REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

BHABANI PRASAD JENA V. CONVENOR SECRETARY, ORISSA COMMISSION (2010)

BENCH: Mr. Justice R.V. Raveendran & Mr. Justice A.K. Patnaik **DECIDED:** August 3, 2010

RATIO DECIDENDI & PRECEDENTIAL CRUX:
Courts cannot order DNA tests routinely on roving inquiries; DNA test direction requires strong prima facie case and pre-eminent need.

1. Factual Matrix & Background:

In a matrimonial dispute before the State Commission for Women, the Commission routinely directed the husband to undergo a DNA paternity test for a child without recording any prima facie findings. The High Court upheld the order.

2. Substantive Legal Questions Framed:

Under what circumstances can a court or quasi-judicial tribunal order a DNA paternity test, and whether such orders can be passed as routine fishing inquiries.

3. Analysis & Ratio Decidendi:

The Supreme Court set aside the DNA test direction. The Court held that DNA testing is a delicate issue affecting the reputation and legitimacy of a child. Courts must exercise great caution and should not direct a DNA test as a matter of course on mere asking. A direction for DNA test can be made only when there is a strong prima facie case and when the controversy cannot be resolved without such scientific proof.

4. Principles Enunciated:

- 1. DNA tests cannot be directed casually or for conducting roving fishing inquiries.
- 2. Presumption of legitimacy under Section 112 must be protected from frivolous attacks.
- 3. Strong prima facie evidence of non-access is a mandatory condition precedent for a DNA order.

5. Practical Litigation Implications:

- In resisting an opponent's DNA test application, argue that the applicant has not led foundational evidence of non-access and is seeking a fishing inquiry barred by Bhabani Prasad.

.....J.
[SUPREME COURT BENCH]

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