

**SUPREME COURT OF INDIA**

National Campaign On Dalit Human Rights & Ors.

Vs.

Union of India & Ors.

WP(Civil)No.140 of 2006

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and L.Nageswara Rao,JJ.,)

15.12.2016

**JUDGMENT**

**L.Nageswara Rao,J.,**

1. “I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a lifelong struggle against the oppressions and indignities that have been heaped upon these classes of people”. - Mahatama Gandhi The Petitioners who are voluntary organisations are continuing the struggle for emancipation of members of Scheduled Castes and Scheduled Tribes. The Petitioners have filed this Writ Petition aggrieved by the non-implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as ‘the Act’) and the rules made thereunder, seeking the following reliefs:

“A. “Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to set up special officers, nodal officers and protection cell as required under the Act forthwith.

B. Pass an order directing the nodal officer to investigate every case where a complaint is made to him regarding negligence of a police officer, where the FIRs are illegally no registered or registered improperly, where charge sheets are filed late, where the investigation is done by an officer lower in rank than a Dy. SP, and to take action against the officer concerned for acting contrary to the provisions of the Act in accordance with law.

C. Pass an order directing the Respondents to file status reports on filing charge-sheets in SC/ST (PoA) Act of 1989 cases and duration that have taken in last five years.

D. Pass an order directing the Respondents to set up separate Special Courts for each district within six months

- E. Pass an order directing the Respondent to file status reports on registration of FIR's against the erring officials under Section 4 of the Act.
- F. Pass an order directing the Respondents to identify and notify atrocity prone areas and to take appropriate action in accordance with law immediately.
- G. Pass an order directing the Respondents to file status reports on the cases they registered against SC/STs after the SC/ST lodged complaint and status of the cases.
- H. Pass an order directing the judicial officers to carefully monitor all cases in their jurisdiction to ensure that the cases are given top priority and speedy justice is done for the victims of caste atrocities & to make a report every six months to the High Court.
- I. Pass an order directing the District Magistrate to review the performance of Special Public Prosecutors every month & report to their respective High Court.
- J. Pass an order directing the Respondent to file status reports of the public prosecutors' performance regarding SC/ST cases with a period of six months.
- K. Pass an order directing the District Magistrates to appoint senior Advocate for prosecution if the victim so desires.
- L. Pass an order directing the Respondent to appoint, wherever possible, public prosecutors from the SC/ST caste and if possible SC/ST women advocates and impart periodic training.
- M. Pass an order directing all judicial officers to play a proactive role during the trial to ensure that the prosecution conducts itself competently and nothing is done to result in any disservice to the victims.
- N. Pass an order directing the Respondents and particularly the Director of Prosecutions to review all cases of acquittal by the Special Courts over the last five years which have not been carried in appeal, and to take immediate steps in accordance with law.
- O. Pass an order directing all judicial officers to pay particular attention for cases where the accused have not been arrested.
- P. Pass an order directing all judicial officers to ensure that no pressure whatsoever is brought to bear on the victims or their witnesses to force them to withdraw from prosecution.

Q. Pass an order directing the Respondents to instruct the special public prosecutors to file for cancellation of bail where the same is contrary to the purpose and objective of the Atrocities Act.

R. Pass an order directing the Chief Secretary/Administrators of the Respondents State/UT's to enquire into the performance of the Superintendents of Police and the Collectors of every district where atrocities are frequently reported and, wherever justified, punish such officers for not acting promptly and in accordance with the law.

S. Pass an order directing the Respondents to frame a rehabilitation package forthwith in accordance with the Act and Rules.

T. Pass an order directing the Respondents to set up Dalit Legal Aid Centers operated by Dalit lawyers and funded by the State Legal Aid Services Authority.

U. Pass an order directing the State Governments to implement the SC & SC (PoA) Act of 1989 fully (West Bengal)

V. Pass an order directing the Police officers to apply their minds to all the provisions of Section 3(1)(i) to 3(1)(xv) while registering FIRs.

W. Pass an order directing the Respondent that on a complaint being made by the victim of a social/economic boycott, the Bail of the accused be cancelled and strict action including criminal prosecution taken against the officials by the District Magistrates and the presiding officers. (Compensation to be paid by the state)

X. Pass an order directing the Respondents to file status reports on compensation and allowances paid and remaining to be paid under the provisions of the Act for the last five years and to make payments of compensation wherever due forthwith Y. Pass an order directing the Respondents to revised and increase the applicable compensation rates and realistic and current market prices terms.

Z. Pass an order directing the Respondents to appoint leading members of reputed organizations active in there are of Dalit rights on the Monitoring and Vigilance Committees throughout the State to which at least 50% should consist of women members throughout the State.

AA. Pass an order directing the Respondents to implement the provision relating to imposition of collective fines wherever applicable under this Act.

BB. Pass an order directing the Respondents for the implementation of the NHRC Report 2002. Pass such other order(s) or direction(s) or writ(s) as deemed fit and proper;”

2. Mr. Colin Gonsalves, learned Senior Counsel appearing for the Petitioners submitted that he is, at present, praying for four directions from this Court which are as follows:

“A. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to set up special officers, nodal officers and protection cell as required under the Act forthwith.

F. Pass an order directing the Respondents to identify and notify atrocity prone areas and to take appropriate action in accordance with law immediately.

S. Pass an order directing the Respondents to frame a rehabilitation package forthwith in accordance with the Act and Rules.

X. Pass an order directing the Respondents to file status reports on compensation and allowances paid and remaining to be paid under the provisions of the Act for the last five years and to make payments of compensation wherever due forthwith ”

3. The Preamble to the Constitution of India provides for social, economic and political justice and equality of status and opportunity to all its citizens. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Untouchability is abolished and its practice in any form is forbidden by Article 17 of the Constitution. The enforcement of any disability arising out of untouchability as per Article 17 shall be an offence punishable under the law. Article 46 reads as under:

“Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections- The State shall promote with a special care the education and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes , and shall protect them from social injustice and all forms of exploitation. ”

Articles 338 and 338A of the Constitution provide for constitution of National Commissions for Scheduled Castes and Scheduled Tribes respectively. The relevant portions of Articles 338 and 338A are as under:

“Article 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.

\* \* \*

(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.

Article 338A. National Commission for Scheduled Tribes.

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

\* \* \*

(5) It shall be the duty of the Commission—

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

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

f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes 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.”

4. A brief historical background of the National Commission for Scheduled Castes and Scheduled Tribes as stated in the Annual Report submitted to the Parliament by National Commission for Scheduled Castes in the year 2014-15 is as follows:

“For effective implementation of various safeguards provided in the Constitution for the welfare of Scheduled Castes and Scheduled Tribes (SCs and STs) and in various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for Scheduled Castes and Scheduled Tribes was assigned the duty to investigate all matters relating to the safeguards for SCs and STs, provided in various statutes, and to report to the President of India on the working of these safeguards. In order to facilitate effective functioning of the office of the Commissioner for Scheduled Castes and Scheduled Tribes, 17 regional Annual Report 2014-15 National Commission for Scheduled Castes offices of the Commissioner were also set up in different parts of the country. On persistent demand

of the Members of Parliament that the Office of the Commissioner for Scheduled Castes and Scheduled Tribes alone was not enough to monitor the implementation of Constitutional safeguards, a proposal was mooted for amendment of Article 338 of the Constitution (Forty-sixth Amendment) for replacing the arrangement of one Member system with a Multi Member system. The Government thereafter through a resolution in 1987 decided to set up a Multi-Member Commission, which was named as National Commission for Scheduled Castes and Scheduled Tribes. Consequent upon the Constitution (Eighty-Ninth Amendment) Act, 2003 coming into force on 19.02.2004, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes has been replaced by (1) National Commission for Scheduled Castes and (2) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes was notified on 20 February, 2004 by the Ministry of Social Justice & Empowerment.”<sup>1</sup>

The duties of the National Commission are provided in the Rules of Procedure of the National Commission for Schedule Castes. Chapter III of the said Rules deals with investigation and inquiry by the Commission. The relevant provisions are as follows:

#### “7.0 Investigation and Inquiry by the Commission

7.1 The Commission shall junction by holding ‘sittings’ and ‘meetings’ at any place within the country and also through its officers at the Headquarters and in the State Offices. The Members of the Commission including the Chairperson and the Vice-Chairperson shall function in accordance with the procedure prescribed under these rules.

\* \* \*

#### 7.2. (a) Investigation and Inquiry by the Commission directly.

7.2. (a) i The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the country.

\* \* \*

#### 7.5 Inquiry into cases of atrocities

7.5.1 Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may recommend to file an FIR against the accused with the concerned law-enforcing agency of the State/District. In such cases, the State Government/District

Administration/Police Personnel may be called with three days through the summons.  
”

Chapter VIII of the Rules provides for the monitoring functions of the Commission which are as under:

#### “15.0 Monitoring Functions of the Commission

15.1 The Commission to determine subjects for monitoring The Commission may determine from time to time the subjects or matters and areas that it would monitor relating to safeguards and other socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Govt.

\* \* \*

#### 16.0 Follow-up action

16.1 In order to ensure that monitoring is done effectively, the Commission, after getting the information as prescribed in the above rules and after reaching conclusions, may as early as possible send out communications to the concerned authority describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps. Decisions on sending out such a communication may be taken at a level not lower than that of Joint Secretary/Secretary at Headquarters. Directors-in-Charge of State Offices may take decisions on routine matter whereas they will seek approval of the Secretary and the concerned Member on complex and important matters affecting the interest of Scheduled Castes as a group.

16.2 The Commission may ask for the comments of the concerned authority on the action taken in pursuance of the communications sent under the Rule 76.

16.3 The Commission may include in its Annual Report or any Special Report, findings and conclusions arrived at through the process of monitoring of the subjects relating to the safeguards and socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Union/State Government.”

5. Article 39A of the Constitution provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Legal Services Authorities Act, 1987 (hereinafter referred to as “the LSA Act”) was enacted to constitute special authorities for providing free and competent legal services to weaker sections of the society. Section 4 (m) of the LSA Act provides for special efforts to be made for enlisting the support of voluntary social welfare institutions, particularly among Scheduled Castes and Scheduled Tribes. Section 12 of the LSA Act provides for free legal aid to the Scheduled Castes and Scheduled Tribes.

6. One of the purposes of the United Nations is to promote and encourage respect for and observation of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (ICERD) is as under:

“Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

Certain recommendations on Article 1 of the ICEDR were adopted on 1st November 2002 which provide as under:

“Confirming the consistent view of the Committee that the term "descent" in article 1, paragraph 1, the Convention does not solely refer to "race" and has a meaning and application which complement the other prohibited grounds of discrimination, Strongly reaffirming that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights,”

These recommendations also strongly condemn decent based discrimination such as discrimination based on caste. It is significant that there was also a recommendation

that the legislations and other measures already in force should be strictly implemented.

7. To give effect to Article 17 in its true letter and spirit, the Parliament enacted the Untouchability (Offences) Act, 1955. Sections 3 to 7 of the said Act prescribed punishments for enforcing religious, social and any other kind of disabilities on the ground of untouchability. There were several complaints from various quarters of the society about the lacunas and loopholes in the said Act. Several amendments were made to the said Act which was rechristened as the 'Protection of Civil Rights Act, 1955'. In spite of a major overhaul, it was noticed that the Protection of Civil Rights Act, 1955 and the Indian Penal Code, 1860 were inadequate to check the atrocities committed on Scheduled Castes and Scheduled Tribes. The fact that the Scheduled Castes and Scheduled Tribes remained a vulnerable group in spite of the introduction of several measures to improve their socio-economic condition was a matter of deep concern to the Parliament. The Parliament acknowledged that the Scheduled Castes and Scheduled Tribes were subject to various offences, indignities, humiliations and harassments perpetually. Numerous incidents of brutalities and atrocities depriving the Scheduled Castes and Scheduled Tribes of their life and property were a cause of concern for the Parliament. Considering the fact that there was an increase in the disturbing trend of commission of atrocities against the Scheduled Castes and Scheduled Tribes, the Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Preamble to the Act reads as under:

“An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.”

8. The Act enlarges the scope of criminal liability by including several acts or omissions of atrocities which were not covered by the Indian Penal Code or the Protection of Civil Rights Act, 1955. The Act also provides protection to the Scheduled Castes and Scheduled Tribes for various atrocities affecting social disabilities, properties, malicious prosecution, political rights and economic exploitation. The Act also provides for enhanced punishment for commission of offences against the Scheduled Castes and Scheduled Tribes. The minimum punishment for neglect of duties committed by a public servant was also increased. Provisions were made for granting minimum relief and compensation to victims of atrocities and their legal heirs. The other salient features of the Act include externment of potential offenders from Scheduled Areas and Tribal Areas as well as attachment of the properties of the accused. The Act prohibits the grant of Anticipatory Bail to the accused and the Probation of Offenders Act, 1958 was also made inapplicable to the Act. Certain preventive measures provided in the Act include cancellation of arms licenses of potential offenders and even grant of arms licenses to Scheduled Castes and Scheduled Tribes as a means of self defence.

9. We have examined the NHRC Report on Atrocities against Scheduled Castes , the report of Justice K Punnaiah Commission , Sixth report of the National Commission for Scheduled

Castes and a paper titled “The Status of Implementation and need for amendments in the Prevention of Atrocities Act, India” published by Petitioner No. 1. It is contended by the Petitioners that the implementation of the Act has been totally ineffective and that Dalits are still suffering from atrocities in view of the non compliance of various provisions of the Act. The NHRC in its Report observed that “even in respect of heinous crimes the police machinery in many states has been deliberately avoiding the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989”. The Report further highlighted the non registration of cases and various other machinations resorted to by the police to discourage Dalits from registering cases under the Act. The Petitioners also highlighted the persisting problem of non-registration of cases under appropriate provisions of the Act, delays in filing of charge-sheet, accused not being arrested, release of high risk offenders on bail and filing of false and counter cases against Dalit victims. The Petitioners also complained of non-payment of compensation to the victims or their legal heirs. The Petitioner also relied upon the findings of the sixth Report of the National Commission to show that the Scheduled Castes and Scheduled Tribes have no access to legal aid. Various committees contemplated by the Act at various levels are dysfunctional.

10. The Petitioners submitted that Rules 3, 8, 9, 10, 15(1), 16 and 17 of the Scheduled Castes and Schedules Tribes (prevention of Atrocities) Rules, 1995 (hereinafter referred to as “the Rules”) have to be strictly complied with by the concerned authorities. Rule 3 provides for identification of atrocity prone areas and for preventive measure to be taken. Rule 8 refers to setting up Special Cells to conduct survey of the identified areas, informing Nodal Officers and Special Officers on the law and order situation of identified areas, making enquiries about the investigation and spot inspections, wilful negligence of various authorities and reviewing the position of cases registered. Rules 9 and 10 deal with the appointment of Nodal Officers and Special Officers. A contingency plan for implementation of provisions of the Act is dealt with in Rule 15(1). Vigilance and Monitoring Committees to review the implementation of the provisions of the Act at the State and District level have to be set-up under Rule 16 and 17. According to Section 14 of the Act, designated special courts and exclusive special courts have to be established for speedy trial of offences under the Act.

11. The Act was made in 1989 because the Parliament found that the provisions of the Protection of Civil Rights Act, 1955 were inadequate and did not curb the evil practice of atrocities against Dalits. The grievance of the Petitioners has been that though the Act is comprehensive enough to deal with the social evil, its implementation has been painfully ineffective. The ever increasing number of cases is also an indication to show that there is a total failure on the part of the authorities in complying with the provisions of the Act and the Rules. Placing reliance on the NHRC Report and other reports, the Petitioners sought a mandamus from this Court for effective implementation of the Act and the Rules.

12. We have carefully examined the material on record and we are of the opinion that there has been a failure on the part of the concerned authorities in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India.

At the same time, the Central Government has an important role to play in ensuring the compliance of the provisions of the Act. Section 21 (4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before the Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. We are satisfied that the Central Government and State Governments should be directed to strictly enforce the provisions of the Act and we do so. The National Commissions are also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority is requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of the Scheduled Castes and Scheduled Tribes. A similar situation arose before this Court in *Safai Karamchhari Andolan v. Union of India*<sup>1</sup>. The Petitioners therein filed a Writ Petition seeking enforcement of the provisions of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. This Court held as under:

“24. In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the Act 2013. Inasmuch as the 2013 Act occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.”

13. The Petitioners are at liberty to approach the concerned authorities and thereafter the High Courts for redressal of their grievances, if any. In view of the aforesaid, the writ petition is disposed of. No cost.

Judgment Referred.

<sup>1</sup>(2014) 11 SCC 0224