



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2026
(Arising out of SLP(C) No.33359 of 2025)

MUMBAI PORT AUTHORITY

...APPELLANT(S)

VERSUS

**NATIONAL COMMISSION
FOR SCHEDULED CASTE & ORS.**

...RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.
2. Whether the National Commission for Scheduled Castes¹ can pass orders in respect of service matters and whether such orders are directory or mandatory is the issue that arises in this appeal which flows from Writ Petition (L) No.1449 of 2025, titled analogously dated 19th August 2025.
3. Certain past events require recall to contextualise the question above.
 - 3.1 Respondent No.3, namely Madhavi K. Chandorkar, member of the scheduled caste, was employed by the appellant as a typist cum computer clerk on 9th July 1997.

¹ NCSC

3.2 Pursuant to the rules, at the time in force i.e. Office Memorandum² dated 21st January 2002, she was promoted to Stenographer Grade-I. The said OM had withdrawn an earlier OM dated 30th January 1997. Here itself we may reproduce the relevant extracts of the two OMs:

OM dated 30.01.1997

“... ”

3. Having regard to the above judgement of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle. 5(1) contained in MHA (now DOPT) OM No. 9/11/55- RPS dated 22.12.59 and para 2.2 of this Department OM No.22011/7/86-Estt.(D) dated 3.7.1986:-

"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general-OBC candidate who is promoted later to the said immediate higher post/grade the general-OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."

4. These orders shall take affect from the date of issue of this Officer Memorandum.

Sd/-
(K.K. Jha)
Director(E)”

OM dated 21.01.2002

“... ”

3. The Government have now decided to negate the effects of the DOP&T OM dated 30th January, 1997 by amending Article 16(4A) OF the Constitution right from the date of its inclusion in the Construction i.e. 17th June, 1995, with ask to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidate belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

4. Therefore, in pursuance of the aforementioned Constitution {Eighty-fifth) Amendment Act, 2001, it has been decided as follows;

(i) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and

² OM

- (b) the above decision shall be effective from 17th June, 1995.
- (ii) The instruction contained in DOPT O.M.N.o.20011/2/97-Estt.(D) dated 30.1.1997 as well as the clarifications contained in DOPT O.M.No.20011/2/97-Estt.(D) dated 21.3.1997 shall stand withdrawn w.e.f.30.1.1997 itself.
- (iii) Seniority of Government servants determined in the light of O.M. was never issued.
- ...”

- 3.3 The 2002 OM was challenged before the High Court of Judicature at Bombay in Writ Petition No.1164 of 2012. In terms of order dated 30th November 2016/1st December 2016, the said challenge mounted by Mumbai Port Trust Non-SC/ST Employees Association, succeeded. The impugned OM was quashed and set aside. A Special Leave Petition preferred against this judgment is pending consideration before this Court. For clarity, it may be stated that the same is not in issue before us.
- 3.4 The directions issued in the above noted judgment were implemented and the seniority of the employees of the appellant was reset accordingly. For implementing the directions issued in the aforesaid judgment, a circular dated 27th December 2018 was issued by the Deputy Secretary of the Appellant stating that no promotions will be granted to SC/ST employees except those made in accordance with the 1997 OM. Resetting the seniority, it was directed that all promotions slated not to be in accordance with the judgment of this Court in *M. Nagaraj v. Union of India*³ will be revisited.
- 3.5 This circular was challenged in Writ Petition(L)121 No. of 2019 before the High Court of Judicature at Bombay, by the Mumbai Port Trust SC, ST and OBC Welfare Association but the same was dismissed by order dated 27th August 2019. Whether it has attained finality or not is neither averred nor would it be relevant.

³ AIR 2007 SC 71

3.6 Considering that the above said circular had been upheld, the process indicated therein was initiated. Respondent no. 3 was one of the nine cases identified from amongst the stenographers and show cause notice dated 9th March 2020 was issued to her. After opportunity of hearing was afforded, she was demoted *vide* order dated 11th September 2020, notionally with effect from 19th April 2007 to 30th November 2016 from Grade I to Grade II.

4. Respondent no.3 aggrieved by the demotion made a representation to Respondent No.2, NCSC through its member, to which the appellant responded. After hearing both parties NCSC passed the order dated 23rd October 2024, which contained the minutes of the meeting held on 1st October 2024, relevant parts whereof are extracted below:

“...

6. After hearing both sides and clarification given by DoPT officials, the Hon’ble member observed and pointed that severe injustice is being caused to the petitioner and ordered that :-

(i) Strictly adhere of DoPT’s guidelines/instructions in matter of maintenance of reservation roster and reservation in promotion.

(ii) The reservation roster should be prepared as per DOPT guidelines and it should be proper.

(iii) Promotion to the post of stenographer and further to the post of PA to HOD may be given as per rules of reservation.

(iv) To implement the order and pay arrears within the period of 30 days.

(v) MbPA to forward the roster for verification to the Minister of Shipping.

7. An Action Taken Report to be submitted to the Commission within 45 days.”

4.1 The appellant sought review/appeal of this order before the Chairperson of the NCSC by representation dated 29th November 2024 and reminder dated 12th December 2024. The status of this is unknown to us.

4.2 The appellant challenged the aforesaid order which resulted in the impugned judgment in rejection of the same. The main ground agitated was that the NCSC did not possess the powers to issue directions except as contained in

Clause 5 of Article 338 of the Constitution of India. The learned Division Bench concluded that the minutes of the meeting held on 1st October 2024 did not go beyond the scope of the power of the NCSC. Reference was made to an earlier order dated 1st June 2023 passed by the NCSC which had purportedly become final, and it is recorded that the direction to pay arrears within 30 days is a restatement of that order. The writ petition was accordingly dismissed.

Heard learned senior counsel/counsel for the parties.

5. The NCSC has been established under Article 338 of the Constitution of India. The same is extracted as under:

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

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three 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 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 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 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.

(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.

(10) In this article, references to the Scheduled Castes shall be construed as including references to the Anglo-Indian community.”

6. Article 338 was originally Article 299 in the Draft Constitution. A Special Officer was provided for, who was to report to the President, regarding the safeguards provided for in the Constitution for the Minorities by investigating all matters relating thereto. Subsequently, in 1990 through the 65th Amendment to the Constitution, this Single Officer was made into a Commission. In 2003, through the 89th Amendment to the Constitution, this was further split into its present iteration i.e., the NCSC (Article 338) and the National Commission for the Scheduled Tribes (Article 338A). In 2018, via the 102nd Amendment to the Constitution, Article 338B was introduced to bring in the National Commission for Other Backward Classes.

7. Our focus in the present *lis* is, obviously, the NCSC. Sub-article (5) lays down the powers of the NCSC. The NCSC itself contends (written submissions) that clause (b) of sub-article (5) which casts upon it a duty to inquire into specific complaints with respect to deprivation of rights and safeguards, is in two parts i.e. enquiry and safeguarding. The latter of the two being the enforcement provision. We shall consider that submission but first we must look to other clauses. Clause (c) says “participate and advise” with regard to the economic developments of SCs; Clause (d) talks about presenting its reports to the President regarding its safeguards; Clause (e) discusses the making of such reports regarding recommendations that the Union or the State should take for effective implementation of safeguards; and Clause (f) leaves the field open for the President to give any further function to NCSC as it is seen fit.

8. Sub-article (8) provides for, in furtherance of the functions mentioned in Sub-article (5) the powers available to the NCSC i.e. that of the civil court for receiving evidence and the examination of witnesses, etc. The question, as already stated above is whether it was within the scope of these powers for NCSC to have directed the appellant to pay arrears within a specified period of time.

9. We are of the considered view that the Division Bench fell in error in holding that the directions issued by NCSC in its order dated 23.10.2024 were within the scope of powers provided under the Constitution. The legislature has been quite categorical in the powers of the Civil Court that have been extended to the NCSC. The word used is “namely” whereunder certain powers have been enumerated. That indicates the limited scope of the powers granted to it. It is therefore clear that while it has powers to requisition documents and receive evidence it does not have the power to make an order in furtherance of that evidence. In other words, NCSC can record a factual finding and then ask the concerned Government, either the Centre or the State to act thereupon. At this

stage it would be appropriate to refer to the submission of the NCSC which states that the word “safeguards” is an enforcement limb of Sub-article (5). Such a submission is difficult to accept in view of the explicit language of the Article. It certainly does not confer adjudicatory power, at best recommendatory in nature. The power provided is to inquire into the deprivation of “rights and safeguards” of the Scheduled Castes. The use of the word “and” indicates that rights and safeguards are to be read together as a bundle.

10. Sub-clauses (a) and (d) support our conclusion. Sub-clause (a) gives the power to the NCSC to investigate and monitor all matters regarding safeguards provided for the Scheduled Castes under the Constitution or in any other law. It flows from this that the provision of safeguards is a function of the Legislature, and the NCSC’s role is to monitor that the true intent of the safeguards is being implemented and met with as a ground reality. Sub-clause (d) provides that the Commission will present annually or at other times as seen fit, reports to the President regarding the working of their safeguards. This implies that safeguards are those recommendations made to the State or the Union Government that are in furtherance of its functions.

11. A co-ordinate Bench of this Court in *All India Indian Overseas Bank SC and ST Employees’ Welfare Assn. v. Union of India*⁴, discussed the powers of the NCSC to grant interim injunction in connection with a dispute pertaining to promotions within the Indian Overseas Bank. The relevant paragraphs thereof are as follows:

“5. 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.

6. Sub-clauses (a) to (f) of clause (8) 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

⁴(1996) 6 SCC 606

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.

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 *Collector v. Ajit Jogi*⁵, while dealing with the issue of verification of caste certificate of the respondent, this Court, after considering the powers vested with other Commissions held as follows:

“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.”

(emphasis supplied)

⁵ (2011) 10 SCC 357

13. Both these judgments referred to in the preceding paragraphs support our conclusion. The powers entrusted to NCSC are limited in nature. Clearly NCSC and its other compatriots under Articles 338A and 338B are Constitutional Bodies with a socially beneficent purpose but quite apparently, the Legislature has prescribed a role that is recommendatory and advisory, but certainly not adjudicatory. They are not meant to be bodies taking over adjudicatory functions. We may only observe that this Court had in *Bhabani Prasad Jena v. Orissa State Commission for Women*⁶, made similar observation regarding the Orissa State Commission for Women. It was observed in Para 11 as follows:

11. Mr Ranjan Mukherjee, learned counsel for Respondent 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorised to decide these complaints. We are afraid, no such implied power can be read into Section 10(1)(d) as suggested by the learned counsel. The provision contained in Section 10(1)(d) is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted the State Commission with the power to take up the role of a court or an adjudicatory tribunal and determine the rights of the parties. The State Commission is not a tribunal discharging the functions of a judicial character or a court.

(emphasis supplied)

14. For all the aforesaid reasons the judgment of the High Court is set aside. The directions issued by the NCSC in as much as it relates to the payment of arrears is declared to be contrary to the provisions of the Constitution and as such non-est in law. Accordingly, the appeal is allowed.

⁶ (2010) 8 SCC 633

Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(AUGUSTINE GEORGE MASIH)

New Delhi;
July 28, 2026