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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1428 OF 2014

Securities and Exchange Board of India  
and anr.

.. Petitioners

Versus

Union of India & Ors.

.. Respondents

Mr. Darius Khambata, Senior Advocate i/by The Law Point for petitioners.  
Dr. G. R. Sharma a/w Y. S. Bhate and D. P. Singh for respondent nos.1 to  
3.

Mr. R. G. Panchal for respondent no.4.

CORAM: NARESH H. PATIL &  
Z. A. HAQ, JJ.

AUGUST 21, 2017.

P.C.

1. The learned Senior Counsel Shri Khambata appearing for the petitioners submits that in the facts and in view of Article 338 of the Constitution of India and the Rules of Procedure of the National Commission for Scheduled Castes, the Commission is not empowered to issue summons. The learned counsel places reliance on the reported judgment of the Supreme Court in the case of All India Indian

Overseas Bank SC and ST Employees' Welfare Association and ors. vs. Union of India **[(1996) 6 SCC 606]** in support of his submissions.

2. The learned counsel appearing for the respondent – Union places reliance on the affidavit-in-reply filed by P. Ramasamy, Assistant Director, National Commission for Scheduled Castes, State Office, Shastri Bhavan, Chennai. Based on the said affidavit, the learned counsel submitted that the Commission has an authority to issue letters as recommendation and not as directions.

3. We have perused the record and considered the submissions advanced. The provisions of Article 338 refers to establishment of Commission for Scheduled Castes. Clause 8 of Article 338 reads as under :-

**“338. National Commission for Scheduled Castes.- (1) .....**

(2) .....

(3) .....

(4) .....

(5) .....

(6) .....

(7) .....

(8) 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 matters, namely;

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public or copy thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

In the case of All India Indian Overseas Bank SC and ST Employees' Welfare Association and ors. vs. Union of India (Supra), the Apex Court, in paras 10 and 11, observed 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) as 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 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.

11. 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. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs.”

4. The deponent in the affidavit-in-reply, in paras 15, 16 and 17 stated as under :-

“15. With reference to Para 32 of the Petition, I say that as a

routine procedure, when the Petitioner (SEBI) did not implement the suggestions of the Commission of the State Office, Chennai, it would report the same to Respondent No.2 as is done in any other case.

16. With reference to Para 32 (B) and (C) of the Petition, I say that the suggestion of the Respondent No. 3 is based on the considered opinion of the Team of NCSC State office, Chennai who visited the SEBI, Chennai on 30.10.2013.

17. With reference to Para 32(D) to (G) of the Petition, I say that it is to bring to kind consideration of the Hon'ble High Court that the NCSC, State Office, Chennai has listed out the suggestions and recommendations and it is not an order at all.”

5. In view of the submissions advanced on behalf of the respondent – Union and the affidavit-in-reply filed by the Union, the petition stands disposed of.

**(Z. A. HAQ,J.)**

**(NARESH H. PATIL,J.)**