

25th September,
2023
(AK)
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W.P.A 13474 of 2023

Union of India and another
Vs.
National Commission for Scheduled Castes and others

Mr. Pulakesh Bajpayee
Mr. Kushi Prasun Chatterjee
...for the petitioner.

1. Learned counsel for the petitioner contends that the National Commission for Scheduled Castes derives its powers from Article 338 of the Constitution of India.
2. Despite such power being restricted to making recommendations before the appropriate Government, the Commission in the present case, has been harassing the officers of the petitioner no.2 by repeatedly summoning them and after giving purported hearing, making directions, *de hors* the provisions of Article 338 of the Constitution of India.
3. In the present specific instance, the petitioners challenge such an order dated March 27, 2023 annexed at page-60 of the writ petition whereby the Commission, in the garb of a recommendation, directed the petitioners to promote a particular employee as J.E.

4. It was further observed by the Commission that the action taken report should reach the Commission Office after receiving the minutes within seven days.

5. If the order is not complied then the Commission may recommend to invoke Section 4 under the appropriate Act.

6. It is argued that such exercise of power is *de hors* the provisions of Article 338. Learned counsel, in support of his propositions, cites several Supreme Court judgments, including the case of *All India Indian Overseas Bank SC & ST Employees Welfare Association and others vs. Union of India and others*.

7. In the said judgment, the Supreme Court observed, while adjudicating upon Article 338(8) of the Constitution, that under the said provision, all the procedural powers of a civil court are given to the Commission for the purpose of investigating and enquiring into the matters and that too for that limited purpose only.

8. The powers of a civil court of granting injunction, 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 of India, it was observed.

9. Despite service, none appears for the respondents.

10. Affidavit-of-service filed in court today be kept on record.

11. The limited compass of the present adjudication is the scope and powers of the Commission under Article 338 of the Constitution of India.

12. The said provision set forth herein below:

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

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three 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 to the safeguards provided for the Scheduled Castes 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;

*(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes 1*** 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

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes

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.

(10) In this article, references to the Scheduled Castes shall be construed as including references to the Anglo-Indian community.

13. On a perusal of the said provision, it is seen that the duty of the Commission, *inter-alia*, pertains to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes, to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the

Constitution or any other law, to participate and advise on the planning process of socio-economic development of the Scheduled Castes, etc.

14. The powers of the Commission also envisages presentation to the President, annually and at such other times as the Commission may deem fit, reports on the working of those safeguards, etc.

15. Thus, a perusal of the provisions of Article 338 shows that the powers of the Commission pertain to certain duties of the Commission to ensure that the safeguards are in place.

16. However, the Commission does not have any powers akin to a judicial forum, or anything to show that it has sanction behind the recommendations made by it for enforcing such recommendations.

17. The power of the Commission is essentially recommendatory. The Commission cannot enforce its powers by any process of law. For such enforcement, the parties concerned are to resort to the appropriate provisions of the extant law.

18. Clause (6) of Article 338 provides that the President shall cause all such reports, filed by the Commission, 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.

19. In Clause (8) of Article 338, the Commission's powers, akin to a civil court on certain aspects in investigating any matter referred to in sub-clauses (a) or (b) of Clause (5), have been enumerated, including the powers to summon, discovery, receiving evidence on affidavits, etc.

20. However, the powers under Clause (8) are to be performed within the limited conspectus of Clause (5), sub-Clauses (a) and (b). Sub-clause (a) provides that the Commission may investigate and monitor all matters relating to safeguards provided for the Scheduled Castes under the Constitution or any law and to evaluate the working of such safeguards.

21. Sub-clause (b) pertains to enquiry into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes.

22. Such duties, regarding which powers have been conferred in Clause (8), all are of a general nature and do not confer any power on the Commission to exercise jurisdiction in passing directions and/or enforcing the same on any particular employer or authority.

23. Hence, the exercise sought to be undertaken by the Commission in the impugned order dated March 27, 2023 was palpably *de hors* the law, the provisions of the

Constitution and the authority conferred on the Commission by the Constitution.

24. The Commission, by the said order, specifically directed the petitioners to comply with its recommendations and in the event such order is not complied with, the Commission issued a threat of making recommendations to invoke Section 4 of the 1989 Act.

25. Such exercise of the Commission is palpably *de hors* the law and is arbitrary, being not sanctioned by Article 338 of the Constitution, which is the repository of power of the Commission.

26. In any event, if any particular person is aggrieved by any action of its employer, he or she is at liberty to take appropriate measures under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989.

27. The Commission is not an 'authority' contemplated under the said Act. Hence, the impugned order is required to be set aside.

28. Accordingly, WPA 13474 of 2023 is allowed, thereby setting aside the order of the National Commission for Scheduled Castes dated March 27, 2023, annexed as Annexure-P6 at page-60 of the writ petition.

29. It is expected that the Commission shall not undertake any such endeavour in future which is palpably *de hors* its powers and shall leave it open to the aggrieved parties to take recourse to the 1989 Act or any

other governing statute enacted by the legislature in that regard.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)