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

Judgement Reserved on: 2nd August, 2018
Judgement pronounced on: 10th September, 2018

+ **LPA 657/2016**

ERA RANI SHUBH & ANR

....Appellants

Through Mr. Shanti Prakash, Advocates

versus

STATE BANK OF INDIA & ANR

...Respondents

Through Mr. Dayan Krishnan, Sr. Adv.
with Mr. Sanjay Kapur, Mr. Rajiv
Kapur and Ms. Megha Karnwal
for R-1/SBI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. Challenge in this appeal filed under Clause X of the Letters Patent Act is to the order dated 19.09.2016 passed by the learned Single Judge whereby the writ petition filed by the respondent No.1/State Bank of India against the order dated 09.02.2016 issued by The National Commission for Scheduled Caste (hereinafter referred as 'NCSC') to reconsider and re-examine the issue of penalty imposed upon the appellant No. 2/ Sh. R.K. Shubh, was allowed.
2. The brief facts leading to the filing of the present appeal are that one R.K. Shubh/ appellant no. 2 was posted as a Special

Assistant at State Bank of India, Faridabad Main Branch on 01.03.2007, which dealt with selling of non-judicial stamps and issuance of Government receipts in the cash department. The respondent was transferred to CAC Faridabad branch in the same building on 23.03.2013. On account of various complaints received by the respondent bank with regard to irregular practices in the cash department in the Faridabad Main Branch, the investigation team conducted a surprise cash verification of the said branch at 03:30pm on 25.03.2013 and submitted its report thereby holding that:

“Later on one Shri Raj Kumar Shubh who was earlier 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 3:30PM there was a cash excess of Rs. 1,30,207/- in the counter, where cash was being received by Smt. Nisha.”

3. Thereafter, a notice dated 16.05.2013 was served upon the appellant No. 2, but being dissatisfied by the explanation given by him, charge sheet dated 31.08.2013 was issued and disciplinary proceedings were initiated against him. Aggrieved by the action sought to be initiated against the appellant No. 2/husband, Appellant No. 1/ wife of R.K. Shubh lodged a complaint with the Faridabad Police against the officers of the bank. The police after taking the statement of the officers of the bank prepared the

closure report by holding that the issue concerned was an internal departmental matter of the bank. On 23.06.2014, the appellant no. 2 was transferred from CAC Branch, Faridabad to Gonda Branch, Shahadra but the appellant No. 2 after joining his duties on 28.08.2014 reported for duty only on few days and remained on medical leave for the remaining period. The appellant No. 1 then went on to file another complaint before NCSC against the chairman of the appellant Bank by taking a plea of dragging her husband in a false case and also being harassed by transfer from Faridabad to Delhi. On 05.11.2014, the respondent bank received a notice from NCSC to which a detailed reply was filed by the said bank. On 02.10.2015, a penalty was imposed against the appellant No. 2 under the disciplinary proceeding, that is, *“bringing down to lower stage in the scale of pay upto one stage for one year.”* The appellant No. 2 filed a departmental appeal against the penalty imposed but the same was rejected by the Appellant Authority on 05.12.2015. On 09.02.2016, the NCSC passed an order directing the appellant bank to re-examine the issue and reconsider the penalty so imposed. A writ petition was preferred by the appellant bank on 04.05.2016 challenging the observations and recommendations given by the NCSC. On 19.09.2016, the writ petition filed by the appellant bank was allowed by the learned Single Judge. Hence, the present appeal has been filed to set aside the said order.

4. Mr. Shanti Prakash, learned counsel for the appellants strenuously contended that the Single Judge committed error in

allowing the writ petition filed by the appellant bank vide its order dated 19.09.2016 and that such findings were based more on hypothetical assumption of vital and necessary facts, based on mere surmises; that the writ petition was allowed without providing opportunity to the appellants to file reply to the writ petition; that the NCSC has exercised its power under Article 338 of the constitution of India under which it can entertain the complaint dated 07.07.2014 filed by the appellant No. 2 to evaluate the deprivation and safeguard the rights of Scheduled castes; that the Regional Manager, State Bank of India is not a competent authority to file the writ petition as the complaint was filed against the Chairman and Chief General Manager of State Bank of India. He further relied upon Rule 7.2(a)(vii) of the Gazette notification dated 25.03.2009 in as much as where the property, service/employment of Scheduled Castes and other related matters are under immediate threat, prompt attention of the Commission is required and that the concerned authority will be prohibited to take any action till the completion of the enquiry in the matter by the commission. Hence, the order dated 14.09.2016 is liable to be set aside on above mentioned grounds. In order to substantiate his case, the counsel for the appellants have placed reliance on the following cases ***All India Indian Overseas Bank SC and ST Employees Welfare Association and others v. Union of India & Ors.*** reported in (1996) 6 SCC 606, ***A.V. Papayya Sastry & Ors. v. Govt. Of A.P. & Ors.*** reported in

(2007) 4 SCC 221, S.P. Chengalvaraya Naidu(Dead) by LRs v. Jagannath (Dead) by LRs & Ors. reported in ***(1994) 1 SCC 1.***

5. Mr. Dayan Krishnan, learned senior counsel for the respondent No. 1 contends that the order dated 09.02.2016 passed by the Commission is contrary to the facts on record and the Commission has acted beyond its jurisdiction enshrined under Article 338 of the Constitution of India; that the Commission has jurisdiction to only make an enquiry and not investigate into the specific complaints with respect to the departmental enquiry or the order of penalty passed by the Disciplinary Authority; that the Commission has no jurisdiction over the services matter of any institution or Bank; that the limited jurisdiction of the Commission under Article 338 of the Constitution of India is to make recommendations but cannot issue any directions to any authority; that the appellants have failed to establish as to how they have been a victim of discrimination and harassment being a Scheduled Caste employee in order to invoke the jurisdiction of the Commission, since the question of caste-based harassment has not been dealt with by the commission in its order, thus the recommendation made by the Commission is beyond its jurisdiction and has been rightly set aside by the learned Single Judge vide his order dated 19.09.2016. In support of the contentions raised, the learned counsel for the respondents placed reliance on ***Union of India v. National Commission for Schedule Castes*** reported in ***2014 SCC Online***

Del 3324, Karnataka Antibiotics & Anr. v. National Commission for SC & ST reported in *ILR 2008 KAR 3305*, *Prof. Ramesh Chandra v. University of Delhi & Anr.* reported in *ILR 2007 II Delhi 593*, *All India Indian Overseas Bank SC and ST Employees v. UOI & Anr.* reported in *(1996) 6 SCC 368*, *Municipal Corporation of Delhi v. Lal Chand & Ors.* vide *Order dated 17.09.2013* in *WP(C) No. 5468/2011*, *Council for Advancement v. National Commission* vide *Order dated 12.01.2015* in *WP(C) No. 3929/2014* and *State Bank of India v. National Commission* vide *order dated 19.09.2016* in *WP(C) No. 6579/2014*.

6. We have heard the learned Counsels for the parties and considered their rival submissions and perused the relevant material on record.
7. The prime question which arises in the instant case is whether the NCSC was acting within its jurisdiction under Article 338 of the constitution to entertain the complaint of the appellants and issuing directions to reconsider and re-examine the penalty imposed on the respondent no. 2 by the respondent bank. In this context, it is relevant to produce Article 338 of the Constitution of India which elucidates the power of the commission.

Article 338 of the Constitution, reads as under:

338.(1) There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) *Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.*

(3) *The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.*

(4) *The Commission shall have the power to regulate its own procedure.*

(5) *It shall be the duty of the*

Commission-

(a) *to investigate and monitor all matters relating the safeguards provided for the Scheduled Castes and Scheduled Tribes under this 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;*

(b) *to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;*

(c) *to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;*

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the 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

(f) to discharge 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 the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(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 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.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

(10) In this Article the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of the Constitution by order specify and also to the Anglo-Indian community."

8. Reading of the above provision it is contemplated, the power under Article 338 (5) and 338 (8) shall be exercised only if the complaint/

representation refers to deprivation of rights and violation of safeguards of Scheduled Castes in terms of the instructions issued by the Central Government, PSU, State Government or Bank. The main guidelines which is to be followed in these matters are the rules issued by the Ministry of Social Justice and Empowerment, gazetted on 15.06.2009. As per Rule 7.4.1 of the gazette notification dated 15.06.2009, the following aspects must be kept in mind while filing a complaint before the commission/ NCSC. Rule 7.4.1:-

"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 OM's, 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 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.

9. In the present case in hand, the complaint was filed by the appellant No. 1 before the NCSC on 07.07.2014 which reads as under:-

*“To,
National Commission for Scheduled Castes
Chairman
5th Floor, Lok Narayan Bhavan,
Khan Market, New Delhi 110003*

Sub: Complaint against Chairman State Bank of India, Mumbai C.G.M. State Bank of India, New Delhi for atrocity on Dalit employees R.K. Shubh.

R/Sir,

My husband Sh. R.K. Shubh is a established Union leader of SBI staff Association for the last 30 years. But in March, 2013 he lost the Election.

But thereafter:-

1. My husband was dragged in a false and fabricated case in which Bank has no proof nor they had not given any prove to support their

changes to my husband R.K. Shubh inspite of his repeated request to give to prove his innocence.

2. My husband R.K. Shubh facing the humiliation at hands of State Bank of India (Vigilance) for the last more than one year.

3. Letter written to Higher authority like Chairman, CGM and others but request made to them (falling on deaf ears) with no answer received on our letter from them, Higher Authority.

4. Sir, we won the false and fabricated case against Vigilance by receiving a report from Faridabad Police with whom we made a request to enquire against the Vigilance Deptt. Charges Faridabad Police given us a clean chit on charges levelled on my husband.

5. It was shocking news for us of my husband transfer to Delhi from Faridabad without giving us any reason. Which was managed by the main culprit Sh. Mahesh Pandey DGM Vigilance New Delhi as he is the man who managed all the wrong story to harm my husband R.K. Shubh.

6. The Higher Management has not taken any action against Sh. Mahesh Pandey who is running extortion Racket in the name of Vigilance Deptt. for which already written and signed complaint was made to Chairman.

7. My husband already makes a request to Regional Manager Region-V Sh. Jha A.G.M. why he is transferring him to Delhi from Faridabad on 24.06.2014 and 30.06.2014 to give the reason of transferring but is also playing in hands of Vigilance DGM because he is junior to him (DGM) have not given any reply so far.

In the end I request your goofsself to look in this matter and take

A senior view of all this incident I am attaching all serious letter written to Chairman SBI Mumbai and

so far no letter/any action taken against the culprits.”

A perusal of the complaint shows that no caste-based allegations have been made by the Appellant No. 1 and nor does the complaint disclose the existence of any “violation of Reservation policy” by the respondent bank as per the abovementioned rules. The grievances made in the said complaint was with regard to the penalty imposed on the appellant No. 2 by the respondent bank and subsequent transfer of the appellant No. 2 from the Main Bank Branch, Faridabad to Gonda Branch, Shahadra. Even otherwise, no evidence was adduced by the appellants to prove that there was a violation of the safeguards provided for the protection of the Scheduled Castes and Scheduled Tribe under the Constitution of India. According to the respondent bank the penalty imposed on the appellant No. 2 is based on the outcome of an enquiry duly conducted by the petitioner Bank following the principles of natural justice. Despite the above facts, the Commission has directed the petitioner Bank to reconsider the penalty so imposed on the appellant No. 2.

10. In the case of ***The National Seed Corporation Ltd. v The National Commission for St & SC & Anr.*** reported in ***2013 SCC OnLine Del 222934***, it was held that :-

34. The Constitutional scheme of Article 338 clearly indicates that the Special Officer was vested with the power primarily to examine rights and safeguards of Scheduled Castes and Scheduled Tribes and to submit a report to the President with respect to the

effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes.

35. Though the Commission post the 65th Amendment has been vested with the power to examine instances and individual complaints but that investigation and enquiry is for the purposes of furtherance of the objective of the setting up of the Commission, i.e., for the purposes of investigation and monitoring all matters relating to the safeguards and for submission of a report to the President.

36. The powers vested with the Commission of enquiry and submission of report cannot be extended to adjudication of disputes between an individual and a corporation or a statutory authority. The powers conferred do not contemplate that the Commission can examine the matter like a Civil Court and adjudicate the dispute and pronounce a judgment either interim or final.

37. The Commission is not a Tribunal or a forum discharging the functions of a judicial character or a Court. Article 338 does not entrust the said Commission with the powers to take up the role of a Court or an adjudicatory tribunal and to determine the rights inter-se the parties.

38. No doubt, under clause 8 of Article 338, the Commission has been given all the powers of the Civil Court trying a suit but the said powers are to be exercised while investigating any matter referred to in sub - clause 'a' or enquiry into any complaint referred to under sub-clause 'b' of Clause 5.

39. The powers given to the Commission are procedural powers of a Civil Court for the purposes of investigating and enquiring into these matters and

are limited for that purposes. The power conferred under Clause 8 of Article 338 do not confer the powers of a Civil Court of granting injunctions of temporary or permanent nature and for adjudicating and deciding disputes between parties like a court.

Further in the case of ***Indian Institute of Technology v. National Commission for Scheduled Castes and Scheduled Tribes*** reported in **111 (2004) DLT 155** this Court has laid down as under:

“15. It will thus be seen from the aforesaid that it is only in specific matters that the power of civil court has been conferred on Respondent No. 1 Commission. This aspect has also to be examined keeping in mind the duties of the Commission set out in Article 338(5) which has to investigate and monitor all matters relating to safeguarding the rights of the scheduled caste and scheduled tribes and to enquire into specific complaint with respect to deprivation of the rights and safeguarding. The jurisdiction is advisory in nature but it is only for the purpose of investigating of the complaint that the powers of civil court have been conferred in respect of certain matters.”

The Division Bench of this Court in ***Deepshikah Jiwan Pandit v. NCERT*** reported in 2004 (73) **DRJ 442 (DB)** held as under:

“8. Having examined the matter in the light of the aforesaid advise of the Commission, we are of the view that answer to the question has to be in the negative. From a reading of Clauses (5) & (8) and in particular sub-clause (b) of Clause (5) of Article 338 of the Constitution, introduced by the Constitution (Sixty fifth Amendment) Act, 1990, it appears that though the Commission has the power

to enquire into a specific complaint and make its report thereon but its reports are recommendatory in nature. We leave it at that because learned counsel for the Petitioner has not seriously contended that the “advice” of the Commission was mandatory and binding on the authorities below. We find from the orders of the lower authorities that they were fully conscious of the advice of the commission. Therefore, we do not agree with learned counsel for the Petitioner that what was advised by the Commission has been ignored by the Tribunal or the Tribunal or the NCERT.”

11. No doubt, under clause 8 of Article 338, the Commission has been given all the powers of the Civil Court trying a suit but the said powers are to be exercised while investigating any matter referred to in sub-clause (a) or enquiry into any complaint referred to under sub-clause (b) of Clause 5. The powers given to the Commission are procedural powers of a Civil Court for the purposes of investigating and enquiring into these matters and are limited for that purposes.
12. In view of the discussion above, it must be held that the Commission had lacked inherent jurisdiction to entertain the complaint filed by the appellant no. 1 on the ground that there are no allegations in the complaint relatable to cases which can be decided by the Commission. The issue with regard to the legality of the disciplinary proceedings initiated against the appellant no.2, which culminated in penalty needs to be decided by a judicial forum. Even otherwise when the earlier order / recommendation dated 09.02.2016 has been acted upon, there was no occasion for

the Commission to reiterate the Bank to reconsider the whole issue.

13. Accordingly, we find no infirmity in the order dated 19.09.2016 passed by the learned Single Judge. Keeping in mind the aforesaid facts, this court finds that there is no merit in the appeal. The appeal, therefore, stands dismissed.
14. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

SEPTEMBER 10, 2018

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