

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

Judgment reserved on: July 14, 2016

Judgment delivered on : September 19, 2016

+ W.P.(C) 3898/2016 & CM 16551/2016, 23884/2016

STATE BANK OF INDIA

..... Petitioner

Through: Mr. Tushar Mehta, ASG with
Mr. Rajiv Kapur, Adv.

versus

THE NATIONAL COMMISSION FOR SCHEDULED CASTES
AND ORS

..... Respondent

Through: Mr. Vivek Goyal, CGSC with
Mr. Prabhakar, Adv. for R-1
Mr. Shanti Prakash, Adv. for R-2 and
R-3

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition by the State Bank of India, is to the recommendation/order/advice dated February 9, 2016 issued by the National Commission for Scheduled Castes, respondent No.1 directing the petitioner Bank to reconsider and re-examine the whole issue of penalty imposed upon the respondent No.2 by the Disciplinary Authority.

2. Some of the relevant facts as noted from the writ petition are, the respondent No.2 was posted at Faridabad Main Branch as Special Assistant on March 1, 2007. While he was working such, a surprise investigation was carried out in the Faridabad Main Branch by an investigating team. The investigating team submitted its report, wherein it inter-alia stated as under:-

“Later on one Shri Raj Kumar Shubh who was earlier posted at this branch and since transferred to CAC Faridabad at the 1st floor of the same building, entered the room a number of times trying apparently to help the staff to tally the cash.....so according to us at 3.30 pm there was a cash excess of Rs.1,30,207/- in the counter, where cash was being received by Smt. Nisha.”

3. On May 16, 2013, a notice was issued to the respondent No.2 calling upon him to submit his explanation against the allegations made against him. The respondent No.2 denied the allegations in his reply dated May 18, 2013. Not satisfied with the reply, on August 31, 2013, a charge sheet was issued to the respondent No.2. On October 9, 2013, a complaint was filed by the wife of respondent No.2 with the Police, Faridabad against senior officers of the petitioner Bank, who were inquiring into the matter. The Faridabad police called the officers of the petitioner Bank for taking their statements and submitted a closure report, holding inter-alia that the matter is an internal departmental issue of the Bank, for which inquiry is going on and

the complainant can always approach the appropriate Court. The respondent No.2 was transferred to Gonda Branch, Shahdra, Delhi. On July 7, 2014, a further complaint was made by the respondent No.3 to the National Commission for Scheduled Castes, New Delhi respondent No.1 against the Chairman of the petitioner Bank for inter-alia dragging her husband in a false case and transferring him to Delhi from Faridabad. It is the stand of the petitioner Bank that the respondent No.2 reported at Gonda branch of the petitioner Bank on August 28, 2014. Thereafter, he has not reported for duty in the petitioner Bank and has been seeking medical leave. He remained unauthorisedly absent from August 29, 2014 except for two days on August 30, 2014 and August 6, 2015. The petitioner Bank sent several notices to the respondent No.2 to report for duty.

4. On November 5, 2014, the petitioner Bank received a notice from the respondent No.1 Commission to which a detailed reply was filed to the complaint filed by the respondent No.3. As the respondent No.2 was seeking medical leave, the petitioner Bank constituted a Medical Board consisting of two senior doctors from Safdarjung Hospital and one medical officer of the petitioner Bank. The Medical Board submitted its report, holding that the respondent No.2 is medically fit. On September 8, 2015, the

wife of the respondent No.2 i.e respondent No.3 once again requested the respondent No.1 Commission to take action against the officials for giving wrong statement. In the meantime, in the disciplinary proceedings initiated against the respondent No.2, a penalty of “*bringing down to lower stage in the scale of pay upto one stage for one year*” was imposed on October 5, 2015. Being aggrieved by the order dated October 5, 2015 the respondent No.2 filed a departmental appeal, which was rejected by the Appellate Authority on December 5, 2015.

5. On February 9, 2016, the respondent No.1 inter-alia directed the Bank to re-consider and re-examine the whole issue in the light of its finding and documents submitted by the respondent No.3, the wife of the respondent No.2 and her rejoinder dated January 4, 2016, so that the justice is provided. On April 8, 2016, the respondent No.2 was informed that the appropriate Authority is reconsidering and reexamining the whole issue and vide letter dated April 11, 2016, the Bank informed the Commission that the penalty imposed on the respondent No.2 is under consideration. On consideration of the entire matter, a decision was taken to challenge the recommendation/order/advice issued by the respondent No.1 Commission.

6. It is the submission of Mr. Tushar Mehta, learned ASG appearing for

the petitioner that the respondent No.1 Commission has acted beyond the jurisdiction conferred under Article 338 of the Constitution of India. He would draw my attention to the complaints made by the wife, (respondent no.3) of the respondent No.2 to contend that there are no allegations that her husband has been a victim of discrimination and harassment, being an employee belonging to scheduled caste in order to invoke the jurisdiction of the Commission. He would state, in the absence of such allegations, the Commission would not get jurisdiction to make/give observation/recommendation, which are effectively directions. He would also state, that it is a case where for misconduct, the respondent No.2 was proceeded departmentally under the Conduct Rules and the charges against the respondent No.2 having been proved, culminated in a penalty order against which, the respondent No.2 has filed an appeal, which was also rejected, could not have been a subject-matter of proceedings before the Commission. He would heavily rely on the fact that after August 29, 2014, in spite of being declared medically fit by the Medical Board, he has not joined the duties. The complaint is nothing but an abuse of process of law. He would also rely upon rules of procedure of National Commission of Scheduled Castes, which were notified on March 25, 2009 and published in

the Gazette of India dated June 15, 2009 to contend, in terms of Rule 7.4 of the Rules, which relates to inquiry into the specific complaints, it is clear that a complaint should clearly disclose the violation of reservation policy or instructions issued by the DoPT/Government of India Orders, State Government Orders, PSUs and Autonomous Bodies, or any other violation of Rules of Reservation. He also states, the said Rules stipulates no action shall be taken up by the commission on matters, which are subjudice/cases pending in Courts or cases in which a Court has already given its final verdict, the case of administrative nature like transfer/posting/grading of ACRs unless there is caste based harassment of the applicant. He has drawn my attention to the complaints as submitted by the respondent No.3 to contend, there are no allegations made in the complaint to the Commission relating to the violation of any reservation policy. He would rely upon the following judgments, in support of his contention.

(i) 2014 SCC OnLine Del 3324 Union of India vs. National Commission for Scheduled Castes;

(ii) ILR 2008 Kar 3305 Karnataka Antibiotics and Another v. National Commission SC and ST;

(iii) ILR (2007) II Delhi 593 Professor Ramesh Chandra v. University of

Delhi and Anr.

(iv) 1996 (6) SCC 606 All India Indian Overseas Bank SC and ST Employees' Welfare Association and Ors v. Union of India (UOI) and Ors.

7. On the other hand, Mr. Shanti Prakash, learned counsel appearing for the respondents 2 and 3 would submit that the respondents 2 and 3 belong to scheduled caste community and the respondent No.3 being the wife of respondent No.2, filed a complaint on July 7, 2014 against the Chairman of the petitioner Bank and Chief General Manager for atrocities on the Dalit employee before the Commission. According to him, the Commission registered a case and after investigating/inquiring into the matter, arrived at a conclusion, which are noted as Observation and Recommendation on February 9, 2016. He states, the petitioner Bank did not consider and re-examine the whole issue as per the observation and recommendation of the Commission and on May 4, 2016, has filed this writ petition before this Court challenging the observation/recommendation of the Commission. According to him, the ground for seeking ex-parte order was mala fide as Bank authorities were summoned by the police authorities at Faridabad on May 4, 2016 for the atrocities under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on a complaint filed by the wife

of respondent No.2 i.e the respondent No.3, herein. He states, the ex-parte order passed by this Court is being misused by the petitioner Bank.

8. On merit, it is his submission that the Commission has the power under sub-clause 5 (a) and (b) of Article 338 of the Constitution to inquire/investigate all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards and also to inquire into the specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes. According to him, it is under these provisions, the Commission has inquired/investigated into the complaint filed by the respondent No.3. He would also state, that the petitioner Bank had participated in the proceedings and never raised the issue before the Commission that the Commission has no power to entertain the complaint of respondent No.3, the petitioner Bank is now estopped from challenging the recommendation made by the Commission. He would state that the Commission has powers of a Civil Court while investigating or inquiring into the complaints. He would also state, that the judgments relied upon by the learned ASG for the petitioner have no applicability in the present case. He states that in the case of WP(C)

no.5468/2011 titled as ***Municipal Corporation of Delhi vs. Lal Chand and Ors.***, this Court has clearly decided on 17th September, 2013 in para 8 that, “it is an undisputed legal proposition that the commission, while acting under Article 338 (5) of the Constitution, can only make recommendations.”

He would state the case of ***All India Indian Overseas Bank SC and ST Employees Welfare Association and Ors. vs. Union of India & Ors. reported in (1996) (6) Supreme Court cases 606*** which pertains to the interim injunction dated 4th March, 1993 and does not deal with the case of observation and recommendation. He further state that the Supreme Court was of the considered view that under Article 338 (5) & (8) of the Constitution of India the National Commission for Scheduled Castes has the power to investigate and/or enquire and make observation and recommendation. He states, the judgment in ***State Bank of Patiala & Ors. vs. Vinesh Kumar Bhasain reported in (2010) 4 SCC 368*** deal with the powers of the Chief Commissioner/ Commissioners of the Disabilities Commission. He states that there was an interim order dated January 12, 2007 issued by the Chief Commissioner for persons with disabilities whereas the present case is totally different as it is for observations and recommendations. He further states that it is also to be noted that the powers

of the National Commission for Scheduled Castes are broader than the powers of the Chief Commissioner/Commissioners of The Persons with Disabilities Commissions. Section 63 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995) says that:

Authorities and officers to have certain powers of civil court—

(i) The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(ii) Summoning and enforcing the attendance of witnesses;

(a) Requiring the discovery and production of any document;

(b) Requisitioning any public record or copy thereof from any court or office;

(c) Receiving evidence on affidavits; and

(d) Issue commissions for the examination of witnesses or documents.

Whereas, Article 338(8) of the Constitution of India says:

“The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5) have all the powers of a Civil Court trying a suit and in particular in respect of the following matter, namely:- ”

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9. He further states that here is a word ‘and’ in the lines *‘have all the powers of a civil court trying a suit and in particular respect of the following matter.’* Whereas there is no word ‘and’ in section 63 of The Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995. This makes clear that the powers of the National Commission for Scheduled Castes are much broader than the powers of the Chief Commissioner/Commissioners of the Disability Commissions. He has also stated that in ***Union of India vs. National Commission for Schedule Castes reported in (2014) SCC online Del 3324 WP(C) no.2390/2012*** deal with the order dated 1st September, 2011 whereas in the present case there are observation and recommendation of the Commission for Scheduled Castes. The Supreme Court has held in para 17 of the (2014) (4) SCC online which reads as under:

“17) This Court is of the view that the reports of the Commission are recommendatory in nature.”

10. He would also refer to the powers of the Chairman of the Commission. It is his contention that the respondent No.2 got the appointment in Bank on a reserved seat being a reserved category candidate under Article 16(4) read with Article 335 of the Constitution of India.

Because of a social origin belonging to scheduled caste, he was deprived, harassed, discriminated and victimized. The social bias in the Society also carries in the departments. He states, that the respondent No.2 has been deprived, harassed, discriminated and victimized as mentioned in the complaint of the respondent No.3. The respondent No.3 being the wife of respondent No.2 also felt harassed by the action of the petitioner bank. Hence, the complaint made before the Commission is justified. He states, that the Commission was within its right to take cognizance. He would rely upon Rule 7. 2 (a)(vii) of the Notification dated March 25, 2009, as gazetted on June 15, 2009 in support of his contention, inasmuch as where the property, service/employment of Scheduled Castes and other related matters are under immediate threat and prompt attention of the Commission is required, the matter shall be taken cognizance by issue of telex/fax to the concerned authority for making it known to them that the Commission is seized of the issue and that authority will be prohibited to take any action till the completion of the enquiry in the matter by the Commission. He also states, that the Bank being regulated by the State Bank of India Act, its actions are guided by public interest and directions as the Central Government, in consultation with the Governor of the Reserve Bank may

issue. He also states, in terms of Article 338(6) of the Constitution of India, the Union of India is supposed to submit action taken report on the recommendation of the Commission before the Parliament. In the end, he states, that the petitioner Bank has not re-examined the issue nor submitted any action taken report on such recommendation of the Commission. He also submits that the petitioner, having abused the process of law, the ex-parte order passed, needs to be vacated.

11. Having heard the learned counsel for the parties and considered the submissions filed by respondents 2 and 3, before, I deal with the submissions made by the learned counsel, I shall refer to the position of law as laid down by the Supreme Court and this Court. In ***All India Indian Overseas Bank SC and ST Employees'*** (*supra*), the Supreme Court examined Clause (8) of Article 338 of the Constitution of India and observed that while investigating a matter under sub-clause (a) or inquiring into a complaint under sub-clause (b) of Clause (5) of the said Article, the Commission has been given limited procedural powers of a Civil Court. The powers are limited by the nature and the Commission does not have any power like that of a Civil Court to issue temporary and permanent injunction.

12. In the case reported as ***ILR (2003) 2 Del 131 Dr.Deepshikha Jiwan***

Pandit v. NCERT, this Court had an occasion to consider clauses 5 and 8 of Article 338 of the Constitution of India and held that it appears that though, the Commission has power to enquire into specific complaints and make its report but the same is recommendatory in nature. However, the Division Bench left the matter at that stage as the counsel for the petitioner in the said case did not seriously contend that the “advice” of the Commission was mandatory and binding. It was however observed that the “advice” given by the Commission should not be ignored by the authorities.

13. Similarly, in the case reported as *ILR (2005) 1 Del. 508 of Gulmarg Restaurant v. Delhi Development Authority*, it was held that the observations of the Commission can only be recommendatory in nature. In the said case, the direction given by the Commission seek to transfer the property in favour of the appellant was held to be hardly acceptable. It would not be proper for any authority to determine the price. The Court did not deal with the issue further, as it held that the directions of the Commission were held to be recommendatory in nature.

14. That apart, this Court in a more recent judgment in the case of *Union of India & another vs. National Commission for Scheduled Castes and another (supra)*, has held 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. It also held that the Commission's reports are not alternative to the hierarchical judicial system envisaged under the Constitution of India. It is not an adjudicatory body, which can issue binding directions or injunction orders. In the case of ***Karnataka Antibiotics and another (supra)***, the writ petition was filed for quashing the directions dated September 11, 2006 of the second respondent, who was a Member of the respondent No.1 National Commission for SC and ST directing the third respondent, which is a Company registered under the Companies Act, jointly owned by Government of India and Government of Karnataka to reinstate the fourth respondent into service and also extend him other benefits. The facts are, on January 29, 2004 the third respondent company issued articles of charge to the fourth respondent stating that he has indulged in corrupt practices, neglected to discharge his duties, acted in a manner prejudicial to the interest of the company, indiscipline, made false statement before superiors, favouritism for pecuniary benefit etc. The fourth respondent submitted his reply on February 10, 2004 denying the charges levelled against him. The Disciplinary Authority being not satisfied with the explanation of fourth

respondent initiated enquiry proceedings. On June 13, 2005 the Enquiry Officer submitted a report stating that the charges levelled against the fourth respondent as proved. After providing an opportunity to the fourth respondent the Disciplinary Authority passed an order of penalty on December 15, 2005 removing the fourth respondent from service. Aggrieved by this order of penalty the fourth respondent filed an appeal and the same came to be rejected vide order dated January 27, 2006 and it had become final. The fourth respondent instead of questioning the order of penalty and the order of Appellate Authority before the appropriate forum, gave a representation to the first respondent-Commission stating that injustice has been caused to him. The second respondent, as Member of first respondent Commission visited the third respondent company at Bangalore and held a meeting with the officers of the third respondent company on September 11, 2006. In the said meeting, among other things the second respondent discussed the issue relating to fourth respondent and directed the third respondent to conduct a fresh enquiry and treat the fourth respondent as deemed to have been continued in service and to pay the salary and allowance. Aggrieved by the said direction, the writ petition was filed. The Karnataka High Court had framed two questions for its consideration:-

(i) *Whether the petitioners are entitled to maintain a writ petition under Article 226 of the Constitution of India?*

(ii) *Whether the second respondent is having power to issue the impugned directions dated September 11, 2006 to the third respondent?*

15. On issue No.2, which is relevant to the case in hand, the Karnataka High Court referring to the judgment of the Supreme Court in the case of ***All India Indian Overseas Bank SC and ST Employees'***(*supra*), has in para 13 held as under:-

“13. In the instant case the third respondent - company issued articles of charges on 29.1.2004 to the fourth respondent stating that he indulged in corrupt practices, neglected to discharge his duties, acted in a manner prejudicial to the interest of the company, indiscipline, made false statement before the superiors, favoritism for pecuniary benefit etc. Since the reply of the fourth respondent was not satisfactory, the disciplinary authority initiated inquiry proceedings. On 13.6.2005 the inquiry officer submitted his report stating that the charges levelled against the fourth respondent as proved. The disciplinary authority after providing an opportunity to the fourth respondent passed an order of penalty on 15.12.2005 removing the fourth respondent from service. Even the appeal filed by the fourth respondent came to be rejected vide order dated 27.1.2006 and the same had become final. When the matter stood at that stage, the fourth respondent gave a complaint to the first respondent -Commission

stating that injustice has been caused to him. The second respondent being the member of the first respondent - Commission visited the third respondent - company at Bangalore and held a meeting with the officers of the company. In the said meeting the second respondent directed the third respondent to conduct a fresh inquiry, to treat fourth respondent as deemed to have been continued in service and to pay him the salary and other allowances. By this impugned direction the second respondent virtually set asides the inquiry report dated 13.6.2005, order of penalty dated 15.12.2005 and the order of appellate authority dated 27.1.2006. Therefore the impugned direction issued by the second respondent is without power and authority. Under Article 338 of the Constitution the second respondent is not empowered to set aside a concluded inquiry and the order of penalty and the order of appellate authority. Therefore the impugned direction issued by the second respondent is liable to be quashed.”

16. This Court also in the case of **Professor Ramesh Chandra (supra)**, dealt with an issue whether the National Commission for Scheduled Castes constituted under Article 338 of the Constitution of India, is vested with powers to pass binding and executable orders like a Civil Court. This Court held that the Commission does not have any power like the Civil Court to issue binding and executable decrees.

17. In the case in hand, the Commission in its order/recommendation dated February 09, 2006 has stated as under:-

“Observation and recommendation

On the basis of discussions held on 8.9.2015 and 20.10.2015, records submitted by the Bank and petitioner the Commission observed that there appears to be contradiction in the reply given by the Bank and the information received by the petitioner under RTI Act, 2005 from CPIO, SBI vide letter No. FBD/2015-16/254 dated 21.9.2015 on the issue of excess of cash. It is also observed that in the final order passed by Disciplinary Authority (Regional Manager), it is mentioned that “Prima-facie this office order seems not genuine as it issued on Sunday”. The Commission observes that in such cases the conclusion drawn by disciplinary authority cannot be vague and the disciplinary authority must be sure whether the orders issued is as per records or not.

Hence, the Bank is advised to re-consider and re-examine the whole issue in the light of the above and the documents submitted by the petitioner and her rejoinder dated 4.1.2016 so that justice is provide.”

18. No doubt, the aforesaid is a recommendation/observation of the Commission to the respondents. Being a recommendation/observation, it is not a mandatory direction. But the question would be whether, the complaint, which resulted in the observation / recommendation could have been entertained at the first instance, in the absence of any allegations for violation of orders related to reservation policy. The answer must be “No”.

This I say so, on a perusal of the representations/complaints given by the respondent No.3. There is not even a single averment that the disciplinary proceeding initiated against the respondent No.2 is in violation of any of the instructions issued with regard to the reserved category candidates/instructions/OMs issued by the Government of India/the Bank. It is only, when such allegations are made, does the Commission get the jurisdiction to initiate the process as contemplated under Article 338 of the Constitution of India. The Notification dated March 25, 2009, as gazetted on June 15, 2009 issued by the Central Government, which are statutory in nature clearly specifies so. I reproduce Rule 7.4.1 in this regard as under:

“7.4.1 The following aspect may be kept in mind while filing complaints before the Commission-

(a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.

(b) The complainants should disclose his full identity and give his full address and should sign the representation.

(c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.

(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 of Reservation.

(e) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).

(f) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.

(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 OM, 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.”

19. Suffice to state, the Commission could not have entertained the representations/complaints. That apart, it is an admitted position that the respondent No.2 has not challenged the penalty order imposed on him by the Disciplinary Authority/Appellate Authority. In the absence of any challenge to the said orders in any judicial forum, the same have attained finality and could not have been commented upon as has been done in the impugned order dated February 9, 2016, more particularly when the petitioner has

exercised his right of appeal to the next higher authority, who has also dismissed the appeal. The plea that the petitioner Bank is estopped from raising the issue of maintainability of complaint, as no such plea was raised before the commission is concerned, in view of the notification dated March 25, 2009, which is statutory in nature when the commission lacked inherent jurisdiction to entertain the complaint, the plea of estoppel is unsustainable. The first and foremost issue needs to be considered by the Commission whether the complaint is, in terms of Article 338, for which the Commission is constituted is at all entertainable. If not, the same should be rejected at the threshold. Even otherwise, the representations/complaints could not have been entertained as the Commission is not a parallel forum for adjudicating any dispute between two litigants. On this ground itself, the recommendation/observation given on February 9, 2016 need to be set aside and I do so accordingly. The writ petition is allowed. No costs.

CM NOs.16551/2016 & 23884/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 19, 2016/ak