

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

+ **W.P.(C) No.11601/2015**

% **11th January, 2017**

UNION OF INDIA & ANR. Petitioners

Through: Mr. R.V. Sinha, Advocate with
Mr. A.S. Singh, Advocate.

versus

SH. RAM KISHORE MEENA & ANR. Respondents

Through: Mr. Harsh Singhal, Advocate
for respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner no.1/Union of India impugns the order dated 30.4.2015 passed by the National Commission for Scheduled Tribes. The only issue to be decided in this writ petition is whether there are judicial powers in the National Commission for Scheduled Tribes to pass an order such as the impugned order dated 30.4.2015. The operative portion of the impugned order dated 30.4.2015 directs that promotion be granted to the post of LDC from the year 2006 to the respondent no.1 herein Sh. Ram Kishore Meena.

2. As many as 20 years back Supreme Court in the judgment in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and Others Vs. Union of India and Others*, (1996) 6 SCC 606 held that Schedule Castes Commission has no power to pass judgments like a Court of law and that it cannot order directions in the nature of injunctions to give reliefs of promotion, pay scale etc etc. The relevant observations of the Supreme Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association (supra)* are contained in paras 8 to 11, and which paras read as under:-

“8. In *M.V. Rajwade v. Dr. S.M. Hassan* the question whether the Commission of Inquiry, by virtue of the above provisions, could be treated to be a civil court for the purpose of the Contempt of Courts Act, 1971 came to be considered. The High Court observed as under:

“It would appear from Section 4 that it only clothes the Commission with certain powers of a Civil Court but does not confer on it the status of a Court. It is only under sub-section (4) of Section 5 that the Commission is deemed to be a Civil Court and sub-section (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created.”

9. The judgment in the case of *M.V. Rajwade* was referred to with approval by this Court in *Baliram Waman Hiray (Dr) v. Justice B. Lentin*. The question in that case was whether the Commission of Inquiry constituted under Section 3(1) of the Commissions of Inquiry Act, 1952 was a court for the purpose of Section 195(1)(b) Criminal Procedure Code, 1973. It was contended before the Court that sub-section (4) of Section 5 of the Commission of Inquiry Act created a legal fiction by which the Commission of Inquiry was deemed to be a Civil Court for all purposes. It was held that the words "for all purposes" are not there in the first part of Sub-section (4) and the Court cannot, in the guise of interpreting the provision, supply any *casus omissus*. The Court went on to say that the purpose of creating the fiction was reflected in the second part of Sub-clause 4, viz., for the purpose of

proceedings under Section 482 of the Old Code and Section 346 of the new Code of Criminal Procedure.

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.

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."

3. This judgment of the Supreme Court in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Association*** (*supra*) has been recently followed by the Supreme Court in the case of ***State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*** holding that the Chief Commissioner acting under the Persons with Disabilities (Equal Opportunities, Protecting of Rights and Full Participation) Act, 1995 cannot pass judgments and orders in the nature of injunctions. The relevant observations of the Supreme Court in the case of ***Vinesh Kumar Bhasin*** (*supra*) are contained in paras 12 to 19, and which paras read as under:-

“12. Under the Rules, an officer of the Bank, shall retire on completion of thirty years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the exit policy scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.

13. Prima facie, neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service regulations, which was clearly mentioned in the letter of retirement dated 17-11-2006; and that when an employee was retired in accordance with the Regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

“58. (a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.”

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. The Commissioners

appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that 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 while trying a suit, in regard to the following matters:

“63.(a) summoning and enforcing the attendance for witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or officer;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.”

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Assn v. Union of India , this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:

“5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution

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10. 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.”

19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction.” (underlining added)

4. It is therefore clear that respondent no.2 in the present case being the Nation Commission for Scheduled Tribes had no power to pass the impugned order dated 6.7.2015 which issued directions for promotion of the respondent no.1.

5. In view of the above, this writ petition is allowed and disposed of setting aside the impugned order dated 30.4.2015 of the respondent no.2. Parties are left to bear their own costs.

JANUARY 11, 2017
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VALMIKI J. MEHTA, J