

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (C) No.1759 of 2012

Tulsi Ram Son of Ramcharan Nai, aged about 75 years, R/o Village Mainpur-2, Tahsil and District Gariyaband (CG).

-----Petitioner

Versus

1. State of Chhattisgarh, through: Secretary, Scheduled Tribe Department, Mantralaya, D.K.S.Bhawan, Raipur (CG)
2. Secretary, Revenue Department, D.K.S.Bhawan, Raipur (CG)
3. State Scheduled Tribe Commission, 61-Jal Vihar Colony, Raipur (CG)
4. Collector, Gariyaband (CG)
5. Additional Collector, Raipur (CG)
6. Sub Divisional Officer, Gariyaband, District Gariyaband (CG)
7. Tahsildar, Gariyaband, District Gariyaband (CG)
8. Pusbati widow of late Lagnu, aged about 70 years, R/o village Mainpur-2, Tahsil & District Gariyaband (C.G.).
9. Banshi S/o Sirpal, aged about 75 years, R/o village Mainpur-2, Tahsil & District Gariyaband (C.G.).
10. Goverdhan S/o Banshi, aged about 52 years, R/o village Mainpur-2, Tahsil & District Gariyaband (C.G.).

----- Respondents

For Petitioner	:	Mr. Raghvendra Pradhan, Advocate
For Res.No.1, 2, 4, 5,6 & 7	:	Mr. Shashank Thakur, Government Advocate
For Res.No.8, 9 & 10	:	None.

Hon'ble Shri Justice P.Sam.Koshy

ORDER ON BOARD

22.06.2018

1. Disputing the legality, validity and correctness of the order dated 27.7.2012 (Annexure P/1) passed by the Chhsttisgarh Rajya Anushuchit Janjati Aayog (hereinafter called as "the Commission"), the petitioner has filed this writ petition under Article 226/227 of the Constitution of India.

2. Following essential facts are required to be noticed in order to judge the correctness of the impugned order as under:-

(i) Petitioner-Tulsi Ram purchased the suit property from Mana Wd/o Sukhdev, Pusbati W/o Lagun and Banshi S/o Sirpal by registered sale deed dated 16.06.1975 situated at village Mainpur, Tahsil Brindranawagarh, District Raipur and accordingly his name was mutated in the revenue records. Thereafter, Mana Wd/o Sukhdev, Pusbati W/o Lagun and Banshi S/o Sirpal filed an application under Section 170B of the Madhya Pradesh Land Revenue Code, 1959 before the Sub Divisional Officer (Revenue), Gariyaband for return of suit land. The Sub Divisional Officer (Revenue), Gariyaband by its order dated 31.10.89 rejected the application holding that the petitioner has purchased the suit land by registered sale deed after obtaining due permission of the Collector. That order granting permission to sale the suit land was not challenged and that has attained finality.

(ii) Thereafter, Bhikham Singh, son of Pratap Singh filed a complaint before the Commission for return of his land. That case was registered and the

Commission by its order dated 27.7.2012 made recommendation to the Collector, Gariyaband for setting aside the order granting permission to sale the suit land dated 30.05.1975 to the petitioner and also made recommendation for mutating the name of Shri Bhikham Singh Son of Pratap Singh in the revenue records.

3. Feeling aggrieved against the said order, the present writ petition has been filed by the petitioner herein stating inter-alia that the Commission has not been conferred with adjudicatory function and jurisdiction as it has only advisory jurisdiction and as such, the impugned order deserves to be quashed.

4. Mr.Raghvendra Pradhan, learned counsel appearing for the petitioner, would submit that the recommendation made by the Commission is without jurisdiction and without authority of law as the notification declaring Mainpur to be scheduled area under Section 165(6) of the Land Revenue Code came into force on 21.2.1977 and Section 165(5) was inserted in the Land Revenue Code w.e.f. 29.11.1976 and therefore, recommendation made by the Commission is ex-facie illegal and further the Commission has not only made recommendation but also directed to set aside the order granting permission to sell by the Collector to the petitioner as well as directed for mutating the name of the complainant in revenue records, therefore, it is beyond the jurisdiction of the Commission under Section 9 (b) of the Chhattisgarh Anusuchit Jati Ayog Adhiniyam, 1995 (hereinafter called as "Act of 1995"). Therefore, the order impugned deserves to be set aside/quashed.

5. On the other hand, Mr. Shashank Thakur, Government Advocate appearing for the State/respondents No.1, 2, 4, 5, 6 & 7 would support the impugned order.

6. I have heard the learned counsel for the parties at length and considered their rival submission made herein and gone through the record thoroughly and extensively.

7. The Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam, 1995 was enacted to constitute the State Commission to protect the interest of Scheduled Tribes and to provide for matters connected therewith or incidental thereto.

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

“9. Functions of the Commission-(1) It shall be function of 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 institution;
 - (e) to perform such other function 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 therefore.

9. A careful reading of the sub-section(1) of Section 9 of the Act of 1995 would show that the function of the Commission is to protect the interest of the member of Scheduled Tribe 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 the programmes meant for the member of the Scheduled Tribe and also to extend advice regarding reservation for them in public service and admission in educational institution. By virtue of sub-section (2) of Section 9 of the Act of 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 of 1995, it appears that the Commission has not been conferred with the adjudicatory function, it is only a advisory/Recommendatory body having advisory jurisdiction.

10. According to Black's Law dictionary sixth addition, "advise" means to give an opinion or counsel, or recommend a plan or course of action, also to give notice. To encourage, inform, or acquaint. It is different in meaning from "instruct" or "persuade." Hughes v. Van Bruggen, 44 N.M. 534, 105 P. 2d 494, 497. Where a

statute authorizes the trial court to advise the jury to acquit, the court has no power to instruct the jury to acquit. The court can only counsel, and the jury are not bound by the advice. "Advice" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not.

11. According to *Merriam-Webster's Collegiate Dictionary, eleventh Edition*, recommendation means the act of recommending or something that recommends or expresses commendation.

12. The word "Recommendation" is defined as under in *Black's Law Dictionary, Sixth Edition*:-

"Recommendation. In feudal law, a method of converting allodial land into feudal property. The owner of the allod surrendered it to the king or a lord, doing homage, and received it back as a benefice or feud, to hold to himself and such of his heirs as he had previously nominated to the superior.

The act of one person in giving to another a favourable account of the character, responsibility, or skill of a third.

Recommendation refers to an action which is advisory in nature rather than one having any binding effect, *People v. Gates*, 41 CA 3d 590, 116 Cal Rptr. 172, 178.

Letter of recommendation. A writing whereby one person certifies concerning another that he is of good character, solvent, possessed of commercial credit, skilled in his trade or profession, or otherwise worthy of trust, aid, or employment. It may be addressed to an individual or to whom it may concern, and is designed to aid the person commended in obtaining credit, employment, etc. See Letter of credit."

13. Very recently, the Constitution Bench of the Supreme Court in the matter of **Manoj Narula vs. Union of India**¹ considered the meaning of “advice” as employed under Article 75 (1) and 164(1) of the Constitution of India and held as under:-

“95. As per the New Shorter Oxford English Dictionary, one of the meanings of the word “advice” is “the way in which a matter is looked at; opinion; judgment”. As per P. Ramanatha Aiyer’s Law Lexicon, 2nd Edition, one of the meanings given to the word “advice” is “counsel given or an opinion expressed as to the wisdom of future conduct” (Abbot L. Dict.). In Webster Comprehensive Dictionary, International Edition, one of the meanings given to the word “advice” is “encouragement or dissuasion; counsel; suggestion”. Thus, the word “advice” conveys formation of an opinion. The said formation of an opinion by the Prime Minister in the context of Article 75(1) is expressed by the use of the said word because of the trust reposed in the Prime Minister under the Constitution. To put it differently, it is a “constitutional advice.”

14. Recently, in the matter of **Manohar s/o. Manikrao Anchule v. State of Maharashtra**², while dealing with Section 20(2) of the Right to Information Act, 2005, the Supreme Court has held that recommendation must be seen in contradiction to direction or mandate, and observed as under:-

“.....Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct

¹

(2014) 9 SCC 1

² (2012) 13 SCC 14

the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a "recommendation" and not a "mandate" to conduct an enquiry. "Recommendation" must be seen in contradiction to "direction" or "mandate".

15. In the **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and another**³, 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 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

³ (2010) 8 SCC 633

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.”

16. 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 **State Bank of Patiala v. Vinesh Kumar Bhasin**⁴ 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.”

⁴ (2010) 4 SC 368

17. Similarly, the Supreme Court in the matter of **Collector, Bilaspur v. Ajit P.K. Jogi and others**⁵ 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*⁶ 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

⁵ (2011) 10 SCC 357

⁶ (1994) 6 SCC 241

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.”

18. 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.

19. If the facts of the case in hand are examined, it is apparent that District Collector granted permission to sale the land to Respondent No. 8 and 9 by order dated 30.05.1975 in a duly constituted revenue case and thereafter the petitioner purchased the suit land by registered sale deed dated 16.06.1975, not only this the proceedings initiated under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 by the respondent has already been dismissed by order dated 31.10.1989. Thus, the order granting permission to sale the land by the Collector on 30.05.1975 as well as the order of Sub-Divisional Officer (Revenue) dated 31.10.1989 both have attained finality in absence of challenge. The State Commission in exercise of function entrusted under Section 9(1) of the Act of 1995 cannot hold that permission granted by the Collector to sale the land is illegal. The State Commission has no jurisdiction and authority to act as appellate or revisional authority by Act of 1995 as no adjudicatory function, much less the revisional and appellate jurisdiction has not been conferred to the Tribunal. It has only power to make recommendation/advice to the Government and in exercise of advisory jurisdiction, the Commission cannot consider and hold that order passed by the Statutory Authority under the provisions of the Chhattisgarh Land Revenue Code to be bad and unsustainable in law. The order passed by the Statutory Authority cannot be annulled by State Commission who is Recommendatory Authority.

20. As a fallout and consequence of the aforesaid discussion, the writ petition is allowed and the impugned order dated 27.7.2012 (Annexure P/1) passed by the Chhattisgarh Rajya Anushuchit Janjati Aayog is quashed and hereby declared as void and inoperative leaving the parties to bear their own cost(s).

Sd/-
(P.Sam.Koshy)
Judge

Sumit