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W.P. No.33082 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.09.2024

Pronounced on: 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P. No.33082 of 2022
and W.M.P. Nos.32484 and 32485 of 2024

1. The Superintendent of Police,
Office of the Superintendent of Police,
District Police Office, Salem District,
Nethimedu, Salem-2.

2. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Attur Sub-Division, Attur, Salem District. Petitioners
VS.

1. The Chairman,
The Tamil Nadu State Commission for the
Scheduled Castes and Scheduled Tribes,
No.31, TADCO Building 3rd Floor,
Cenotaph Road 2nd Lane, Teynampet,
Chennai-18.

2. Thangavel S/o. Murugan [Impleaded as per the
order dated 19.01.2024 in WMP No.428 of 2024] Respondents

PRAYER: This Writ petition has been filed under Section 226 of the
Constitution of India seeking to issue a Writ of Certiorari calling for the



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records of the 1st respondent in connection with Petition No.132 of 2022 and the consequential summons in Na.Ka No.M1/132/2022-3 dated 11.05.2022 and the summons dated 31.10.2022 on the file of the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021 and quash the same as arbitrary, illegal and in violation of the settled proposition of law.

For Petitioners : Mrs. G.V. Kasthuri,
Additional Public Prosecutor,
High Court, Madras.

For Respondents : Mr. P. Munusami.

JUDGMENT

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

This Writ petition has been filed by the petitioners calling for the records of the 1st respondent in connection with Petition No.132 of 2022 and the consequential summons in Na.Ka No.M1/132/2022-3 dated 11.05.2022 and the consequential summons dated 31.10.2022 issued by the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes and to quash the same.

2. The Tamil Nadu State Commission for SC/ST Act, 2021 is hereinafter called as 'The Act' for the sake of convenience.



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3. The shorts facts of the case necessary to dispose the Writ petition are as follows:-

The defacto complainant Thangavel, who belongs to Scheduled Caster, lodged a complaint with the Tamil Nadu SC / ST Commission against one Anbucheziyan, PA to RDO, Attur who did not allow SC community people to enter into the Kalahasthreeswaran Swami Temple for worship and further threatened and abused them discriminatively on caste bias. Therefore, there were apprehension of communal riot between two factions. The said complaint was forwarded to the Superintendent of Police, Salem District with an endorsement dated 11.05.2022 of the Tamil Nadu State SC / ST Commission directing to supervise the investigation and to file a report on or before 17.06.2022. Thereafter, a remainder dated 06.07.2022 was sent to the Superintendent of Police. The said complaint dated 24.05.2022 of the defacto complainant Thangavelu was forwarded to the Deputy Superintendent of Police, Attur for enquiry. There was no investigation pending in respect of the complaint and no FIR was registered. Thereafter, summons were issued to the defacto complainant on 12.06.2022 and 23.07.2022 for enquiry, but he did not appear for enquiry. Hence the opposite party Anbuchezhian, then PA to RDO, Attur was also



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enquired and his statement was also recorded and enquiry report dated 27.07.2022 was submitted by the Deputy Superintendent of Police, Attur to the Superintendent of Police, Salem District. Based on that report, the Superintendent of Police, Salem sent a report to the Tamil Nadu SC / ST Commission, which was electronically approved on 05.08.2022, hence signature was not affixed. Thereafter, a manually signed covering letter was forwarded to the Tamil Nadu SC / ST Commission on 08.11.2022. On receipt of the said report, the Superintendent of Police, Salem District, the Tamil Nadu SC / ST Commission has issued summons dated 31.10.2022 for personal appearance of the Superintendent of Police, Salem seeking explanation for sending the covering letter without signature and the Deputy Superintendent of Police for personal appearance on 15.11.2022 to explain why preliminary enquiry was conducted without registration of FIR under Section 18 A of the SC/ST (POA) Act. On 15.11.2022, the Additional Superintendent of Police, Head Quarters and the Deputy Superintendent of Police, Attur appeared before the Tamil Nadu SC / ST Commission, as the Superintendent of Police, Salem deputed the said Additional Superintendent of Police, Head Quarters to appear on his behalf, since he was present in Salem for participating in the Zonal meeting for the



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Minister for Welfare of Scheduled Caste and Scheduled Tribes along with Director, SC / ST Welfare and various officers from the Secretariat. The Tamil Nadu SC / ST Commission once again adjourned the hearing directing the personal appearance of both the Superintendent of Police, Salem and the Deputy Superintendent of Police, Attur on 08.12.2022 for the same reasons. Now, the petitioners who are the said Superintendent of Police, Salem and the Deputy Superintendent of Police, Attur have challenged the said order through this Writ petition.

4. No counter was filed by the respondents.

5. The learned Additional Public Prosecutor appearing for the petitioners would contend that the defacto complainant namely Thangavel has filed a complaint against one Anbuchezhian, who was the PA to RDO, Attur, before the Tamil Nadu SC / ST Commission and the same was forwarded to the Superintendent of Police, Salem. In turn, the same was forwarded to the Deputy Superintendent of Police, Attur for enquiry. The Deputy Superintendent of Police, Attur issued summons to the defacto



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complainant Thangavel for enquiry, but he did not appear. Thereafter, he enquired the opposite party Anbuchezhian and recorded his statement and the report was forwarded to the Superintendent of Police, Salem and the same was sent to the Tamil Nadu SC / ST Commission on 05.08.2022. Since it was electronically approved, no signature was found in the said report. However, subsequently a manually signed covering letter was forwarded to the Tamil Nadu SC / ST Commission on 08.11.2022. Thereafter, the Tamil Nadu SC / ST Commission issued summons dated 31.10.2022 for personal appearance to explain for sending the covering letter without signature and the 2nd petitioner for personal appearance on 15.11.2022 to explain as to why preliminary enquiry was conducted without registering the FIR. On behalf of the 1st petitioner, Additional Superintendent of Police, Head Quarters was deputed and he also appeared since the 1st petitioner was in Salem to attend the Zonal meeting with Minister for Welfare of Scheduled Castes and Scheduled Tribes along with Directors, SC / ST Welfare and other Directors. Again, the Tamil Nadu SC / ST Commission directed the petitioners to appear before the Commission on 08.12.2022 for the same reasons.



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5.1. The Commission has power of Civil Court trying a Suit under Civil procedure under Section 9 of 'The Act' in respect of summoning and enforcing the attendane of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing commissions for the examination of witnesses and documents and any other matter which may be prescribed. Already the petitioners have sent a report to the Tamil Nadu SC / ST Commission, inspite of that, Tamil Nadu SC / ST Commission issued summons to the petitioners to appear before the Tamil Nadu SC / ST Commission without any basis. The cognizance of the complaint by the 1st respondent Commission is not maintainable and therefore, the consequential summons and communication issued by the Commission are illegal and liable to be quashed.

6. The learned counsel appearing for the 1st respondent would submit that the defacto complainant who belongs to Scheduled caste community lodged a complaint before the Tamil Nadu State SC / ST Commission in respect of violation of rights provided under the SC/ST



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POA Act, thereby, the said complaint was forwarded to the Superintendent of Police, Salem for taking necessary action. But the Superintendent of Police, Salem has not taken any steps and the said complaint was forwarded by the Superintendent of Police, Salem to the Deputy Superintendent of Police, Attur. The Deputy Superintendent of Police, Attur/ the 2nd respondent herein without registering the FIR, conducted a preliminary enquiry and sent a report, that too without any signature. Therefore, the 1st respondent summoned the petitioners to explain as to why the 1st petitioner has not signed in the covering letter and as to why the 2nd respondent has conducted a preliminary enquiry without registering the FIR, when the matter involved Scheduled Caste and Scheduled Tribes (Protection of Atrocities) Act. The Tamil Nadu State SC / ST Commission has power to summon the parties as per Section 9 of the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021. Therefore, the 1st respondent has power to summon the petitioners and the present summons are in accordance with law and therefore, the present petition is liable to be dismissed.

7. Heard both sides and perused all the materials available on



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record.
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8. In this case, according to the petitioners, one Thangavelu has lodged a complaint before the Tamil Nadu State SC / ST Commission and the same was forwarded to the Superintendent of Police, Salem, who is the 1st petitioner herein, who in turn, forwarded the same to the 2nd petitioner, the Deputy Superintendent of Police, Attur for further proceedings. Thereafter, the 2nd petitioner summoned the defacto complainant for enquiry on 12.06.2022 and 23.07.2022, but the defacto complainant after receipt of summons, did not appear for enquiry. Hence, the 2nd petitioner enquired the opposite party Anbuchezhian, then PA to RDO, Attur and recorded his statement. Thereafter, a report was submitted by the 2nd petitioner to the 1st petitioner on 27.07.2022. Based on the report, the 1st petitioner forwarded the same to the 1st respondent on 08.11.2022. According to the 1st respondent, the said report was not signed by the Superintendent of Police, Salem. Therefore, the 1st petitioner was required to submit his explanation through summons dated 31.10.2022 for the personal appearance and to explain for sending the covering letter without signature and the 2nd petitioner for personal appearance on 15.11.2022



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and to explain as to why he had conducted preliminary enquiry without registering FIR as mandated under Section 18 A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On behalf of the 1st respondent, the Additional Superintendent of Police, Salem appeared before the Tamil Nadu State SC / ST Commission, the 1st respondent and the 2nd petitioner had personally appeared before the 1st respondent on 15.11.2022. Since the 1st petitioner was engaged in a zonal meeting with Minister for welfare of Scheduled Caste and Scheduled Tribes along with Directors, SC / ST Welfare and various officers at Salem, he did not appear before the Commission. Hence the Commission once again adjourned the hearing directing the personal appearance of both the petitioners on 08.12.2022 for the same reasons. Now, the petitioners have challenged the above said proceedings issued by the 1st respondent Commission dated 11.05.2022 and the summons dated 31.10.2022.

9. In fact, as per the proceedings dated 11.05.2022, the report was submitted by the petitioners to the 1st respondent and based on the summons dated 31.10.2022 issued, they also appeared before the 1st respondent Commission. Therefore, the question of quashing the said



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proceedings will not arise, as already the direction was complied.

However, the 1st respondent Commission has adjourned the hearing directing the personal appearance on 08.12.2022.

10. The petitioners have challenged the powers of Commission. According to the petitioners, the Tamil Nadu State SC / ST Commission has no power to direct the petitioners to appear before the Commission, since no enquiry was pending before the Commission in respect of the complaint given by Thangavel. At this juncture, it is relevant to refer the provisions under Sections 8 and 9 of 'The Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021' as below:.

FUNCTIONS OF THE COMMISSION

8. The functions of the Commission shall be as follows,-

(a) inquire, suo moto or on a petition presented to it by a victim or by any person on his behalf, into complaint of,-

(i) violation of any rights provided in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the rules made thereunder or abetment thereof;

(ii) negligence in the prevention of such violation, by a public servant;

(b) inquire and recommend to the Government to initiate disciplinary action in cases where the Commission is of the view that any public servant has been grossly negligent or grossly



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indifferent in the discharge of his duties in regard to the protection of the interests of the Scheduled Castes and Scheduled Tribes;

(c) evaluate the working of various safeguards and civil rights accruing to a person as stipulated, in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 or in any other law, regulation or order passed by the Union and the State Governments and to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force;

(d) make recommendations with a view to ensure effective implementation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or any other law for the time being in force;

(e) undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the Scheduled Castes and Scheduled Tribes;

(f) inquire into specific complaints of deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(g) spread literacy among various sections of the society regarding the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;

(h) conduct studies, research and analysis on the question of avoidance of discrimination against the Scheduled Castes and Scheduled Tribes.

(i) suggest appropriate legal and welfare measures in respect of the Scheduled Castes and Scheduled Tribes to be undertaken by the Government;

(j) monitor the working of laws in force concerning the Scheduled Castes and Scheduled Tribes Women with a view to identify the areas where the enforcement of laws is not effective or has not been streamlined and recommend executive or legislative measures to be undertaken;



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(k) encourage the efforts of non-governmental organizations and institutions working, in the field of human rights or for the upliftment and betterment of the Scheduled Castes and Scheduled Tribes;

(l) send periodical reports in such manner and at such intervals, as may be prescribed, to the Government; and

(m) exercise such other functions as may be conferred or enjoined upon it by this Act or the rules made thereunder;

Provided that if the National Commission for Scheduled Castes established under Article 338 of the Constitution or the National Commission for Scheduled Tribes established under Article 338-A of the Constitution is seized of any matter, the Commission shall cease to have jurisdiction on such matter and in case of conflicting recommendations, the recommendation of the National Commission for Scheduled Castes or the National Commission of Scheduled Tribes, as the case may be, shall prevail over the recommendation of the Commission.

9. The Commission shall, while discharging any of the functions under Section 8, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely -

(a) summoning and enforcing the attendance of any person 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; and

(f) any other matter which may be prescribed.

11. On a careful perusal of the Section 9 of 'the Act', the



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Commission while discharging any of the functions under Section 8 of the Act, have all the powers of a Civil Court trying a Suit under the Code of Civil Procedure, in particular, in respect of the summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and producing of any documents, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuign commissions for the examination of witnesses and documents and any other matter which may be prescribed. Therefore, in order to invoke powers of Section 9 of 'The Act', the condition precedent is discharging any of the functions under Section 8 of 'the Act', by the Commission.

12. In the case on hand, according to the 1st respondent, they received a complaint from the defacto complainant and the same was forwarded to the concerned Superintendent of Police, Salem, in turn, the Superintendent of Police, Salem had transferred the said complaint to the Deputy Superintendent of Police, Attur and the Deputy Superintendent of Police, Attur has enquired the matter, but the defacto complainant did not appear for enquiry. Therefore, they sent a report to the Tamil Nadu State



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SC / ST Commission. The Tamil Nadu State SC / ST Commission has not conducted any enquiry under Section 8 of the Act and issued any summons for attending the enquiry, under Section 9 of the Act.

13. On careful perusal of the records, it is seen that the 1st respondent Commission has simply instructed the 1st petitioner to monitor the investigation in respect of the complaint given by the defacto complainant namely Thangavelu and sent report on 17.06.2022, failing which further proceedings shall be initiated under Section 9 of 'The Act'. This is the substance of the proceedings dated 11.05.2022 issued by the 1st respondent addressed to the 1st petitioner. Therefore, the above said proceedings is not comes under the provision of Section 8 of 'The Act', since no enquiry was conducted. The 1st respondent Commission has simply instructed the Superintendent of Police, Salem / 1st petitioner to supervise the investigation and send a report. Therefore, there is no enquiry in terms of Section 8 of 'The Act'. Therefore, in order to invoke Section 9 of 'The Act', the condition precedent mentioned in the Section 9 of 'The Act' i.e, enquiry under Section 8 of the Act, is not present in this case. However, the petitioners have sent the report to the 1st respondent



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Commission and the said fact is also admitted by the 1st respondent Commission.

14. According to the 1st respondent, the said report was not signed by the concerned Superintendent of Police and as per the report, the 2nd petitioner has conducted a preliminary investigation without registering the FIR, thereby, failed to comply Section 18A of the SC/ST (POA) Act. Therefore, the 1st respondent issued summons dated 31.10.2022 for the personal appearance of the petitioners on 15.11.2022 and rejected the report of the petitioners. In that summons, issued against the 1st petitioner, the 1st respondent Commission has stated that since, there is no signature in the report, it was rejected. Therefore, explanation was called for and directed to appear in person on 15.11.2022. In the summons issued to the 2nd petitioner, it was stated that report was perused and considered, in the report, without registration of the FIR, the preliminary enquiry was conducted and therefore, explanation was called for and to appear in person before the Commission on 15.11.2022. Since there was no enquiry proceedings under Section 8 of the Act was pending before the 1st respondent Commission, to attract Section 9 of 'The Act', the summons



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issued by the respondent is not permissible under law. Moreover, the summons issued to the 1st petitioner reveals that the report was rejected and the summons issued to the 2nd petitioner reveals that the said report was considered and without registering the FIR as per Section 18A of 'The SC/ST (POA) Act, the 2nd petitioner conducted preliminary enquiry, and thereby the 1st respondent Commission called for explanation. Therefore, there are contradictory versions taken by the 1st respondent Commission. It shows the non application of mind by the respondent while issuing the summons to the petitioners.

15. No doubt that the Commission has power under Section 9 of 'The Act' for summoning and enforcing the attendance of any person and examining him on oath. But in the case on hand, these petitioners were not called for to examine them on oath and moreover, in order to attract Section 9 of 'The Act', there should be pending enquiry under Section 8 of 'The Act'. As per Section 8(a) and (b) of 'The Act', (a) the Commission can inquire, suo moto or on a petition presented to it by a victim or by any person on his behalf, into complaint of,-



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(i) violation of any rights provided in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the rules made thereunder or abetment thereof,

(ii) negligence in the prevention of such violation, by a public servant, and

(b) inquire and recommend to the Government to initiate disciplinary action in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in the discharge of his duties in regard to the protection of the interests of the Scheduled Castes and Scheduled Tribes.

Since there is no any inquiry conducted under Section 8 of 'The Act', invoking Section 9 of the Act would not arise. Therefore, in the case on hand, the impugned order passed by the Commission and the summons issued by the 1st respondent are out of purview of Section 9 of the Act. Even as per Section 9 of the Act, the scope is very limited and for the purpose mentioned in Section 9 of the Act only the Commission can issue summons for attendance but not beyond that purpose. As far as the proceedings dated 11.05.2022 is concerned, there is no enquiry



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proceedings are pending with the 1st respondent Commission in respect of the complaint given by the individual namely Thangavelu and without exercising the power under Section 8 of the Act they simply directed the 1st petitioner to monitor the investigation. In fact, there was no investigation pending with the petitioners on the date of order passed by the 1st respondent Commission. However, the above said orders have been complied with by the petitioners. Therefore, the Commission ought not have summoned the petitioners based on the above said proceedings dated 11.05.2022, since already orders were complied. If any discrepancies in the report, the 1st respondent Commission could take appropriate recommendations to the authority concerned in accordance with law.

16. No doubt, if any inquiry conducted by the 1st respondent Commission and in that enquiry, the attendance of the petitioners are necessary to examine them or requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record, which may be prescribed for the enquiry pending before the Commission, the Commission can summon the petitioners, as per Section 9 of 'The Act'. But in this case, neither the proceedings dated 11.05.2022



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nor the summons dated 30.10.2022 indicated any pendency of the enquiry under Section 8 of 'The Act'. Since already the petitioners have submitted the report, if any deficiency in that report, they can initiate proceedings in accordance with law and need not summon for seeking explanation from the petitioners and such power has not been vested with the 1st respondent Commission. Therefore as discussed supra, the 1st respondent has no power to summon the petitioners without pending enquiry under Section 8 of the Act, thereby the petitioners need not appear for the further hearing as ordered by the Commission.

17. With the above observations, this Writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Internet : Yes

Index:Yes/No

Neutral Citation:Yes/No

To

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



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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.

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P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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