

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 9595 of 2023

State of West Bengal,
Service through the Department of Health and Family Welfare,
Government of West Bengal & Ors.

vs.

National Commission for Scheduled Castes,
through the Under Secretary, Government of India & Ors.

For the petitioner	:	Mr. S.N. Mookherjee, Ld. AG. Mr. Anirban Ray, Ld. GP. Mr. Jayanta Sengupta, Adv. Ms. Shrivalli Kajaria, Adv. Mr. Piyush Agarwal, Adv.
For the respondent nos. 1 & 2.	:	Mr. Billwadal Bhattacharya, Ld. DSG. Ms. Sayani Roy Chowdhury, Adv.
For the respondent no. 3	:	Mr. D.N. Ray, Adv. Mr. Biswarup Nandy, Adv. Mr. Rajesh Kumar Shah, Adv.
Last Heard on	:	16.05.2023.
Delivered on	:	19.05.2023.

Moushumi Bhattacharya, J.

1. The first petitioner is the State of West Bengal through the Department of Health and Family Welfare and the other petitioners are the Principal Secretary, Senior Special Secretary and the Director of the said Department. The petitioners seek a mandamus commanding the National Commission for Scheduled Castes and the Vice Chairperson of the Commission to rescind the recommendation made by the Commission on 3.2.2023 and not to give any further effect thereto. The recommendations were made pursuant to a hearing dated 3.2.2023 and were communicated to the petitioners by way of a letter dated 9.2.2023.

2. The impugned recommendations, which is part of the Minutes of the hearing dated 3.2.2023, were made on a complaint filed by the private respondent no. 3. It was recommended that respondent no.3 be allowed to join his duty in the Department of Health and Family Welfare. The Commission further recommended that the respondent no. 3 be paid his salary with effect from 23.6.2021. The concerned competent authority of the Department was also directed to appear before the Commission on the scheduled date of hearing and submit an Action Taken Report within 15 days from the date of the signature on the Minutes by the respondent no. 2 / Vice Chairperson of the Commission.

3. The learned Advocate General assisted by the learned Government Pleader urges that the impugned recommendations suffer from a lack of jurisdiction. Counsel places the correspondence between the parties to show

that the complaint made by the respondent no. 3 related to a service matter and hence the Commission does not have the power to adjudicate on the complaint. Counsel submits that the Commission could not have directed the petitioners to submit an Action Taken Report which essentially amounts to a direction on the petitioners, which is also beyond the jurisdiction of the Commission under Article 338 of the Constitution. It is also submitted that no case has been made out by the Commission to initiate proceedings on the complaint made by the private respondent no. 3.

4. The learned DSG appearing for the Commission places documents to show that the petitioners participated in the proceedings and sought exemption to appear on the ground of intervening festivals and holidays. Counsel submits that Article 338A(8) empowers the Commission to investigate any matter and that the Commission has been vested with all the powers of a civil court trying a suit including summoning any person from any part of the country. Counsel refers to the Rules of Procedure of the National Commission for Scheduled Castes notified on 25.3.2009 under which Rule 7.2 (a)(vii) provides for service and employment of Scheduled Castes and related matters. Counsel submits that the writ petition has only been filed on the apprehension of arrest of the petitioner nos. 2-4 and that too from a "BREAKING NEWS" aired in the electronic media. Counsel submits that the petitioners should be asked to participate in the proceedings and deal with the allegations made by the respondent no. 3.

5. Learned counsel appearing for the private respondent no. 3 / complainant before the Commission submits that the respondent no. 3 is a member of a Scheduled Caste. Counsel submits that the respondent no. 3 has been harassed by the concerned Department of the State and further that the petitioners refused to appear and participate in the proceedings.

6. The National Commission for Scheduled Castes/respondent no. 1 derives its existence and source of power from Article 338 of the Constitution of India. The duties of the Commission may be found under Article 338(5) which covers investigation and monitoring of all matters related to the safeguards provided for the Scheduled Castes under the Constitution or under any other law for the time being in force, the evaluation of the working of such safeguards and inquiry into specific complaints with respect to deprivation of rights and safeguards of the Scheduled Castes: 338(5)(a),(b). Sub-clause (e) of Article 338(5) includes the duty to make recommendations as to the measures that should be taken by the Union or any State for the effective implementation of the safeguards referred to in sub-clause (a) and other measures for the protection, welfare and socio-economic development of the Scheduled Castes.

7. Clause (8) of Article 338 vests the Commission with the power of a civil court during investigation of any matter referred to in clause 5(a) or an inquiry into a complaint under clause 5(b).

8. Therefore, clause (8) of Article 338 contemplates vesting of the powers of a civil court on the National Commission in relation to the duties enumerated in sub-clause (a)-(f) of clause 5, which include investigating or

making an inquiry into any matter relating to the safeguards provided for the Scheduled Castes or into specific complaints with respect to the deprivation of the right and safeguards of the Scheduled Castes. The power of the Commission to summon and enforce the attendance of any person under Article 338(8)(a) is circumscribed by the duty specified under Article 338(5)(a) and (b).

9. The question in the present case is whether the recommendations made by the Commission vide the Minutes of Hearing dated 3.2.2023 were within the powers and duties vested in the Commission under Article 338 of the Constitution.

10. The admitted facts are that the respondent no. 3 was an employee of the Department of Health and Family Welfare, Government of West Bengal. The respondent no. 3 first resigned from service on 5.1.2021. The respondent no. 3 gave a second letter of resignation on 27.1.2021 through proper channel citing his inability to serve in Alipurduar. Disciplinary proceedings were initiated against the respondent no. 3 which culminated in an order of dismissal on 5.4.2023. A show-cause notice had earlier been issued on the respondent no. 3 on 21.10.2022 followed by a reply of the respondent no. 3 on 22.11.2022 containing an admission that the respondent no. 3 had committed a "grave offence" and that punishment, other than dismissal, may be imposed on the respondent.

11. The respondent no. 3, in the meantime lodged a complaint before the Commission on 5.7.22 stating that he belonged to the Namasudra community which is a sub-caste of the Matua community and that he had

suffered injustice from the Government machinery since 27.1.2021. The Under Secretary to the Government of India wrote a letter to the Senior Special Secretary, Health and Family Welfare Department, on 12.9.2022 informing the Department about the complaint and requesting the Department to submit facts and information on the action taken on the allegations within 7 days of receipt of the notice. The Commission called the petitioner and the respondent no. 3 for a hearing; correspondences were exchanged between the parties in this regard and culminated in the Minutes of Hearing dated 3.2.2023 where both the parties were present. The impugned recommendations were part of the Minutes and were communicated to the petitioners on 9.2.2023. The petitioners were called upon to submit an Action Taken Report as per the recommendations of the Commission.

12. There are several documents which disclose the nature of the complaint made by the respondent no. 3 to the Commission on 5.7.2022. First, the complaint merely states that the respondent had suffered injustice from the Government machinery for participating in the West Bengal Legislative Election 2021 and that the complainant/respondent no. 3 belonged to a sub-caste of the Matua community. There is no case of discrimination or violation of the safeguards provided to the Scheduled Caste or any deprivation of rights suffered by the respondent no. 3 as a member of Scheduled Caste in the complaint. Second, the letter of the Department of Health and Family Welfare dated 22.11.2022 refers to departmental proceedings initiated against the respondent no. 3 on violation

of service norms. The letter emphasizes that the matter does not relate to caste discrimination. Third, the impugned Minutes/recommendations refer to an application filed by the petitioner/respondent no. 3 in the West Bengal Administrative Tribunal, Kolkata, in 2021 and an order passed by the Tribunal on 13.8.2021 directing the Secretary, Department of Health and Family Welfare to consider the application of the respondent no. 3 for withdrawal of resignation and for resumption of duty by passing a reasoned order within 8 weeks from the date of communication of the order. The Tribunal further directed that the respondent no. 3 shall have to join at Alipurduar at his transferred place of posting.

13. The above makes it clear that the complaint of the respondent no. 3 before the Commission was not related to any discrimination, violation of safeguards or deprivation of the rights of the respondent no. 3 as a member of the Scheduled Caste. It was a case of a disgruntled employee who took his dissatisfaction to the Commission as a last resort. The Commission, on its part, travelled beyond its jurisdiction to issue the impugned recommendations, not only for reinstatement of the respondent no. 3, but also for payment of his salary with effect from 23.6.2021. The Commission further directed the petitioners to file an Action Taken Report within 15 days from the date of signature on the Minutes by the Vice-Chairman of the Commission.

14. Rule 7.2(a)(vii) of the Rules of Procedure of the National Commission for Scheduled Castes, notified on 23.5.2009, which includes service/employment of Scheduled Caste and other related matters cannot be

divorced from the periphery of Rule 7.2(a)(i). Rule 7.2(a)(i) empowers the Commission to investigate and enquire into matters relating to safeguards, protection, welfare and development of the Scheduled Castes, and into specific complaints for which the Commission takes up investigation or inquiry. The language of Rule 7.2(a)(i) borrows from the language of Article 338(5)(a) and (b) of the Constitution of India which specify the duties of the Commission. The inescapable conclusion hence is that matters of service or employment and any investigation or inquiry in related matters must be ring-fenced by the constitutional safeguards under Article 338(5) pertaining to members of the Scheduled Caste. The investigation and inquiry, in essence, must relate to specific complaints involving discrimination, deprivation or violation of the safeguards accorded to members of the Scheduled Castes.

15. The present complaint does not fall within the purview of the constitutional mandate with regard to the jurisdiction of the Commission. The impugned recommendations also make it clear that the Commission has virtually acted as an appellate forum with reference to the order passed by the West Bengal Administrative Tribunal by recommending the reinstatement of the respondent no. 3.

16. Moreover, demanding an Action Taken Report from the petitioner in pursuance of recommendation takes on the colour of a direction. The Supreme Court in *All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India; (1996) 6 SCC 606* held that the powers of the Commission under Article 338(8) are essentially to facilitate an

investigation or inquiry but that such powers do not convert the Commission into a Civil Court. The Supreme Court further held that that the Commission does not have the power of the civil court in granting injunction, whether temporary or permanent. The order of the Delhi High Court in *Maharaja Agrasen College v. Narender Kumar*, W.P (C) 521/2018 & CM No. 2232/2018 and of this Court in *Board of Major Port Authority for Syama Prasad Mookerjee Port Kolkata v. Government of India, National Commission for Scheduled Castes* in W.P.A. 1243 of 2023 were passed on the jurisdictional question outlining the bounds of the jurisdiction vested in the Commission.

17. The argument made on behalf of the Commission and the private respondent no. 3 on the issue of participation in the proceedings is not a satisfactory defense to assumption of jurisdiction by the Commission where the case is a service matter, simpliciter. The petitioners appearing before the Commission or writing letters to it or presenting themselves for appearance will not cure the inherent lack of jurisdiction. The question is not of the investigation being allowed to continue as a matter of course; the question is whether the investigation could have started at all. Any action or decision taken in excess or in the absence of jurisdiction would not only nullify the very initiation of proceedings but all that follows post-initiation. The Commission cannot wrest jurisdiction to proceed where there is none.

18. WPA 9595 of 2023 is accordingly allowed and disposed of by directing the National Commission for Scheduled Castes to recall and withdraw the recommendations made pursuant to the hearing held on 3.2.2023. The

respondent no. 1 Commission shall not act in terms of the recommendations or give effect to the same.

19. Although affidavits have not been called for, learned counsel for the parties have made elaborate submissions on the writ petition and the writ petition is being disposed of on that basis.

20. The learned DSG appearing for the Commission makes a prayer for stay of the operation of this judgment. Since the Court has held that the Commission did not have the jurisdiction to initiate the investigation/enquiry, the prayer for stay is considered and refused.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)