



W.P. No.1009 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.09.2024

Pronounced on: 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P. No.1009 of 2022
and W.M.P. Nos.1074, 1075, 1077 of 2022, 20876 of 2023 and
1016 of 2024, 1017 of 2024

P. Anusamba W/o. Pugazhpari

... Petitioner

vs.

1. The National Commission for Scheduled Castes,
represented by its Registrar,
5th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi - 110 003.

2. The District Collector,
Villupuram District, Villupuram.

3. The District Collector-cum-District Magistrate
I floor, New Revenue Complex,
Vazhudavoor Road, Pettaiyanchathiram,
Puducherry-605 009.

4. The Superintendent of Police,
Office of the Superintendent of Police,
PCR Cell, Villupuram (OR), Tamilnadu.

5. D. Mohana W/o. D. Manivannan

... Respondents



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PRAYER: The Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the proceedings in File No.TN/17/2018-APCR dated 01.12.2021 on the file of the respondent and to quash the same.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mrs. A. Anuradh,
Central Government
Senior Counsel [for R1]

Mr. K.S. Mohandass
Public Prosecutor, Puducherry.
Assisted by
Mrs. N. Danalatchumi [for R3]

Mrs. G.V. Kasthuri [for R2 & R4]
Additional Public Prosecutor,
High Court, Madras.

Mr. T.R. Shanmugam [for R5]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

The Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the proceedings in File No.TN/17/2018-APCR dated 01.12.2021 on the file of the respondent and to quash the same.



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2. The short facts necessary to dispose of the Writ petition are as follows:-

The 5th respondent is the owner of Amnibus bearing Registration No.TN16 A 2092. The petitioner entered into an agreement with the 5th respondent on 14.03.2018. After entering into an agreement for lease of the bus, the petitioner's husband went to the 5th respondent's house to take delivery of the vehicle so as to commence the operations. At that time, the 5th respondent's husband informed that he has sent the said vehicle to the Body Building work shop for repairs and after the repairing work is over, he can take over the bus. Thereafter, the husband of the 5th respondent demanded further a sum of Rs.4 lakhs in addition to the earlier advance amount of Rs.4 lakhs for carrying out the repairing works and for payment of road tax and for other purposes. Thereafter, the petitioner had paid a further sum of Rs.1 lakh to the 5th respondent on 16.03.2018 and the same was endorsed in the agreement. Again, the 5th respondent through her husband demanded to pay money to bear the mechanical and labour charges, insurance, cost of spares and EMI amount of Rs.93,000/- to the Corporation Bank, Lakshmipuram Branch, Mysore. Thereby the



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petitioner transferred the amount through Corporation Bank, Selaiyur and also paid a sum of Rs.4,62,069/- towards electrical works and in total, he paid a sum of Rs.9,62,520/- to the 5th respondent towards the repair and other charges. The 5th respondent also further agreed that another sum of Rs.40,000/- to be deducted from the monthly rental of Rs.1,10,000/-. In fine, the vehicle was only handed over on 28.06.2018 to the petitioner. Thereafter, the 5th respondent came to Chennai for renewal of permit and it was renewed. At the time of agreement, the 5th respondent assured that he had engaged the services of a driver and the driver of the petitioner has started to run the bus from 01.07.2018 to 09.07.2018. While so, on 08.07.2018 night, when the bus was commenced from Chennai to Salem with passengers, during the time of reaching Salem, the driver noticed that the breaks were not functioning and the same was informed to the 5th respondent and he was instructed to take the bus to Vetrivel Workshop for repairs and the mechanic informed that the break drum had been failed and it is to be replaced. The 5th respondent refused to attend the repair works and the petitioner wrote a letter dated 09.08.2018 to take back the bus and return the advance amount given by the petitioner. After receipt of the letter, no reply was given. So the petitioner terminated the agreement by



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issuing notice to the 5th respondent on 05.09.2018. Thereafter, he filed a Suit in O.S. No.154 of 2019 before the Additional Sub Judge, Tindivanam for recovery of money of Rs.9,30,569/- and also filed an application in I.A. No.178 of 2019 for restraining the 5th respondent from alienating the bus and the same was allowed. Thereafter the present complaint has been filed as if the petitioner unlawfully retained the bus and based on the complaint the 1st respondent passed the impugned order and the same is now under challenge.

3. The learned counsel appearing for the petitioner would contend that there is a dispute between the petitioner and the 5th respondent regards operation of bus on contract basis and the 5th respondent and her husband already lodged a complaint before the police and the same was closed by the police as false. While so, once again by suppressing the material facts the 5th respondent gave complaint to the 1st respondent. Based on the complaint without any enquiry and service of notice to the petitioner, the 1st respondent passed an order directing the police to recover the bus from the petitioner with fitness certificate along with 41 months rent and send the same to the custody of the 5th respondent and submit



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report to him within two weeks. The 5th respondent resorted to her usual practice of filing false and fake complaints with aid of her husband Manivannan by misusing and abusing provisions of the SC/ST (POA) Act. Already the petitioner has filed a Civil Suit in o.S.No.154 of 2019 on the file of Sub Court, Tindivanam for recovery of money. The 5th respondent, by suppressing the pendency of the Suit in O.S. No.154 of 2019, has approached the 1st respondent and has obtained the order. The 1st respondent Commission has no power to act as Civil Court, to invoke powers of the Civil Court and to decide the rights of the parties. The petitioner is not a party to the proceedings before the Commission and without having the petitioner adverse order has been passed as against the petitioner. Therefore, the order passed by the 1st respondent is liable to be quashed.

4. The learned counsel appearing for the petitioner has also relied on the following judgments in support of his arguments:

4.1. *All India IOB SC / ST Employees Association of India v.*



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Union of India reported in 1996 6 SCC 606.

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4.2. U.P. State Handloom Corporation Limited vs. State of U.P.

2012 SCC Online All 732.

4.3. Pankaj Kumar v. State of Uttarakhand reported in 2019 SCC

Online Utt 929.

5. The learned counsel appearing for the 1st respondent would contend that based on the complaint given by the defacto complainant, the 1st respondent Commission has enquired the matter and issued directions and the complaint prima facie disclosed the commission of offence under Section 3(1) (2A) (E) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [POA], 1989. Therefore, the 1st respondent Commission has passed an order and the present petition is liable to be dismissed.

6. The learned counsel appearing for the respondents 2 to 4 would contend that based on the order passed by the 1st respondent Commission,



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the petitioner has to comply with the said order.

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7. The learned counsel appearing for the 5th respondent would contend that the petitioner being a member of non-scheduled caste, committed serious offences and caused financial loss to the 5th respondent, who belongs to scheduled caste by unlawfully taking the bus. Thereby, she lodged a complaint before the 1st respondent Commission and the 1st respondent Commission also, based on the complaint given by the 5th respondent, passed an order. Therefore, the present Writ petition is liable to be dismissed.

8. This Court heard both sides and perused all the materials available on record.

9. In this case, there was a contract between the parties with respect to the plying of bus and already a Civil Suit was also filed by the petitioner for recovery of money as against the complainant before the Civil Court and already the property was also attached by the Civil Court. While so, by suppressing the above facts, the 5th respondent has preferred a



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complaint before the 1st respondent Commission and the 1st respondent Commission has also passed an order by recommending the Collector of Vallipuram and Collector Puducherry to recover the bus with fitness certificate along with 41 months rent and to send the same to the custody of the petitioner and to submit a report within 2 weeks from the date of hearing i.e., 18.11.2021.

10. The first and foremost point is that without hearing the petitioner, the 1st respondent Commission has passed an order as against the right of the petitioner and thereby Principles of Natural justice has not been followed. On that ground alone, the impugned order is liable to be quashed. Moreover, it is a well settled law that the National Commission for Scheduled Castes has no power to decide the rights of the parties. However, the 1st respondent passed the impugned order recommending the concerned authorities to restore the bus to the 5th respondent and no such order can be passed by directing the officials to do a particular act, that too the civil rights of the parties in respect of the agreement and money dispute. The 5th respondent has suppressed the material facts in respect of the money transaction based on the agreement in respect of plying of bus,



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and filed the complaint before the 1st respondent. The 1st respondent also failed to hear the petitioner before passing such order.

11. At this juncture, the learned counsel appearing for the petitioner has also relied on the following judgments:

11.1. *All India IOB SC / ST Employees Association of India v. Union of India* reported in 1996 6 SCC 606.

11.2. *U.P. State Handloom Corporation Limited vs. State of U.P.* 2012 SCC Online All 732.

11.3. *Pankaj Kumar v. State of Uttarakhand* reported in 2019 SCC Online Utt 929.

On careful perusal of the above said judgments, it is clear that the Commission does not have powers to pass orders like a regular Court and its powers are merely recommendatory in character and the Commission has not authority to issue any order of injunction, direction or decree, which may be enforced by public authorities. The Commission has not been vested with the powers of issuing such order, exercising the powers of the Court. Moreover, the Hon'ble High Court of Uttarakhand in *Pankaj Kumar v. State of Uttarakhand* in 2019 SCC Online Utt 929, held that 'we



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find it disconcerting that the National Commission should continue to pass orders, such as that impugned in this Writ petition, despite the Supreme Court having clearly held, in All India Overseas Bank SC & ST Employees Association, that it lacks the power to pass orders of injunction, temporary or permanent. With the fond hope and trust that the National Commission for the Scheduled Tribes would desist from issuing any such directions, and from making any such requests, in future, we refrain from saying anything more'.

12. Therefore, the Commission has no authority to pass such an order directing the official to recover the bus from the petitioner along with fitness certificate and handover the bus to the 5th respondent. Therefore, the impugned order passed by the 1st Respondent Commission is without



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jurisdiction and by violating the natural justice. Hence it is liable to be quashed.

13. In the result, this Writ petition is allowed. The order passed by the 1st respondent Commission in File No.TN/17/2018-APCR dated 01.12.2021 is quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

.....11.2024
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Internet : Yes

Index:Yes/No

Neutral Citation:Yes/No

To

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P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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