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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1707 of 2013**

1 - South East Central Railway, Through The General Manager, Bilaspur Zone, South East Central Railway, Bilaspur, Chhattisgarh

2 - Prafull Bhatnagar, S/o Late Shri V.N. Bhatnagar Aged About 58 Years Deputy Chief Personnel Officer (Construction), South East Central Railway, Bilaspur, Chhattisgarh

---- Petitioners**Versus**

1 - Chhattisgarh State Scheduled Tribe Commission, Through Its Secretary, 61, Jalvihar Colony, Raipur, Chhattisgarh

2 - Sahanguram Kango, R/o Village Bhaismudi, Post, Thana And Distt. Kanker, C.G. 494336, District : Kanker, Chhattisgarh

3 - Dron Kumar Usare R/o Village Kanhargaon, Post, Thana And Distt. Kanker C.G. 494336, District : Kanker, Chhattisgarh

4 - Manohar Nareti R/o Village Chougel, Post, Thana And Distt. Kanker, C.G. 494336, District : Kanker, Chhattisgarh

5 - Lakhan Singh Taram R/o Village Chougel, Post, Thana And Distt. Kanker, C.G. 494336., District : Kanker, Chhattisgarh

6 - Gangaram Dihari, R/o Village Podgaon, Post, Thana And Distt. Kanker C.G. 494336, District : Kanker, Chhattisgarh

7 - Surya Prakash Uikey, R/o Village Kuhiye, Post, Thana And Distt. Kanker, C.G. 494336, District : Kanker, Chhattisgarh

8 - Superintendent Of Police Post, Thana Kanker, Distt. Kanker, C.G. 494336, District : Kanker, Chhattisgarh

9 - State Of C.G. Through The Secretary, Tribal Welfare Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, C.G. 492002, District : Raipur, Chhattisgarh

---- Respondents

For Petitioners	: Dr. N.K. Shukla, learned Senior Advocate appears along with Mr. Tushar Dhar Diwan, Advocate.
For Respondent No.1	: Mr. Ashutosh Singh Kachhawaha, Advocate appears along with Ms. Shruti Prammar, Advocate
For Respondents No. 2 & 3	: Mr. Rakesh Kumar Thakur, Advocate appears along with Mr. Shankar Rajput, Advocate
For Respondents No.8 & 9	: Ms. Pragya Shrivastava, Dy. G.A.
For Respondents No.4 to 7	: None, though served.

Single Bench : Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****26.07.2024**

- 1) This petition has been filed by the petitioners, questioning the legality and propriety of the order dated 15/10/2013, passed by the Chhattisgarh State Scheduled Tribe Commission (hereinafter referred to as "the Commission") in Case No.302/2013-14, whereby, the recommendation has been issued for holding a departmental enquiry against the Petitioner No.2- Prafull Bhatnagar,-Dy. Chief Personnel Officer (Construction) (SECR) and to register a case against him for the offences punishable under Sections 177 and 420, IPC read with Sections 3 (1) (iv) and Section 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as "the Act, 1989") and, also to inform to the Commission about the implementation of the said recommendation.
- 2) Learned counsel appearing for the petitioners submits that the alleged recommendations as issued were apparently beyond the scope of the Commission provided under Section 9 of the Chhattisgarh Rajya Anusuchit Jan Jati Ayog Adhiniyam, 1995 (hereinafter referred to as "the Act, 1995") as the function of the committee is directory in nature, and therefore, the recommendation as issued by the Commission is, apparently, contrary to law and deserves to be quashed.
- 3) On the other hand, learned counsel appearing for the respondents have supported the impugned order as passed by the Commission.
- 4) From perusal of the order impugned, it appears that while passing the same, the Commission vide its order impugned has issued a recommendation to hold a departmental enquiry against the petitioner No.2 and to register a case for the offences punishable under Sections 177 and 420, IPC read with Section 3 (1) (iv) and Section 4 of the Act, 1989, while directing further to inform to it about the implementation of the same.
- 5) In order to ascertain as to whether the alleged recommendations could be issued by the Commission or not, it is necessary to examine the function of the Commission which has

been provided under Section 9 of the Act, 1995 as under:-

“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 therefore.”

6) A bare perusal of sub-section (1) of the aforesaid provision would show that the function of the Commission would be 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 the time being in force and to ensure timely implementation of programmes meant for the members of Scheduled Tribes and also to extend advice regarding reservation for them in public service and admission in educational institutions. It provides further by virtue of sub-section (2) that the advice of the Commission shall, ordinarily be binding upon the State Government and the State Government, if does not accept the advice, then it shall record its reasons therefore.

7) It, thus, appears from the scheme of the Act, 1995 that the

Commission has not been conferred with the adjudicatory function, rather it appears to be advisory and/or recommendatory in nature.

8) At the outset, it is to be seen that the Co-ordinate Bench of this Court, after considering the aforesaid provision, in the matter of “Chhattisgarh State Power Generation Co. Ltd. Vs. Chhattisgarh Rajya Anusuchit Jan Jati Ayog and Another” decided on 07/09/2017 in the WPC No.1735/2017 has observed that the function of the Commission is advisory and/or recommendatory in nature only. The relevant observations made therein at paragraphs 10 and 13, reads as under:-

“10. 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.that respondent No.2 has claimed correction/up-gradation of his ACR as well as promotion from retrospective effect and further claimed registration of criminal case against the officers of the petitioner Company under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including taking disciplinary action against them. None of the reliefs claimed by respondent No.2 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. It is not the case that reservation provided to the members of the Scheduled Tribes is not being afforded to them or that admission in a particular college in the reserved seat is not being given to them. The reliefs claimed are out and out pertaining to pure and simple service matter that could be considered and granted by the jurisdictional court. So far as the relief of registration of case against the officers of the petitioner Company under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, that can also be considered and granted by the jurisdictional criminal court on the application/complaint made competently in that behalf. 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 respondent Commission is absolutely unjustified in holding that under Section 9(1)(a) of the Act, 1995 such a relief, which respondent No.2 has claimed, can be granted”

9) In view of the provisions prescribed under Sections 9 of the Act, 1995 and the principles laid down by the Co-ordinate Bench of this Court in the above referred matter, it is evident that the recommendation as issued by the Commission to hold a departmental enquiry and for registration of the case against the petitioner No.2 under Sections 177 and 420 IPC read with Sections 3 (1) (iv) and Section 4 of the Act, 1989, is apparently beyond its jurisdiction and scope and, therefore, can not be held to be sustainable in the eye of law.

10) In view of the aforesaid background, the petition is allowed and, the recommendation issued by the Commission vide its order impugned dated 15/10/2013 (Annexure P/1) in Case No.302/2013-14, is hereby quashed.

No order as to cost(s)

Sd/-
(Sanjay S. Agrawal)
JUDGE

Prashant