

I asked the people who had brought the injured man, to go to the hospital for treatment and after getting treated, to come back to the police station

and register a complaint on reporting the accident. Being busy, the number of the car and the names of the persons could not be noted. Later on, a

case was filed in respect of the accident where it was found that the car was white.

Q. You have said in answer to the previous question, that you had handed the injury report to the persons who had brought the injured man and

had (sent) the injured man with them and you and your duty officer A.S.I. D. Acharjee (?) neither noted the names of those persons nor the

number of the car and, why did you not send any police with him and sent the man to the hospital through those persons.? Who is the scooter

driver really? What did you find on investigation? Did you find out when, where and how that accident happened to the person?

A. The people who had brought the injured man to the police station, they in their hurry had gone out stating that they would take the injury report

later. The man was injured in a road accident and then I thought that the injured man needed immediate medical attention, moreover those persons

had said that they would come back later, hence their names were not taken down. The police vehicle was on outside duty. At that moment, there

were no police personnel. It was known from those persons that the accident had occurred near the Bagmari Check post. The people who had

brought the injured man could not give his name. Through Jadavpur police station, and Maheshtalla (police station) the identity of the said injured

man came to be known and the name of the injured man was Shiekh Samu Khan. The injured man died at the M.R.B. Hospital on 22.4.97 last

and the mother of the injured man had gone to the said hospital and identified him. Since the address of their residence was under the Maheshtalla

Police Station, for that reason, on the basis of the U.D. case of Jadavpur Police Station an officer of the Maheshtalla Police Station had come to the

Budgebudge police station on 23.4.97, when the identity of the injured man became known.

Q. Did you know Samu Khan? Have you seen Samu Khan previously and did you raid his house on quite a few occasions? Was the said Samu

Khan arrested previously by your police station in connection with any case? If so, then when and in which case was he arrested?

A. It has come to be known that Samu Khan was involved in many anti-social activities in the area under Budge Budge Police Station. I knew

him. I had seen him. Since his residence was under Maheshtalla Police Station, raids were conducted jointly and separately. He was once arrested

by our police station during my tenure. I do not recall the exact case and date right now.

Q. In reply to the previous question you have stated that you knew Samu Khan and during your tenure Samu Khan was arrested. Then why did

you not recognise Samu Khan when Samu Khan was brought in an injured state as you have stated on 14.4.97 that is on the day of First Baisakh

and why did you note him as unidentified in the diary or the police station? Why didn't you visit the place of occurrence on that day?

A. I have never stated that it was Samu Khan that the said persons had brought to the police station. The forehead and the face of the injured man

was smeared in blood, hence the injured man could not be recognised then. Maybe the acquaintances of the injured man had brought him to the police

station and therefore they had not given out his name. I had asked the R.T. mobile officer to go to the place of occurrence. The R.T. mobile officer

visited the place of occurrence and initiated the process of investigation. Therefore I had not gone to the place of occurrence. Besides that, if law

and order problem arises after a car accident like road-blockade, arson, only then does the O.C. go to the place of occurrence along with the other

officers of the police station. In this case, no such situation had arisen.

Q. On enquiry it has been found against you that on 14.4.97 last that is on the day of First Baisakh at or about 5/5.30 (pm) you riding a WBY

white ambassador car with four young men, at a great speed, had hit the back of Samu Khan's scooter and threw him off at Jatadharitalla while

Samu Khan had crossed Badamtal Ja Check Post, travelling on his scooter from Charial Side to Birlapur. You were wearing a punjabi and along

with the said four young men who were with you, you had beaten up Samu Khan with the butt of your revolver in his unconscious state, on the

pretext that he was escaping after committing a robbery, and you had dumped the unconscious body of Samu Khan in a state of injury, on the floor

of the back seat of the ambassdor car that you had with you. The said four men immediately went to the driver and you had the car driven fast and

brought it to your police station. Thereafter having beaten up Samu Khan some more, you had sent him in the said ambassador car accompanied

by the 4 (four) men who were with you, to the-Bangur hospital and had him admitted as an unknown person. You had not sent any intimation to

Samu Khan's house. Samu Khan did not regain consciousness at the hospital and on 22.4.97 he died at the Bangur hospital. For such a misdeed

of yours, a road blockade was put up between Sahapur and Charial on 23.4.97. What was the reason for your doing so? Show cause and give

details. Did you post a police to guard the injured Samu Khan at Bangur hospital?

A. I have come across this allegation for the first time on coming here. I have not received any such complaint before from the said injured person

or from any other quarter. This allegation is not at all true. I have never worn a punjabi. On the specified date and time, I was present at the police

station as I have stated in my reply to your previous reply. The persons who had got Samu Khan admitted to the hospital as unknown, their names

have been known later from the records of the hospital. The case of the car accident was registered in the Budge Budge Police Station. On the

complaint of the local people residing near the Bagmari Check post and therein the identity of the injured person and the number of the involved

car, were not given. No police guard is posted for a person injured in a car accident and therefore the same was not posted in this case. Some

people had created a road block with Samu's body in the Sapanghat area (Maheshtall). There was no road block in the area referred to.

Q. Will you say anything more about Samu's death? After Samu Khan's death, did you ransack Samu Khan's house within the Maheshtalla police

station, by taking police with you, on an application being made regarding Samu Khan's death before the Human Rights Commission? And did

you remove the iron gate at the front of Samu Khan's house?

A. An U.D. case was registered at Jadavpur police station in respect of Samu Khan's death (since he died at M.R.B. Hospital). The car accident

had occured in the Budge Budge police station area, an unidentified person. The name came to be known later. The allegation of my having

ransacked Samu Khan's house is not at all true neither is it true that the police had removed the iron gate. There being no further questions on

Samu Khan's death, I have nothing more to say.



54. In the light of the statements, the grievance of the writ Petitioner that he was not given any copy of the complaint even if true did not result in

any prejudice nor could it be said that he had been denied a reasonable opportunity of defending himself within the meaning of Section 16.

55. Having rejected all the submissions of the Petitioner and for the reasons aforesaid I dismiss the writ application. There will be no order as to

costs.