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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2390/2012**

UNION OF INDIA & ANR Petitioners
Through Mr. Rajeeve Mehra, ASG with
Dr. Ashwani Bhardwaj, Advocate

versus

NATIONAL COMMISSION FOR SCHEDULED
CASTES & ANR Respondents
Through Mr. Baldev Malik with Mr. Arjun
Malik, Advocates for R-1.
Mr. Vivek Sheel with Mr. S. Rao,
Advocates for R-2.

% Date of Decision : 28th May, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the orders dated 1st September, 2011 and 23rd September, 2011 passed by National Commission for Scheduled Castes (for short 'Commission') by virtue of which not only the adverse remarks in Annual Confidential Report [ACR] for the period 2005-2006 but also the transfer order of respondent no. 2 has been set aside.
2. The facts of the present case are that respondent no. 2 had joined Indo-Tibetan Border Police (ITBP) as an Assistant Commandant on 25th January, 1997 and promoted as a Deputy Commandant on 24th January,

2006. He was posted with 24th Bn. as no post of Deputy Commandant was available with 18th Bn.

3. On 28th April, 2006, some adverse remarks were recorded in the ACR of respondent no. 2 for the period 2005-2006, which were duly communicated to him. The representation dated 1st June, 2006 made by respondent no. 2 to Directorate General, ITBP against the adverse remarks was rejected vide order dated 8th September, 2006.

4. Respondent no. 2 filed a writ petition being W.P.(C) No. 7086/2007 before this Court challenging his transfer to Leh with 24th Bn. on similar allegations. The said writ petition was disposed of vide order dated 3rd October, 2007. The relevant portion of the said order is reproduced hereinbelow:-

“5. In our considered view, the posting of the Petitioner at Leh is an exigency of service arising from the 24th Battalion being posted to Leh and the Petitioner’s physical condition is not such as would disentitle the Petitioner to be posted at Leh. The Petitioner has also since his earlier posting at Leh done three years soft posting in terms of the policy.”

5. Thereafter respondent no. 2 submitted a representation to the Chairman of the Commission alleging harassment. The Chairman of the Commission vide letter dated 28th February, 2008 summoned the Directorate General, ITBP on 17th March, 2008. In the said meeting, Directorate General, ITBP is stated to have given all clarifications as asked for by the Commission.

6. On 28th April, 2008, respondent no. 2 filed a representation addressed to the Directorate General, ITBP for expunction of adverse remarks recorded in his ACR. On 23rd July, 2008, respondent no. 2’s above representation was

rejected on the ground that it was devoid of merit.

7. Thereafter respondent no. 2 filed another application dated 1st August, 2008 with the Chairman of the Commission. After the petitioner-UOI filed its reply dated 16th September, 2008, the Commission passed the impugned order dated 1st September, 2011 directing the petitioner to treat the adverse remarks in ACR for the period 2005-2006 as null and void. The impugned order dated 1st September, 2011 is reproduced hereinbelow:-

“It is hereby stated that on the representation of the petitioner, Shri Kumar Akamia, Deputy Commandant, 28th Bn. ITB Police, a hearing was held on 10/8/2011 in National Commission for Scheduled Castes and the matter was discussed with Shri R.K. Bhatia, Director General, Shri K.B. Singh, Inspector General (H.Q.) and Shri Dipesh Juneja, DIG (Pers.) ITB Police with presence of the petitioner. A copy of the minutes of hearing held on 18/08/2011 is enclosed for necessary action and compliance report.

After detailed analysis of all the facts provided before the Commission, it is observed that in light of the facts provided before the Commission, the adverse remarks in the ACR was immaterial, uncalled for, unwarranted and illogical. The Commission is of the view that the adverse remarks in the ACR for the period 2005-2006 may be treated as null and void, since they were motivated and prejudiced to harass the petitioner and deny him for promotion to the next rank. His seniority may be also protected in his batch.

It is requested to consider the matter. An action taken report in this regard may also be furnished to this Commission within 15 days positively.”

8. Mr. Rajeev Mehra, learned Additional Solicitor General appearing for petitioner-UOI submits that the Commission has no jurisdiction over service matters of an institution or organization like ITBP. He submits that

jurisdiction over service matters of ITBP specifically comes under the Division Bench of this Court. In support of his submission, Mr. Mehra relies upon a judgment of the Supreme Court in ***All India Indian Overseas Bank SC and ST Employees' Welfare Association Vs. Union of India, 1996 (6) SCC 606*** wherein it has been held that procedural powers of civil court given to the Commission by Article 338(8) of Constitution of India are for the limited purpose of investigating any matter/complaint. According to him, powers of civil court of granting injunctions, temporary or permanent, neither inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution. The relevant portion of the Supreme Court judgment in ***All India Indian Overseas Bank SC and ST Employees' Welfare Association*** (supra) reads as under:-

“10. Interestingly, here, in clause (8) of Article 338, the words used are “the Commission shall ... have all the powers of the Civil Court trying a suit”. But the words “all the powers of a Civil Court” have to be exercised “while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5”. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.”

9. Mr. Mehra also relies upon the judgment of Karnataka High Court in ***Karnataka Antibiotics and Another Vs. National Commission for SC and ST and Others, ILR 2008 KAR 3305*** wherein it was held that Commission

is not empowered under Article 338 of the Constitution to either set aside a concluded inquiry or the order of penalty or the order of Appellate Authority. The relevant portion of the Karnataka High Court judgment in ***Karnataka Antibiotics and Another*** (supra) reads as under:-

“12. Article 338 of Constitution of India specifies for constitution of National Commission for Schedule Castes and Schedule Tribes. The Supreme Court in All India Indian Overseas Bank SC and ST employees' welfare association v. Union of India (Supra) held that “all the procedural powers of civil court given to the National Commission for Schedule Caste and Schedule Tribe by Article 338(8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338(5)(a) or inquiring into any complaint, under 338(5)(b). The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading, of clause (8) of Article 338 of the Constitution. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4.3.1993 directing the Bank to stop the promotion process pending further investigation and final verdict in the matter”.

10. On the other hand, Mr. Baldev Malik, learned counsel for respondent No.1-Commission submits that the Commission under Article 338(5) has the power to inquire into the specific complaints with respect to deprivation of rights of Scheduled Castes. He emphasises that the Commission has been constituted to protect and safeguard the persons belonging to Scheduled Castes by ensuring that there is affirmative action by way of reservation as well as empowerment, redressal of grievances and no discrimination.

11. Mr. Malik contends that in the present case the Commission has inquired and investigated the subject matter of the complaint. He states that

after a number of discussions with the concerned officials, the Commission has sent its decision to the Government.

12. Dr. S. Rao, learned counsel for respondent No.2 contends that the petitioner having participated in the inquiry before the Commission cannot raise any objection with regard to its competence. In fact, according to him, the petitioner is precluded from questioning the competence and jurisdiction of the Commission. In support of his submissions, he relies upon the doctrine of estoppel.

13. With regard to judgment of *All India Indian Overseas Bank SC and ST Employees' Welfare Association* (supra), he submits that the said judgment operates as an embargo only upon the Commission's power to issue interim injunctions. He points out that in the instant case the Commission had conducted a full-fledged inquiry into the allegations levelled by the respondent No.2 against the petitioner after following principle of natural justice.

14. Dr. Rao reiterates that the Commission under Article 338(5)(b) of the Constitution, has the power to conduct inquiries into service related matters of Scheduled Castes employees. He submits that the petitioner's arguments if accepted, would lead to absurdity inasmuch as on the one hand, the petitioner submits that Commission has power to conduct inquiry and on the other hand, contends that the recommendations of the Commission are not binding upon the Union of India on the ground of jurisdiction and competence. He states that if such an argument is accepted, the Commission would become a 'toothless tiger'.

15. Having heard the learned counsel for parties, this Court is of the view that the issue raised in the present writ petition is no longer *res integra* as a

Coordinate Bench of this Court in **W.P.(C) 5468/2011 Municipal Corporation of Delhi vs. Lal Chand and Ors.** has held as under:-

"7. It would be noticed that sub-clause (a) empowers the Commission to undertake an investigation and sub-clause (b) empowers it only to make an enquiry and not an investigation. Investigation and enquiry are altogether different connotations, envisaging application of different procedures. Therefore, no investigation can be carried out by the Commission into matters which can be subject matter only of an enquiry. However, a perusal of the communication dated 14.12.2012 would show that on receipt of a complaint from respondent No. 1, the Commission decided to „investigate“ into the matter. This, however, was beyond jurisdiction of the Commission since it can make only an enquiry and not investigation into specific complaints of deprivation of rights and safeguards of the Scheduled Castes.

*8. The Commission, vide communication dated 03.01.2011, thereby enclosing minutes of the meeting/hearing on 27.12.2010, directed the Commissioner, MCD to handover plots in question to respondent No. 1, who was stated to be its rightful owner and also submit a compliance report. It is an undisputed legal proposition that the Commission, while acting under Article 338(5) of the Constitution, can only make recommendations, but cannot issue any direction to the Government or any other person or Authority. A reference in this regard may be made to the following view taken by a Division Bench of this Court in **Professor Ramesh Chandra vs. University of Delhi and Anr.**, LPA No. 280/2007, decided on 04.05.2007:-*

“6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the Constitution of India is an adjudicatory body which can issue binding directions or injunction orders.

.....While conferring limited powers of a civil court for some purposes, Article 338 has not given the Commission, the power to adjudicate and pass binding and executable decrees like a civil court.

...It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are alternative to the hierarchical judicial system envisaged under the Constitution of India.”

In All India Indian Overseas Bank SC and ST Employees' Welfare Association and Ors. Union of India (UOI) and Ors. (1996) 6 SCC606, the Commission issued a direction to a bank stopping a promotion process pending further investigation and final verdict by the Commission. The Apex Court, however, held that the Commission having not been specifically granted any power to issue interim injunctions, a power vesting in a safeguard, had no authority to issue an order of this nature.

9. It is thus quite clear that the Commission clearly exceeded its jurisdiction by taking upon itself adjudicatory role of deciding the title of the land subject matter of the complaint made by respondent No. 1, constituting a Demarcation Committee and directing MCD to handover possession of the said land to respondent No. 1. No such power, in my view, could have been exercised by the Commission which even if it is presumed that the complaint made by respondent No. 1 comes within the purview of sub-clause (b) of clause (5) of Article 338 could only have forwarded it to MCD with appropriate recommendations. Neither the Commission could have taken an adjudicatory role which law assigns only to a Court of competent jurisdiction nor could it have directed MCD to hand over a disputed piece of land to respondent No.1. Even thereafter, the Commission in its meeting held on 04.04.2011 directed demarcation of the area by a Committee which was to include three persons named by the petitioner and minutes dated 16.05.2011, requiring that the claim of the petitioner should be considered in the light of the findings of the Demarcation Committee constituted by DDA on the

directions of the Commission. The Commission went to the extent of observing in the meeting held on 20.06.2011 if the officers of MCD tried to grab the land of a Scheduled Caste, they would be booked under POA Act, 1989. This clearly was beyond the power of the Commission.

10. In my view, even an inquiry in terms of sub-clause (b) of clause (5) can be initiated by the Commission only where the complaint relates to a specific incident of depriving a person of the rights conferred upon and safeguards provided for the persons, who as a class belong to Scheduled Castes. It is only such deprivation and not deprivation of any civil right of a person belonging to a Scheduled Castes which can be subject matter of such an inquiry. To take a view that the Commission can inquire into any specific complaint made by a person belonging to a Scheduled Castes irrespective of the nature of the complaint, would render the words “with respect to deprivation of the rights and safeguards of the Scheduled Castes” wholly redundant which certainly could not have been the legislative intent. Had the intention of the Legislature been to entrust the Commission with duty to inquire into any complaint made by a person belonging to a Scheduled Castes, the wording of sub-clause (b) would have been altogether different. The Legislature in that case would have said without any qualification, that it shall be the duty of the Commission to inquire into specific complaints made by Scheduled Castes or a person belonging to a Scheduled Castes. There are many rights granted to and safeguards provided only for the persons belonging to Scheduled Castes, the reservation in public appointments and admissions to educational institutions being such instances. To take a few other examples, if there is a welfare scheme of the State or an instrumentality of the State for the benefit of the members of Scheduled Castes alone, any complaint alleging deprivation of benefit of the said scheme can certainly be inquired into by the Commission. Then, there are reservations made by some instrumentalities of the State in making various allotments such as allotments of plots/flats by Delhi Development Authority and allotment of petrol pumps/LPG outlets by oil marketing

companies. Specific complaints with respect to such matters can also be brought to the notice of the Commission and inquired into by it. To take yet another instance if a person belonging to a Scheduled Caste is refused caste certificate by the State, he can make a complaint in this regard to the Commission since such certificates are sought to avail the rights conferred only upon the members of Scheduled Castes. If the State comes out with a scheme to grant financial assistance to the members of the Scheduled Castes, any complaint alleging denial of such benefit can also be brought to the notice of the Commission and enquired into by it. But the disputed issues such as claims of title to a property which, by their nature, involve adjudication by an adjudicatory body cannot be subject matter of an inquiry in terms of sub-clause (b) even if the complainant belongs to a Scheduled Caste. The legal right to a property claimed can be by every citizen, irrespective of whether he belongs to a Scheduled Caste or not and a complaint alleging deprivation of property by State or one of its instrumentalities would certainly not be a matter with respect to deprivation of rights and safeguards of Scheduled Castes alone. Some support in this regard is available from the decision of Supreme Court in **Collector, Bilaspur vs. Ajit P.K. Jogi and Ors.** AIR2012SC44. In the aforesaid case, the sixth respondent before the Apex Court filed a complaint before the Commission alleging that the first respondent did not belong to a Scheduled Tribe and had obtained false caste certificate. The Commission issued a show-cause notice to the first respondent, proposing to verify his caste certificate and also referred the complaint to the Government of Chhatisgarh, which constituted a Committee for verification of the caste certificate. The Commission later called upon the State Government to conduct verification of genuineness of the caste certificate and initiate urgent necessary action for its cancellation and also for taking criminal action. The said order was challenged by the first respondent before Chhatisgarh High Court which allowed the writ petition filed by him. Being aggrieved from the said decision of the High Court, the State of Chhatisgarh filed an appeal before the Apex Court. Upholding the order of High Court to the extent it quashed the order passed by the Commission, the Apex

Court inter alia held as under:-

“12. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to scheduled castes and scheduled tribes by ensuring: (i) anti-discrimination, (ii) affirmative action by way reservation and empowerment, and (iii) redressal of grievances. The duties under Clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to the Sub-clause (b) of Clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of scheduled tribes. This power to enquire into 'deprivation of rights and safeguards of the scheduled castes and scheduled tribes' did not include the power to enquire into and decide the caste/tribe status of any particular individual.”

11. The following is the State of Objects and Reasons, appended to the Constitution (Sixty-eight Amendment) Bill, 1990, whereby Article 338 was amended:

“Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It is felt that a high level five-member Commission under article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer

as at present. It is also felt that it is necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It is also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States.

2. The Bill seeks to achieve the aforesaid objects.”

It would thus be seen that the legislative intent behind even the Amended Article was to address the grievance of the members of Scheduled Castes, through the Commission, only with respect to such rights and safeguards, which the Constitution or any other statute grants only to the members of such castes.

12. The Rules of Procedure of the Commission, to the extent they are relevant, read as under:

“7.4 The following aspect may kept in mind while filing complaints before the Commission.

xxxx xxxx xxxx xxxx
(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules or Reservation.

xxxx xxxx xxxx xxxx
(g) The cases of Administrative nature like transfer/ posting/ grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.

(h) No action will be taken on the matters where there is no

mention of violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation of Rules of Reservation. Hence the matters where there is no mention of violation of above Rules need not be referred to the Commission as complaints."

It would thus be seen that even as per the Rules framed for the Commission, the matters which do not involve violation of reservation policy and allied matters are not expected to be inquired into by the Commission, and the emphasis is on inquiring into his complaints which relate to deprivation of rights and safeguards made available only to the members of the Scheduled Castes."

16. This Court is of the opinion that the Commission under Article 338 of the Constitution of India is not an adjudicatory body which can issue binding directions or injunction orders.

17. This Court is of the view that the reports of the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. Commission's reports are not alternative to the hierarchical judicial system envisaged under the Constitution of India. As this Court is of the view that Commission has no jurisdiction, the doctrine of estoppel offers no assistance to the respondent.

18. Consequently, present writ petition is allowed and the orders dated 01st September, 2011 and 23rd September, 2011 passed by respondent No.1-Commission are set aside.

MANMOHAN, J

MAY 28th, 2014

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