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

+ W.P.(C) 3471/2013 and CM No. 6573/2013

STATE BANK OF INDIA AND ANR.

..... Petitioners

Through: Mr Mukul Talwar, Senior Advocate
with Mr Rajiv Kapur, Advocate for
SBI.

versus

THE NATIONAL COMMISSION FOR SCHEDULED
CASTES AND ANR

..... Respondents

Through: Mr R.V. Sinha and Mr A.S. Singh,
Advocates for R-1.
Respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **01.08.2017**

1. The principal grievance of the petitioner in the present petition is that respondent no.1, the National Commission for Schedule Castes (hereafter 'the Commission') has been repeatedly issuing summons to the Chairman of the petitioner no.1 Bank (that is, petitioner no.2) to appear in person before the Commission in connection with a complaint made by respondent no.2. The complaint made by respondent is regarding certain alleged atrocities which are in the nature of not granting promotions, pay fixation release of annual increments and other conditions of employment; respondent no.2 alleges that he has been the subject of discrimination.

2. The said complaint was being examined by the Commission and in

this regard the Commission had issued summons to respondent no.2. A bare perusal of the summons indicate that the summons have been issued without any application of mind as to whether the presence of the senior most officers of respondent no.1(that is, the Chairman) is necessary for examining the complaint. The Commission has asked to bring the relevant records, which clearly would be not available with the Chairman but with the concerned officers. Concededly, no personal allegations have been levelled against the Chairman and the grievance of the petitioner relates to the service conditions as indicated hereinbefore. The matter in investigation is already over and the hearing pursuant to the summons impugned in the present petition has been held. However, the petitioner has brought in focus an unhealthy practice adopted by the Commission to straightaway summon the senior most officers of petitioner no.1 bank.

3. Rule 7.2(a)(v) and 7.2(a)(vi) of the Rules of Procedure for National Commission for Scheduled Castes are relevant and are set out below:-

"7.2.(a) v In accordance with clause 8 of Article 338 of the Constitution, while investigating in a matter referred to in sub-clause (a) or in inquiring into any complaint referred to in sub-clause (b) of clause (5) of Article 338, the Commission shall have all the powers of 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 document;

- (c) receiving evidence on affidavits;
- (d) requisitioning any public record 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.

7.2.(a) vi The Commission for the purpose of taking evidence in the investigation or inquiry requires the presence of any person and when considered necessary may issue summons to him/her with the approval of the Chairman. The summons for enforcing attendance of any person from any part of India and examining him/her during the course of investigation and inquiry by the Commission shall provide at least 15 days' notice to the person directed to be present before the Commission from the date of receipt of the summons. In serious cases of atrocities, three days notice will be given to the person directed to be present before the Commission from the date of receipt of the summons by him/her."

4. It is apparent from the above that although, the Commission has the powers to summon and enforce the attendance of any person from any part of India and examining him on oath, the said powers are for the specific purpose of enquiring into a complaint or for taking evidence. Thus, the Commission needs to be circumspect while exercising those powers and ensure that the same are used only for the purpose of performing their functions.

5. Undisputedly, senior officers of the petitioner bank or for that matter any other organisation can be summoned by the Commission, provided that

a need is felt for examining those officers for the purpose of enquiry. Such summons to senior most officers or heads of organisations cannot be issued as matter of routine without considering as to whether their presence is necessary for the inquiry/investigation.

6. The Supreme Court in several cases has deprecated the practice of Courts and other Tribunals to issue summons to senior officers without examining the necessity of requiring their presence. In the case of ***State of Uttar Pradesh and Ors. v. Jasvir Singh and Ors.: (2011) 4 SCC 288***, the Supreme Court had, in the context of summoning of officers in writ petitions, observed as under:-

"16. The normal procedure in writ petitions is to hear the parties through their counsel who are instructed in the matter, and decide them by examining the pleadings/affidavit/evidence/documents/material. Where the Court seeks any information about the compliance with any of its directions, it is furnished by affidavits or reports supported by relevant documents. Requiring the presence of the senior officers of the Government in court should be as a last resort, in rare and exceptional cases, where such presence is absolutely necessary, as for example, where it is necessary to seek assistance in explaining a complex policy or technical issues, which the counsel is not able to explain properly. The Court may also require personal attendance of the officers, where it finds that any officer is deliberately or with ulterior motives withholding any specific information required by the Court which he is legally bound to provide or has misrepresented or suppressed the correct position."

7. Since in the present case, the hearing pursuant to the impugned

summons had already been held, no further directions are required to be passed in this petition. However, it is expected that the Commission would bear in mind the observations made by this Court as well as by the Supreme Court before issuing further summons to petitioner no.2.

8. The petition and the pending applications are, accordingly, disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 01, 2017
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