

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1298 of 2014**

1. Mahindra & Mahindra Finance Services Ltd. Balodabazar Branch, Through Its Territory Legal Manager And Power Of Attorney Holder, Prasoon Shrivastava, S/o Shri R.K. Shrivastava, 2nd Floor, CLC Plaza, Mangala Chowk, Bilaspur, Chhattisgarh 495001.

---- Petitioner**Versus**

1. Chhattisgarh Rajya Anusmit Janjati Aayog Through Its Secretary, 61, Jalvihar Colony, Raipur, Chhattisgarh 492001.
2. Nandkumar Dhruw S/o Shri Amar Singh Dhruw R/o Village And Post Bodtara, Tah Bhatapara, Distt Balodabazar- Bhatapara, Chhattisgarh

---- Respondent

For Petitioner	Shri Kshitij Sharma, Advocate
For Respondent No.1	Shri A.S. Kachhawaha, Advocate
For Respondent No.2	Shri C.K. Sahu, Advocate

Order On Board**By****Prashant Kumar Mishra, J.****20/08/2018**

1. On petitioner's finance to the respondent No.2 he purchased a tractor (265 DI Bhumiputra) bearing registration No.CG-04-DM-5456. The respondent No.2 committed default in repayment of the installments of loan, therefore, the petitioner had to take recourse to the rights under the hypothecation agreement and eventually the tractor was recovered by the petitioner and sold by

way of auction to a third party for recovery of the part of the loan amount.

2. Challenging the said order of auction of the tractor as well as making recovery of the loan amount the respondent No.2, a member of Scheduled Tribe community, moved a complaint before the respondent No.1 Chhattisgarh Rajya Anusuchit Janjati Ayog (for short 'the Commission') alleging harassment by the Finance Company and return of the tractor. The Commission issued notice to the petitioner and after hearing the parties has passed the impugned order recommending waiver of the balance loan amount of Rs.1,06,010/-.
3. Shri Kshitij Sharma, learned counsel appearing for the petitioner, would refer to the law laid down by this Court in **Chhattisgarh State Power Generation Co. Ltd. v Chhattisgarh Rajya Anusuchit Jan Jati Aayog & Another¹** and **Chhattisgarh State Electricity Board v. Chhattisgarh Human Rights Commission & Others²** to argue that the Commission being a recommendatory Body it cannot record a finding as to the validity of the action taken by the Finance Company or for waiver of the balance loan amount. He would submit that taking benefit of the impugned order the respondent No.2 is not repaying the balance amount and further that if the order is allowed to remain intact, it will encourage other defaulters belonging to the said category of persons to take recourse to the proceedings before the

¹ WPC No.1735 of 2017 (decided on 7-9-2017)

² WPC No.2585 of 2008 (decided on 7-11-2017)

Commission under the provisions of the Chhattisgarh Rajya Anusuchit Jati Ayog Adhiniyam, 1995 (for short 'the Adhiniyam, 1995') to evade and avoid payment of loan amount.

4. Shri A.S. Kachhawaha, learned counsel appearing for the respondent No.1, would submit that the Commission has only made recommendation declaring waiver of the balance loan amount of Rs.1,06,010/-, therefore, the Commission having not passed any executable order, the writ petition is not maintainable nor any interference of this Court is required in the order impugned.
5. On a reading of the impugned order particularly the operative part of it, it appears there is a declaration that re-possession of the tractor and its auction has been declared constitutionally invalid. There is no mention in the said part of the order as to under which provisions of law the respondent No.2 is entitled for waiver of the balance loan amount of Rs.1,06,010/-, therefore, even if the language seems to be recommendatory, the effect thereof would be that the respondent No.2 would not deposit the loan and any action by the petitioner Finance Company to recover the said part of the loan amount would be termed contrary to the recommendation made by the Commission.
6. It is settled law that the Commission being a recommendatory Body has no jurisdiction to adjudicate the *lis inter partes* and record a finding concerning the rights and liabilities of the contesting parties in respect of the issue brought before it.

The question as to whether or not any member of ST is entitled for waiver of the loan or as to whether the action taken under the hypothecation agreement for repossessing the vehicle suffers from any invalidity is to be decided by the appropriate legal forum having jurisdiction in law to adjudicate the issue and the same cannot be done by a recommendatory body i.e. the respondent No.1 Commission. This view has been taken by this Court in **Chhattisgarh State Power Generation Co. Ltd.** (supra) after referring to the judgments rendered by the Supreme Court in **Collector, Bilaspur v Ajit P.K. Jogi and Others**³ and **All India Indian Overseas Bank SC and ST Employees' Welfare Association and others v Union of India and Others**⁴.

7. For the foregoing, the impugned order deserves to be and is hereby set aside being in excess of jurisdiction conferred to the Commission under the Adhiniyam, 1995. The parties would be at liberty to work out their remedies before the appropriate judicial forum having jurisdiction over the matter.
8. In the result, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri

3 (2011) 10 SCC 357

4 (1996) 6 SCC 606