ALL INDIA INDIAN OVERSEAS BANK SCHEDULED CASTES AND SCHEDULED TRIBES EMPLOYEES WELFARE ASSOCIATION AND ORS. A

v.

UNION OF INDIA AND ORS.

OCTOBER 31, 1996. B

[A.M. AHMADI, C.J. AND S.P. BHARUCHA, J.]

Constitution of India, 1950: Articles 338 (8) and (5)

National Commission for Scheduled Castes and Scheduled Tribes—Powers of Civil Court—Exercise of—By Commission—Commission passed an interim order to the Bank to stop the promotion process pending further investigation and final verdict on certain complaints received by it—Held: Powers of Civil Court are exercisable by the Commission for the purposes of investigating any matter under Art. 338 (5)(a) or inquiry into any complaint under Art. 338(5)(b) but not for the purposes of granting injunctions, temporary or permanent—Commission has no power to stay the promotion process pending inquiry into a complaint—Hence, Commission's interim order set aside—Constitution (Sixty Fifth Amendment) Act, 1990, Section 8—Commission of Inquiry Act, 1952, Ss. 4 and 5—Service Law. C D E

The National Commission for Scheduled Castes and Scheduled Tribes directed respondent no. 3-Bank by an interim order to stop the promotion process pending further investigation and final verdict on certain complaints received by it. F

Respondent no.4, the Bank Officers' Association and respondent nos. 5 to 8 who were candidates for selection for promotion filed a writ petition before the High Court challenging the aforesaid order, which was allowed. Hence this appeal. G

On behalf of the appellant it was contended that the Commission had power to issue interim order under Article 338(5) and (8) of the Constitution of India introduced by the Constitution (Sixty Fifth Amendment) Act, 1990 and that the Commission enjoyed powers like a Civil Court for all purposes. H

A **Dismissing the appeal, this Court**

HELD : 1. All the procedural powers of a Civil Court given to the National Commission for Scheduled Castes and Scheduled Tribes by Article 338(8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338(5)(b). The B **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. [302-H, 303-A]**

2. The Commission having not been specifically granted any C **power to issue interim injunctions lacks the authority to issue an order directing respondent no.3-Bank to stop the promotion process pending further investigation and final verdict on the complaints received by it. [303-B, 297-E]**

D *Baliram Waman Hiray* **v.** *Justice B. Lentin,* **[1988] 4 SCC 419, relied on.**

M.V. Rajwade **v.** *Dr. S.M. Hassan,* **AIR (1954) Nag 71, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13700 of E 1996.

From the Judgment and Order dated 17.5.93 of the Delhi High Court in C.W.P. No. 1362 of 1993.

F A.S. Nambiar, S.C. Paul, J.D. Jain, R.K. Azad and Santosh Singh for the Appellants.

S.K. Bisaria for the Respondent No. 4

G R. Mohan and Nedumaran for the Respondent No. 3

Ms. Binu Tamta for D.S. Mehra for the Respondent No.1

The Judgment of the Court was delivered by :

H **AHMADI, CJ.** Leave granted.

By a letter No. 9/D/SCTC/M(S)/93 dated March 4, 1993, the National Commission for Scheduled Castes and Scheduled Tribes (hereafter referred to as 'the Commission') directed the Executive Director of the Indian Overseas Bank, the respondent No.3, thus:

"No.9/D/SCTC/M(s)/93 4th March, 1993

Dear Shri K. Subramanian,

Please refer to the commission letter No.9/D/SCTC/M(S)/92 dated 18th Feb.93 in the matter of contravention of Government Directives relating reservation for SC/ST in Indian Overseas Bank and Other matters adversely affecting their interests.

The commission had desired the reply of Bank within 7 days of said letter. It is a matter of concern that the reply from bank has not reached the commission till date.

In view of the *prima facie* examination of the matter and considering the fact that the Bank is reportedly going ahead with the promotion process, the commission, in exercise of the powers conferred upon it under section 8 of the Constitution (Sixty-Fifth Amendment) Act, 1990 hereby directs the Bank to stop the promotion process pending further investigation and final verdict in the matter.

The commission also direct for requisitioning of all records in custody of Bank relating to the said matter be produced before it. For this purpose you are requested to ascertain a date from my office.

Please advice compliance.

Thanking you,

Yours faithfully,

Sd/-

(B. SAMMAIAH)
MEMBER"

A It is a fact that when the letter was issued the respondent No.3 was actually going through the process of deciding on promotion of various employees at various levels. On March 4, 1993 when the letter was written, the respondent No. 2, was perhaps not aware of the reply addressed to it by respondent No. 3 on that very day meeting all the queries raised in the letter dated February 18,1993, which letter was perhaps written on the B representation made by the President of the All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Welfare Association, the appellant before us, alleging grave injustice to its members in matters of promotion. In view of the letter of respondent No. 2 quoted above, respondent No. 3 issued a letter on the same day staying the promotion process. On March 6, 1993 the Indian Overseas Bank Officers Association, C the respondent No.4, and respondents Nos. 5 to 8 who were candidates for selection for promotion filed a writ Petition (Civil) No. 1362 of 1993 praying for a writ of Mandamus quashing the order dated March 4, 1993 staying the selection process. The High Court by the impugned judgment allowed the writ petition with the finding that the Commission had no power to issue interim orders like the one in question. Hence this appeal D by special leave.

The short question that arises for consideration in this matter is whether the Commission had the power to issue a direction in the nature of an interim injunction? The appellant supports the letter dated March 4, 1993 E of the Commission on the facts of the case which supposedly justify the passing of an interim direction of the type contained in the letter dated March 4, 1993. The appellant refers to Article 338, clauses (5) and (8), of the Constitution introduced by the Constitution (Sixty Fifth Amendment) Act, 1990 to argue that the Commission had power to requisition public record and hence it could issue directions as if it enjoyed powers like a F civil court for all purposes. Further the appellant contends that even a single member of the Commission has every authority to pass a direction on behalf of the entire Commission and hence the High Court was wrong in expressing the view that a single member of the Commission could not have issued the direction contained in the letter dated March 4, 1993. The G appellant further contends that no writ would lie against an interim order of the Commission.

The basic question, however, is whether the Commission had the authority to issue the direction it did by the letter dated March 4, 1993. Clauses (5) and (8) of Article 338 of the Constitution, which the appellant H refers to as the source of the Commission's power, can be quoted for ready

reference:

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

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Commission 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 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 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 purposed 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."

It can be seen from a plain reading of clause 8 that the Commission has the power of the Civil Court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of Clause 5 of Article 338 of the Constitution.

Sub-clauses (a) to (f) of clause (3) clearly indicate the area in which the Commission may use the powers of a Civil Court. The Commission has the power to summon and enforce attendance of any person from any part of India and examine him on oath; it can require the discovery and

production of documents, so on and so forth. All these powers are essential to facilitate an investigation or an inquiry. Such powers do not convert the Commission into Civil Court.

It will be interesting to observe that the Commissions of Inquiry Act (1952) grants similar powers to the Commission of Inquiry. Section 4 and sub-sections (4) and (5) of Section 5 of the Commissions of Inquiry Act, 1952 which confer such powers are quoted below:

"4. *Powers of Commission*—The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person 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 or documents;

(f) any other matter which may be prescribed.

5. (4) The Commission shall be deemed to be a civil Court and when any offence as is described in section 175, section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (Act XLV of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 482 of the Code of Criminal Procedure, 1898.

A (5) Any proceedings before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (Act XLV of 1860)."

In *M.V. Rajwade* v. *Dr. S.M. Hassan,* AIR (1954) Nagpur 71, the question whether the Commission of Inquiry, by virtue of the above B provisions, could be treated to be a civil court for the purpose of the Contempt of Courts Act, 1971 came to be considered. The High Court observed as under:

> "It would appear from Section 4 that it only clothes the Commission with certain powers of a Civil Court but does C not confer on it the status of a Court. It is only under sub-section (4) of Section 5 that the Commission is deemed to be a Civil Court and sub-section (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created."

D

The judgment in the case of *M.V. Rajwade* (supra) was referred to with approval by this Court in *Dr. Baliram Waman Hiray* v. *Justice B. Lentin and others,* [1988] 4 SCC 419. The question in that case was whether the Commission of Inquiry constituted under Section 3(1) of the Commissions of Inquiry Act, 1952 was a court for the purpose of Section E 195 (1)(b) Criminal Procedure Code, 1973. It was contended before the Court that sub-Section (4) of Section 5 of the Commission of Inquiry Act created a legal fiction by which the Commission of Inquiry was deemed to be a Civil Court for all purposes. It was held that the words "for all purposes" are not there in the first part of sub-section (4) and the Court cannot, in the guise of interpreting the provision, supply any *casus omissus.* F The Court went on to say that the purpose of creating the fiction was reflected in the second part of sub-clause 4, viz., for the purpose of proceedings under Section 482 of the Old Code and Section 346 of the new Code of Criminal Procedure.

G Interestingly, here, in clause 8 of Article 138, 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 H 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. A

The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated March 4, 1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed. No costs. B

V.S.S. Appeal dismissed. C