

Court No. - 40

Case :- WRIT - C No. - 30476 of 2023

Petitioner :- Divine Faith Fellowship Church And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Akanksha Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

(Per Hon'ble M.C. Tripathi, J.)

1. Heard Ms. Akanksha Mishra, learned counsel for the petitioners and Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel for the respondent nos.1, 4 and 5.

2. The petitioners have filed the instant writ petition under Article 226 of the Constitution of India seeking a mandamus upon respondent nos.4 and 5 for complying with the orders dated 12.12.2022 and 17.4.2023 passed by the National Commission for Minorities, Government of India (hereinafter referred to as 'the Commission').

3. Petitioner-Divine Faith Fellowship Church, Sambhal claims to be a Non-governmental Organization (in short 'NGO'), which works for promotion and betterment of the Christian Community. Petitioners further claim that they have 17 shops around Church area, which is property of the Church. In one of the shops bearing Shop no.13/1 some land grabbers have entered into possession illegally. Petitioners moved an application on 4.6.2022 before U.P. Commission for Minorities (hereinafter referred to as 'the U.P. Commission') seeking direction upon respondent nos.4 and 5 for eviction of respondent no.6, who according to the petitioner was an unauthorized occupant of the shop in question. The U.P. Commission considered this application as a civil case and issued notices to the government officers to appear before it. Accordingly,

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Nayab Tehsildar appeared before the U.P. Commission and submitted its report stating that Shop No.13/1 was leased out by the Church to one Mr. Amit son of Satish Chandra and Kamal son of Kalyan Das, who is said to be the encroacher, was actually the partner of Amit, who was the tenant of the petitioner. Since, the Church wanted to throw out the tenant, a case of encroachment was set up against the partner of the tenant. On this, the U.P. Commission directed the Nayab Tehsildar to get the copy of the Lease Deed or Partnership Deed, which was executed between the tenant and his partner. Obviously, the private document was not with the Officer and the same could not be produced. In fact, a document was produced by the petitioners wherein it was said that the Partnership Deed between Amit and Kamal has come to an end, hence, Kamal could not be in possession of the shop in question. It is then that the U.P. Commission had gone ahead and came to a conclusion that Kamal has illegally taken possession of Shop no.13/1 situated in Church area and the tenant has helped him to do so, hence, both are liable to be punished. The U.P. Commission further ordered that an FIR be registered against Kamal as he was found by the U.P. Commission to be an illegal occupant.

4. When the order passed by the U.P. Commission was not complied with, the petitioners sent another representation to the National Commission for Minorities, Government of India at New Delhi. The Commission again treated the application as a case and called the officers to appear before it. After hearing the petitioners and the Sub Divisional Magistrate (on behalf of the concerned District Magistrate), passed an order on 12.12.2022 that the respondents (District Administration) should help the petitioners to get the possession of the shop in question from the trespassers. The Commission further directed the respondents to remove the encroachment within 15 days after completion of local election and send a report to the Commission.

5. Since, order of the Commission passed on 12.12.2022 was not

complied with, so the petitioners have filed the instant petition with the following prayers:-

"(i) to issue a writ, order or direction in the nature of mandamus commanding the respondent no.4 (i.e. District Magistrate, Sambhal) and respondent no.5 (i.e. Sub Divisional Magistrate, District Sambhal) and to direct them to ensure compliance of orders dated '12.12.2022' and '17.4.202' passed by the National Commission of India, Government of India.

(ii) to issue any other writ, order or direction as this Hon'ble Court may deem fit and proper.

(iii) to award cost of this petition to the petitioners"

6. On contra, Ms. Bahuguna, learned Additional Chief Standing Counsel appearing on behalf of respondent nos.1, 4 and 5 opposed vehemently and submitted that both the State and National Commission for Minorities had been set up for a purpose but it is seen that, very often these Commissions have been exceeding their powers and jurisdiction and further, they are trying to usurp the powers which they do not possess. They have started working as Court and deciding lis between the parties, for which they are not empowered. Further, it has become a common practice by these Commissions of summoning the officers and pressurizing them to pass certain orders. Very often these Commissions are seen deciding disputes or engaging in areas which are beyond their jurisdiction.

7. On perusal of record, we find that the National Commission for Minorities had been established under National Commission for Minorities Act, 1992 (hereinafter referred to as 'the 1992 Act'). This Act was enacted for the purpose of safeguarding and protecting the interest of minorities. The function of the Commission for Minorities is to evaluate the progress of development of minorities under the Union and under the States. The main function of these Commissions is to monitor the working of the safeguard

provided in the Constitution and Acts passed by the Parliament and State Legislatures. The Commission is to make recommendation for the effective implementation of the safeguard. They are also empowered to look into specific complaint regarding deprivation of rights of minorities and to take up such matters with the appropriate authorities. They are enacted to conduct studies, research and analyse the issues relating to socio economic and educational development of minorities and to suggest appropriate measures in respect of the minorities to the State Government and to the Central Government.

Preamble of the Act

8. Chapter III of the 1992 Act lays down functions of the Commission as follows :-

“Section 9. Functions of the Commission .-(1) The Commission shall perform all or any of the following functions, namely:-

(a) evaluate the progress of the development of minorities under the Union and States;

(b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

(c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;

(d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;

(e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) suggest appropriate measures in respect of any minority to be

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undertaken by the Central Government or the State Governments;
(h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

(i) any other matter which may be referred to it by the Central Government.

2) The Central Government shall cause the recommendations referred to in clause(c) of sub-section (1) 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.

(3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government 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 recommendation or part.

(4) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), 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; and

(f) any other matter may be prescribed.”

9. We further find that U.P. Commission was established under the U.P. Commission for Minorities Act, 1994 and the functions of the Commission

provided therein is almost the same as laid down in the 1992 Act.

10. The Commission for Minorities was set up to evaluate the progress of development of minorities and monitor the working of the safeguards provided in the Constitution, look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities. As per Section 9(4) of the Commission while performing the function mentioned in sub clause (a), (b) and (d) of sub-section 1 while having the powers of civil court trying a suit, could enforce attendance of any person.

11. The U.P. Commission cannot usurp the power of civil court for resolving property disputes, such as dispute of evicting a person from a shop owned by the Church. The power of the Commission is confined to Section 9(1)(a), (b) and (d) of the 1992 Act, under which they can summon an officer or have the power of civil court. They cannot usurp the power which has not been granted to them under the Statute.

12. Now the question which arises before us is to see whether the Commission for Minorities as established under the 1992 Act is a 'Court' or not or can it adjudicate the issues between the parties.

13. An identical issue came up before this Hon'ble Court in **Yogendra Singh @ Ballu and another vs. State of U.P. and others**¹, wherein Lucknow Bench of this Court has held that the powers given to the Commission for the Minorities incorporated under the U.P. Commission for Minorities Act, 1994 is limited. In the said matter, the Commission for Minorities had issued direction for holding elections and the Court has held that such direction issued by the Commission for Minorities is wholly without jurisdiction and the Commission for Minorities has acted beyond the scope of the Act in issuing such direction. The Court further held that the recommendation made

¹ 2008 SCC Online All 1145

by the Commission is only recommendatory and not binding upon the State Government or the Government Officers.

14. A Division Bench of this Court in the case of **Managing Director, U.P. Co-operative Bank Ltd. And another vs. Chairman, U.P. State Minorities Commission and others**², has held that the U.P. Minorities Commission, Backward Caste Commission and Scheduled Caste Commission are only recommendatory bodies and they can only make recommendations to the Government. The Court has further held as under:

“Unfortunately, we find that these bodies are often going beyond their jurisdiction by passing orders staying termination of service of some Government employee passing injunction orders, or closing the accounts etc. which is not within their jurisdiction at all. These Commissions should act within their jurisdiction and not do as they please.”

15. In the matter of **Ekdant Housing vs. Maharashtra State Minorities Commission and others**³, Bombay High Court has held as under:

“3. The powers of the Minorities Commission have been incorporated in Section 10 of the said Act. No such adjudicatory power has been conferred upon the Minorities Commission. The learned counsel appearing for the sixth Respondent relies upon Clause (j) of Sub-section (1) of Section 10 of the said Act. It only empowers the Minorities Commission to look into the specific complaints regarding deprivation of rights of minorities and take up the matters with the appropriate authorities.

4. Prima facie, it appears to us that the Minorities Commission has virtually granted a decree of specific performance by exercising the powers of the Civil Court.”

16. In the matter of **Bal Patil vs. Union of India**⁴, the Hon'ble Supreme Court has held as under:

2 2003 SCC OnLine All 2107,

3 2017 SCC Online Bom 6228

4 AIR 20005 SC 3172

“while dealing with the objects of the commission expressed, the view that the recommendations made by the National or State Minorities Commissions are in the nature of advice only and can have no binding effect.”

17. The Hon’ble Supreme Court in the matter of **Brij Nandan Sinha vs. Jyoti Narayan**⁵ has defined the word “Court”. The Hon’ble Apex Court has held that in order to constitute a Court in strict sense of the term an essential condition is that the Court should have, apart from having some of the judicial trappings, power to give decision or definitive judgments which has finality and authoritativeness which are the essential tests of a judicial pronouncement. The pronouncement of a definitive judgment is considered the essential “sine qua non” of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court.

18. The Hon’ble Supreme Court in the matter of **Ganesan vs. T.N. Hindu Religious & Charitable Endowments Board**⁶ has held as under :

“13. The definition of the Court refers to the Civil Court constituted by Legislature in the State for administration of justice. The conventional definition of the Court as mentioned in Advanced Law Lexicon by P. Ramanatha Aiyer, Third Edition is:

*“A Court is defined in Coke on Littleton as a place wherein justice is judicially administered. “In every Court, there must be at least three constituent parts-the actor, reus and judex: the actor, or plaintiff, who complains or an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy,” (3 Steph. Comm. 6th Ed., pp.383, 385). See also **Manavaala Goundan v. Kumarappa Reddy**⁷, Court is a body in the government to which the public administration of justice is delegated; an organised body, with defined powers, meeting at*

5 1955(2) SCR 955=AIR 1956 SC 66

6 2019 (7) SCC 108

7 ILR (1907) 30 Mad 326 : 2 MLT 267

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certain times, and places, for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsels, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure order in its proceedings.”

14. *The constitution of Court in this country has been by legislative enactments. For constituting Civil Courts, the Bengal, Agra and Assam Civil Courts Act, 1887 was enacted which provided classes of civil courts and provided for constitution of courts of District Judges, Subordinate Judges and Munsifs. Similarly for civil courts in the town of Bombay, Calcutta and Madras, the Presidency Small Causes Act, 1882 was enacted.*

15. *The definition of Court as contained in Section 6(7) as noted above, thus, clearly indicates that what Act, 1959 refers to a Court is a civil court created in the State. The scheme of the Act clearly indicates that Commissioner is an authority under the Act who is to be appointed by the Government. The Commissioner is entrusted with various functions under the Act and one of the functions entrusted to the Commissioner is hearing of the appeal under Section 69 of the Act, 1959.....”*

19. It has become a normal practice by the National Commission for Minorities and the U.P. Commission for Minorities to keep summoning the officers and try to pressurize them to pass orders which is beyond their jurisdiction. Hon'ble the Supreme Court in the matter of **State of U.P. and others vs. Dr. Manoj Kumar Sharma**⁸ has deprecated this practice and has held as follows:

“17. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

18. *The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is*

always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.

19. This Court in a judgment reported as **Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr.**⁹ observed that judges must know their limits. They must have modesty and humility, and not behave like emperors. The legislature, the executive and the judiciary all have their own broad spheres of operation. It is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction. This Court held as under:

“19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State—the legislature, the executive and the judiciary—must have respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the **French thinker Montesquieu** (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

“When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the

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executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

We fully agree with the view expressed above. Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian judiciary today, since very often it is rightly criticised for “overreach” and encroachment into the domain of the other two organs.”

20. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now. The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.”

20. These days, it has become a normal procedure where the Commission started calling the officers at the drop of a hat whereas Hon'ble the Supreme Court in **Dr. Manoj Kumar Sharma's case (supra)** has even deprecated the High Courts for summoning the officers without a solid reason. A Commission cannot be said to be better than the High Courts. They cannot summon officers in each and every matter. They have no power to adjudicate the dispute, which has to be adjudicated by the civil court.

21. If the Commission for Minorities continues indulging in matters which are beyond their jurisdiction then undoubtedly it is a case of abuse of position of Chairperson or Member, who starts working as a “Court” and starts summoning the officers, and direct them to execute their orders. As per Section 4F of the National Commission for Minorities Act, 1992 Act, such abuse of position would render Member/Chairperson’s continuance in the Office detrimental to the public interest and can invite removal of such Member/Chairperson.

22. We strongly deprecate such practice adopted by the National Commission for Minorities to adjudicate disputes and proceed to adjudicate matters, as if they are Courts and also to summon the officers without any rhyme or reason in continuance of such adjudication or to pressurize officers to pass any order. We further request the Members or Chairpersons of Commission for Minorities of the State of U.P. and also the National Commission for Minorities, not to function or adjudicate any dispute as a Court for which they are not empowered under the Act to do so.

23. In this case, Amit was a tenant of Shop No.13/1 and Kamal was his partner, who was running the shop. The Commission has no authority to declare him as trespasser or a bhu-mafia and thereafter proceed for registering FIR against him or direct the authorities to comply with the orders and report back the same to the Commission. The only course open for the petitioner was to approach the civil court by filing suit for eviction, if it has been proved that Kamal was an unauthorized occupant of the shop in question.

24. In view of aforesaid facts and circumstances, it is clear that both the Commission and the U.P. Commission have acted beyond their functions as provided under the Acts. The Commissions were established under the Acts only to protect and safeguard the interest of the minorities in the State. The

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Commission should confine its activities as per the objects of the Statute under which they were established and should not go beyond that.

25. The instant writ petition is devoid of merits and hence, it is accordingly dismissed.

26. Let a copy of this order be sent to the Chief Secretary, Government of U.P. for circulation amongst the officers/Head of the Departments in the State of U.P. for information.

Order Date :- 26.9.2023
Manish Himwan