

F.No. 15011/26/2011 – HR III  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
(HUMAN RIGHTS DIVISION)

\*\*\*\*

4<sup>th</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi 110001  
Dated the 29<sup>th</sup> January , 2013

To

✓ The Director,  
Common Cause,  
5, Institutional Area,  
Nelson Mandela Road,  
Vasant Kunj, New Delhi 110070

**Subject: Writ Petition (c) No.35 of 2012 in the Supreme Court – Common Cause Vs Uol & Othrs regarding complaints against Chairperson, NHRC.**

Sir,

Please refer to the above cited Writ Petition and Judgement dated 10.5.12 of the Hon'ble Supreme Court thereon. In Para 7 of above Judgement, the Hon'ble Court had directed that "if the allegations are found to be unworthy of any further action, the petitioner shall be informed accordingly. Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of Section – 5(2) of the 1993 Act".

2. The matter has been examined in consultation with the Ministry of Law and Justice and they have commented/opined as below;

i) Shri Balakrishanan was appointed as Chief Justice of India on 14.1.2007; he retired on 11.5.2010 and assumed the charge of Chairperson, NHRC on 7.6.2010 and continues at this post till date;

ii) The provisions of removal of Chairperson and other members are provided in Section 5 of the PHR Act, 1993 and relevant extracts of the above Section are **enclosed**;

iii) The Supreme Court in Krishna Swami v. Union of India, 1992(4) SCC 605 held that misbehaviour of a person as a Judge of a High Court can form the basis of his removal even after his elevation to the Supreme Court. In the said case, a contention was raised that since the Ld. Judge, on his elevation as a Judge of the Supreme Court, had vacated his office as Chief Justice of

contd...../-

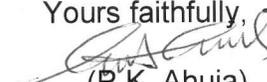
the Punjab & Haryana High Court, the alleged misbehaviour, if any, would cease to be relevant and his conduct, i.e. his misbehaviour as a Judge of the Supreme Court alone would be subject matter of the motion and investigation. Rejecting the said contention, the Supreme Court held as follows:

“So long as one holds the judicial office, the above conduct remains germane and relevant. Any imputation of misbehaviour through a valid motion admitted by the Speaker needs investigation. The elevation of a High Court Judge to the Supreme Court is only an elongation of the judicial functions in the apex court with the same judicial fervor. From this perspective, the alleged misbehaviour of the learned Judge, if proved, would remain germane, even while the learned Judge is a Judge of this Court. It would thus not be difficult to discount the contention of the learned advocate as of no substance”.

iv) The functions and power of National Human Rights Commission are mentioned in Chapter III of the Act. In main, the functions of the Commission include to inquire, intervene, review etc. the violations of human rights and to study and spread human rights literacy among various sections of the society. These functions of the Commission cannot be said to be an elongation of the judicial functions which Shri Balakrishnan discharged in the Supreme Court as Chief Justice of India in terms of the judgement of the Supreme Court cited above. Therefore, his conduct as CJI does not appear to be a relevant ground for making a Presidential Reference to the Supreme Court under section 5(2) of the PHR Act, 1993 in respect of his continuation in his present tenure as the Chairperson of the National Human Rights Commission.

3. Keeping in view above and also that the alleged instances of misbehaviour pertain to the tenure of Justice Balakrishnan as Chief Justice of India, this Ministry has sent all the original papers relevant in this case to the Ministry of Law & Justice for taking further appropriate action.

Yours faithfully,



(P.K. Ahuja)

Deputy Secretary to the Government of India  
Telefax : 23438110