

**“Moreover, I wanted you to share with you all good news regarding the new post of one of our brothers from Kerala. By the immense of Allah, a star of the Divine Manifestation is rising all the more under the gaze of Allah and only for the pleasure of Allah. In this era, the star, after signing with faith and sincerity a Mubahila Challenge along with the Messenger of Allah of the time, this humble self, he has proved that not only he is sincere with Allah and His Messenger but that he can also master the academic world and revolutionise it. Insha-Allah, he shall go from progress to progress when he continues to strive hard for the cause of Allah and of His Khalifatullah of this era and remain ever sincere, simple, joyous, and open-hearted. All this is a sign of Allah, of His great satisfaction with Mukarram Fazil Jamal Sahib, newfound Assistant Professor at the Jawaharlal Nehru University (at the Centre for International Legal Studies School of International Studies). And the news of his appointment reached him on a day when he completed two years of Bai’at in the Divine Manifestation, through his acceptance of this humble self as the Khalifatullah of the time... May Allah bless him, and the like of him in the Jamaat Ul Sahih Al Islam, who devote night and day for the spread of the Divine Message. May Allah be your Reward. Insha-Allah, Ameen”** (Extract of Friday Sermon of Hazrat Khalifatullah Munir A. Azim (atba) – 19 October 2012)

Before being received at one of the greatest universities of India, Mukarram Fazil Jamal Sahib has written a paper which was published in the “Sikkim Express” Newspaper on 11 October 2012 – and which was much appreciated by scholars and the likes. The Jamaat Ul Sahih Al Islam International has the pleasure to reproduce the article for the kind attention of our all our members, well-wishers and seekers of truth. May Allah make him shine all the more, be it in spiritual and secular fields so that the religion of Allah and the world may benefit from the knowledge (both spiritual & secular) which Allah keeps pouring down upon him, as the blessed disciple of the Khalifatullah of the age. (Insha’Allah)

## A Verdict and Some Questions

FAZIL JAMAL

In a recent Order, the Sikkim Human Rights Commission made a strong critique of the administrative practices of the Sikkim University and its Executive Council, the highest decision making authority of the University. Based on a complaint preferred by former employees whose services were terminated on grounds of misconduct by the Executive Council, the Commission passed strictures on the Vice Chancellor of this Central University, ordered the release of payments deemed withheld by it and announced a compensation package to the complainants. While the Order of the Commission could be discussed from a number of vantage points, it deserves the attention and scrutiny of legal scholars as it raises a number of Constitutional and legal questions which need careful analysis.

Sikkim University is an institution established by an Act of Parliament and it is funded and maintained by the Government of India through its organs and instrumentalities. The legal issues begin from the very root of jurisdictional competence of the Commission to entertain the complaint itself. Can a State Human Rights Commission exercise its jurisdiction over a Central Educational Institution? Secondly, to whom Central Government or State Government should a State Commission make its recommendations/Orders to implement the same when the issue pertains to a Central Institution? What does the term “Government or authority” mean when a State Commission is making the recommendation against a Central University or its officials?

The Human Rights

Commission of Sikkim is established by, and functions under, the Protection of Human Rights Act, 1993. All of its activities and recommendations and Orders have to, by necessary implication, be structured upon, and in accordance with, the framework provided by the legislation. In other words, in the exercise of its considerable powers the Commission has to be guided by the parent statute and its relevant sections that define and regulate its mandate, including on the question of competence of jurisdiction.

Let us begin by looking at the question of jurisdiction. From a careful perusal of the Order, it is apparent that the Commission took the matter of its jurisdiction very lightly. It seems to have attached virtually no importance to the institutional identity and legal status of the University as an institution created by the Parliament of India and maintained and funded by the instrumentalities of the Government of India. Regrettably, the Commission dismissed the objections regarding the jurisdiction of the Commission over the University without much reflection. It satisfied itself by providing a “simple” or rather simplistic, explanation for its exercise of jurisdiction.

Referring to the definitional clause of “human rights” in Sec. 2 (d) of the 1993 Act, the Commission offered the following insight: “the right to equality mentioned in the Section is nothing but Article 14. Proceeding against anybody contrary to law, proceeding against anybody in breach of the rules of natural justice are all meeting out unequal treatment and therefore contrary to Article 14” (p. 18-19). According to

the Commission, the only relevant facts to be considered are the following: the petitioners are Indian citizens and that the complaint is a matter of “human rights”. The Commission made the leap from this lazy intellectual analysis to reach the conclusion that it has the jurisdiction on the matter.

The important question of legal significance left unaddressed by the Commission is this: Can the Sikkim Commission or any other State Commission for that matter, address any and every perceived violation of human rights and right to equality arising under the Constitution of India? The simple fact is it cannot and it should not. Astonishingly, this plain truth escaped the Commission. By looking at the individual complaint as a grant constitutional issue of “human rights” and “right to equality”, the Commission has overlooked the functional limitation imposed upon it by the applicable law. With respect, the State Commission has failed to measure even its primary jurisdictional competence by ignoring or violating its Constitution.

The Sikkim Human Rights Commission is constituted under the 1993 Act. Section 21 of the Act is the virtual “Constitution” of the State Commission. According to Clause 5 of Section 21 of the 1993 Act, “a State Commission may inquire into violation of human rights only in respect of matters relating to any of the entries enumerated in List II and III in the Seventh Schedule to the Constitution”. While List II enumerates entries that provide for the exclusive legislative competence of states, List III provides for entries where the legislative competence is shared between the Centre and the States.

An argument may be

raised that education, including higher education and matters pertaining to University education, is a subject that falls under the List III or the Concurrent List and that the legislative basis of the Sikkim University is derived from the List III. One may make an argument that the State Commission has jurisdiction over any institution which traces its legislative basis to List III as per the powers derived from Section 21 (5). However, any “celebration” of jurisdiction for the State Commission on this basis would be premature on a number of grounds.

First, the proviso to clause (5) of Section 21 that deals with the Jammu and Kashmir Human Rights Commission gives a clear indication of the nature of jurisdiction that is intended in the context of State Commissions: “in respect of matters in relation to which the Legislature of that State has power to make laws”. In short, the key test of jurisdiction for the State Commission is to identify whether the matter pertains “to which the Legislature of that State has power to make laws”.

Secondly, while List II contains entries over which States have legislative competence; the List III has also been included under Section 21 (5) as the State shares legislative powers with the Centre under it. The objective is to include those institutions that are established by states under the Concurrent List.

Thirdly, if the question was merely of whether the entry can be located in List I or List III, it would not have made any sense in excluding List I. The Parliament’s competence to make the legislation in this regard-creation of a Central University-can be traced to both List I and List III. When certain institutions

established by the Centre under List I are completely excluded, it militates against notions of equality if similarly endowed institutions established under List III are treated very differently without any apparent reason. That is precisely why institutions established by the states whether under List II or List III are sought to be included under the jurisdictional competence of the State Commissions without any discrimination.

Fourthly, Section 17 of the 1993 Act read along with Section 29 (d) makes it absolutely clear that a State Commission, which may inquire into complaints, has no authority to “call for information or report from the Central Government or any other authority or organization subordinate thereto”. It is apparent that the State Commission has failed to check the very legal identity of Sikkim University as a Central institution when it chose to exercise jurisdiction over it and called for information from the same.

Unfortunately, the same kind of doctrinal confusion is also discernible in the recommendation of the Commission being sent to the State Government for potential implementation and the submission of action taken report. Based on Section 18 of the 1993 Act, the State Commission has asserted its authority to make recommendations for payment of compensation and damages to the complainants. After completing its inquiry into the present matter, the Commission had sent a copy of its report together with its recommendations to the University as well as “to the State Government and especially of its offices of Home and Law & Justice”.

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ommendations being forwarded to the State Government has possible political and administrative consequences, given the widely known, ongoing, acrimonious relationship between the ruling establishment and the present Vice Chancellor of the University. If the State Government wants to invent a fig leaf or manufacture an excuse to take administrative/legal action against the latter, this is the Order to harp on. Clearly, the Commission missed an important opportunity to raise its prestige and identity as an independent institution in Sikkim, impervious to the political winds and transitional fluxes, exercising its function under the cold light of law and justice.

In a social milieu where personality clashes and political vendetta prevails, judicial institutions and other statutory commissions have an important role to play in retaining fairness and balance in the public discourse. And this role is to be played in accordance with the rules of the judicial game: restraint, sobriety, impartiality, objectivity and respect for institutional ethos and for the wider principles of constitutional and statutory interpretation. It is submitted that the present Order needs to be reviewed or even better, set aside at the earliest opportunity so as to castrate its mischief potency as well as the interpretative anomalies it has introduced into the Indian Federal framework and ethos of systemic integrity and distribution of powers. For, what is at stake is legality and constitutionalism itself.

[Fazil Jamal teaches Constitutional Law at the Department of Law, Sikkim University, Gangtok. The writer wishes to register that the views are personal and may not necessarily reflect the official views of the Institution.]

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From a careful perusal of the Order, it is apparent that the Commission took the matter of its jurisdiction very lightly. It seems to have attached virtually no importance to the institutional identity and legal status of the University as an institution created by the Parliament of India and maintained and funded by the instrumentalities of the Government of India. Regrettably, the Commission dismissed the objections regarding the jurisdiction of the Commission over the University without much reflection. It satisfied itself by providing a "simple" or as we shall see below, rather simplistic explanation for its exercise of jurisdiction.

Referring to the definitional clause of "human rights" in Sec. 2 (d) of the 1993 Act, the Commission offered the following insight: "the right to equality mentioned in the Section is nothing but Article 14. Proceeding against anybody contrary to law, proceeding against anybody in breach of the rules of natural justice are all meeting out unequal treatment and therefore contrary to Article 14" (p. 18-19). According to the Commission, the only relevant facts to be considered are the following: the petitioners are Indian citizens and that the complaint is a matter of "human rights". The Commission made the leap from this lazy intellectual analysis to reach the conclusion that it has the jurisdiction on the matter.

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