
(2013) 10 DEL CK 0300
In the Delhi High Court
Case No : Writ Petition (C) 8038 of 2011

MCD

APPELLANT

Vs

Ompal and Another

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Constitution of India, 1950 — Article 338, 338(5)

Citation : (2013) 10 DEL CK 0300

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Biji Rajesh for Mr. Gaurang Kanth, for the Appellant;

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The respondent no. 1-Mr. Ompal was appointed as "Mali" with the petitioner-MCD with effect from 1.4.2000. He was appointed as Technical Supervisor on ad hoc basis with effect from 1.4.2002. A DPC meeting was held on 26.11.2010 for making promotion to the post of Section Officer. Since the respondent no. 1 was not eligible for promotion to the aforesaid post, he was not considered for such promotion. The respondent no. 1 thereupon made a complaint to respondent no. 2-National Commission for Scheduled Castes whereupon. Vide communication dated 12.9.2011, the said Commission required the Commissioner of MCD to attend a discussion in the office of the Chairman of the said Commission on 31.10.2011, along with full facts and all relevant requisite documents pertaining to the case of respondent no. 1. Later, the date of hearing/discussion was postponed to 1.11.2011. The Commissioner of MCD could not appear on 1.11.2011 being busy in some other engagement and Deputy Director (Horticulture) and Administrative Officer (Horticulture) to attend the proceedings before the Commission. According to the petitioner, the officers were made to wait for hours and were allowed to meet the Chairman of the Commission only at 2.30 pm on that date. The Chairman, according to the petitioner, got annoyed and made it clear that summons will be issued for

personal appearance of the Commissioner of MCD on 15.11.2011 and if he does not appear on that date, warrants would be issued against him. This was followed by summons dated 3.11.2011 seeking personal appearance of the Commission of MCD. Being aggrieved from the aforesaid order, the petitioner is before this Court seeking the following reliefs:

a) issue a writ of mandamus or any other writ of like nature thereby quashing the impugned inquiry and letter dated 12.9.2011 and summons dated 3.11.2011 issued by the respondent no. 2 against the petitioner based upon a frivolous complaint filed by the respondent no. 1 w.r.t. his ad hoc promotion to the post of Section Officer in the department of the petitioner.

b) issue a writ of mandamus or any other writ of like nature thereby directing that the complaint filed by the respondent no. 1 w.r.t. his ad hoc promotion to the post of Section Officer is not maintainable and the respondent no. 2 has no jurisdiction in accordance with Article 338 of the Constitution of India and the said Rules to entertain, investigate the service dispute of the employees of the petitioner.

The respondent No. 1 is reported to have been served on 28.11.2011 and respondent No. 2 is reported to have been served on 25.11.2011. They were proceeded ex parte, vide order dated 18th October, 2012. Since there is no appearance on behalf of respondents and that they have been proceeded ex parte, I have heard the learned counsel for the petitioner.

2. The extent and scope of the powers of the National Commission for Scheduled Castes came to be examined by this Court in W.P. (C) No. 5468/2011 decided on 17.9.2013 and the following view was taken:-

...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 vs. University of Delhi and Anr., LP A 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 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 and Others Vs. Union of India (UOI) and Others*, 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.

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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 Caste 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 Caste 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 Caste, 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 Caste. 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.

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Some support in this regard is available from the decision of Supreme Court in Collector, Bilaspur Vs. Ajit P.K. Jogi and Others, . 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.

3. The petitioner has not placed on record the complaint made by respondent No. 1 to respondent No. 2. The respondents have not come forward to contest the writ petition. In these circumstances, it cannot be known what exactly was the nature of the complaint made by respondent No. 1 to respondent No. 2 and on which issue the Commission is examining the aforesaid complaint.

4. The learned counsel for the petitioner states that the petitioner will ensure that a responsible officer remains present before the Commission as and when

required by it in connection with the inquiry initiated by it and it shall also produce such record as is required by the Commission in connection with the aforesaid inquiry. The only grievance of the petitioner at this stage is with respect to personal appearance of the Commissioner of MCD. The contention is that such personal appearance is not at all necessary for the purpose of the inquiry being held by the Commission. Considering all the facts and circumstances of the case, the writ petition is disposed of with the direction that the respondent no. 2-National Commission for Scheduled Castes shall not insist upon personal appearance of the Commissioner of MCD provided a responsible officer of MCD remains present before it and all such documents as are required in connection with the inquiry are produced.

There shall be no orders as to costs.

Dasti under the signatures of Court Master.