
(2019) 09 UK CK 0047

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1271 Of 2018

State Of Uttarakhand

APPELLANT

Vs

National Commission For Schedule Tribe & Others

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Scheduled Castes And Scheduled Tribes Act, 2003 — Section 11, 11(1)(b), 12
Constitution Of India, 1950 — Article 338A

Citation : (2019) 09 UK CK 0047

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Yogesh Pandey, Suyash Pant

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. Evidently in this case one Khajan Singh who was given a sub-contract by a contractor, namely, Anil Jaitely did not get his remuneration from the contractor, and therefore, being a member of Scheduled Tribe community, he moved an application before the National Scheduled Tribe Commission, which in turn vide its notice dated 18.04.2018 had called the Additional Chief Secretary, Public Works Department, Government of Uttarakhand, the Labour Commissioner, Government of Uttarakhand and various other government officials.

2. Learned counsel for the petitioner/State would argue that considering the nature of the case even the cognizance ought not to have been taken by the Commission in the matter.

3. The Scheduled Tribe Commission has been formed under the provisions of Article 338A of the Constitution of India, which reads as under:-

"Article 338A. National Commission for Scheduled Tribes.- (1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission

for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), 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 India 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;
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

4. Consequently, the Scheduled Tribe Commission has been formed, inter alia, in the State of Uttarakhand under the Uttaranchal Commission for the Scheduled Castes and Scheduled Tribes Act, 2003, in which duties and functions of the Commission have been given in Section 11 and powers of the Commission have been given in Section 12 of the aforesaid Act. Section 11 and 12 of the aforesaid Act read as under:-

"Section 11. Duties and functions of the Commission

(1) It shall be the duty of the Commission-

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards;
- (b) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and evaluate the progress of their development;
- (d) to present to the State Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the State Government for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and Scheduled Tribes as may be referred to it by the State Government.

(2) The State Government shall cause the reports of the Commission to be laid before the State Legislature along with a memorandum explaining the action taken on proposed to be taken on the recommendations and the reasons for the non-acceptance, if any, of the such recommendations.

Section 12- Power of the Commission

The Commission shall, while investigating any matter referred to in clause (a) or inquiring into any complaint referred to in clause (b) of sub section (1) of Section 11 have all the power of a civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing attendance of any person 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 Commission for the examinations of witnesses and documents; and
- (f) any other matter that may be prescribed."

5. A bare perusal of the provisions of Article 338A of the Constitution of India as well as the provisions given in the Statute and considering the nature of the case which is a contractual matter, this Court is of a considered view that cognizance ought not to have been taken in the matter by the Commission and it was beyond its jurisdiction.

6. In view of the above, the writ petition is allowed. Orders dated 13.11.2017, 17.11.2017, 30.11.2017 and 18.04.2018 are hereby set aside.