



GAHC010279632019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8588/2019

NATIONAL HYDRO ELECTRIC POWER CORPORATION LTD. (NHPC)
A GOVT. OF INDIA UNDERTAKING, REP. BY THE EXECUTIVE DIRECTOR,
LOWER SUBANSIRI HYDRO ELECTRIC PROJECT, P.O. AND P.S.
GERUKAMUKH, DIST- DHEMAJI, ASSAM- 787035

VERSUS

THE NATIONAL COMMISSION FOR SCHEDULED TRIBES AND ANR.
REP. BY ITS CHAIRPERSON, 6TH FLOOR, B WING, LOK NAYAK BHAWAN,
KHAN MARKET, NEW DELHI- 110003

2:KIRI DINI BOGUM
GENERAL SECY.
1225 HECTARE COOMPENSATION DEMAND ACTION COMMITTEE
S/O- TAKIR DINI
PERMANENT R/O- LIPU VILLAGE
P.O. AND P.S. LIKABALI
DIST- LOWER SIANG
ARUNACHAL PRADES

:: BEFORE ::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the petitioner:	Mr. P.K. Tiwari, Sr. Advocate, Mr. A.R. Gogoi.
Advocates for the respondents:	Mr. S. Sarma, CGC. Mr. T. Pertin, Advocate.
Date of hearing:	28.01.2021.
Date of judgment:	03.02.2021.

JUDGMENT AND ORDER (C.A.V.)

Heard Mr. P.K. Tiwari, learned Senior Counsel, assisted by Mr. A.R. Gogoi, learned counsel for the petitioner. Also heard Mr. S. Sarma, learned CGC appearing for respondent no.1 and Mr. T. Pertin, learned counsel for respondent no.2.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner which is a Government of India undertaking has assailed the legality of the minutes and direction of the Assam Commission for Scheduled Tribes (respondent no.1), sitting held on 27.09.2019 regarding payment of full compensation against submergence of 1225 hectares due to construction of lower Subansiri Hydro Electric Project at Gerakamukh along Assam- Arunachal Pradesh Boarder and to submit the compliance report.

3) At the outset, the learned Senior Counsel for the petitioner has submitted that some necessary facts has been stated in this writ petition, but the petitioner has only challenged the power and jurisdiction of the respondent no. 1 Commission to issue directions as contained in the minutes dated 27.09.2019. It is submitted that on various factual aspects, separate writ petitions have been filed. Accordingly, it is submitted by the learned senior counsel for the petitioner that he would only be arguing on power and jurisdiction of the respondent no.1 Commission in light of the provisions of Article 338A of the Constitution of India. In this regard, it is further submitted that the petitioner had apprised the respondent no.1 Commission that the subject matter of dispute for which the respondent no. 2 had approached the Commission in the representative capacity was dealt with by this Court in WA No. 7(AP)/2014 and the matter is presently pending before the Supreme Court of India vide SLP (C) No. 6856/2020. It is also submitted that in course of determination of compensation, various reports and orders passed have come to the notice of the petitioners, which have been challenged by filing a separate writ petition.

4) While the learned counsel for the respondent had expresses no objection for hearing the matter only with regard to power and jurisdiction of commission as contained in minutes dated 27.09.2019. However, it is submitted that this writ petition is vitiated by suppression of material facts.

5) The short submissions made by the learned Senior Counsel for the petitioner is that the respondent no. 1, Commission is required to function in terms of Article 338A of the Constitution of India and the duty of the Commission is contained in Clause-5 of Article 338A of the Constitution of India. It is submitted that upon investigation of any matter relating to the safeguards provided for the Scheduled Tribes under the Constitution of India or any other law for the time being in force, the Commission has powers to make in its report recommendations as to the measures that should be taken by the Union of India or by any State for effective implementation of those safeguards and other measures for the protection, welfare and socially, economically development of the Scheduled Tribes. It is submitted that in the present case in hand, not only the respondent no. 1 Commission acted as a Court to determine that under which Act, land acquisition compensation should be computed, but also acted as an enforcing agency for payment of the awarded sum. It is submitted that the directions issued by the respondent no. 1 Commission is in the nature of mandamus containing a direction to pay, thereafter to report compliance and also the consequences of failure was also provided in the order. It is submitted that the power and jurisdiction of the National Commission of Scheduled Tribes and its limitations have been well settled by the Supreme Court of India in the ratio laid down in the case of *All India Indian Overseas Bank SC & ST Employees Welfare Association and Ors. Vs. Union of India and Ors., (1996) 6 SCC 606*. It is submitted that by following the said ratio, several cases have been decided by various High Courts of the Country. It is submitted that the only case which has come to his notice where the Supreme Court of India had approved of the directions issued by the respondent no.1 Commission was the case of *Director Transport Department Union Territory Administrator of Dadra and Nagar Haveli Silvassa and Ors. Vs. Abhinav Dipakbhai Patel, (2019) 6 SCC 434*. In connection with the said case, it is submitted that the said writ petition was filed to claim benefit of reservation and therefore, the Supreme Court of India was never

called upon to deal with the power and jurisdiction of the National Commission for Schedule Tribes under Article 338A of the Constitution of India, as such, it is submitted that in the case citation holding the field on the question of power and jurisdiction of the respondent no.1 Commission is the case of *All India Indian Overseas Bank (supra)*.

6) The learned counsel for the respondent has made his submissions on three aspects, viz., suppression of material facts, subject matter of claim for compensation being different, and power of the Commission.

7) On the point of separation of material facts, it is submitted that the land in the State of Arunachal Pradesh belongs to the people and it is owned by the Government. Accordingly, it is submitted that the petitioner was proceeding on a wrong premise that the land was a forest land and was permitted to be diverted by the Central Government. It is submitted that in this regard, the petitioner had suppressed that vide letter of approval dated 03.01.2002, the Govt. of India, Ministry of Environment and Forest had made it clear that the legal status of the forest land shall remain unchanged. In the meanwhile, there was an agreement dated 05.09.2001 with the *Gram Budas* and villages of Gengi and Siberete village by virtue of which, the *Gram Budas* and villagers had accepted the rehabilitation and resettlement package and the petitioner presumed that they had acquired ownership of forest land. Accordingly, it is submitted that there was suppression of material facts because there was no diversion of forest land.

8) On the point of separate claims being made, it is submitted that the assessment report dated 01.02.2008 for Rs.84.11 crore approximately was forwarded to the Deputy Commissioner, Aalo, which was in respect of eight species of trees, bamboo, and *tokopatta* only, leaving out other immovable property like agriculture, horticulture field, medicinal plants and herbs orchid, etc. It is submitted that although undertakings were given by the villagers, but after the Rehabilitation and Resettlement Policy, 2008 coming into force, the reports dated 01.02.2008 and affidavit submitted by the beneficiaries were withdrawn.



However, the petitioner has suppressed that the undertaking dated 30.03.2009 and 04.05.2009 were cancelled on 06.02.2015. It is also submitted that various other communications were misleading.

9) It is also submitted that orders passed in WP(C) 483(AP)/2011 was challenged by filing WA No. 7(AP)/2014 and that the orders passed therein has been assailed by filing SLP (C) 6856/2020. It is also submitted that the subject matter exclusively relates to the short payment of Rs.15,37,35,254/- out of the assessment amount of Rs.84.11 crore approximately as per assessment report dated 01.02.2008 for the land, eight species of trees, bamboo and *tokopatta* and was not the entire compensation but part of the compensation, which was also suppressed.

10) Thereafter, on the basis of public representation regarding non-assessment of medicinal plants and trees, herbal plants and fruit trees, varieties of orchid, spice and many horticultural items in the assessment report dated 06.02.2008, the Deputy Commissioner, Aalo issued a direction for re-survey and the correct compensation amount which was assessed as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2015 (hereinafter referred to as the "2013 Act" for short) was Rs.3205,79,52,367/-. In this regard, it is submitted that the land which was submerged in the hydro electric project is the community land of the Scheduled Tribe people of the State of Arunachal Pradesh and therefore, the claim of compensation is solely for the welfare of the scheduled tribe people. Accordingly, the respondent no. 1 Commission has a duty to ensure that the rights and privileges of the Scheduled Tribe people cannot be denied. It is submitted that despite clear stand by the Chief Minister of the State of Arunachal Pradesh and the Union Minister of Power and despite decision of the land settlement officer and other competent authorities, the petitioner was not complying with such directions and, as such, the respondent no. 1, Commission has a bounded duty to prevent violation of various safeguards and protection. It is submitted that denial of adequate and fair compensation amounts to denial of fundamental rights of the effected Scheduled Tribes

people. It is submitted that on the basis of facts and record, the respondent no.1 had come to definite finding as regards existence of their rights to have a fair compensation and regarding deprivation of the rights, privileges and safeguards guaranteed under the Constitution of India, as such, the contents of minutes impugned in this writ petition is stated to be inconsonance with the provisions of Article 338A of the Constitution of India. The direction to pay the remaining compensation amount of Rs.523.00 crore within a period of 30 days was in accordance with the provisions of the 2013 Act.

11) It is submitted that the directions contained in the minutes dated 27.09.2019 was not the independent finding by the respondent no.1 and therefore, the directions contained therein does not amount to an order or decree as projected by the petitioners, but the said direction wherein only to ensure that the Schedule Tribe people of Arunachal Pradesh get their due compensation as assessed by the competent authority.

12) It is submitted that the respondent no. 1 Commission not only has the power of Civil Court as provided in Clause-8 of Article 338 A of the Constitution of India, but it also have the power to investigate and monitor all matters under their jurisdiction, to enquire into complaints and to discharge other function relating to protection, welfare, development and advancement of the scheduled tribes and, as such, if restrictive interpretation is given to the effect that the Commission has no power to issue direction, then the provisions of Article 338A would be rendered redundant. In this regard, it is submitted that in the case of *Director Transport Department (supra)*, the Supreme Court of India had approved of the directions issued vide order dated 25.07.2016 by the respondent no. 1, directing the appellant in the said appeal to issue an appointment letter in favour of the respondent. Hence, it is submitted that the respondent no.1 Commission had power to issue directions.

13) The learned CGC appearing for respondent no.1 has adopted the argument advanced by the learned counsel for respondent no.2 and it is submitted that if the respondent no.1 has no power to issue direction, the provisions of Article 338A would become

redundant. It is submitted that the respondent no.2 complainant was a member of Scheduled Tribe community. The non-payment of compensation had adversely affected the safeguards provided to the Scheduled Tribe people. Therefore, as the respondent no.1 was the sole repository of powers to ensure welfare of Scheduled Tribes, the impugned order was lawful and within the power and jurisdiction of the Commission.

14) It is seen that in this writ petition, the sole prayer of the petitioner is to issue a writ in the nature of certiorari quashing the minutes and directions dated 27.09.2019 issued by the respondent no.1, i.e. the National Commission for Scheduled Tribes and to pass such order competent orders as may be deemed fit and proper. The learned Senior Counsel for the petitioner had made his argument only on the power and jurisdiction of the respondent no. 1. It was submitted that reference was made to certain facts, but those introductory facts were necessary to be referred to, which do not require any adjudication at this stage. Accordingly, the only issue which arises for determination in this writ petition is whether the minutes and directions 27.09.2019 issued by the National Commission for Scheduled Tribes is within the scope of powers conferred under Article 338A of the Constitution of India. In the writ petition filed by the petitioner, there is no reason for the Court to examine whether or not the claim made by the respondent no.2 before the respondent no.1 Commission in respect of land acquisition was genuine. Hence, there is no necessity for this Court to determine the nature of monetary claim for compensation, the heads under which compensation was claimed and/or adjudicated, or as regards genuineness of documents relied upon by the parties to sustain their respective claim and defence. Therefore, even assuming that in the present case, the petitioner has not portrayed a correct picture, yet the challenge in the present writ petition is limited to the legality of minutes and direction 27.09.2019 issued by the respondent no.1 Commission. It is not disputed by the respondents that the minutes dated 27.09.2019 does not exist. Therefore, the present writ petition is not found vitiated for suppression of material facts, if there be any, because the Court is not examining the tenability of objection by the petitioner in respect of quantum of compensation awarded in favour of the respondent no.2 and other beneficiaries whose interest he is purportedly espousing. In other words, even assuming that the allegations of suppression of material

facts are tenable, yet the alleged suppressed facts do not go to the root of the challenge made in the present writ petition. Hence, they have no bearing in the matter.

15) The respondent no. 2, is the General Secretary of 1225 hectares compensation demand action committee, lower Siang district, Arunachal Pradesh. From the minutes and direction of sitting dated 27.09.2019 of the respondent no. 1, it appears that the respondent no.2 had filed a complaint before the respondent no. 1 on 06.02.2019. Paragraph 1 of the said order indicates the purpose of representation dated 06.02.2019, which is reproduced below:

"Representation dated 06.02.2019 received from Kirri Dini Bogum, General Secretary, 1225 Hectares Compensation Demand Action Committee, Lower Siang district, Arunachal Pradesh being aggrieved by the non-payment of full compensation amount by the NHPC since so many years and praying for a direction to the NHPC to pay the lawfully assessed amount of compensation and other compensation as admissible under R & R Agreement' 2001, the R & R Policy' 2008 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to all the affected families, individuals and communities who all belong to tribal community."

16) The respondent no.1 Commission has made a detailed discussion of the claim for land acquisition compensation. Reference has been to the Rehabilitation and Resettlement Policy, 2008 and Arunachal Pradesh (Land Settlement and Records) Act, 2000. Reference was also made to the Rehabilitation and Resettlement Agreement dated 05.09.2001. Thereafter, the first issue regarding the ownership of land was decided by holding that the land belongs to the effected local tribal people and that it was also held that the complainants are the true land owners of the land and they ought to be paid the compensation for other immovable assets attached to land such as agricultural, horticultural, herbal, spice trees, orchid and medicinal trees/ plants, timber or any non-timber forest produces.

17)

As per the impugned minutes, the second issue before the respondent no.1 Commission related to applicability of the 2013 Act and payment of the amount of compensation, which was re-determined and recalculated under the said 2013 Act at Rs.3205,79,52,367/-. It was mentioned in the minutes that as per the Rehabilitation and Resettlement Policy, 2008 the Land Acquisition Act, 1984 was applicable and as per Article 3 of the Memorandum of Agreement dated 27.01.2010, the acquisition of land was to be under the Land Acquisition Act, 1894 and the respondent no.1 Commission held that said 1894 Act having been repealed with the 2013 Act which had retrospective effect if compensation amount had not been paid, as such, the 2013 Act was held to hold the field and as Rs.523.00 crore had not been paid till date it was held that the unpaid amount shall be covered by 2013 Act. Accordingly, a finding was returned back if any re-determination and recalculation have been made by the competent authority in terms of 2013 Act and recommended for payment vide letter dated 22.03.2019, the same cannot be held to be not tenable as claimed by the petitioner herein. Resultantly, direction was issued by the respondent no.1 Commission to the petitioner to pay the remaining compensation amount of Rs.523.00 crore against the left out assets and properties of the project effected people as per law, directing that the payment shall be made within 30 days from the date of issue of the order through the Deputy Commissioner, Lower Siang District, Likabali. It was also provided that the concerned parties, if so advised, may discuss amongst themselves and arrived at a just conclusion to the total payable compensation amount considering the national interest. The respondent no.1, Commissioner further directed that compliance indicating *Payment cum Action Taken Report* by the Deputy Commissioner, Likabali and the petitioner herein shall be filed within 30 days from the date of issue of the order failing which it was provided that necessary order shall be passed.

18)

It is seen from the impugned minutes that in paragraph 1, reference has made that all the effective families individual and communities belong to tribal communities. In paragraph 22 of the minutes, it is mentioned that the land belongs to the affected local tribal people, and in paragraph 29 it has been mentioned that the 2013 Act has special and provision for the well being of the Scheduled Tribes. However, in this regard, nothing is



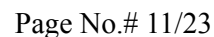
contained in the said minutes from which it can culled out that the respondent no.2 had made any prayer before the respondent no.1 Commission to determine whether or not the land belonged to local Schedule Tribe people, or whether the complainants were true land-owners, or whether such people were ought to be paid compensation.

19) From the impugned minutes, it can be seen that the respondent no. 1 Commission did not take up the matter because the 2013 Act did not provide for any mechanism by which a Scheduled Tribe would be granted compensation. The matter was not taken up because the Scheduled Tribe people had been deprived of benefits of the said 2013 Act. The respondent No. 1 Commission also did not take up the matter because of any provisions in the said 2013 Act, which prevented Scheduled Tribe community to enforce the award that was passed under the said 2013 Act. There is nothing in the order from which it can be gathered that the 2013 Act was not a complete code in itself and that the Scheduled Tribe was deprived of its legitimate rights relating to safeguards provided for Scheduled Tribe under the Constitution of India or any other law for the time being in force.

20) The Preamble to the Constitution of India provides for social, economic and political justice and equality of status and opportunity to all its citizens. Article 15 of the Constitution of India prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.

21) Article 46 reads as under:

"46. *Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections-* The State shall promote with a special care the education and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes , and shall protect them from social injustice and all forms of exploitation."



"338A. *National Commission for Scheduled Tribes.*

* * *

* * *

- (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."*

23) Nothing contained in the provision of Article 338A including clause (5) thereof indicates that the respondent no. 1 Commission was envisaged as an additional authority to enforce any laws in force in the Country. The conferment of power of a Civil Court is limited to summoning witnesses and to record evidence. The mere conferment of limited power of a civil Court would not make the respondent no.1 a civil Court. It has been held by the Division Bench of this Court in the case of *Registrar General, Gauhati High Court Vs. Union of India & Ors., (2014) 3 GLR 379*, that Bengal, Agra and Assam Civil Courts Act, 1887 is applicable in the State of Arunachal Pradesh. The said Act provides for establishment of Civil Courts, as such, the respondent no.1 Commission having not been declared to be a Civil Court for the State of Arunachal Pradesh, cannot become a Civil Court merely on the strength of conferment of limited power of civil court vide clause (8) of Article 338A of the Constitution of India. For the sake of appreciating the argument advanced, even by assuming that there exists an award for payment of Rs.523.00 Crore under the 2013 Act, there is nothing in Article 338A of the Constitution of India, which permits the respondent no. 1 Commission to start enforcing the purported award passed under 2013 Act merely on account of the



projection made by the respondent no.2 that all the beneficiary of the award were members of Scheduled Tribes.

24) In this case in hand, the respondent no.1 Commission has made an attempt to enforce an award passed under 2013 Act. The high Constitutional authorities are expected to show self restrain in exercising its powers so that complainant before it should not be able to use the office of such Constitutional authority to enforce orders passed by Courts, Tribunals and Authorities established in the Country as if it was an authority equivalent to Courts and Tribunal, merely because the complainant before it is a member of Schedule Tribes.

25) Sub-Clause (a) of Clause (5) of Article 338A of the Constitution of India provides power to "investigate" and "monitor". The learned counsel for the respondents no. 1 and 2 could not show any provision of law or any authority on the point by which the authority to "investigate" or "monitor" all matters relating to the safeguards provided to the Scheduled Tribes under the Constitution of India or any other law for time being in force" would empower the respondent no.1 Commission to "investigate" to find out which Land Acquisition Act was applicable for acquisition, or to "monitor" that within what particular time an award passed under the 2013 Act should be paid, and to "investigate" whether or not payment has been made in compliance of the orders passed by the respondent no. 1 in connection with payment of land acquisition compensation. The 2013 Act is not meant only for the benefit of persons from Scheduled Tribes. Therefore, by no stretch of imagination, it can be accepted that by enforcing award under the 2013 Act, the respondent no.1 was safeguarding the interest of members of Scheduled Tribe.

26) By no stretch of imagination, this was not a case where the respondent no. 1 Commission was investigating or monitoring whether the safeguards provided for Schedule Tribes under the Constitution or under any law for the time being in force or under any order of the government was not being complied with by the petitioner and no such finding has

been recorded in the impugned minutes. In the absence of any law conferring upon the Commission established under Article 338A of the Constitution of India the power and jurisdiction to enforce an award purportedly passed under 2013 Act, the Court is unable to accept that the non-disbursement of award passed under 2013 Act can be read as there was a *violation of safeguards provided for the Scheduled Tribes*. If such a broad meaning is given to sub-clause (a) of clause (5) of Article 338A of the Constitution of India, it would amount to permit the respondent no.1 Commission to function as an extra-judicial and/or an extra-administrative authority and take over the function of both the executive and the judiciary merely by recording in its minutes that action has been taken as a measure for the safeguard to a Scheduled Tribes person although no legal safeguards provided under any law for the time being in force was violated.

27) In the case of *National Campaign on Dalit Human Rights & Ors. Vs. Union of India, (2017) 2 SCC 432: 2016 STPL 15830 SC*, the Supreme Court of India had mentioned about a brief historical background of the National Commission for Scheduled Castes and Scheduled Tribes as stated in the Annual Report submitted to the Parliament by National Commission for Scheduled Castes in the year 2014-15, which is extracted as follows (*from 2016 STPL 15830 SC*) :-

"6. For effective implementation of various safeguards provided in the Constitution for the welfare of Scheduled Castes and Scheduled Tribes (SCs and STs) and in various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for Scheduled Castes and Scheduled Tribes was assigned the duty to investigate all matters relating to the safeguards for SCs and STs, provided in various statutes, and to report to the President of India on the working of these safeguards. In order to facilitate effective functioning of the office of the Commissioner for Scheduled Castes and Scheduled Tribes, 17 regional offices of the Commissioner were also set up in different parts of the country. On persistent demand of the Members of Parliament that the Office of the Commissioner for Scheduled Castes and Scheduled Tribes alone was not

enough to monitor the implementation of Constitutional safeguards, a proposal was mooted for amendment of Article 338 of the Constitution (Forty-sixth Amendment) for replacing the arrangement of one Member system with a Multi Member system. The Government thereafter through a resolution in 1987 decided to set up a Multi-Member Commission, which was named as National Commission for Scheduled Castes and Scheduled Tribes. Consequent upon the Constitution (Eighty-Ninth Amendment) Act, 2003 coming into force on 19.02.2004, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes has been replaced by (1) National Commission for Scheduled Castes and (2) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes was notified on 20 February, 2004 by the Ministry of Social Justice & Empowerment."[Annual Report 2014-15 National Commission for Scheduled Castes.]

7. The duties of the National Commission are provided in the Rules of Procedure of the National Commission for Scheduled Castes. Chapter III of the said Rules deals with investigation and inquiry by the Commission. The relevant provisions are as follows:

7.0 Investigation and Inquiry by the Commission

7.1 The Commission shall function by holding 'sittings' and 'meetings' at any place within the country and also through its officers at the Headquarters and in the State Offices. The Members of the Commission including the Chairperson and the Vice-Chairperson shall function in accordance with the procedure prescribed under these rules.

** * **

7.2. (a) Investigation and Inquiry by the Commission directly.

7.2. (a) i The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the

Headquarters of the Commission or at any other place within the country.

** * **

7.5 Inquiry into cases of atrocities

7.5.1 Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may recommend to file an FIR against the accused with the concerned law-enforcing agency of the State/District. In such cases, the State Government/ District Administration/ Police Personnel may be called with three days through the summons."

8. Chapter VIII of the Rules provides for the monitoring functions of the Commission which are as under:

"15.0 Monitoring Functions of the Commission

15.1 The Commission to determine subjects for monitoring

The Commission may determine from time to time the subjects or matters and areas that it would monitor relating to safeguards and other socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Govt.

** * **

16.0 Follow-up action

16.1 In order to ensure that monitoring is done effectively, the Commission, after getting the information as prescribed in the above rules and after reaching conclusions, may as early as possible send out communications to the concerned authority describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps. Decisions on

sending out such a communication may be taken at a level not lower than that of Joint Secretary/ Secretary at Headquarters. Directors-in-Charge of State Offices may take decisions on routine matter whereas they will seek approval of the Secretary and the concerned Member on complex and important matters affecting the interest of Scheduled Castes as a group.

16.2 The Commission may ask for the comments of the concerned authority on the action taken in pursuance of the communications sent under the Rule 76.

16.3 The Commission may include in its Annual Report or any Special Report, findings and conclusions arrived at through the process of monitoring of the subjects relating to the safeguards and socio-economic development measures provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Union/State Government."

28) In the case of *Pankaj Kumar Vs. State of Uttarakhand & Ors., (2019) 0 Supreme (UK) 357: 2019 Scc OnLine Utt 929*, the Division Bench of High Court of Uttarakhand had observed as follows:-

"27. Clause (f) of Article 338-A(5), [which is what is specified in clause (f) of Paragraph 3 of the Rules of Procedure of the National Commission for Scheduled Tribes], prescribes, as the functions and responsibilities of the Commission, the duty 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. The power conferred on the President to specify by way of Rules is made subject to the provisions of any law made by Parliament. No Rule made by the President, or any law made by Parliament, conferring power on the National Commission for the Scheduled Tribes to pass orders of injunction, temporary or permanent, have been brought to our notice. In the absence of any such Rule or Law having been made, reliance placed on clause (f) of Article 338-A(5) of the Constitution, or

on clause (f) of Paragraph 3 of the Rules of Procedure, is misplaced."

29) The above fortifies the opinion of the Court that enforcement of award purportedly passed under 2013 Act is definitely not the look-out of the respondent no.1 Commission. It may be mentioned that the first question purportedly answered by the respondent no.1 Commission was not the matter in dispute. It does not appear from the impugned minutes that the respondent no.2 had prayed for a declaration that the land in question was a land belonging to Scheduled Tribes and that the complainants were true land owners. Moreover, there is no finding in the impugned minutes that the petitioner had disputed that the land did not belong to persons belonging to Scheduled Tribes.

30) In the case of *Director Transport Department (supra)*, the facts on which the said case was decided was that the respondent belonged to *Dhodia* caste, which is recognized as a Scheduled Tribe category in the State of Gujarat as well as Dadra and Nagar Haveli. He held a valid caste certificate issued by a competent authority of the State of Gujarat. He shifted his residence from Gujarat to Dadra and Nagar Haveli, where he owns a residential accommodation and has a voter identify card. He applied for appointment to the post of Assistant Motor Vehicle Inspector, reserved for Scheduled Tribe category. The advertisement provided that persons domiciled in Dadra and Nagar Haveli would be given weightage. His name was short-listed, but when result for written test for the Scheduled Tribes vacancy was not announced, he approached the respondent no.1 Commission after his representations were not responded. The Commission, upon enquiry was convinced that the respondent was a resident of Union Territory of Dadra and Nagar Haveli and that he belonged to Scheduled Tribe, directed the representative of Dadra and Nagar Haveli to seek clarification from the Ministry of Home Affairs, Govt. of India and appoint the respondent thereafter. The Ministry clarified that the respondent was eligible for appointment and advised the concerned authority to take action as per directions given by the respondent no.1 Commission. After a series of communication, the Commission by an order passed on 25.07.2016, directed the appellants to issue a letter of appointment in favour of the respondent. Since no action was

taken, the respondent approached the Bombay High Court. The High Court directed the appellants to appoint the respondent w.e.f. from the date when appointment of other candidates was made from the same section process. In appeal, the Supreme Court of India held that the respondent was a member of Scheduled Tribe in Dadra and Nagar Haveli and, as such, injustice was caused to him by the appellants by not appointing him in spite of the advice of the Union of India and direction by the respondent no.1 Commission. Hence, the Supreme Court of India refused to interfere and the appeal was dismissed. Thus, it is seen that the directions issued by respondent no.1 Commission was not assailed either before the High Court or before the Supreme Court of India, as such, neither the High Court and nor the Supreme Court was ever called upon to adjudicate upon the power and jurisdiction of the respondent no.1 under Article 338A of the Constitution of India to pass directions. It is well settled that the concept of *stare decisis* has to be applied by keeping in mind the principle that a decision is an authority for the question considered and decided and not for what can logically be deduced therefrom. If one needs an authority for the said principle, reference may be made to the Constitution Bench judgment rendered in the case of *Union of India Vs. Chajju Ram, (2003) 5 SCC 568*. Therefore, the cited case is distinguishable from the facts of the present case.

31) However, in the case of *All India Indian Overseas Bank SC & ST Employees Welfare Association (supra)*, the Commission, in exercise of the powers conferred upon it under Section 2 of the Constitution (Sixty-fifth Amendment) Act, 1990 directed the Bank to stop the promotion process pending further investigation and final verdict in the matter and also issued direction for requisitioning and production of all records in custody of Bank relating to the said matter. The basic question that arose for decision in the said case was whether the Commission had the authority to issue the direction it did by the letter dated 04.03.1993. The relevant paragraphs 8 to 11 of the said judgment is quoted below:-

"8. In *M.V. Rajwade v. Dr S.M. Hassan, AIR 1954 Nag 71: 1955 CrLJ 366*, the question whether the Commission of Inquiry, by virtue of the above provisions, could be treated to be a civil court for the purpose of the Contempt of courts Act, 1971 came to be considered. The High court observed as under:

"It would appear from Section 4 that it only clothes the Commission with certain powers of a civil court but does not confer on it the status of a court. It is only under Ss. (4) of Section 5 that the Commission is deemed to be a civil court and Ss. (5) imparts to the proceeding before it the character of a judicial proceeding. However, these provisions only create a fiction which cannot extend beyond the purpose for which it is created."

9. *The judgment in the case of M.V Rajwade was referred to with approval by this court in Baliram Woman Hiray (Dr) v. Justice B. Lentin, (1988) 4 SCC 419. The question in that case was whether the Commission of Inquiry constituted under Section 3(1) of the Commissions of Inquiry Act, 1952 was a court for the purposes of Section 195(1)(b) Criminal Procedure Code, 1973. It was contended before the court that Ss. 4 of Section 5 of the Commission of Inquiry Act created a legal fiction by which the Commission of Inquiry was deemed to be a civil court for all purposes. It was held that the words "for all purposes" are not there in the first part of sub-section (4) and the court cannot, in the guise of interpreting the provision, supply any casus omissus. The court went on to say that the purpose of creating the fiction was reflected in the second part of sub-clause (4), viz., for the purpose of proceedings under Section 482 of the old Code and Section 346 of the new Code of Criminal Procedure.*

10. *Interestingly, here, in clause (8) of Article 338, the words used are "the Commission shall ... have all the powers of the civil court trying a suit". But the words "all the powers of a Civil court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.*

11. *The Commission having not been specifically granted any power to*

issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4-3-1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High court was justified in taking the view it did. The appeal is dismissed. No costs."

32) In light of the ratio laid down in the case of *All India Indian Bank SC & ST Employees Association (supra)*, it appears to be well settled that a Constitutional Authority like the respondent no.1 Commission is not expected to over-reach its jurisdiction, power and authority merely because the award purportedly passed under the 2013 Act is projected to be for an astronomical sum of Rs.3205,79,52,367/- (Rupees three thousand two hundred five crore seventy nine lakh fifty two thousand three hundred sixty seven only), thereby prompting it to pass an order to make payment of Rs.523.00 Crore within 30 days and to report compliance. In this case, the respondent no.1 appears to be acting as a judge and an executioner. The herein before case of *Pankaj Kumar (supra)*, which was decided on 17.09.2019 by the Division Bench of High Court of Uttarakhand, it was observed as follows:-

"30. We find it disconcerting that the National Commission should continue to pass orders, such as that impugned in this Writ Petition, despite the Supreme Court having clearly held, in All India Overseas Bank SC & ST Employees' Association¹, that it lacks the power to pass orders of injunction, temporary or permanent. With the fond hope and trust that the National Commission for the Scheduled Tribes would desist from issuing any such directions, and from making any such requests, in future, we refrain from saying anything more."

33) It is also seen that in the case of *Indian Oil Corporation Ltd. Vs. National Commission for Scheduled Tribes & Anr., (2018) 0 Supreme(Del) 2012*, the Delhi High Court had observed as follows:-

"21 The contents of paragraph seven of the impugned order dated 27.07.2016 indicates that the Commission has perceived itself to be an alternative forum for dispute resolution. The Commission has specifically observed that "as far

as approaching the IOCL for arbitration it is the choice of the proprietor to approach the arbitrator of the Constitutional Authority of National Commission for Scheduled Tribes since he belongs to a Scheduled Tribe Community” thereby expressly indicating that since respondent no.2 belongs to a Schedule Tribe, he has an option to approach the Commission for redressal of his grievance instead of resorting to the agreed dispute resolution method.

22. In view of the above observations, this Court is in no doubt that the Commission has misunderstood its role under Article 338A of the Constitution of India. The Commission is not an alternative forum for dispute resolution and has no adjudicatory function.”

34) Therefore, despite such clear observations made by the Delhi High Court, it appears that the respondent no.1 Commission is adamant in its stand that come what way, it would carry on to act as alternative dispute redressal forum. Moreover, the present impugned order was passed on 27.09.2019, barely 10 days after the aforesaid observation was made by the Division Bench of High Court of Uttarakhand. Thus, the hope and trust expressed so politely by the Division Bench of the High Court of Uttarakhand has been set at naught by the respondent no.1 Commission.

35) Therefore, in view of the discussions above, the Court is of the considered opinion that the minutes and direction of the National Commission for Scheduled Tribes (respondent no.1), sitting held on 27.09.2019 regarding payment of full compensation against submergence of 1225 hectares due to construction of lower Subansiri Hydro Electric Project at Gerakamukh along Assam- Arunachal Pradesh Boarder and to submit the compliance report is wholly without power or jurisdiction and, as such, the said impugned minutes dated 27.09.2019 is held to be illegal, without jurisdiction and thus, void *ab inito* and the Court has no hesitation to set aside and quash the same.

36) Nothing contained in this order shall prejudice any of the parties as the



legality of the claim of the respondent no.2 or others whose interest he is representing had neither been raised in this writ petition and nor the same has been dealt with by the Court in this proceeding.

37) Under the circumstances, having observed that despite herein before referred judgment and orders passed by the Supreme Court of India, Delhi High Court and Uttarakhand High Court, the respondent no.1 Commission has passed adjudicatory orders in this case, the Court is inclined to impose a token cost of Rs.500/- (Rupees five hundred only) on the respondent no.1 Commission, which shall be payable by it to the petitioner within a period of one month from the date of this order.

JUDGE

Comparing Assistant