

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC No.9609 of 2022

Ashish Thakare.

....

Petitioner(s)
Mr. A.K.Parija,
Sr.Advocate

-versus-

*National Commission for Scheduled
Tribes & Ors.*

....

Opp.Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
18.04.2022**

Order No.

1

1. This matter was not in today's list. On being mentioned in the first hour, it is taken up on special notice.

2. On oral prayer, this Court permits the learned counsel appearing for the petitioner to add the concerned Department to defend its case reflecting it as opposite party no.10.

2. Heard Mr.A.K.Parija, learned Senior Advocate appearing for the petitioner-Collector. Referring to several pages including complaints involved herein, the response of the Collector pursuant to issuing notice asking therein to file his response and the power of the Commission involved herein, through the rules and procedure of the National Commission for Scheduled Tribe, 2021, reading through the power of the Commission urged before this Court that even assuming there has been some complaints by the Members of the Scheduled Tribe Community, for the limited role of the Commission, for the rule 2(A) and (B) giving power to investigate and monitor all matters relating to safeguards provided for the Scheduled Tribe under the Constitution and in any other law for the time being in force or under order of the Government and to evaluate the working of such safeguards and further under Rule 2(B) requiring to enquire into specific complaints with

respect to the deprivation of rights and safeguards of the Scheduled Tribes provided under the Constitution of India and or the specific statutes, if any, for clear provision under Rule 2(F) alleges that there has been exceeding of exercise of power by the Commission involved. It is also argued that once the Commission is in receipt of complaint of whatever nature becomes the duty of the Commission to first have a scrutiny to find out whether exercise undertaken in such capacity brings its jurisdiction or not and even assuming the Commission has to work in the manner prescribed in receipt of complaints, once the complaints are served on the parties concerned asking them to file response, response have also been filed, there is no necessity of personal appearance of the party. Such type of complaints can also be undertaken in exercise of rule 2021 in the participation of representatives of the persons so alleged. Mr.Parija, learned Senior Advocate therefore alleges that in no circumstance there is any necessity of personal appearance of the Collector.

3. Perused the complaint, notices so issued to the Collector involved herein, response pursuant to such notices by the Collector and the provision so relied on by Mr.Parija, learned Senior Advocate and this Court is of the prima facie opinion that there is exercise of power by the Commission beyond scope and limits under the Rule, 2021, this Court finds a prima facie case in favour of the petitioner.

4. In the process, this Court directs issue notice to the competent Department by speed post/registered post with A.D. to have their response on the allegation involved herein requisites for which shall be filed within a period of three working days.

5. Counter, if any, be filed within a period of six weeks from the date of service of notice.

(Biswanath Rath)
Judge

ORDER
18.04.2022

Order No.
2

I.A.No.5007 of 2022

1. Issue notice as above.
2. Accept one set of process fee.
3. As an interim measure it is directed that operation of the order dated 11.04.2022 at Anenxure-1 and consequential letter dated 13.04.2022 at Annexure2 shall remain stayed till next listing of the case. It is further made clear that pendency of the writ petition shall not stand on the way of the Commission to proceed in the inquiry involved, if any, and if falls within its domain to arrive at conclusion even in absence of the Collector providing right of submission to the representative of the Collector on appropriate notice.
4. Issue urgent certified copy of this order in course of the day on proper application.

(Biswanath Rath)
Judge

Sks