

**(2023) 05 JH CK 0024**

**In the Jharkhand High Court**

**Case No : Writ Petition (Criminal) No. 612 Of 2022**

Manoranjan Prasad Sinha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision : 08-05-2023**

**Acts Referred:**

Constitution Of India, 1950 — Article 21, 301(1), 338, 338(5), 338(8)  
Code Of Criminal Procedure, 1973 — Section 41, 173(8), 190

**Citation : (2023) 05 JH CK 0024**

**Hon'ble Judges : Sanjay Kumar Dwivedi, J**

**Bench : Single Bench**

**Advocate : Rahul Kumar, Apoorva Singh, Vikash Kumar, Prashant Pallav, Deepankar Roy, Manish Yadav**

**Final Decision : Allowed/Disposed Of**

## **Judgement**

Sanjay Kumar Dwivedi, J

1. Heard Mr. Rahul Kumar, learned counsel for the petitioner, Mr. Vikash Kumar, learned counsel for respondent no.1, Mr. Prashant Pallav, learned counsel for respondent no.2, Mr. Deepankar Roy, learned counsel for the State and Mr. Manish Yadav, learned counsel for respondent no.5.

2. This petition has been filed for quashing of the order dated 9. 09.2022 contained in Annexure-6 of this petition, passed by the National Commission for Scheduled Castes in F. No.Jharkhand/2/2020-APCR, whereby, the Commission has directed for the arrest of the petitioner, who was Ex Vice Chancellor, Sido Kanhu Murmu University within 24 hours and has further directed for the Action Taken Report to be submitted within 7 days.

3. Mr. Rahul Kumar, learned counsel for the petitioner submits that the petitioner has approached this Court and vide order dated 20.12.2022, the order of no coercive steps against the petitioner has been passed by this Court and notices were issued upon the respondents. He further submits that initially FIR being

Dumka SC/ST P.S. Case No.1/2020 was registered on the written complaint of respondent no.5 against Gourav Gangopadhyay, Dean Student Welfare, Sido Kanhu Murmu University alleging therein that on 06.01.2020 when the informant had gone to the office of Dean Student Welfare regarding some query in relation to his engagement on contractual basis, he had been abused by the Dean Student Welfare with castiest slur that 'on the basis of reservation you are seeking appointment and he would not get your doctoral degree invalidated by the Vice-Chancellor. The informant has further alleged that after the incident he became scared as the said Gourav Gangopadhyay would get his degree invalidated.

4. Learned counsel for the petitioner submits that the said FIR was investigated by the police and final form has been submitted and the petitioner has not been sent up for trial, however Gourav Gangopadhyay, Dean Student Welfare has been sent up for trial. He further submits that in this background, present complaint case has been filed before the National Commission for Scheduled Castes and pursuant to that, the impugned order has been passed. He also submits that the Commission is constituted under Article 338 of the Constitution of India only to limited extent to investigate, enquire and advise, however the Commission has exceeded its jurisdiction by directing to arrest the petitioner. He further submits that this aspect of the matter has been considered by Delhi High Court in *National Seed Corporation Ltd. v. National Commission for SC & ST & anr.*; (2013 SCC OnLine Del 2229). On these grounds, he submits that the impugned order is lacking jurisdiction and the said order may kindly be quashed.

5. On the other hand, Mr. Prashant Pallav, learned counsel for respondent no.2 submits that the power is there to the Commission in light of Article 338(5) of the Constitution of India. He draws attention of the Court to Article 338 of the Constitution of India and submits that how the Commission is having power, it is discussed in Clause (a) to (f) of the said Article. By way of placing this, he submits that the Commission was already having power and that is why the impugned order has been passed. There is no illegality in the impugned order. He further refers Rule 7.5 of Rules of Procedure of National Commission for Scheduled Caste and submits that by way of separate Rule, further power is conferred to the National Commission for Scheduled Castes. On these grounds, he submits that there is no illegality in the impugned order.

6. Mr. Deepankar Roy, learned counsel for the State submits that the police has investigated the matter and submitted charge-sheet and the petitioner has not been sent up for trial, however one Gourav Gangopadhyay has been sent up for trial. He submits that in view of the charge-sheet, it appears that the case has been maliciously filed by respondent no.5.

7. So far as maintainability is concerned, Mr. Manish Yadav, learned counsel for respondent no.5 has adopted the argument of Mr. Prashant Pallav, learned counsel for respondent no.2. Learned counsel for respondent no.5 submits that the allegations are there and the case of SC/ST is made out and that is why, the

Commission has rightly passed the impugned order.

8. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record and finds that for the said allegation, the FIR being Dumka SC/ST P.S. Case No.1/2020 was registered. The said FIR was investigated by the police and further looking into the counter affidavit filed by the respondent-State, it transpires that the petitioner, who happened to be Ex Vice-Chancellor of Sido Kanhu Murmu University, has not been sent up for trial, however one Gourav Gangopadhyay, Dean Student Welfare, has been sent up for trial, which prima facie suggests that the case is falsely filed against the petitioner. Further, the Court has looked into the impugned order dated 09.09.2022 and finds that in paragraph 2, it has been disclosed that the authority accepted before the Commission that there was a major flaw in the recruitment exercise of 2019 with regard to appointment of Assistant Professor on Ad-hoc basis in the University. Further the document contained in Annexure-2 of the petition, which is reply to the query made by respondent no.5, whereby, it has been disclosed that respondent no.5 has scored lowest marks among the candidates, who appeared in the examination and that is why, he has not been considered for appointment. In this background, it appears that the case has been lodged under SC/ST (Prevention of Atrocities) Act and the FIR was already investigated by the police and the petitioner has not been found guilty. Thus, materials on record clearly suggest that maliciously the case has been lodged against the petitioner.

9. So far as jurisdiction of Commission is concerned, for ready reference, Article 338 of the Constitution of India reads as under:

"National Commission for Scheduled Castes and Scheduled Tribes.";

338.(1) There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution 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;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) 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 socioeconomic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge 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 the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely : -

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

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

(10) In this Article the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of the Constitution by order specify and also to the Anglo-Indian community."

10. In view of the submission of Mr. Prashant Pallav with regard to jurisdiction, the said Article is required to be read with Rule 7.5 of the Rules of Procedure of National Commission for Scheduled Caste, which also reads as under:

"7 5 Inquiry into cases of atrocities

7. 5.1 Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may recommend to file an FIR against the accused with the concerned law-enforcing agency of the State/District. In such cases, the State Government/District Administration/Police Personnel may be called within three days through the summons.

7. 5.2 The Commission ensures the following while by monitoring and issuing instruction to the concerned authorities-

(i) Whether the scene of occurrence of the crime has been visited immediately by Collector and Supdt. of Police of the district on receipt of information.

(ii) Whether proper FIR is registered in local Police Station.

(iii) Whether names of all the persons involved/cited by the complainant has been included in the FIR.

(iv) Whether investigation has been taken up by a Senior Police Officer as per provisions of the SCs & STs (POA) Act, 1989.

(v) Whether culprits have been apprehended and booked without loss of time.

(vi) Whether proper charge sheet has been filed mentioning the relevant sections of IPC together with the PCR Act, 1955 and SCs & STs (POA) Act, 1989 in Court.

(vii) Whether the cases are tried by the Special Courts.

(viii) Whether special Public Prosecutors are appointed to handle these cases.

(ix) Whether Police assists the courts in bringing forward witnesses and see that the culprits are suitably punished by the courts.

7. 5.3 The Commission will also monitor that-

- (i) the victims are provided with suitable medical assistance and on time;
- (ii) adequate protection is arranged for the victims of such incidents by providing police protection by stationing a police party, by patrolling, etc;
- (iii) to see that proper compensation is paid to the victims as per provisions of law.

7. 5.4 The Commission will, wherever possible depending upon the gravity and circumstances of the case, visit the place of incident to oversee the arrangements and to console and infuse confidence among the victims.

7. 5.5 The Commission may laid down detailed procedure for conducting such inquiries and monitoring at all levels. Such inquiries can be conducted by the Members of the Commission or Teams of Investigators from Headquarters or State office of the Commission or any other officer(s)/agency duly appointed authorized by the Chairman.

7. 5.6 When any offence as is described as an atrocity in the relevant acts for the time being in force, is committed in the view or presence of the Commission or has been found to have been taken cognizance by the Commission, in pursuance of the enquiry/investigation conducted by it in the discharge of its functions, the Commission may, after recording the facts constituting the offence, forward the case to a Magistrate having jurisdiction to try the same.”

11. From joint reading of Article 338 of the Constitution of India and Rule 7.5 of the Rules of Procedure of National Commission for Scheduled Caste, it transpires that the power vested with the Commission of enquiry and submission of report cannot be extended to adjudication of disputes between an individual and a corporation or a statutory authority. The powers conferred do not contemplates that the Commission can examine the matter like a Civil Court and adjudicate the dispute and pronounce a judgment either interim or final. In view of the said Article, the Commission is not a Tribunal or a forum discharging the functions of a judicial character or a Court. Article 338 does not entrust the said Commission with the powers to take up the role of a Court or an adjudicatory tribunal and to determine the rights inter-se the parties. No doubt, under clause 8 of Article 338, the Commission has been given all the powers of the Civil Court trying a suit but the said powers are to be exercised while investigating any matter referred to in sub - clause ?a? or enquiry into any complaint referred to under sub-clause ?b? of Clause 5. Clause (8) of Article 338 of the Constitution of India was the subject matter before the Hon?ble Supreme Court in All India Indian Overseas Bank SC and ST Employees Welfare Association v. Union of India; [(1996) 6 SC 606]. Paragraph

10 of the said judgment is quoted herein below:

“10. Interestingly, here, in clause (8) of Article 338, the words used are “the

Commission shall... have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution."

(Emphasis Supplied)

12. In that case, it has been held that the Commission has been given the procedural powers of a Civil Court but the substantive powers of a Civil Court to adjudicate and decide disputes between the parties and to pronounce orders of final or interim nature have not been conferred by Article 338 under the Constitution of the Commission.

13. The said Article was further subject matter before Delhi High Court in *Gulmarg Restaurant v. Delhi Development Authority*; [119 (2005) DLT 648] wherein it has been held in paragraph 29 as under:

"29. It may be noticed that the appellant had even approached the National Commission for Scheduled Caste and Scheduled Tribes and directions were issued on 02.08.1997. These directions were, however, issued in a pending disputed matter. In any case within the Constitutional Scheme of Article 338 of the Constitution of India, the observations of such a Commission can only be recommendatory in nature. The directions passed by the said Commission seek to transfer the property in favor of the appellant at a price of Rs. 12,42,700/-, can hardly be acceptable as either the auction bid was rightly rejected or wrongly rejected. It would not proper for any other authority to determine the price. However, we are not required to deal any further with this issue since those are only recommendatory in nature."

(Emphasis Supplied)

14. Article 338(5) of the Constitution of India was considered by Delhi High Court in *Indian Institute of Technology v. National Commission for Scheduled Castes and Scheduled Tribes*; [111 (2004) DLT 155] wherein it has been held in paragraph 15 as under:

"15. It will thus be seen from the aforesaid that it is only in specific matters that the power of civil court has been conferred on Respondent No. 1 Commission. This aspect has also to be examined keeping in mind the duties of the Commission set out in Article 338(5) which has to investigate and monitor all matters relating to safeguarding the rights of the scheduled caste and scheduled tribes and to enquire into specific complaint with respect to deprivation of the rights and safeguarding. The jurisdiction is advisory in nature but it is only for

the purpose of investigating of the complaint that the powers of civil court have been conferred in respect of certain matters.”

15. The scope of orders was further considered by the Hon<sup>ble</sup> Supreme Court in *M.C. Abraham v. State of Maharashtra*; [(2003) 2 SCC 649]. Paragraphs 13, 14 and 15 of the said judgment read as under:

13. This Court held in the case of *J.A.C. Saldanha* [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

14. Tested in the light of the principles aforesaid, the impugned orders dated 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends

inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

15. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the court on mere apprehension that he may be arrested. The court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations.

16. In view of the above, it is crystal clear that the National Commission of Scheduled Castes is not a Court or a Tribunal and the orders of the Commission are merely directory in nature and respondent no.5 was not required to approach the Commission for the redressal of his grievance particularly when FIR was already registered being Dumka SC/ST P.S. Case No.1/2020. Further in view of this background, when maliciously the case has been lodged, the Commission was required to restraint itself to proceed further in view of the materials on record, however the Commission has directed the authority to arrest the petitioner within 24 hours, which is against the mandate of law. Further the liberty of any person cannot be allowed to be taken away in view of Article 21 of the Constitution of India. The case of the petitioner further fortifies in view of final form and disclosure to that effect has been made in the counter affidavit filed by the respondent-State.

17. In view of the above facts, reasons and analysis, the order dated 9. 09.2022 contained in Annexure-6 of this petition, passed by the National Commission for Scheduled Castes in F. No. Jharkhand/2/2020-APCR is set aside.

18. Accordingly, this petition is allowed and disposed of.

19. Interim order, if any granted by this Court, stands vacated.