

IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU

Writ Petition No. / 2020 (PIL)

Between:

Sri Maruthi

... Petitioner

And

State of Karnataka
Social Welfare Department
5th Floor, M.S. Building,
Dr. B. R. Ambedkar Veedhi
Bengaluru – 560 001
Represented by its Principal Secretary

...Respondent

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 & 227 OF
CONSTITUTION OF INDIA

1. The address for the purpose of service of notice and summons from this Hon'ble court is as shown in the cause title and also the notice may be served to the advocate of the petitioners in the address of Basawa Prasad Kunale, Mohammed

Afeef, Savita A Siddi, Sivamanithan, Lekha Adavi and Narasimappa T.V, having office at 122/4, Infantry Road, Bengaluru-560001.

2. The address of the respondent for the purpose of service of notice and summons is as provided in the cause title.
3. The petitioners have preferred this petition seeking reliefs for proper and effective implementation of the Karnataka State Commission for Schedule Caste and Schedule Tribe Act of 2002 (The Act) and the Rules made thereunder, which has been not functioning for the past 2 years due to non-appointment of the Chairperson and due to lack of effective powers entrusted upon the said Commission under the Act has lead to failure in achieving the objective for which it has been constituted.
4. The Petitioner, himself belonging to the Madiga community, a Schedule Caste, is a social and RTI rights activist who has been involved in various issues in the forum of submitting representations, negotiations with the Government agencies and publishing books and articles on the status of Dalits in Karnataka, better facilities to the students in Government aided universities, better working conditions for migrant constructions workers and powrakarmikas. He has

published several books on social issues in Kannada including, "ಸ್ವಾಭಿಮಾನಿ ದಾ: ಬಿ.ಆರ್. ಅಂಬೇಡ್ಕರ್" and "ಸುಸ್ಥಿರ ಭಾರತ ಅಸ್ಥಿರ" The Petitioner is presently pursuing Phd doctorate at Bangalore University on the topic "Impact of Social Boycott on Dalits in State of Karnataka an Analysis from the year 1955-2017. Further, he has also initiated other public interest litigations including WP no. 6435/2020 regarding the procurements of 10,000 ventilators, 5 lakh personal protective equipment's and 10 lakh masks, pending before this Hon'ble Court.

5. The Petitioner has no personal interest in the litigation and there is no motive other than that of public interest in filing the captioned Writ Petition. Pertinently, it has been filed for the protection of members of the Schedule Castes and Schedule Tribes and the same persons are unable to approach this Hon'ble Court, considering the economic and social constraints.

Factual Background:

6. The Indian society being based on the Caste system discriminated and oppressed the persons belonging Schedule Castes and Schedule tribes for centuries and continue to do so denying them of every social, economic, and political benefits, which constitutes of 18% of SC's and 6.95% of ST's population according to the 2011 census. In the State of Karnataka, there are 101 castes classified as Schedule

Caste under Article 341 and there are 50 communities classified as Schedule Tribe under Article 342 of the Constitution.

7. The victims of the caste system have been recognized as a group in itself and have been identified with different names including as "Dalits", "Harijans", "Pariahs" etc. However, the Constitution of India has recognized this group as "Schedule Caste" (hereinafter referred as SC) and Schedule Tribe" (hereinafter referred as ST) under Article 366 (24) and Article 366 (25).
8. Considering the plight of this marginalized community, the Constitution makers introduced several provisions into the Constitution for the welfare, protection and the upliftment of this community including Article 15 (4) which provides for special provisions for the advancement of persons socially and educationally backward classes of citizens or for the SC's/ST's, Article 16 (4) & (4A) speaks of reservation in matters of promotion to any class or classes of posts in the services under the State in favor of backward class of citizens which are not adequately represented in the services under the State, Article 17 abolishing the practice of untouchability, Article 46 which requires the State to promote with special care the educational and economic interests of the weaker section of the society, and in particular of the SC and the ST and Article 335, which provides for the claims

of the members of the SC and ST to be taken into consideration for appointment to services and posts, including of the judiciary, in connection with the affairs of the Union or of a State.

9. Further, in order to ensure adequate and proportionate representation of this community in the Parliament and State Legislature, Article 330 and Article 332 were introduced provides for reservation of seats in favor of the SC/ST on the House of People and in the legislative of the States Under Part IX relating to Panchayats and Part IXA of the Constitution relating to the Municipalities, reservation for the SC and ST in local bodies.
10. With the objective to provide for a permanent Commission to look into the safeguard of the SC/ST, the State Government enacted The Karnataka State Commission for Schedule Caste and Schedule Tribe Act of 2002, which shall,-
- a. Investigate and examine the working of various safeguards provided for the welfare and protection of the Scheduled Castes and Scheduled Tribes.
 - b. Inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes of Karnataka.

- c. To participate and advice on the planning process of socio-economic development of the Scheduled Castes and the Scheduled Tribes and evaluate the progress of their development in the state.
- d. make recommendations as to the measures that should be taken by the State Government for the effective implementation of safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled tribes and make report to the State Government annually.
- e. discharge such other functions as may be instructed by rules.

11. Section 3 of the Act provides for the Constitution of the Commission for the Scheduled Castes and the Scheduled Tribes which shall consist of the following members, namely:-

- a. the Chairperson, who has special knowledge in matter relating to the Scheduled Castes and the Scheduled Tribes nominated by the State Government;
- b. two persons, who have special knowledge in matters relating to the Scheduled Castes and the Scheduled Tribes nominated by the State Government;

- c. The Director, Social Welfare or Director Tribal Welfare shall be the Member Secretary of the Commission respectively in matters pertaining to the Scheduled Castes and the Scheduled Tribes.

12. That the Commission for SC's and ST's established under the Act, has been entrusted with the following functions as follows, under section 8:

- a. to investigate and examine the working of various safeguards provided in the constitution of India or under any other law for the time being in force or under any order of the Government for the welfare and protection of the Scheduled Castes and the Scheduled Tribes of Karnataka and;
- b. to inquire into specific complaints with respect to the deprivation of rights and safeguard of the Scheduled Castes and the Scheduled Tribes of Karnataka and to take up such matter with the appropriate authorities;
- c. to participate and advise on the planning process of socio economic development of the Scheduled Castes and the Scheduled Tribes and to evaluate the progress of their development in the State.
- d. to make recommendations as to the measures that should be taken by the State for the effective implementation of safeguards and other measures for the protection, welfare and socio economic development of the Scheduled Castes and the Scheduled Tribes and to make report to the

State Government annually and at such other time as the Commission may deem fit.

- e. to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and the Scheduled Tribes as may be prescribed

13. Under Section 10 of the Act, the Commission has the powers of a civil court while investigating into a matter, including:

- a. summoning and enforcing the attendance of any person from any part of the State 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.

14. Irrespective of the Constitution of the Commission as envisioned under the Act from the year 2003, the Commission has not been functioning due to non-appointment of the Chairperson or the said Commission for the past 5 years.

15. It is submitted that the Commission as envisioned under the Act has been unable to perform effectively, thereby failing to assist the victims of caste atrocities in the State of Karnataka as well as to innovate ideas to curb atrocity cases as well as to adopt measures for uplifting the members of the Schedule caste and Schedule tribe.
16. That the Commission has failed to achieve its objective due to failure to comply with periodic appointment of the Chairperson and Members of the Commission; inadequate powers entrusted upon the Commission; need for proper guidelines on the appointment of the Chairperson and the Members, with regard to their fixed tenure as well as qualifications.
17. The Petitioner has no other alternative or efficacious remedy than approaching this Hon'ble Court. The Petitioner has not initiated any other legal proceedings on the same cause of action. Hence, the Petitioner has preferred this writ petition under Article 226 and 227 of the Indian Constitution on the following among other grounds:

GROUNDSLiving conditions of Dalits and the rising number of caste atrocities against them in the State of Karnataka

18. That the SCs and STs live in segregated hamlets, which is not necessarily recognized as villages, throughout the length and breadth of the State. There are about 30,000 such hamlets which are exclusive ethnic habitats of the SCs and STs.
19. The Scheduled Caste (SC) households account for about 20 per cent of the rural population. Together with Scheduled Tribe (ST) households, they form nearly 28 per cent of the rural population. These two social categories have the lowest levels of average consumption and the highest incidence of poverty. About 25 per cent of their respective populations is poor. In urban Karnataka, the combined population share of the SCs and STs is about 15 per cent. Nearly half of these two social categories are poor, whereas this proportion comes to only a sixth for other households. Thus, there exists a sharp gap between these social groups and the rest of the population in terms of improvements in levels of living.
20. It is submitted that persons belonging to the Schedule Caste and Schedule Tribes continue to face discrimination on the basis of caste assigned based on birth and there has been steep rise in the

21. In the city of Bengaluru itself, A Dalit man and his friend were allegedly abused and assaulted by a businessman for distributing milk to poor people. Apparently the man Anil Kumar parked his car in front of RadhaKrishna Reddy's house. Mr.Reddy started abusing Anil for car parking, and told the locals not to take anything from Anil, as he belongs to a lower caste. The accused along with three of his family members assaulted Anil and his friend. Anil was taken to hospital for treatment, and later he filed a complaint against Reddy and his family members. The copy of the news report in The New Indian Express with the headline "Schedule Caste Man assaulted while distributing ration to poor" dated 14/04/2020 is produced herewith as ANNEXURE - "A".

22. Similarly, in the month of June, 2020, A Dalit leader, by name Venkatesh, 50, was assaulted and attacked by "upper" caste hotelier and his realtives for rquesting a cup of water at Mallipatna in Arakagud Taluq recently, succumbed to his injuries at a hospital, triggering protests across the State. The deceased Venkatesh is survived by his wife and two sons. The copy of the news report in The Hindu with the headline "Protest after Dalit Leader dies in attack by hotelier" dated 11/06/2020 is produced herewith as ANNEXURE - "B".

23. In another shocking incident, were a mob of at least 13 people brutally beat up a lower caste man with sticks in Bijapur District, Karnataka, allegedly because he touched a scooter belonging to an upper-caste man. The incident, which took place on July 18 in the rural town of Talikoti in Bijapur district, was captured on video. The video shows the man, Kashinath Talwar, 28, surrounded by men and being attacked and stripped. The copy of the news report in the Times of India dated 22/07/2020 with the headline "28 year old dalit man beaten for touching vehicle in Karnataka's Vijayapura" is produced herewith as ANNEXURE - "C".

24. That the State of Karnataka ranks 7th in India in terms of crimes against SCs and ranks 10th in terms of crimes against STs as per the 2019 data as per the latest 2019 National Crime Records Bureau's ('NCRB') Crime Statistics Report. The report also observes that rate of crime against SCs in Karnataka has increased from 2017 to 2019, however, the conviction rate for such crimes in Karnataka has been extremely low at 1513 of acquittals with the 2775 arrests made in the year 2019. The rate of crime against ST in Karnataka has also seen an increase with 4% crimes being committed against the community and with 769 arrests, with 300 of them being convicted. All of this data proves that there has been no effective implementation of the legislations in place, which look at the welfare and provide safeguard measures for the persons belonging to Scheduled Caste and

against Scheduled Castes (States & UTs) dated 2017 is annexed herein and marked as ANNEXURE – D. A copy of the NCRB report on Chapter 7C. Crime/Atrocities Against Scheduled Tribes (States & UTs) dated 2017 is annexed herein and marked as ANNEXURE – E.

25. That there have been more than 2,036 cases filed before the Commission since its inception in the 2003.
26. It is submitted that the irrespective of the constitution of the said Commission as envisioned under the Act, it has been dysfunctional for non-appointment of the Chairperson from the year
27. It is submitted that considering the rising number of the atrocity cases against the persons belonging to the Schedule Caste and Schedule tribe, there is an urgent need for strengthening the Commission established under the Act.

Effective Implementation of the SC/ST Prevention of Atrocity Act

28. That as per section 8 (d) of the Act, the Commission is bound to make recommendation to the State government for the effective implementation for the

safeguards and other measures for the protection, welfare and socio economic development of the Scheduled Castes and the Scheduled Tribes

30. In regard to the said function it the duty of the Commission to submit reports with regard to the implementation of the Prevention of Atrocity Act, which is a welfare legislation with the objective to provide safeguard measures and to protect the interest of the persons belonging to the Scheduled Castes and the Scheduled Tribe communities.

31. It is further submitted that as per Rule 13 of the PoA Rules, 1995, the State government is bound to prepare and release annual reports on the implementation of the PoA Act under the and the last annual report it has released was only for the year 2016. After 2016, no Annual Reports on the PoA Act have been released.

31. It is submitted that unless the Karnataka Commission for SC/ST does not prepare a report in furtherance of its functions as detailed under section 8 (d) of the Act, the State Government will be unable to submit its report on the implementation of the PoA Act.

32. That the Commission has been unable to prepare any report due non appointment of the Chairperson for the last 5 years and therefore the State

Government has failed to comply its obligation under Rule 18 of the PoA Rules, 1995.

Appointment of the Chairperson to the Commission

33. The said Commission as envisioned under the Act has been constituted with the sole objective of protecting the interest of the persons belonging to the Schedule Caste and the Schedule Tribe.
34. The uninterrupted functioning of the Commission is *sine quo non* for achieving the objective of protecting the interest the persons belong Scheduled Caste and Schedule Tribe against cases of atrocity and to further the objective of uplifting the members of the said community. However, the Commission has been dysfunctional from the year 2018.
35. Presently there are 2,500 number of cases pending before the Commission and there are no proceedings taking place due to the non-appointment of the Chairperson to the Commission.
36. That in order for keeping the said Commission functioning all the time, it is important to ensure that the post of the Chairperson doesnot remain vacant at

any point of time and that the victims of caste atrocity should be able to access the Commission without any difficulty.

37. Rule 7 (6) of the Rules, requires that every decision of the Commission shall be decided by majority of the members present and voting, however, the Chairman will have an additional casting vote in case of an equal division.

38. In furtherance of the Rule 7 (6), the presence of the Chairperson in any decision making process of the Commission is mandatory and his absence will frustrate the entire objective and the purpose for which Commission has been established.

Temporary appointment of the Chairperson to the Commission:

39. That the dysfunction of the Commission due to any reason will lead to failure of the State to provide adequate safeguards to the persons belonging to the SC and ST communities thereby in gross violation of the objective of the Act it aims to achieve.

40. That the non-functioning of the Commission due to non-appointment of the Chairperson is in violation of Article 21 of the persons belonging to Schedule Caste and Schedule Tribe in the state of Karnataka.

41. In furtherance of achieving the objectives of the Commission, it is important that in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death or resignation, this Hon'ble Court should be authorized to appoint any one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

42. That, along with such powers, this Hon'ble Court should also be authorized to appoint any one of the Members of the Commission to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties, in case he is unable to do the same on account of his leave or any other reasons.

Qualification of Appointment of the Chairperson and Members to the Commission

43. That the Act provides for very limited qualification for consideration for the post of Chairperson and Members to the commission, whereby a person having mere special knowledge in matters relating to the Schedule Castes and the Scheduled Tribes can be nominated by the State Government for the said post to the Commission to the SC/ST.

44. That the mere eligibility is not enough to be the Chairman or the members of the Commission, it is important that along with the eligibility, there must also be some positive qualities such as experience, ability, character and integrity for being appointed as the Chairman and Members Commission, therefore it is not only the personal integrity of the candidate who is to be appointed but also the integrity of the Commission as an institution which has to be borne in mind while making the appointments.
45. That the Commission as envisioned under the Act, considering its objectives and the functions assigned to it, has a mammoth of task before it including not only to investigate and examine the working of various safeguards for the welfare of the SC and ST, but also to inquire into specific complaints with respect to the deprivation of rights and safeguards and to participate and advice in the planning process of socio-economic development of the SC and ST, and 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 Schedule Castes and Schedule Tribes.

46. That as per the functions assigned to the Commission, it is important that it should not only be constituted of those persons who have special knowledge in matters relating to the Schedule Castes and the Scheduled Tribes, but also of those persons having qualification of additional specific knowledge with regard to the Law and the functioning of the legal system, for the purpose of better adjudication of the complaints made before the Commission, as well as the qualification to be well equipped with the administrative functioning of the government to make recommendations with regard to the measures for upliftment and protection of the Schedule Caste and Schedule Tribe members.

47. That considering the nature of the objective of the Commission it is important that the Commission is constituted of members who are well equipped with legal and administrative knowledge.

48. In *M/s Hochtief Gammon v. State of Orissa and Others* (AIR 1975 SC 2226), A. Alagiriswamy writing the judgment for a three Judge Bench of the Hon'ble Apex Court explained this limitation on the power of the Executive in the following words: "The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They

should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully".

49. That there is an urgent need for expanding the qualification guidelines for appointment as the Chairperson and Members to the Commission, considering the rise in the number of atrocity cases in the State of Karnataka.

50. In order for the smooth functioning of the Commission and at the same time to achieve the objective for which it has been established, it is important that following qualification is set out for the appointment of Chairperson and the Members:

- a. Chairperson, who have been Judge of the High Court or District Judge in the State of Karnataka and belonging to the Schedule Caste or Schedule Tribe community
- b. Two Members, having State government administrative experience of atleast 20 years including atleast 10 years of experience with the protection and welfare of the members of the Schedule Caste and Schedule Tribes and who belongs to the Schedule Caste or Schedule Tribe community and out of which one member will be woman.

Empowering the Commission with additional powers and duties

51. That the powers entrusted upon the Commission under the Act are inadequate and fail to advance the interest of the persons belonging to Schedule Caste and Schedule Tribe thereby failing to achieve the objective for which it has been established.
52. That the powers entrusted upon the Commission are futile in nature and in no way strengthens the said Commission in fulfilling the objective for which it has been established.
53. Considering the rise in caste atrocity cases there is an urgent need for empowering the Commission with additional powers which can be exercised by the Chairperson and Members of the Commission to enforce and better implementation of the laws protecting the Schedule Caste and the Schedule Tribes,
54. That in furtherance of empowering the Commission it is important the in addition to the already existing powers, the following powers be entrusted upon it, including:
- c. Enquire, suo moto or on a petition presented to it by a victim or any person on behalf, into complaint of:

- i. Violation of any rights provided in the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) and rules therein or abetment thereof
 - ii. Negligence in the prevention of such violation by the Public servant
 - iii. Inquire and recommend to the concerned disciplinary authority to initiate disciplinary actions in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of the schedule caste and schedule tribe
- d. To investigate and monitor all matters relating to the safeguards provided for the Schedule Castes and Schedule Tribes under the Constitution of India 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;
- e. To evaluate the working of various safeguards and civil rights accruing to a person as stipulated in the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) for the protection of Schedule Castes and Schedule tribes and in laws and

regulations and any other orders passed by the Union and Governments, to investigate and monitor all matters relating to safeguards provided for the Schedule Castes and the Scheduled Tribes under the Constitution of India or under any other law;

- f. To make recommendations with a view to ensure effective implantation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 Act 22 of 1955) and the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and other laws and the rules;
- g. To undertake a review of the implementation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;
- h. To undertake a review of the implantation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;
- i. To undertake a review of the implementation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;
- j. To look into specific complaints regarding deprivation of rights and safeguards in the interest of the Scheduled Castes and Scheduled Tribes

- k. To enquire into any unfair practice, take decision thereon and recommend to the Government the action to be taken in that matter;
- l. To spread literacy among various section of the society regarding the Protection of Civil rights Act, 1955 (Central Act 22 of 1955) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) and to promote awareness of the safeguards available for the protection of these rights through publications in the media, seminars and other available means;
- m. To conduct studies, research and analysis on the question of avoidance of discrimination against the Scheduled Castes and the Scheduled Tribes
- n. To suggest appropriate legal and welfare measures in respect of Scheduled Castes and Scheduled Tribes to be undertaken by the Government;
- o. To discharge such other functions in relation to welfare, development and advancement of Scheduled Castes and Scheduled Tribes;
 - i. On receiving a written complaint from any Scheduled Caste and Scheduled Tribe women alleging that she has been subjected to any unfair practice or on a similar complaint made on behalf of her by any individual or an organization;

- ii. To cause investigations or inquiries to be made by the Director of Tribal Welfare on issues of importance concerning Scheduled Castes and Scheduled Tribes particularly SC/ST women and issues concerning unfair practice and to report thereon to the Government on the corrective measures to be taken.
- p. The monitoring of the working of laws in force concerning the Scheduled Castes and the Schedule Tribes women with a view to identifying the areas where the enforcement of laws is not adequately effective or has not been streamlined and recommending executive or legislative measures to be taken;
- q. To invite one or more prominent persons to participate in the meetings of the Commission to advise on such matters as may be necessary
- r. To encourage the efforts of non-governmental originations and institutions working in the field of human rights and for the upliftment and betterment of Scheduled Castes and Scheduled Tribes;
- s. To make periodical reports at prescribed intervals to the Government;
- t. To exercise such other powers and perform such other functions as may be conferred or enjoined upon it by this Act or the Rules made there under;

55. It is submitted that, in furtherance of the above said additional powers entrusted upon the Commission, it is also important for it to enforce and execute its powers effectively. Therefore it is with this objective that the Commission is additionally equipped with a Police task force, in order to achieve the purpose for which it has been established under The Act.

56. That, whenever the Commission considers it necessary so to do, with the assistance of the Director General of Police/ Inspector general of Police of Karnataka, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of any of the complaints made before the Commission.

Obligation of the state towards the marginalized communities

57. The Non appointment of the Chairperson and inadequate powers entrusted upon the Commission shows that total lack of empathy and seriousness, as regards to the rights of the persons belonging to the SC and ST Communities and the redressal of the encroachment and transgressions of their rights, the result of which has proved catastrophic to the whole community which is extremely vulnerable and is now bearing the brunt of being targeted systematically by the anti-social elements.

58. In *National Campaign on Dalit Human Rights & Ors. v Union of India (UoI) and Ors.* Writ Petition (Civil) No. 140 of 2006, the Hon'ble Supreme Court while looking the implementation of the PoA Act, examined various constitutional provisions, along with it the United Nations International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') and the evolution of laws addressing caste in India, the Court observed that *"the laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities... The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected"*. The Supreme Court directed the State Governments to strictly enforce the provisions of the PoA Act and granted liberty to the Petitioners to approach the concerned authorities and thereafter, the High Courts for redressal of their grievances. Similarly it is important for this Hon'ble Court to examine the level of implementation of the Karnataka State SC/ST Commission Act and Rules and direct the State Government to enforce the said Act effectively.

59. In *Sakti v. State of Andhra Pradesh & Ors.* (2009) 12 SCC 682, the Supreme Court held that *"So far as Section 21 of the Central Act is concerned, it is the duty of the State Government to take such measures as may be necessary for effective*

implementation of the Act", even when there is state-specific legislation relating to SC/ST persons.

60. That the Karnataka SC/ST Commission Act and the Rules have been enacted to broaden the scope of the executive to protect and prevent the commission of offences of atrocities against the members of the SC/ST community, and in case of such offences, to provide appropriate reliefs to the victims and other such measures. Non-implementation of the said Act and Rules is not only placing the members of the SC/ST community in an unequal footing with regard to the access to law and thus violating the Right to Equality under Article 14, but also amounts to discrimination based on caste prohibited under Article 15 of the Constitution. Furthermore, the non-implementation and resulting hardship is impeding the quality of life of the SC/ST community.

61. Therefore, in light of the above, the issue of the proper and effective implementation of the Karnataka State SC/ST Commission Act and Rules requires the intervention of this Hon'ble Court in light of the poor state of compliance with the provisions of the said Act and Rules on the issues outlined above, which has resulted in a consistent rise in atrocities in the State of Karnataka and poor disposal of cases and conviction of accused persons.

Power of the Judiciary to intervene

62. That this Hon'ble Court has the power to issue appropriate writs directing the Respondent State Government to appoint a chairperson to the Commission as well as to entrust it with additional powers, as there is difference between judicial review and merit review and Courts, while exercising the power of judicial review, the Court is not concerned with the final decision of the Government taken on merit but are entitled to consider the integrity of the decision-making process.

63. In **Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur & Anr.**

[AIR 1966 SC 81] three-Judge Bench of The Hon'ble Supreme Court held that Article 226 of the Constitution is couched in comprehensive phraseology and it *ex facie* confers wide power on the High Court to reach injustice wherever it is found.

64. In **State Of Punjab v. Salil Sabhlok & Ors** (2013) 2 SCC (LS) 1 the Hon'ble

Supreme Court held that the power under Article 226 can be exercised in order to fulfil the objectives and purpose of the Constitution, while observing that,

".....that the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an

exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extra-ordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution"

65. The Petitioner has no other alternative or efficacious remedy than approaching this Hon'ble Court, hence, the Petitioner has preferred this writ petition under Article 226 and 227 of the Indian Constitution.

PRAYER

WHEREFORE, in light of the above facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

A. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to effectively implement the Karnataka State Commission for Schedule Caste and Schedule Tribe Act and Rules and to monitor the implementation of the same;

B. Appoint an interim Chairperson to the Karnataka State Schedule Caste/ Schedule Tribe Commission till the post is filled officially by the State government

C. Direct the Respondents to appoint a Chairperson to the Karnataka State Commission for Schedule Caste and Schedule Tribes immediately ;

D. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents appoint any one of the Members of the Commission to act as the Chairperson until the appointment of a new Chairperson, in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death or resignation.

E. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to appoint any one of the Members of the Commission to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties, in case he is unable to do the same on account of his leave or any other reasons;

F. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to consider the following qualifications while appointing a person to the post of the Chairperson or Member:

- Qualification to the post of Chairperson to the Commission: Person who has been a Judge of the High Court or District Judge in the State of Karnataka and belonging to the Schedule Caste or Schedule Tribe community
- Qualification to the post of Members to the Commission: Two Members, having State government administrative experience of atleast 20 years including atleast 10 years of experience with the protection and welfare of the members of the Schedule Caste and Schedule Tribes and who belongs to the Schedule Caste or Schedule Tribe community and out of which one member will be woman;

6. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to empower the Commission with the following additional powers:

- Enquire, suo moto or on a petition presented to it by a victim or any person on behalf, into complaint of:

- Violation of any rights provided in the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) and rules therein or abetment thereof

- Negligence in the prevention of such violation by the Public servant

- Inquire and recommend to the concerned disciplinary authority to initiate disciplinary actions in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of the schedule caste and schedule tribe

- To investigate and monitor all matters relating to the safeguards provided for the Schedule Castes and Schedule Tribes under the Constitution of India 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;

- To evaluate the working of various safeguards and civil rights accruing to a person as stipulated in the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) for the protection of Schedule Castes and Schedule tribes and in laws and regulations and any other orders passed by the Union and Governments, to investigate and monitor all matters relating to safeguards provided for the Schedule Castes and the Scheduled Tribes under the Constitution of India or under any other law;
- To make recommendations with a view to ensure effective implantation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 Act 22 of 1955) and the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and other laws and the rules;
- To undertake a review of the implementation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;
- To undertake a review of the implantation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;

- To undertake a review of the implementation of the policies pursued by the Government with respect to the Scheduled Castes and Scheduled Tribes;
- To look into specific complaints regarding deprivation of rights and safeguards in the interest of the Scheduled Castes and Scheduled Tribes
- To enquire into any unfair practice, take decision thereon and recommend to the Government the action to be taken in that matter;
- To spread literacy among various section of the society regarding the Protection of Civil rights Act, 1955 (Central Act 22 of 1955) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (central Act 33 of 1989) and to promote awareness of the safeguards available for the protection of these rights through publications in the media, seminars and other available means;
- To conduct studies, research and analysis on the question of avoidance of discrimination against the Scheduled Castes and the Scheduled Tribes
- To suggest appropriate legal and welfare measures in respect of Scheduled Castes and Scheduled Tribes to be undertaken by the Government;
- To discharge such other functions in relation to welfare, development and advancement of Scheduled Castes and Scheduled Tribes:

- On receiving a written complaint from any Scheduled Caste and Scheduled Tribe women alleging that she has been subjected to any unfair practice or on a similar complaint made on behalf of her by any individual or an organization;
- To cause investigations or inquiries to be made by the Director of Tribal Welfare on issues of importance concerning Scheduled Castes and Scheduled Tribes particularly SC/ST women and issues concerning unfair practice and to report thereon to the Government on the corrective measures to be taken;
- The monitoring of the working of laws in force concerning the Scheduled Castes and the Schedule Tribes women with a view to identifying the areas where the enforcement of laws is not adequately effective or has not been streamlined and recommending executive or legislative measures to be taken;
- To invite one or more prominent persons to participate in the meetings of the Commission to advise on such matters as may be necessary
- To encourage the efforts of non-governmental originations and institutions working in the field of human rights and for the upliftment and betterment of Scheduled Castes and Scheduled Tribes;
- To make periodical reports at prescribed intervals to the Government;

- To exercise such other powers and perform such other functions as may be conferred or enjoined upon it by this Act or the Rules made there under
- That, whenever the Commission considers it necessary so to do, with the assistance of the Director General of Police/ Inspector general of Police of Karnataka, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of any of the complaints made before the Commission;

H. Grant any other relief, which the Hon'ble Court deems fit in the circumstances of the case in the interests of justice and equity.

Advocate for the Petitioner

Place: Bengaluru

Date:

Address for Service:

122/4, Next to Balaji Art Gallery,

Infantry Road, Bangalore-06