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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Press Notice No: HRC/P/i/13/02/23

Press Notice

The primary concern of the Human Rights Commission of Sri Lanka (Commission, HRCSL) in giving the impugned directive to the Ceylon Electricity Board was to protect the fundamental human rights of the students sitting for a decisive examination from 25th January to 17th February. Undoubtedly, these students are at the crossroads of their future and will be called upon to shape the future of this nation. All children have equal rights to education with an emphasis on the word ‘equal’. The issue is not whether the students in rural areas could study without electricity, but that the right to education is a human right declared and recognized by the International Covenant on Economic, Social and Cultural Rights, and to be meaningful must necessarily include the availability of a proper environment and proper facilities. It is the cardinal responsibility of the Human Rights Commission to protect that right if in its view, the decisions taken by the State would undermine such right, and such decisions have been taken arbitrarily and unreasonably with callous disregard to the right of these students during the impugned period.

This statement is issued not to criticize nor fault in any way the decision of the Supreme Court in dismissing the Application but to give reasons for initiating the Application. The purpose of the Application was two-fold;

- (a) To move for a direction by the Supreme Court on the Electricity Board to ensure uninterrupted power supply for the period of the Examination, and,
- (b) For contempt against the Respondents for violating the directive given by the Commission.

The application was dismissed by the Supreme Court comprising Justice Gamini Amerasekera, Justice Kumudini Wickremasinghe and Justice Shiran Gooneratne in case no. SC/Contempt/01/2023. It held that the certificate did not contain sufficient material to form charges against the 2nd Respondent and the documents tendered by the petitioner questions the legality of the settlement and the process culminating in issuing a directive and a Certificate.

It is the obligation of the government under the Constitution and International law to promote and protect fundamental human rights. Such was the object and purpose for which the Parliament had enacted Act No.21 of 1996, and thereby established the Human Rights Commission. The Human Rights Commission is an institution where the impoverished and the voiceless come for redress against the actions of State Officials for a violation of their human and fundamental rights.

The HRCSL, following an inquiry, can recommend the government to grant immediate relief or even approach the higher courts for necessary recommendations and directions.

The Commission is not merely a body to render an opinion without enforcement as that would defeat the statutory object underlying the constitution of such a body. The Government cannot nonchalantly disregard the view of the Commission.

Even though the Commission is empowered under its statute to make only recommendations as opposed to a recommendation or direction, it remains incumbent on the government to give effect to such recommendations. They are called upon to do so in the name and style of good governance and in the spirit of its obligation under the Constitution and international law to promote and protect human and fundamental rights. Arbitrary or unreasonable failure to comply with a recommendation/direction made by the Human Rights Commission of Sri Lanka will give rise to legal repercussions, particularly from the perspective of Article 12(1) of the Constitution. (Justice Kodagoda in SCFR 329/2017 dated 12th January 2023)

The basic question is whether the use of the expression "recommend" in Section 15 (4) a,b,c,d can be treated by the Government or by an authority as merely an opinion or a suggestion which can be ignored with impunity. To place such a construction on the expression "recommend" would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority or a government which is aggrieved by the recommendation/direction of the Commission is entitled to challenge the recommendation/direction. Since no appeal is provided by the Act against a recommendation/direction of the Commission, the power of judicial

review is available when a recommendation/direction of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under Article 12 and of the basic principles of equality, it would not be possible to accept the construction that the Government can ignore the recommendations of the Commission under Section 15 at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of section 21 (3)(c) under which the Commission is entitled to approach the Supreme Court for contempt.

Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be open to the Government to disregard the view of the Commission. The Commission has directed the Government to report compliance. The Government is at liberty to challenge the recommendation/direction of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the recommendation/direction being set aside, modified or reviewed disregard the recommendation/direction at its own discretion.

While a challenge to the recommendation/direction of the Commission is available in the exercise of the power of judicial review, the Government subject to this right is duty-bound to comply with the recommendation/direction. Otherwise, the purpose of enacting the legislation would be defeated.

The provisions of the Act have been made to enforce the constitutional protection of life and liberty by providing the Commission with wide power to make such recommendation as it may think fit to prevent any infringement or continuation of such infringement and such protection would be rendered nugatory.

A construction which will produce that result cannot be adopted and must be rejected.

The Human Rights Commission of Sri Lanka remains a watchdog of the government.

Media Spokesperson
Human Rights Commission of Sri Lanka

13. 02. 2023