

(2019) 08 CAL CK 0071

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1175 (W) Of 2018, Civil Application (CAN) No. 3630 Of 2019

Sanjoy Chakraborty

APPELLANT

Vs

National Commission For Schedule Caste & Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3, 3(1), 3(1)(viii), 3(1)(ix), 3(2)(i), 3(2)(ii), 3(2)(vii)
Code Of Criminal Procedure, 1973 — Section 173(8)
Constitution Of India, 1950 — Article 338, 338(1), 338(4), 338(5), 338(8)

Citation : (2019) 08 CAL CK 0071

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Joydeep Kar, Sudhasatra Banerjee, D. Paul, Pantu Deb Roy, Anand Farmania, Susmita Saha Dutta, Niladri Saha, Utpal Bose, Prantik Gorai, Shweta Mukherjee, Debaleena Ganguly, Sourav Saha

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

The petitioner has assailed a decision dated April 24, 2018 of the National Commission for Scheduled Caste (hereinafter referred to as the Commission) taken in File No. WB/3/2016-APCR. An application made at the behest of the petitioner seeking extension of an interim Order passed in the writ petition has also been taken up for hearing.

Learned Senior Advocate appearing for the petitioner has submitted that, the petitioner is a Police Officer. He was posted with Asansol (South) Police Station at the relevant time. In 2015, when the petitioner received an information that there was illegal dealing of iron scrap at a particular godown, the petitioner instructed his immediate sub-ordinate Officer to make necessary enquiries. The second Officer did make the enquiries. Subsequently, the Police received another

complaint regarding unrest at the locality. Such complaint was registered as a First Information Report being Asansol (South) Police Station Case No. 123 of 2015. There were judicial proceedings with regard to such F.I.R. In May 2015, the sixth respondent filed a complaint with the Commission alleging violation of the Act of 1989 by the petitioner. A departmental proceeding was initiated against the petitioner. The departmental proceeding resulted in a final order being passed. In the departmental proceeding, allegations of violations of provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were levelled. The Enquiry Officer did not find any substance in such charge. Such finding was affirmed upto the Appellate Authority stage. The Commission called for a report from the fourth respondent. The fourth respondent responded thereto. The Commission was informed by the fourth respondent that, an enquiry was conducted, against the petitioner and the persons connected with it, with regard to the allegations levelled against them and that, appropriate steps were taken.

Learned Senior Advocate for the petitioner has submitted that, an appropriate Court is in seisin of the criminal proceeding in which the sixth respondent is an accused. The Court in seisin of the criminal proceeding is yet to arrive at a finding that is adverse to the petitioner in the context of the Act of 1984. In such circumstances, the assumption of jurisdiction by the Commission as against the petitioner in relation to the Act of 1989, is bad. He has referred to the minutes of the hearing dated April 24, 2018 and submitted that, the impugned writing is bad on two grounds. Firstly, the Commission cannot interfere or pass any direction with regard to any subject matter which is receiving the consideration of the Court. More importantly, the Commission has no power of enquiry and to issue directions. He has referred to Article 338 of the Constitution of India and submitted that, the Commission established under Article 338 cannot have jurisdiction beyond Article 338. What the Commission is doing in the facts of the present case, is beyond its jurisdiction. He has referred to Section 3 of the Act of 1989 to contend that, the Commission has no power in the nature that has been sought to be exercised by the impugned writing. He has referred to Article 338 (4) and (5) of the Constitution of India and submitted that, the Commission has formulated guidelines in exercise of powers under Article 338(4) of the Constitution. The guidelines so formulated by the Commission specify that, the Commission should not take any action on matters which are subjudice. In the present case, there is a criminal case pending. Therefore, the Commission should not have exercised jurisdiction in respect of the criminal case.

Learned Senior Advocate appearing for the sixth respondent has relied upon Section 3 of the Act of 1989 as also Article 338 of the Constitution. He has submitted that, the impugned order is within the jurisdiction of the Commission. According to him, the impugned order is in the manner of a recommendation. The Commission is yet to take a final decision. Therefore, the present writ petition and the connected applications therein are premature. He has submitted that, the Commission wanted to know what steps in the proceeding were being

taken. A Commission established under the Act of 1989 is entitled to ask for such informations. There is no illegality in the Commission asking for such informations. In fact, in the event, such information is not provided, it would tantamount to be a fetter in the functioning of a Commission established under the Act of 1989. There have been and there are concerted efforts by interested persons to divest the sixth respondent of his valuable rights in the landed property. The criminal cases against the sixth respondent is one of the tools utilised for such purpose. The sixth respondent is being falsely implicated in various proceedings to make him agree to part with his rights in respect of the landed property. He has submitted that, the writ petition and the connected application should be dismissed.

Learned Advocate appearing for the first and second respondents has submitted that, such portion of the impugned order which contains recommendations are within jurisdiction. According to her, the portion of the impugned order, which contains directions, are beyond jurisdiction of the Commission. She has contended that, the second portion of the impugned order is beyond jurisdiction.

The petitioner before the Court is a Police Officer. He has posted as the Officer-in-Charge of Asansol (South) Police Station at the relevant period. At the time of filing of the writ petition, he was the Officer-in-Charge in of Andal Police Station. The genesis of the complaint before the Commission, made at the behest of the sixth respondent, are two complaints received by Asansol (South) Police Station against the sixth respondent. One of such complaint was enquired into. The other complaint is pending before the Criminal Court for adjudication. It is after the Police started making enquiries and/or investigation on the basis of the complaints received by them as against the sixth respondent that, the sixth respondent approached the Commission with the allegation against the petitioner of violations of the provisions of the Act of 1989. In or about May 2015 the sixth respondent complained to the Commission about the petitioner. The sixth respondent had alleged in his complaint to the Commission that, the petitioner abused the sixth respondent in a manner that is derogatory to his caste and that, the petitioner implicated the sixth respondent in criminal cases falsely and improperly. The Commission took cognizance of such complaint. By a letter dated July 28, 2015, the Commission called upon the fourth respondent to furnish information pertaining to the same. By a writing dated August 28, 2015, the Commission sought for an action taken report from the fourth respondent. The fourth respondent in its report dated October 13, 2015 intimated the Commission that, an enquiry was conducted against the petitioner and the persons connected with the incident. Consequent to such enquiry, a departmental proceeding was initiated against the petitioner and one lady Sub-Inspector. The sixth respondent filed two rejoinders to his complaint on September 27, 2015 and September 29, 2016 before the Commission. By a letter dated April 7, 2016, the Commission called for further report acting on the basis of the two rejoinders. The sixth respondent wanted a First Information Report to be lodged against the petitioner. The sixth respondent also expressed his displeasure over the petitioner being

posted as Officer-in-Charge of Jamuria Police Station.

By a letter dated May 6, 2016, the Commission directed the fourth respondent to appear before him on June 20, 2016. By a letter dated June 14, 2016, the fourth respondent intimated the progress of the Departmental Proceedings against the petitioner to the respondent No. 1. Report dated May 24, 2016 was furnished along with such letter. A joint discussion was held on August 23, 2016 between the Commission and the fourth respondent where, the Commission came to the conclusion that, although departmental proceeding was initiated against the petitioner, the reopening of the departmental case is required for further reinvestigation. Based on such direction, Police applied before the Court in seisin of the criminal complaint for arranging reinvestigation. By a letter dated November 23, 2017, the fourth respondent was called upon to appear in person by the Commission. The hearing was in relation to the subsequent complaint of the sixth respondent to the Commission. The Commission called for a status report of the Departmental Proceeding initiated against the petitioner. Such status report was furnished on December 9, 2016 by the fourth respondent. The status report stated that, the Departmental Proceeding against the petitioner culminated into an order of punishment dated November 23, 2016. The charge pertaining to caste based abuse was found not to have been proved against the petitioner. The charge of instituting any false or fabricated case was also not found to have been proved against the petitioner. The petitioner was found guilty for not entering the matter in the General Diary Entry and also not entering the Investigating Officer in the case and in putting appropriate sections in the charge-sheet. Based on such proved charges, petitioner was awarded a punishment of stoppage of annual two years increment with future effect. The petitioner preferred an appeal against such order of punishment. Such appeal was partly allowed by an order dated January 18, 2017.

By a letter dated November 23, 2017, the Commission wanted to hold a discussion with the fourth respondent. The fourth respondent submitted a report dated February 12, 2018. At the hearing on February 13, 2018, the Commission expressed his displeasure about the report dated February 12, 2018 and summoned the fourth respondent to appear in person. A hearing took place on April 24, 2018 by which time, further documents were submitted with the Commission. The minutes of the hearing dated April 24, 2018 is the subject matter of challenge in the present writ petition. The Commission thereafter issued a summon dated May 15, 2018 requiring the fourth respondent to appear in person before him. This summon is the subject matter of challenge in a contempt petition.

By the impugned minutes dated April 24, 2018, the Commission recorded the presence of the sixth respondent, the Additional District Magistrate, Paschim Barddhaman and the Deputy Commissioner of Police. The impugned minutes states that, the report dated April 17, 2018 of the sixth respondent was considered. It has noted that, the petitioner and the lady Sub-Inspector were

found guilty on one of the charges in the Disciplinary Proceeding and that, no evidence of commission of an offence under the Act of 1989 was available before the disciplinary authority. It goes on to state that, the finding of the departmental proceeding that, no offence under the Act of 1989 was made out is incorrect as, since the petitioner and the other Police officer was found guilty of an offence against the sixth respondent who comes under the Protection of the Act of 1989. Therefore, offences under Sections 3(1), (viii), (ix), 3(2)(i), (ii), and (vii) of the Act of 1989 were committed. Consequently, the District Magistrate, Paschim Bardhaman was advised to take cognizance of the issue, monitor and register cases under relevant sections of the Act of 1989 against the petitioner and the lady Police Officer. He was also directed to take up the issue of ordering reinvestigation under Section 173(8) of the Code of Criminal Procedure, 1973. According to him, there was a deliberate attempt to frame the sixth respondent in a false case.

The impugned minutes of the hearing dated April 24, 2018 has referred to Section 3(1) and (2) of the Act of 1989. So far as Sub-Section 1 is concerned, it has referred to Clauses (viii) and (ix) of Sub-Section 1 of Section 3 of the Act of 1989. The Act of 1989 does not have those clauses in Sub-Section (1). The impugned minutes of the hearing dated April 24, 2018 has referred to Section 3(2)(i), (ii) and (vii) of the Act of 1989. They are as follows:-

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Sub-clauses (i) and (ii) of Sub-section (2) of Section 3 of the Act of 1989 makes a person, who is not a member of the Scheduled Caste or Scheduled Tribe, giving or fabricating false evidence, intending to cause or knowing it to be likely that he will thereby cause, a member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by law or punishable with imprisonment

for a term of seven years or upwards and the member of the Scheduled Caste or Scheduled Tribe is convicted and punished in consequence of such false or fabricated evidence, then, the person giving the false and fabricated evidence, liable to be punished with the quantum of punishment prescribed. Therefore, there has to be a legal proceeding where, a charge against a member of a Scheduled Caste or a Scheduled Tribe must exist, a trial must take place, by virtue of the same and in which such trial, a non-member of a Scheduled Caste or a Scheduled Tribe must be found to have fabricated false evidence leading up to the conviction of a member of a Scheduled Caste or a Scheduled Tribe, then, such non-member can be punished. In the present case, there is yet to be a trial against the sixth respondent which culminated into a finding that, the petitioner or the lady Sub-Inspector involved, are guilty of fabricating false evidence against the sixth respondent leading to his conviction. Therefore, in my view, Section 3 of the Act of 1989 is not attracted in the facts of the present case for the Commission to claim that, the petitioner or the lady Sub-Inspector is guilty of commission of an offence under Section 3 of the Act of 1989 and require the Police Authorities and the District Administration to initiate proceedings against the petitioner and the lady Sub-Inspector for violations of Section 3 of the Act of 1989.

There were at least two complaints against the sixth respondent to the Police at the relevant point of time. The Police investigated the same. The complaints stands committed for trial. The complaints received by the Police will reach its logical conclusion. Articles 338(1),

(4), (5) and (8) are relevant in the facts of the present case. They are as follows :-

"338. National Commission for Scheduled Castes -

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

.....

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

(5) It shall be duty of the Commission-

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

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes 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 report 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 Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

.....

(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."

Article 338(4) of the Constitution empowers the Commission to regulate its own procedure. In exercise of such powers, the Commission formulated guidelines. Chapter III of such guidelines deals with investigation and enquiry by the Commission. Rule 7.4.1 of Chapter III of such guidelines is as follows:-

"7.4.1 The following aspect may be kept in mind while filing complaints before the Commission.

(a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.

(b) The complainants should disclose his full identity and give his full address and should sign the representation.

(c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.

(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 of Reservation.

(e) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).

(f) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.

(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 OM's, 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."

Rule 7.4.1(e) requires the Commission not to take any action on matters which are subjudice. In the facts of the present case, the Commission ought to have taken note of the Disciplinary Proceedings and the pending criminal proceedings before issuing directions to the State Authorities as sought to be done by the impugned minutes of the hearing dated April 24, 2018.

Article 338(5) of the Constitution empowers the Commission to exercise powers of a Civil Court trying a suit while investigating into the matter referred to in Sub-Clause (a) or enquiring into a complaint referred to in Sub-Clause (b) of Clause 5. Exercise of such powers by the Commission however have to be taken in the context of Article 338(4) and (5) of the Constitution. Such articles do not empower the Commission to investigate or enquire into matters which are subjudice before a court. It is not for the Commission to adjudicate on the quality of the trial that will take place before the Court in seisin of such proceedings. The Commission has acted in excess of its jurisdiction while commenting on the quality of the proceedings before the Criminal Court. As noted above, the Criminal Courts are yet to pronounce the petitioner and the lady Sub-Inspector guilty of fabricating false evidence against the sixth respondent.

In such circumstances, the requirement of the Commission as against the District Administration as contained in the Minutes of the hearing dated April 24, 2018 is quashed. All consequential steps taken subsequent to the minutes of the hearing dated April 24, 2018 by the Commission are also quashed.

W.P. No. 11366 (W) of 2018 and C.A.N. 3630 of 2019 are disposed of accordingly. No order as to costs.

Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.