

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3298 of 2007**

Smt. Saraswati Bai Manikpuri, W/o Shri Manharan Das Manikpuri, Aged about 26 years, R/o Village – Bhatkundera, Post-Gochhiya, Block – Sahaspur-Lohara, Distt. - Kabirdham (C.G.)

---- **Petitioner****Versus**

1. The Chhattisgarh Rajya Anusuchit Janjati Ayog Through : Secretary 61, Jalvihar Colony, Raipur (C.G.)
2. The Collector, District Kabirdham (C.G.)
3. District Women and Child Welfare Officer, Distt. Kabirdham (C.G.)
4. The Project Officer, Akikrit Child Development Project Sahaspur-Lohara, Distt. Kabirdham (C.G.)
5. Gram Panchayat-Bhatkundera, Through : Secretary, Janpad Panchayat- Shaspur-Lohara, Distt- Kabirdham (C.G.)
6. Smt. Premin Bai Kothari, W/o Shri Shiv Kumar Village – Bhatkundera, Post-Gochhiya, Block-Sahaspur-Lohara, Distt.- Kabirdham (C.G.)

---- **Respondents**

For Petitioner : Mr. Sandeep Dubey, Advocate.

For Respondent No.1 : Mr. B.L. Sahu, Advocate on behalf of Shri A.S. Kachhwaha, Advocate.

For State : Mr. Ashish Surana, Advocate.

For Respondent No. 6 : Mr. Bhaskar Pyashi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**01/02/2018**

(1) Smt. Premin Bai Kothari, respondent No. 6, was appointed as Anganwadi Karyakarta by Project Officer, Integrated Child Development Project, Sahaspurlohara, District Kabirdham by order dated 21.02.2007,

which was challenged by the petitioner before Additional Collector.

(2) The Additional Collector, Kabirdham, by its order dated 27.12.2006, set aside the appointment of respondent No. 6 and directed that the petitioner be appointed on the post of Anganbadi Karyakarta, pursuant to which, the petitioner was appointed as Anganbadi Karyakarta by order dated 22.02.2007.

(3) Respondent No. 6 questioned the order of Additional Collector before the Chhattisgarh Rajya Anusuchit Janjati Ayog (henceforth “ ST Ayog”). The said “Ayog” by its order dated 26.03.2007 held that cancellation of appointment of respondent No. 6 is in violation of principle of natural justice and also recommended appointment of respondent No. 6 on the post of Angangadi Karyakarta, pursuant thereto, petitioner’s appointment was cancelled and accepting the recommendation made by ST Ayog, the respondent No. 6 was appointed on the post of Anganbadi Karyakarta. Questioning that order, instant writ petition has been filed questioning the same.

(4) Learned counsel for the petitioner would submit that the complaint/appeal as framed and filed is not covered by Section 9(1) (a) of the Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam, 1995 (for short “Adhiniyam, 1995”), and as such, entertainment of the instant complaint is without jurisdiction and without authority of law and therefore, it is liable to be set aside.

(5) On the other hand, learned counsel appearing for the respective respondents, would support the impugned order.

(6) I have heard learned counsel for the parties and also

considered the rival submissions made herein-above and also gone through the record critically and minutely as well.

(7) The Chhattisgarh Rajya Anusuchit Janjati Ayog has been constituted under Section 3 the Act, 1995. The function of the Commission has been provided under Section 9 of Act, 1995. Section 9 of the Act, 1995 is reproduced below for sake of convenience:-

“9. Functions of the Commission.-(1) It shall be the function of the Commission-

(a) to act as watch-dog Commission for the protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force;

(b) to recommend to the State Government to take steps to add particular tribes or tribal communities or parts of or groups within tribes or tribal communities in the Constitution (Scheduled Tribes) Order, 1950.

(c) to watch the proper and timely implementation of programmes meant for welfare of Scheduled Tribes and to suggest improvement in such programmes of the State Government or any other body or authority responsible for such programmes;

(d) to tender advice regarding reservation for Scheduled Tribes in public services and admission in educational institutions;

(e) to perform such other functions as may be assigned to it by the State Government.

(2) The advice of the Commission shall, ordinarily be binding upon the State Government, where, however, the Government does not accept the advice, it shall record its reason therefor.”

(8) A careful reading of sub-section (1) of Section 9 of the Act, 1995 would show that the function of the Commission is to protect the interest of the members of the Scheduled Tribes particularly the protection afforded to them under the Constitution or under any other

law for time being in force and to ensure timely implementation of programmes meant for the members of the Scheduled Tribes and also to extend advice regarding reservation for them in public services and admission in educational institutions. By virtue of sub-section (2) of Section 9 of the Act, 1995, advice of the Commission is ordinarily binding upon the Government and as such the function of the Commission is advisory/recommendatory in nature. From the scheme of the Act, 1995, it appears that the Commission has not been conferred with the adjudicatory function, it is only an advisory/recommendatory body having advisory jurisdiction.

(9) In the matter of **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and another (2010) 8 SCC 633**, the Supreme Court considered the extent of power of the State Commission for Women constituted under Section 3 of the Orissa State Commission for Women Act, 1993 and after analyzing the scheme of the Act, it has been held that no power or authority has been conferred to the State Commission to adjudicate or determine of the rights of the parties. It was held succinctly as under:-

“10. In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and health care that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the authorities concerned for remedial measures; help women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties.

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.

13. It is clear to us that the legislature has not gone so far as to give jurisdiction to the State Commission to make an order such as the one that has been made. From whatever angle we may examine the validity of the directions given by the State Commission in its order dated 11-5-2009, it appears to us that the said order was outside the jurisdiction, power or competence of the State Commission. It was an order which the State Commission had no competence to make and, therefore, a void order. The High Court instead of correcting that order went a step further and directed that DNA test of the child as well as the appellant shall be conducted.”

(10) Dealing with the powers of the Chief Commissioner and the Commissioners under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules thereunder, the Supreme Court in the matter of **State Bank of Patiala v. Vinesh Kumar Bhasin** has struck the similar proposition of law by crystallizing condensely as under:-

“18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory

injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act.”

(11) Similarly, the Supreme Court in the matter of Collector, Bilaspur v. Ajit P.K. Jogi and others considered the duty of National Commission for Scheduled Caste and Scheduled Tribes provided under Article 338(5) of the Constitution of India and held that the Commission cannot determine/adjudicate the caste or tribe status of any particular individual. Relevant extract of report states as under:-

“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* directed constitution of scrutiny committees.

23. The contention that there was sufficient material to reach such a conclusion is not relevant. The

scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338-A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16-10-2001.”

(12) Following the principle of law enunciated in above-stated judgments rendered by Their Lordships of the Supreme Court, it is quite vivid that the function of the Chhattisgarh Rajya Anusuchit Janjati Ayog constituted under the Act of 1995 is advisory in nature. The power and jurisdiction to make enquiry and adjudication in regard to the rights of the Schedule Tribes have not been conferred to the State Commission by Act of 1995. Therefore, the Commission constituted under the Act of 1995 has no adjudicatory jurisdiction and as such State commission is not a tribunal exercising functions of judicial character or Civil Court and cannot determine rights of the Schedule Tribes. The State Commission can by virtue of functions entrusted to him by Section 9(1) of the Act can supervise and see that the protection granted to members of Scheduled Tribe under the Constitution of India or under any other law for the time being in force is actually extended to them and proper implementation and execution of programmes meant for them and also to make recommendation for the State Government for insertion of certain tribes/group of tribes in the Constitution (ST) Order 1950 and further advice for representation of Scheduled Tribe in public service and admission in educational institution, but cannot perform adjudicatory function being only a body competent to make recommendation to the

State Government as well as to make advise to the State Government.

(13) At this stage, it would be appropriate to notice a decision of the Supreme Court in the matter of **All India Indian Overseas Bank SC and ST Employees' Welfare Association and others v. Union of India and others** in which the direction issued by the National Commission for Scheduled Castes and Scheduled Tribes to the Bank stopping promotion process pending further investigation and final verdict by the Commission, has been assailed. Their Lordships of the Supreme Court considered the matter and held that the Commission having not been specifically granted any power to issue interim injunctions, a power vesting in civil court, has no authority to issue an order of this nature.

(14) The Delhi High Court in the matter of **Municipal Corporation of Delhi v. Lal Chand and others** while considering sub-clause (a) of clause (5) of Article 338 of the Constitution of India held that the National Commission for Scheduled Castes and Scheduled Tribes has no adjudicatory power and it can deal with the complaint 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. In paragraph 10, the Delhi High Court held as under: -

“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 enquiry. 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, involved 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. ...”

(15) After having noticed the principles of law flowing from the aforesaid decisions reverting to the facts of the case, it is quite vivid that the respondent No. 6 has questioned the order of Additional Collector, by which, the petitioner was appointed as Anganbadi Karyakarta by order dated 22.02.2007 before the ST Aayog and the ST Aayog has recommended cancellation of appointment of the petitioner and recommended that the respondent No. 6 be appointed as Anganwadi Karyakarta. None of the relief claimed by respondent No. 6 relates to the protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force. The reliefs claimed by respondent No. 6 are out and out pertaining to pure and simple service dispute relating to post of Aaganbadi Karyakarta, that could be considered and granted by the jurisdictional court. The order of the Additional Collector cannot be held to be bad by the ST Aayog as it has no adjudicatory power. Therefore, none of those reliefs fall within the scope of Section 9(1)(a) of the Act, 1995 warranting cognizance to be taken by the respondent ST Aayog. Thus, the ST Aayog is absolutely unjustified in holding that under Section 9(1)(a) of the Act, 1995 such a relief, which respondent No. 6 has claimed, can be granted.

(16) As a fallout and consequence of aforesaid discussion, the order passed by the respondent ST Aayog dated 26.03.2007 and the appointment of respondent No. 6 is hereby quashed. Termination order

of the petitioner is also hereby quashed.

(17) Accordingly, writ petition is allowed to the extent indicated hereinabove. However, the respondent No. 6 is at liberty to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

