

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-22343-2017 (O&M)
Date of Decision: 15.03.2023**

KAMALJIT SINGH SIDHU AND ANR

... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab
for respondents No.1, 4, 6 and 7.

Mr. Bharat Bhushan Sharma, Sr. Panel Counsel
for respondents No.2 and 3.

Mr. A.P.S. Deol, Sr. Counsel with
Mr. H.S. Deol, Advocate
for respondents No. 5 and 8.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition raises a challenge to the order dated 18.08.2017 (Annexure P-13) passed by the National Commission for Scheduled Castes, whereby various directions have been issued by the respondent-Commission.

Briefly summarized, the grievance espoused by the petitioners is that a false and frivolous case had been registered against them bearing case FIR No.94 dated 24.09.2016 under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Shaheed Bhagat Singh Nagar, Ludhiana on an application submitted by one Jaswinder Singh Waraich son of Kailash Singh. It is alleged that the petitioners were granted concession of

anticipatory bail by this Court vide order dated 24.10.2016, which was eventually confirmed by this Court subject to be terms and conditions mentioned therein. The counsel for the petitioners has made submissions on merits against the aforesaid complaint and the FIR registered against them. However, the same are not necessary to be adverted to for the purpose of examining the legal question that arises for consideration in the present case. The instant complaint in question was submitted by one Dayal Singh son of Malkit Singh on 23.07.2017 to the Director, National Commission for Scheduled Castes averring that he was a witness in the aforesaid FIR and that the petitioners are threatening him to resile from his evidence failing which, he was likely to be impleaded in some false case. It is further averred that the petitioners have claimed to have their inquiry negotiated with the Addl. Deputy Commissioner of Police and that they shall be declared innocent. He thus represented before the National Commission for Scheduled Castes to close the inquiry and to get the challan presented under its supervision through the police and/or to get the investigation of the case conducted through some external agency. Copy of the aforesaid application dated 23.07.2017 has been appended as Annexure P-10. The National Commission for Scheduled Castes thereafter called for the comments of the concerned officials and vide order dated 18.08.2017 (Annexure P-13) directed as under:

"File No.2-Pb/91/2016

To

*The Commissioner of Police,
Ludhiana (Pb)*

Sub: Regarding the fifth enquiry started by ADCP 3, Ludhiana Police, Ludhiana when the enquiries done by three PPS and one IPC Officer in the same case.

Sir,

I am to forward herewith copy of the letter NO.2996/CB-2, Crime dated 18.08.2017 on the above subject and to say that action as per the recommendation made in the enquiry conducted by AIG, Commission, Punjab Police, Chandigarh to put the challan for trial to the Court of competent jurisdiction may be taken. It is also worth mentioning here that as per the advice of Legal Department of the Crime Wing of Punjab Police Headquarters no further enquiry be conducted and the challan be presented to Court of competent jurisdiction for trial. Therefore, it is also advised that no further enquiry be conducted in this matter.

Action taken report be sent to this office within 15 days of the receipt of this letter."

(Emphasis supplied)

Alleging that the aforesaid direction was beyond the powers conferred upon the National Commission for Scheduled Castes by the constitution of India, the present petition has been filed by the petitioners.

Upon notice, reply by the respondents has been filed wherein the averments contained in the complaint as well as the FIR were reiterated. The proceedings of the National Commission for Scheduled Castes were also sought to be justified and were claimed to be within the powers conferred upon it.

Learned counsel for the petitioners contends that Article 338 of the Constitution of India deals with the powers and functions of the National Commission for Scheduled Castes. The said powers only confer a recommendatory power with the National Commission for Scheduled Castes for protection and safeguarding the interests and members of the Scheduled Castes. The said power does not extend to issuance of any direction to the Investigating Agencies to present challan and/or not to submit a cancellation

report etc. Any such direction contained in the order would be beyond the jurisdictional power conferred upon the National Commission for Scheduled Castes. He further places reliance on the judgment of **Jatt Ram Vs. Punjab State Human Rights Commission and another** reported as **(2005) 3 R.C.R. (Criminal) 716**. The relevant extract of the same is reproduced hereinafter below:

"57. Taking into consideration the aforesaid law laid down by the Apex Court in various judgments, as noticed above, we made the following observations in Jai Singh's case (supra):

"In the light of the settled law by the Apex Court with regard to the inherent powers of the High Court in interfering with the powers of the investigation by the investigating agency and making further comments or remarks on the veracity or authenticity of the prosecution version, it has been repeatedly held by the Supreme Court that High Court has no such power to scuttle the investigation at the initial stages and that the investigating agency has a statutory right of investigation. Even when there are inherent powers with the High Court to interfere at the stage of investigation, it has been held that the aforesaid powers shall be sparingly used in the rarest of the rare cases.

What is true about the powers of the High Court and the limitation put there upon is obviously true for the Commission. In addition, from the perusal of the provisions of the Act, we notice that there are no inherent powers which have been conferred upon the Commission. As noticed above, the Commission is merely a creation of the statute. There are no general or plenary powers enjoyed by the Commission. In contrast to the Court of law which enjoys inherent and plenary powers, the Commission does not have any such powers.

On the same analogy it would be proposer for us to hold that even in civil disputes, which are governed essentially by the Code of Civil Procedure or some other statutory provisions, the Commission has no role to play. We have already noticed above, that under Section 12 of the Act, it is only the violation of human rights or abetment thereof by a public servant, or negligence in the prevention of such violation by a public servant that would give a cause of concern to the Commission to initiate an enquiry into the matter. It would, therefore, necessarily follow that unless and until a case falls within the four corners under the provisions of the Act, the Commission have neither any authority nor any power even to initiate proceedings as or inquire into the matter and obviously no direction (even in the shape of recommendations) can be issued."

58. *As a result of the aforesaid discussion and keeping in view the law laid down by the Apex Court in various judgments noticed above, and the provisions of the Act and the Regulations, we have no hesitation. in holding that the Commission, or the State Commission, in exercise of the power under the Act have no power to issue directions, for ordering reinvestigation in a matter, which is being investigated and or has been investigated by the investigating agency nor have any powers to order the cancellation of FIRs nor can entertain the complaints on the allegations that an FIR against a complainant had been wrongly recorded. As noticed above, entertainment of the aforesaid complaints on the said allegations and issuance of any such directions, by the Commission would not only amount to thwarting the investigation at the initial stages or interference with the same but shall also not be permissible in view of the fact that even in exercise of inherent powers of the High Court, the Apex Court has laid down certain restraints. In these circumstances, when the Commission does not even have the inherent powers, the power to interfere in investigation either on*

the asking of the complainant or on the asking of the accused in the FIR or suo-moto obviously cannot be inferred in favour of the Commission.”

(Emphasis supplied)

It would also be relevant to reproduce herein the statutory provisions of Article 338 of Constitution of India under which, the National Commission for the Scheduled Castes and Scheduled Tribes was established with the objective of monitoring all the safeguards provided for the Scheduled Castes:

“Article 338 - National Commission for Scheduled Castes

(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 socioeconomic development of the Scheduled Castes 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 socioeconomic 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 such other backward classes*

as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.”

Per contra, learned Sr. Counsel for respondent No.8, however, contends that the rights of the respondents have been prejudiced and that the Investigating Agency has not been acting in accordance with law. Resultantly, the vested rights of the respondents and aggrieved parties have been defeated. He, however, could not dispute the fact that the directions to Investigating Agency could not have been issued by the National Commission for Scheduled Castes. He contends that the reliance placed by the petitioners on the inquiry report bearing no.362-5C/ADCP-3/LDH, dated 25.07.2017 was without jurisdiction and that there was no authority conferred upon the Addl. Deputy Commissioner of Police to conduct a further investigation into the matter. Consequently, the Authorities concerned are required to take action by ignoring the aforesaid investigation conducted by the Addl. Deputy Commissioner of Police.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

It is evident from perusal of the provisions of Article 338 of Constitution of India that the National Commission for Scheduled Castes is conferred with the power to monitor/protect the interests of the members belonging to Scheduled Caste and to make a recommendation for protection of their rights guaranteed under the Constitution of India. The power, however, does not extend to interference in the investigation process and/or to issue any such direction(s) to the Investigating Agency to act or conduct the investigation in defined manner. Consequently, any such direction issued by

the National Commission for Scheduled Castes would be beyond the powers conferred upon it by the Constitution of India. It is evident from the perusal of the impugned order dated 18.08.2017 that the National Commission for Scheduled Castes directed the police to put up challan for trial in the Court of competent jurisdiction on the basis of recommendations made in the enquiry conducted by the A.I.G. of the Commission and also directed that as per the advice of the Legal Department of the Crime Wing of Punjab Police Headquarters, no further enquiry be conducted and the challan be presented to the Court of Competent jurisdiction for trial.

The scope of the authority to be exercised by the Commission has been examined by the Hon' ble Supreme Court in the matter of **"All India Indian Overseas Bank SC & ST Employees' Association Vs. Union of India"** reported as **(1996) 6 SCC 606**. The relevant extract of the same is reproduced hereinafter below:

"10. Interestingly, here, in clause 8 of Article 138, 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 it 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 power be inferred or derived from a reading of Clause 8 of Article 138 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 March 4, 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."

Further, the Hon'ble Supreme Court held in the matter of **'Collector Bilaspur Vs. Ajit P.K. Jogi and others'** reported as **(2011) 10 SCC 357** as under:

"17. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to Scheduled Castes and Scheduled Tribes by ensuring: (i) anti-discrimination, (ii) affirmative action by way of reservation and empowerment, and (iii) redressal of grievances. The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or the State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of the Scheduled Tribes. This power to enquire into "deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes" did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in Madhuri Patil v. Commr., Tribal Development directed constitution of scrutiny committees.

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22. *It is only after recording the said findings, the Commission directed the State Government to verify the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case.*

23. *The contention that there was sufficient material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338-A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16-10-2001.”*

The authoritative pronouncement of the Hon'ble Supreme Court recognize the powers of the Commission to enquire into denial of constitutional safeguards but not to enquire/investigate matters and to return

binding findings or steer investigation. Such powers can be exercised by only the Courts and in relation to Criminal matters only sparingly. Commission has been held to be not vested with such plenary powers and to direct investigating agency or the investigation.

It is hence well settled that any such direction contained in the order passed by the National Commission for Scheduled Castes amounts to exercise of powers of a Constitutional Court. The issuance of any such directions by the National Commission for Scheduled Castes, despite having not been conferred with any such power, is sans the authority of law. The position in this regard stands re-affirmed by a Division Bench Judgment of this Court in the matter of **Jatt Ram (supra)**. The National Commission for Scheduled Castes would thus have no power to order filing of any challan and/or cancellation of FIR nor can it entertain the complaints on the allegations that the FIR against a person has been wrongly recorded or is not being properly investigated. The said issue is to be examined by a Court of competent jurisdiction i.e. either Civil or Criminal. The National Commission for Scheduled Castes has no jurisdiction to initiate the parallel proceedings and/or to make recommendations that are likely to prejudice the on-going proceedings.

Insofar as the submission of the petitioners with regard to the action initiated by the respondent-Authorities in carrying out further investigation and making a recommendation in terms of the letter bearing Memo No.362-5C-ADCP-3/LDH dated 25.07.2017 is concerned, the same does not require any consideration at this stage. The petitioners would be at liberty to take recourse to the alternative efficacious remedy available to them in accordance with law. The petition espouses the issue regarding the

jurisdiction and/or power of the National Commission for Scheduled Castes. The independent right of the petitioners against the investigation conducted by the Investigating Agency and/or any illegality thereof is to be adjudged in an appropriate proceeding by the competent Court. The relief prayed for by the petitioners at this stage qua directing the respondents-Authorities to ignore the recommendation made by the Addl. Deputy Commissioner of Police, Ludhiana cannot be considered.

The respondent No.8 would, however, also be at liberty to take recourse to the appropriate remedy available to him in according with law for seeking redressal of his grievance.

The petition is accordingly allowed with liberties as aforesaid.

15.03.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No