

\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 11 October, 2022**

+ W.P.(C) 2789/2019, CM APPL. 12907/2019(Stay)

TORRENT POWER LIMITED Petitioner

Through: Mr. Manik Dogra, Ms. Sonali Jaitley,
Mr. Jaiyesh Bakshi, Mr. Ravi Tyagi,
Mr. Gaurav Mishra, Ms. Neetu
Devrani, Ms. Ria Chanda, Ms.
Mayurit Shukla and Mr. Daman
Popli, Advs.

versus

NATIONAL COMMISSION FOR SCHEDULED CASTES & ORS.

..... Respondents

Through: Ms. Abha Malhotra, Sr. CGC with
Mr. J. Karan Malhotra, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The instant writ petition has been preferred questioning the assumption of jurisdiction by the **National Commission for Scheduled Castes** [“**Commission**”] and the proceedings that have been initiated in light of the complaint made by the second respondent.

2. The record would reflect that the respondent No. 2 was provisionally appointed as an Engineer in the petitioner company on 07 April 2010. His services were confirmed upon completion of the training period on 09 April 2011. The petitioner asserts that on a consideration of his performance, his

services came to be terminated on 25 September 2012. Six years after the aforesaid termination, the second respondent made a complaint to the Commission on 08 July 2018. Since the contents of that complaint would have some bearing on the challenge which stands raised, it is extracted hereinbelow: -

“To,

Hon’ble President

National Commission for Schedule Caste

Indian Government New Delhi

Subject: Termination from the job because of Schedule Caste by Torrent Power Private Limited Agra. Special appeal for reinstatement.

Sir,

Most respectfully submitted that applicant was appointed on 09/04/2010 in Torrent Power Private Limited Agra. Appointment Letter was issued on 24/04/2010. Applicant was appointed on the post of Engineer. Because of the good work of the applicant, Torrent Power Limited has confirmed the job of applicant on 09/04/2011 and promoted him to the post of Executive.

That company has started harassing him by different methods as he belongs to Schedule Caste. Even though applicant kept performing his duties effectively.

That Torrent Power Limited has sent a registered letter on 25/09/2012 at the house of applicant through which company has terminated the service of him without mentioning any reason and fault.

Prayer

It is requested that Hon’ble President should pass an order for his reinstatement from the date 25/09/2012 of his termination with all promotion and increment. Applicant will be highly obliged. Thanking you.

Date: 08/07/2018”

3. Taking cognizance of the said complaint, the Commission summoned the Principal Secretary (Power) Government of Uttar Pradesh as well as the Managing Director of respondent No.3. It also required the presence of the Vice President (Technical) of the petitioner. The Commission, on 08 January 2019, noted the submissions addressed by the petitioner who had asserted that the services of the second respondent had come to be terminated on account of “non-performance”. The petitioner is also stated to have submitted that there was no suitable post against which respondent No.2 could be re-engaged bearing in mind his educational qualifications. Taken note of the aforesaid, the Commission proceeded to pass the following directions: -

“4. The petitioner stated that he is being harassed and as FIR has been lodged against his father by Torrent Power Ltd. The V.P., Torrent Power Ltd. stated that the FIR against petitioner’s father is totally unrelated issue.

5. It was decided that SP, Agra, and DM, Agra, will examine the FIR against the petitioner’s father and submit a report on whether it is motivated or based on factual circumstances.

6. The present of Shri Sudhir Mehta, Chairman, Torrent Power Ltd. and Shri Jinal Mehta, Managing Director, Torrent Power Ltd., for next hearing is to be ensured by MD, DVVNL, and Principal Secretary (Power), Govt. of UP, to solve this matter. The MD, DVVNL, and Principal Secretary (Power) Govt. of UP, to also be present in the next hearing.”

4. Assailing the aforesaid proceedings, learned counsel for the petitioner submitted that undisputedly the engagement of the petitioner was on a contractual basis and terminable with notice. It was pointed out that there was no occasion or justification for the Commission having taken cognizance of the complaint which was laid by the second respondent six

years after the order of termination had come to be passed. The petitioner further contends that a reading of the complaint itself would establish that no allegation had been leveled by the petitioner which may have sustained an allegation of harassment or ill-treatment by the petitioner solely on account of him belonging to a Scheduled Caste.

5. Learned counsel for the petitioner submits that the jurisdiction which the Commission exercises in terms of Article 338 of the Constitution stands restricted to an enquiry and investigation into specific complaints which allege deprivation of rights and safeguards guaranteed to members of the Scheduled Castes and Tribes. Learned counsel has placed reliance upon the decision rendered by the Court in **Fresenius Kabi Oncology LTD. v. National Commission for Scheduled Castes, and Ors.**¹ where while ruling on the scope of the authority conferred on the Commission, the Court observed as follows: -

“6. I have considered the submissions made by the learned counsels for the parties. The learned counsel for the respondent no. 4 has handed over a copy of the complaint filed by the respondent no. 4 before the respondent no. 1. Apart from mentioning in the subject matter of the complaint that he was a Scheduled Caste candidate, the entire complaint does not make any reference of any Constitutional or Statutory Rights of the respondent no. 4, as a Scheduled Caste being violated by the petitioner. In fact, the complaint is one of seeking resignation by exercising force. It does not even state that the resignation was sought only against the respondent no. 4 who happened to be a Scheduled Caste candidate. In fact, in the counter affidavit filed by the respondent no. 4 before this Court, the respondent no. 4 himself gives names of three more persons whose services were terminated by the petitioner during the period in question. However, they are not stated to be belonging to Scheduled Caste category.

¹ W.P.(C) 12490/2018

7. In *Lal Chand & Ors.* (Supra), this Court has held that an enquiry in terms of sub clause (b) of Clause 5 of Article 338 of the Constitution of India can be initiated by the Commission only where the complaint relates to specific incident of depriving a person of the rights conferred upon and safeguards provided for the persons, who as a class belong to Scheduled Castes. It is only such deprivation as a Scheduled Caste, which can be made a subject matter of such an enquiry by the Commission.

8. In *Oriental Insurance Company Ltd.* (Supra), this Court reiterated that a complaint relating to mere commercial disputes cannot be made the subject matter of inquiry before the Commissioner.

9. Similarly in *National Seed Corporation Ltd.* (Supra), this Court held that challenge to voluntary retirement scheme which does not have any challenge based on the specific rights and safeguards of the Scheduled Caste, cannot be made subject matter of inquiry by the Commission.

10. In view of the above well-settled principles of law, the exercise of jurisdiction by the respondent no. 1 on the complaint of the respondent no. 4 is clearly unsustainable.”

In view of the aforesaid, learned counsel would submit that entire proceedings which have been initiated are liable to be quashed.

6. Learned counsel appearing for the Commission, on the other hand, would submit that there exists no justification for the instant challenge being entertained since the Commission had only initiated a process of enquiry and had not framed any directions which could possibly be viewed as being prejudicial to the interest of the petitioner. It was further submitted that the Commission found that the services of the petitioner had come to be terminated without the requisite notice as was contemplated in the appointment letter. According to learned counsel, this fact itself constituted a valid ground for the Commission to have drawn and initiated proceedings.

7. The scope of the jurisdiction which stands conferred upon the Commission by virtue of Article 338 of the Constitution is no longer *res integra*. The Court observes that apart from the salient observations which
W.P.(C) 2789/2019 *Page 5 of 13*

stand noticed by the Court in **Fresenius Kabi Oncology**, the jurisdiction of the Commission was explained by the Court in **Municipal Corporation Delhi v. Lal Chand and Ors.**² as follows: -

“...7. It would be noticed that sub-clause (a) empowers the Commission to undertake an investigation and sub-clause (b) empowers it only to make an enquiry and not an investigation. Investigation and enquiry are altogether different connotations, envisaging application of different procedures. Therefore, no investigation can be carried out by the Commission into matters which can be subject matter only of an enquiry. However, a perusal of the communication dated 14.12.2012 would show that on receipt of a complaint from respondent No. 1, the Commission decided to ‘investigate’ into the matter. This, however, was beyond jurisdiction of the Commission since it can make only an enquiry and not investigation into specific complaints of deprivation of rights and safeguards of the Scheduled Castes.

8. The Commission, vide communication dated 03.01.2011, thereby enclosing minutes of the meeting/hearing on 27.12.2010, directed the Commissioner, MCD to handover plots in question to respondent No. 1, who was stated to be its rightful owner and also submit a compliance report. It is an undisputed legal proposition that the Commission, while acting under Article 338(5) of the Constitution, can only make recommendations, but cannot issue any direction to the Government or any other person or Authority. A reference in this regard may be made to the following view taken by a Division Bench of this Court in *Professor Ramesh Chandra v. University of Delhi, LPA No. 280/2007, decided on 04.05.2007*:-

“6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the Constitution of India is an adjudicatory body which can issue binding directions or injunction orders.

.....While conferring limited powers of a civil court for some purposes, Article 338 has not given the Commission, the power to adjudicate and pass binding and executable decrees like a civil court.

...It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be

² 2013 SCC OnLine Del 3702

equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are alternative to the hierarchical judicial system envisaged under the Constitution of India.”

In *All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India (UOI)* (1996) 6 SCC 606, the Commission issued a direction to a bank stopping a promotion process pending further investigation and final verdict by the Commission. The Apex Court, however, held that the Commission having not been specifically granted any power to issue interim injunctions, a power vesting in a safeguard, had no authority to issue an order of this nature.”

9. It is thus quite clear that the Commission clearly exceeded its jurisdiction by taking upon itself adjudicatory role of deciding the title of the land subject matter of the complaint made by respondent No. 1, constituting a Demarcation Committee and directing MCD to handover possession of the said land to respondent No. 1. No such power, in my view, could have been exercised by the Commission which even if it is presumed that the complaint made by respondent No. 1 comes within the purview of sub-clause (b) of clause (5) of Article 338 could only have forwarded it to MCD with appropriate recommendations. Neither the Commission could have taken an adjudicatory role which law assigns only to a Court of competent jurisdiction nor could it have directed MCD to hand over a disputed piece of land to respondent No. 1. Even thereafter, the Commission in its meeting held on 04.04.2011 directed demarcation of the area by a Committee which was to include three persons named by the petitioner and minutes dated 16.05.2011, requiring that the claim of the petitioner should be considered in the light of the findings of the Demarcation Committee constituted by DDA on the directions of the Commission. The Commission went to the extent of observing in the meeting held on 20.06.2011 if the officers of MCD tried to grab the land of a Scheduled Caste, they would be booked under POA Act, 1989. This clearly was beyond the power of the Commission.

10. In my view, even an inquiry in terms of sub-clause (b) of clause (5) can be initiated by the Commission only where the complaint relates to a specific incident of depriving a person of the rights conferred upon and safeguards provided for the persons, who as a class belong to Scheduled Castes. It is only such deprivation and not deprivation of any civil right of a person belonging to a Scheduled Castes which can be subject matter of such an inquiry. To take a view that the Commission can inquire into any specific complaint made by a person belonging to a Scheduled Castes irrespective of the nature of the complaint, would render the words “with

respect to deprivation of the rights and safeguards of the Scheduled Castes” wholly redundant which certainly could not have been the legislative intent. Had the intention of the Legislature been to entrust the Commission with duty to inquire into any complaint made by a person belonging to a Scheduled Castes, the wording of sub-clause (b) would have been altogether different. The Legislature in that case would have said without any qualification, that it shall be the duty of the Commission to inquire into specific complaints made by Scheduled Castes or a person belonging to a Scheduled Castes. There are many rights granted to and safeguards provided only for the persons belonging to Scheduled Castes, the reservation in public appointments and admissions to educational institutions being such instances. To take a few other examples, if there is a welfare scheme of the State or an instrumentality of the State for the benefit of the members of Scheduled Castes alone, any complaint alleging deprivation of benefit of the said scheme can certainly be inquired into by the Commission. Then, there are reservations made by some instrumentalities of the State in making various allotments such as allotments of plots/flats by Delhi Development Authority and allotment of petrol pumps/LPG outlets by oil marketing companies. Specific complaints with respect to such matters can also be brought to the notice of the Commission and inquired into by it. To take yet another instance if a person belonging to a Scheduled Caste is refused caste certificate by the State, he can make a complaint in this regard to the Commission since such certificates are sought to avail the rights conferred only upon the members of Scheduled Castes. If the State comes out with a scheme to grant financial assistance to the members of the Scheduled Castes, any complaint alleging denial of such benefit can also be brought to the notice of the Commission and enquired into by it. But the disputed issues such as claims of title to a property which, by their nature, involve adjudication by an adjudicatory body cannot be subject matter of an inquiry in terms of sub-clause (b) even if the complainant belongs to a Scheduled Caste. The legal right to a property claimed can be by every citizen, irrespective of whether he belongs to a Scheduled Castes or not and a complaint alleging deprivation of property by State or one of its instrumentalities would certainly not be a matter with respect to deprivation of rights and safeguards of Scheduled Castes alone. Some support in this regard is available from the decision of Supreme Court in *Collector, Bilaspur v. Ajit P.K. Jogi* AIR 2012 SC 44. In the aforesaid case, the sixth respondent before the Apex Court filed a complaint before the Commission alleging that the first respondent did not belong to a Scheduled Tribe and had obtained false caste certificate. The Commission issued a show-cause notice to the first respondent, proposing to verify his caste certificate and also referred the complaint to the Government of Chhatisgarh, which constituted a Committee for verification of the caste certificate. The Commission later called upon the

State Government to conduct verification of genuineness of the caste certificate and initiate urgent necessary action for its cancellation and also for taking criminal action. The said order was challenged by the first respondent before Chhatisgarh High Court which allowed the writ petition filed by him. Being aggrieved from the said decision of the High Court, the State of Chhatisgarh filed an appeal before the Apex Court. Upholding the order of High Court to the extent it quashed the order passed by the Commission, the Apex Court inter alia held as under:-

“12. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to scheduled castes and scheduled tribes by ensuring: (i) anti-discrimination, (ii) affirmative action by way reservation and empowerment, and (iii) redressal of grievances. The duties under Clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to the Sub-clause (b) of Clause (5) of Article 338, the Commission could no doubt entertain and enquire into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of scheduled tribes. This power to enquire into ‘deprivation of rights and safeguards of the scheduled castes and scheduled tribes’ did not include the power to enquire into and decide the caste/tribe status of any particular individual.”

11. The following is the State of Objects and Reasons, appended to the Constitution (Sixty-eight Amendment) Bill, 1990, whereby Article 338 was amended:

“Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It is felt that a high level five-member Commission under article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer as at present. It is also felt that it is necessary to elaborate the functions of the said Commission so as to cover 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 Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It is also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States.

2. The Bill seeks to achieve the aforesaid objects.”

It would thus be seen that the legislative intent behind even the Amended Article was to address the grievance of the members of Scheduled Castes, through the Commission, only with respect to such rights and safeguards, which the Constitution or any other statute grants only to the members of such castes.

12. The Rules of Procedure of the Commission, to the extent they are relevant, read as under:

“7.4 The following aspect may kept in mind while filing complaints before the Commission.

xxx

(d) Complaints should clearly disclose the violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation Rules or Reservation.

xxx

(g) The cases of Administrative nature like transfer/posting/grading of ACRs will not be taken up by the Commission unless there is caste based harassment of petitioner.

(h) No action will be taken on the matters where there is no mention of violation of Reservation policy, DOPT OMs, Government of India Orders, State Government Orders, PSUs and Autonomous Bodies orders or any other violation of Rules of Reservation. Hence the matters where there is no mention of violation of above Rules need not be referred to the Commission as complaints.”

It would thus be seen that even as per the Rules framed for the Commission, the matters which do not involve violation of reservation policy and allied matters are not expected to be inquired into by the Commission, and the emphasis is on inquiring into his complaints which

relate to deprivation of rights and safeguards made available only to the members of the Scheduled Castes.”

8. Having noticed the extent of the jurisdiction which the Commission could have possibly exercised, the Court at the outset notes that a bare perusal of the complaint as made would evidence that the second respondent had merely made a general allegation that the petitioner had started harassing him “*by different methods*” since he belonged to a Scheduled Caste. It becomes pertinent to observe that the second respondent did not allege or refer to any specific instance / instances in support of his allegation that he had been ill-treated by virtue of belonging to a particular class. In order to invoke the jurisdiction of the Commission, it was incumbent upon the petitioner to have alleged or at least prima facie established, that the action of the petitioner was actuated by mala fides and motivated by the fact that he belonged to a particular class. The Court is thus constrained to observe that the Commission cannot possibly be recognized to have the authority to assume jurisdiction or initiate an enquiry under Article 338 based on such a specious complaint and unsubstantiated allegations.

9. It would be pertinent to observe that the Commission is empowered to initiate an enquiry provided a member of a Scheduled Caste is able to establish, at least prima facie, that he had been ill-treated or discriminated solely on account of the fact that he belonged to that class. The Commission is constitutionally empowered to enquire and investigate into instances of deprivation of rights of the Scheduled Castes/Tribes. That presupposes that the action complained of is founded on an allegation that a member of that particular class was discriminated against or arbitrarily dealt with solely on

account of his social status. It is equally important to note that it is not every violation of a perceived civil right of a member of that class which would justify the Commission assuming jurisdiction. As has been repeatedly held, it is the right of a member of Scheduled Caste/Tribe guaranteed by law and aimed at the protection of their rights which is the sine qua non for the Commission to initiate action. In the facts of the present case, it is manifest and apparent that no such foundation or material had been laid or placed by the second respondent.

10. The Court further observes that the complaint itself came to be made almost six years after the services of the petitioner had come to be terminated. This was thus a factor which should have necessarily weighed with the Commission before it proceeded to initiate an enquiry. Insofar as the issue of the petitioner having not placed the respondent No.2 on notice prior to termination is concerned, it may only be observed that that would be an aspect which would relate to the merits of the termination. The Court notes that it was not the allegation of the second respondent that he was not placed on notice by the petitioner solely on account of the fact that he belonged to a Scheduled Caste. In any case, the merits or otherwise of the action of termination was liable to be investigated and inquired into only if the respondent No.2 had been able to establish that the action was based on mala fides or motivated by the fact that he belonged to the Scheduled Castes. Accordingly, and for the aforesaid reasons, the Court finds itself unable to sustain the assumption of jurisdiction by the Commission.

11. The writ petition is accordingly allowed. All proceedings pertaining to the complaint registered as No. B-6/UP-53/2018/SSW-II shall consequently stand quashed.

YASHWANT VARMA, J.

OCTOBER 11, 2022

bh

