

(2018) 07 CHH CK 0099
In the Chhattisgarh High Court
Case No : WPC No. 1180 of 2013

Mukund Soni And Anr.

APPELLANT

Vs

State Of Chhattisgarh And Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam, 1995 — Section 3, 9, 9(1), 9(2)
Constitution of India, 1950 — Article 75(1), 164(1), 338, 338(5)

Citation : (2018) 07 CHH CK 0099

Hon'ble Judges : SANJAY K. AGRAWAL, J

Bench : Single Bench

Advocate : Awadh Tripathi, Anand Dadariya, B. L. Sahu, Shalvik Tiwari

Final Decision : Allowed

Judgement

1. This writ petition is directed against the order dated 26.06.2013 (Annexure â?" P/1) passed by the Chhattisgarh Rajya Anushuchit Janjati Aayog.
2. Learned counsel for the petitioner would submit that the State Commission has no jurisdiction to make recommendation for handing over the possession to respondent No. 4 dispossessing the petitioner as the said jurisdiction lies with the Civil Court.
3. Learned counsel for the State and private respondent would support the order impugned.
4. I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.
5. 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.

6. 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:-

â??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.

7. 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 advisory/Recommendatory body having advisory jurisdiction.

8. 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.

9. According to Merriam-Webster's Collegiate Dictionary, eleventh Edition, recommendation means the act of recommending or something that

recommends or expresses commendation.

10. 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."

11. Recently, the Constitution Bench of the Supreme Court in the

matter of Manoj Narula vs. Union of India¹ 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."

12. In the matter of Manohar s/o. Manikrao Anchule v. State of Maharashtra (2012) 13 SCC 14, 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 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".

13. In the Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and another 3(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 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.â??

14. 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* (2010) 4 SC

368 has struck the similar proposition of law by crystallizing condensely as

under:-

Â??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.Â??

15. Similarly, the Supreme Court in the matter of Collector,

Bilaspur v. Ajit P.K. Jogi and others (2011) 10 SCC 357 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:-

Â??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 â??deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribesâ? 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 (1994) 6 SCC 241 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.â??

16. 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.

17. If the facts of the case are examined in light of the discussion made hereinafter that the Commission has adjudicated the title of respondent No. 6

over the suit land and held that the title has been established by respondent No. 6 and petitioner has no title over the suit land and further

recommended dispossession of the petitioner from the suit land and handed over the possession to respondent No. 4 which is absolutely the jurisdiction

of the Civil Court and Commission has no jurisdiction and adjudicatory power to declare the title and further direct dispossession of the petitioner.

18. As a fall out and consequence of the aforesaid discussion, the petition is allowed and the impugned order dated 26.06.2013 (Annexure â?" P/1)

passed by respondent No. 1 is quashed and hereby declared as void and inoperative leaving the parties to bear their own cost(s). However, this would not prevent the respondent No. 4 to proceed further in accordance with law.