

GAHC010018842022



2026:GAU-AS:3983

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

Case No. : WP(C)/781/2022

CHANDAN JYOTI DEKA
S/O- TILAK CHANDRA DEKA, R/O- NORTH GUWAHATI, MADHYAM
KHANDA, P.O. AND P.S. NORTH GUWAHATI, PIN- 781030.

VERSUS

THE ASSAM STATE COMMISSION FOR WOMEN AND 2 ORS.
ASCU, BELTOLA, MAIDAMGAON, GAUHATI-28.

2:THE COMMISSIONER
LAC
ASCW

BELTOLA
MAIDAMGAON
GAUHATI-28

3:JAHNABI DAS
D/O- HALADHAR DAS

HOUSE NO. 10
BYE LANE NO.- 2

BELTOLA LAKHI MANDIR
LAKHIMI PATH

GUWAHATI- 781028
KAMRUP(M)

Advocate for the Petitioner : MR S BORTHAKUR, MR. D GOGOI,MR P H KONWAR

Advocate for the Respondent : ,

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner: Shri S. Borthakur

Advocates for the respondents: Shri J. Handique, GA, Assam

Date of hearing and Judgment : **19.03.2026**

JUDGMENT & ORDER (ORAL)

An order dated 18.12.2021 passed by the Assam State Commission for Women, whereby the petitioner is directed to pay an amount of Rs.10,000/- (Rupees Ten Thousand) to the respondent no.3 as maintenance, to be deducted every month from his account, is the subject matter of challenge in this petition instituted under Article 226 of the Constitution of India.

2. As per the facts projected, the petitioner is posted as Duftry at the Srimanta Sankardeva University of Health Science. The respondent no.3, who is his estranged wife, had filed a case in the Assam State Commission for Women (hereinafter the Commission), which was registered as ASCW/53/2021. In the said case, vide the impugned order dated 18.12.2021, maintenance has been determined and directed to be paid by way of deduction from the monthly salary of the petitioner.

3. I have heard Shri S. Borthakur, learned counsel for the petitioner. I have also heard Shri J. Handique, learned State Counsel. So far as respondent no. 3 is concerned, though notices have been served, she has chosen not to appear and contest this proceeding. In this connection, it would be relevant to place on

record the earlier order dated 04.02.2026, as per which the aspect of service of notice upon the respondent no. 3 has been held to be complete.

4. Shri Borthakur, learned counsel for the petitioner has based the challenge on mainly two grounds. Firstly, he has contended that no opportunity was granted to the petitioner before passing the impugned order and the second ground would go to the root of the matter inasmuch as, he has questioned the jurisdiction and authority of the Commission to pass such an order. In this regard, he has drawn the attention of this Court to the Assam State Commission for Women Act, 1994 (hereinafter the Act), more particularly, Section 10 thereof, which is with regard to the functions of the Commission. He has submitted that though various powers and functions have been bestowed upon the Commission, the power to grant maintenance has not been bestowed and therefore, there is a serious jurisdictional error in the impugned action.

5. Shri Borthakur, learned counsel for the petitioner has also relied upon a decision of the Hon'ble Supreme Court in the case of ***Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Anr.***, reported in ***(2010) 8 SCC 633***, wherein it has been clearly laid down that the jurisdiction and function of the Commission have to be confined to those which are specifically entrusted to it under the Act. He has submitted that in that case, a direction to constitute a DNA test issued by such a Commission was the subject matter of challenge and the submissions advanced on behalf of the appellant that the same would come within the aspect of examining a complaint has been negated by the Hon'ble Supreme Court. He has also submitted that though the observations are with regard to the Act of the State of Orissa, the present Act is in *pari materia* and therefore, the principles and ratio would be squarely applicable.

6. Shri Handique, learned State Counsel has fairly submitted that though the objective of the Commission appears to be *bona fide*, it appears that the Commission lacks jurisdiction to pass such an order of maintenance.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. The aspect of maintenance is covered by various statutes including Section 125 of the earlier CrPC [corresponding to Section 144 of the BNSS] as well as under the personal laws. However, such power of determining maintenance and direction to pay does not appear to have been bestowed upon the Commission. For ready reference, the functions of the Commission, as laid down in Section 10 of the Act are extracted hereinbelow:

“10. FUNCTIONS OF THE COMMISSION

(1) The Commission shall perform all or any of the following functions, namely:-

(a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;

(b) present to the State Government, annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards ;

(c) make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the State;

(d) review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend

amendments thereto so as to suggestion remedial legislative measures to meet any lacunae, inadequacies of shortcomings in such legislations;

(e) take up the case of violation of the provision of the Constitution and of other law relating to women with the appropriate authorities;

(f) look into complaints and take suo moto notice of matters relating to - (i) deprivation of women's rights ; (Ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development.; (iii) non-compliance of policy decisions; guidelines or instructions, aimed at mitigating hardship and ensuring welfare and providing relief to women and take up the issues arising out of such matter with appropriate authorities;

(g) call for special studies or investigation or investigation into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic service, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

(i) participate and advice on the planning process of socio-economic

development of women;

(j) evaluate the progress of the development of women under the State;

(k) inspect or cause to be inspected a jail, remand home, women's institution or other place or custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action if found necessary;

(l) fund litigation involving issues affecting a large body of women;

(m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(n) any other matter which may be referred to it by State Government.

(2) The State Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before the State Legislature 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 of such recommendation.

(3) The Commission shall, while investigating any matter referred to in sub-clause (i) or clause (f) of sub-section (1), have all the powers of the 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 Assam 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; and

(f) any other matter which may be prescribed.”

9. On a careful perusal of the said functions, this Court has not come across any such powers being bestowed upon the Commission to determine and give a direction for payment of maintenance. This Court is also fortified in the aforesaid opinion by the decision of the Hon'ble Supreme Court in the case of ***Bhabani Prasad Jena*** (supra). In the said case, the following observations which would be relevant, are extracted hereinbelow:

“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.”

10. In view of the aforesaid discussion, this Court is of the opinion that a case for interference on the ground of jurisdictional error itself is made out and accordingly, the impugned order dated 18.12.2021 passed by the Assam State Commission for Women stands interfered with and is set aside. The interim order passed earlier is accordingly made absolute.

11. It is however made clear that there is no restriction on the respondent no.3 to approach the appropriate forum with a prayer for maintenance, if so advised.

12. The writ petition accordingly stands allowed.

JUDGE

Comparing Assistant