

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 512 of 2017**

*{Arising out of Order dated 07/09/2017 passed in Writ Petition(C) No. 1735 of 2017 by
the learned Single Judge}*

- Rajju Lal Dhruw S/o Shri P. R. Dhruw Aged About 39 Years Qtr. No. NB/02
CSPGCL Colony Korba Chhattisgarh.

----Appellant**VERSUS**

1. Chhattisgarh State Power Generation Co. Ltd. (Incorporated As Per Electricity Act 2003), Through The Officer In Charge Rajeev Jha , S/o G S Jha Aged About 48 Years , Manager HR Cum Executive Engineer , O/o CE(HR) CSPGCL Raipur Chhattisgarh.
2. Chhattisgarh Rajya Anusuchit Jan Jati Ayog Through Secretary 61, Jalvihar Colony Raipur C.G.

-----Respondents**and****WA No. 546 of 2017**

1. Chhattisgarh Rajya Anusuchit Jan Jati Aayog Through Its Secretary, 61, Jal Vihar Colony, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

Versus

1. Chhattisgarh State Power Generation Co. Ltd. (Incorporated As Per Electricity Act, 2003) Through Officer-In-Charge Sh. Rajeev Jha, Aged About 48 Years, S/o G.S. Jha, Manager (HR) Cum Executive Engineer, O/o CE (HR), CSPGCL, Raipur, Chhattisgarh), District : Raipur, Chhattisgarh
2. Rajju Lal Dhruw, S/o Sh. P.R. Dhruw, Aged About 39 Years Qtr. No. NB/02, CSPGCL Colony, Korba, Chhattisgarh., District : Korba, Chhattisgarh

WA No. 512 of 2017

For Appellant	:	None appeared.
For Respondent No. 1	:	Mr. Raja Sharma, Advocate.
For Respondent No. 2	:	Mr. Ashutosh Singh Kacchawaha, Advocate.

WA No. 546 of 2017

For Appellant	:	Mr. Ashutosh Singh Kacchawaha, Advocate.
For Respondent No. 1	:	Mr. Raja Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge**

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice.****02/08/2019**

1. These appeals are connected by a common thread and arise from the judgment rendered by the learned Single Judge, whereby the proceedings initiated by the Chhattisgarh Rajya Anusuchit JanJati Ayog (for short 'Ayog') against the writ petitioner company with reference to the caste status of the employee concerned came to be interdicted and set aside, stating that it did not come within the power and competence of the said authority.
2. The factual matrix shows that the employee concerned was working as 'Chief Safety Officer' in the service of the writ petitioner-Company. The merit rating of the employee was effected by the authorities of the Company in respect of a particular year, whereby he was awarded 'Grade-C'. By virtue of awarding him 'Grade-C', it is stated that the employee failed to obtain the necessary promotion to the next higher cadre, which made him to feel aggrieved, who filed a representation in this regard before the higher authorities of the Company. Simultaneously, the said employee approached the 'Ayog', who is an authority constituted under Section 3 of the the Chhattisgarh Rajya Anusuchit JanJati Ayog Adhiniyam, 1995 (for short, 'the Act, 1995'), stating that the awarding of grade as 'C' was pursuant to the dubious exercise pursued by the employer Company because of his being a member of the 'Schedule Tribe' and to extend undue advantage to others concerned, after denying promotion to him. This was sought to be substantiated by raising various grounds in Annexure P/3 complaint dated 06-01-2017, requesting the 'Ayog' to look into the same and to interfere so as to set things right.

3. On receipt of the said complaint, the 'Ayog' issued notice to the writ petitioner-Company, on receipt of which Annexure-P/4, preliminary objection was submitted on 28-01-2017, pointing out that the grievance projected by the employee before the 'Ayog' was purely a 'service dispute' and as such, there was no jurisdiction for the 'Ayog' to interfere with the matter and hence that, this might be considered as a preliminary issue. The 'Ayog' considered the said preliminary objection and turned it down and proceeded to deal with the complaint in terms of the provisions of Section 9 of the Act, 1995, which made the petitioner-Company to approach this Court by filing Writ Petition(C)No. 1735 of 2017 with the following prayers:-

“Wherefore Petitioner begs for and craves indulgence of this Hon'ble Court to be pleased to allow this petition with consequential relief, quashing the impugned Order dated 13/04/2017 passed by *Chhattisgarh Rajya Anusuchit JanJati Ayog* in *A.J.JA.AA./2016/Vividh Pra. Kra. 612/2017 (Annexure-P/1)* consequently quashing the proceedings continued vide order impugned despite raising sustainable legal objection; and the Hon'ble Court be further pleased to pass such other orders as may be deemed fit in the circumstances of the case.”

4. Grounds were raised in support of the contentions; which virtually is to the effect that the powers conferred under the said Statute on the 'Ayog' and the functions were entirely different and not to deal with any employer-employee dispute. After final hearing, the learned Single Judge made a threadbare analysis of the relevant provisions of law and binding precedents; based on which a finding was rendered to the effect that it was never within the purview of the 'Ayog' to look into a service dispute,

stretching the scope and ambit of the provisions of Section 9 of the Act, 1995. It was accordingly, that the proceedings were set aside, which made the employee to feel aggrieved, who has approached this Court by filing 'Writ Appeal No. 512/2017'. At the same time, since the authority of the 'Ayog' was interdicted, the 'Ayog', who was to render a finding on the complaint, has also chosen to approach this Court by filing a separate appeal as 'Writ Appeal No. 546/2017'.

5. Since the pleadings and the grounds are almost similar, we heard both the matters together. Shri Ashutosh Singh, learned counsel appearing for the Ayog-appellant in Writ Appeal No. 546/2017, addressed the Court at length. We heard Mr. Raja Sharma, learned counsel for the respondent-Company as well in this regard.
6. The learned counsel for the appellant 'Ayog' points out that the appellant is conferred with specific power to discharge the functions as per the Statute and as such, any failure in this regard will result in perpetuation of injustice. It is stated that the 'Ayog' was constituted with a specific intent and the powers and functions are very much discernible from the provisions, in particular Sections 9 & 10 of the Act, 1995, respectively. It is accordingly that, on receipt of the complaint, the 'Ayog' issued a notice to the respondent-Company to look into the aspects of the complaint, where specific insinuation was made by the employee in relation to the action on the part of the employer. The respondent-Company submitted its preliminary objections and after considering the same, since nothing was stated with regard to the merits of the case, the 'Ayog' found it appropriate to deal with the issue on merits of the complaint, so as to protect the rights and interests of a member of the Scheduled Tribe; for which the 'Ayog' is constituted. The said attempt came to be interdicted by the learned Single

Judge, which is stated as not correct or sustainable and hence the challenge.

7. The primary aspect to be looked into is with regard to the circumstances under which the 'Ayog' was constituted as per the Section 3 of the Act, 1995. The said Act was enacted by the legislature of the State of Madhya Pradesh in the year 1995, which was to constitute a 'State Commission' for the 'Scheduled Tribes' and to provide for the matters connected therewith or incidental thereto. The authority concerned was to be constituted in terms of Section 3 of the Act, 1995 and the same has been constituted and notified. The scheme of the Act, 1995 further deals with the terms and conditions of service of the 'Chairperson' and 'Members'; officers and other employees of the Commission; salaries and allowances, vacancies etc.; the procedure to be regulated by the Commission; accounts & audit; annual report and also the rule making power of the State as mentioned under Section 17 of the Act, 1995. The relevant provisions for deciding the present 'lis' are; Sections 9 & 10 of the Act, 1995. Section 9 deals with the functions of the Commission, whereas Section 10 deals with the powers of the Commission. For convenience of reference, we find it appropriate to extract both the Sections, as given below:-

“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 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."

10. Powers of the Commission. - The Commission shall, while performing its functions under sub-section (1) of Section 9, 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 the State 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 which may be prescribed.

8. With reference to the mandate of Section 9(1)(a) of the Act, 1995, the learned counsel for the appellant submits that the Commission has to act as a 'watch-dog' 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. This being the position, there is nothing wrong on the part of the Commission in having issued notice to the respondent-

Company calling for the explanation, if at all any, with regard to the Annexure P/3 complaint and to proceed with accordingly.

9. The learned counsel for the employer Company submits that the idea and understanding of the appellants with regard to the powers and functions of the Commission is thoroughly wrong and misconceived. Section 9 of the Act, 1995 only deals with the general functions to be discharged by the Commission, so as to protect the rights and interests of the members belonging to the Scheduled Tribe, by way of looking into the various aspects and to effect various recommendations; besides performing such other duties as clearly mentioned therein. It does not extend to interference with any dispute involving 'employer-employee relationship', or to render a finding in this regard. With regard to the powers of the Commission, as dealt with under Section 10 of the Act, 1995, it is true that while performing the functions under Section 9(1), the commission is having all the powers of Civil Court in trying a suit, but it does not extend to anything further; as stipulated under Clauses (a) to (f) of Section 10, which is rather procedural and not adjudicatory. The learned counsel also points out that the scope and effect has been considered elaborately by the learned Single Judge and it was after placing reliance on various judgments rendered by the Apex Court on the point, that the final verdict has been passed, virtually, allowing the writ petition, which is not assailable under any circumstance.
10. Coming to the scope of Section 9 of the Act, 1995, particularly Section 9(1)(a), it is only to act as a 'watch-dog' for protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force. It is obviously a general power and if at all there is any instance of encroachment, intrusion or interdiction with

regard to constitutional rights, it may be for the Commission to interfere for making or suggesting or recommending appropriate remedial measures. The courses of action to be performed by the Commission is more discernible from the other provisions such as clauses (b), (c), (d) and (e) under Section 9(1) of the Act, 1995. Section 9(1)(b) refers to the functions of the Commission to make recommendations and 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. Similarly, Section 9(1)(c) refers to the functions to suggest improvement in the various welfare programmes or to watch the proper and timely implementation programmes meant for the welfare of the Scheduled Tribes to the State Government or such other bodies; Section 9(1)(d) deals with the advisory power vested to the Commission in the given circumstances and Section 9(1)(e) is with regard to such other functions as may be assigned to it by the State Government. The above provisions, in no way, deal with other aspects/disputes; particularly dealing with the service conditions between the employer and the employee, which rather is a forbidden field for the 'Ayog' and it is to be dealt with by such other appropriate authorities

11. Coming to the powers of the Commission under Section 10 of the Act, 1995, as rightly pointed out by the learned counsel for the respondent-Company, it is only with regard to regulation of the procedure, while exercising the functions under Section 9(1) of the Act, 1995. The power of a civil Court which can be used for summoning and enforcing the attendance of any person or witnesses and on examining on oath; requiring the discovery and production of any document, receiving evidence or affidavits, requisitioning any public record or copy thereof

from any Court or office; issuing commission for examining witnesses and documents and any other matter which may be prescribed, is only to promote and give effect to the various functions conferred upon the Commission under Section 9(1) of the Act, 1995 and it can never be used for any purpose beyond the said extent. We find considerable force in the said submission as well.

12. Coming to the case law, we find that an exhaustive analysis has been made by the learned Single Judge in this regard, after making reference to the functions of the Commission under Section 9 of the Act, 1995. The learned Single Judge has referred to the verdicts passed by the Supreme Court in **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and another**¹, **State Bank of Patiala v. Vinesh Kumar Bhasin**², **Collector, Bilaspur v. Ajit P.K. Jogi and others**³, **Madhuri Patil v. Commr., Tribal Development**⁴, **All India Indian Overseas Bank SC and St Employees' Welfare Association and others v. Union of India and others**⁵ and a decision rendered by the Delhi High Court in the matter of **Municipal Corporation of Delhi v. Lal Chand and others**⁶ to arrive at a conclusion that it was never a case for the 'Ayog' to have entertained Annexure-P/3 complaint by virtue of specific nature of the grievance projected therein and it was accordingly, that the challenge was upheld and the proceedings were set aside. We do not find any tenable ground to disagree with the view expressed by the learned Single Judge.

1 (2010) 8 SCC 633

2 (2010) 4 SC 368

3 (2011) 10 SCC 357

4 (1994) 6 SCC 241

5 (1996) 6 SCC 606

6 W.P.(C)No. 5468/2011 decided on 17-9-2013

13. Insofar as the main grievance of the employee as contained in Annexure-P/3 complaint is in respect of delay in the promotion to him, because of a 'lower rating' given to him as 'C', the correctnesses or sustainability of it could be caused to be considered in other appropriate proceedings. In the said circumstances, the verdict passed by the learned Single Judge is perfectly within the four walls of the law and is not assailable under any circumstance. The appeals fail and they are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge