

# The New India Assurance Company Ltd vs National Commission For Scheduled ... on 18 May, 2022

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7593/2022, CM APPLs. 23359/2022, 23360/2022

THE NEW INDIA ASSURANCE COMPANY LTD ..... Petitioner

Through: Ms.Maninder Acharya, Sr. Adv. with

Mr. JPN Shahi and Mr.Sai Shashava

Advs.

versus

NATIONAL COMMISSION FOR SCHEDULED CASTE AND

ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 18.05.2022 CM APPL. 23360/2022 (for exemption) Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 7593/2022, CM APPL. 23359/2022 (for Stay)

1. Notice. Although the respondent No.2 has been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let learned counsel for the petitioner take steps for service on the said respondent through all permissible modes including via approved courier service.

2. Prima facie, the Court finds merit in the challenge addressed to the order passed by the Commission for the following reasons. The jurisdiction which the Commission exercises is traceable to Article 338 of the Constitution. The primary function of the Commission is to take steps in relation to the protection, welfare, development and advancement of Scheduled Casts and Scheduled Tribes. The Court fails to countenance any authority or jurisdiction which may inhere in the Tribunal to pass the impugned order dealing with a dispute with respect to claims flowing from an insurance policy.

3. The Court, in this connection, is constrained to bring to the attention of the Commission the following observations as were entered by the Supreme Court in Collector v. Ajit Jogi [(2011) 10 SCC 357]:-

"17. 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 of 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 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 the State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of the 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.

In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in *Madhuri Patil v. Commr., Tribal Development* [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] directed constitution of scrutiny committees."

4. The Court also takes note of a similar view which was expressed by learned Judge of this Court in *Union of India Vs. National Commission For Scheduled Castes* [2014 SCC OnLine Del 3324], which reads as under:-

"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 socioeconomic 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."

5. Matter requires consideration.

6. Till the next date of listing, there shall be stay of the impugned order dated 04 May 2022 as well as of all further proceedings pending before the Commission.

7. List on 25.01.2023.

YASHWANT VARMA, J.

MAY 18, 2022 bh