

(2009) 01 GAU CK 0052
In the Gauhati High Court

Biswa Chandra Debbarma and Another	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : AIR 2009 Guw 50 : (2010) 3 GLR 254 : (2009) 3 GLT 104

Hon'ble Judges : U.B. Saha, J;Hrishikesh Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. S. Deb, learned senior Counsel appearing for the writ appellants/writ petitioners. Also heard Mr. S. Chakraborty, learned Government Advocate representing the State Authorities.

2. Being aggrieved by the judgment and order dated 16-4-2004 in the W.P. (C)276/2003, the writ petitioners have preferred the present appeal. By filing the writ petition, the appellants sought directions from the Court for payment of financial assistance as surviving victims of extremist attack. The said payment was sought to be justified by the petitioners in terms of the scheme for granting of financial assistance formulated by the Government of Tripura and notified by the Memorandum dated 1-1-2000. It may be recorded that under the said Memorandum dated 1-1-2000, financial assistance is to be provided to, inter alia, members of the public who are victim of extremists violence. Under Clause 2(a) of the Memorandum, the compensation payable, which was earlier fixed at Rs. 50,000/- has been enhanced to Rs. 1.5 lacs.

3. The writ petitioners who are parents of one Umakanta claimed the said compensation amount as survivors of Umakanta who was killed on 13-4-2002. It is not dispute that Umakanta was killed by members of the extremist group belonging to the NLFT (NB), which is a banned organization in the State of Tripura.

4. The respondents by filing counter affidavit disputed the entitlement of the writ

petitioners to receive such payment as it was averred that the victim Umakanta was an unlisted collaborator of ATTF, an extremist group and for the killing of an extremist by rival extremist group NLFT (NB), the parents cannot claim benefit of financial assistance payable under the Memorandum dated 1-1-2000. It may be recorded that in the counter affidavit, the victim has been variously described as unlisted collaborator, active worker, over ground agent and suspected collaborator of the concerned extremist group.

5. The learned single Judge by the impugned judgment held that the purpose of the Memorandum dated 1-1-2000 is required to be examined in order to consider the entitlement of benefits under the said memorandum claimed by the writ petitioners and having examined the memorandum, particularly in light of the clarificatory memorandum dated 27-5-2002 (Annexure R 2), the learned Judge held that, it would not be appropriate to declare that the benefit under the memorandum can be claimed, even for the death of an extremist, killed by a rival extremist group.

6. The learned single Judge also took the view that as it was not conclusively established that the victim was a hard-core activist or collaborator of an extremist group, the entitlement claimed by the writ petitioners on the basis of the Memorandum dated 1-1-2000 cannot be ordered by the writ Court, as it would be necessary to determine through evidence, the status of the victim, more particularly, whether he belongs to an extremist group or he can be considered as an innocent members of public, subject to extremist violence.

7. Accordingly the writ petition was held to be not maintainable. But liberty was given to the writ petitioners to approach the civil Court for adjudication of their claim, by adducing evidence on the status of the deceased.

8. Mr. S. Deb, learned senior counsel appearing for the appellants submits that the stand taken by the respondents in the counter affidavit where entitlement to receive compensation has been denied, is contrary to the earlier stand of the authorities reflected in the communication dated 26-4-2003 sent by the S.D.M., Khowai in response to the Advocate's notice sent on behalf of the writ petitioners. According to the learned counsel, through the communication dated 26-4-2003 (Annexure P 10), the S.D.M. asked for presence of the writ petitioners with all necessary papers, to receive the compensation amount. As such it is submitted that the stand taken in the counter affidavit whereby the entitlement of the petitioners have been denied, cannot be accepted to be the consistent stand of the State authorities, as the said stand is in conflict with the earlier allegedly positive stand convened through the S.D.M.'s communication dated 26-4-2003.

9. The next contention made on behalf of the writ petitioners/appellants is that even assuming that the victim Umakanta was a member of the extremist group, even then, the benefits under Memorandum dated 1-1-2000, is receivable by the petitioners, as no exclusion of any kind in the category of the members of public

have been indicated in the Memorandum dated 1-1-2000. It is accordingly submitted that since there is no specific indication that the members of extremist group are not to be treated as members of public, financial assistance under Memorandum dated 1-1-2000 has to be paid to the writ petitioners.

10. Assailing the reasoning given by the learned single Judge in dismissing the writ petition, the learned senior counsel submits that the Court committed an error in examining the objective of the Memorandum dated 1-1-2000. He contends that the entitlement of the claim made by the petitioners cannot be scrutinized by a purposive interpretation of the said Government Memorandum. It is also submitted by Mr. Deb that as the benefit of the memorandum are to be given to members of public and no exclusion whatsoever is indicated, the memorandum has to be literally construed and the learned single Judge committed an error in adding further words in the said memorandum, to exclude the category of victims who belonged to extremist groups.

11. The learned senior counsel submits that what was not incorporated in the memorandum by specific words, cannot be added by the Court, in order to interpret the Memorandum dated 1-1-2000 and it is submitted that omissions seen in the memorandum cannot be substituted by inserting words to exclude victims who are themselves extremists, as was done by the Court.

12. The learned Counsel refers to Craies on Statute Law to submit that the Memorandum dated 1-1-2000 is required to be construed according to the plain, literal and grammatical meaning of the words contained therein and there is no scope for the Court by making a purposive construction, to exclude claimants, who make the claim for the death of a victim, who might have been an extremist himself. To fortify this submission, the learned Counsel relies upon the decision of the Supreme Court in the case of Union of India (UOI) Vs. Rajiv Kumar,

13. Mr. S. Chakraborty, learned Govt. Advocate on the other hand submits that; the Memorandum dated 1-1-2000 was intended to confer financial benefits to bring relief to members of public, unconnected with extremist activities who suffer in the hand of the extremist and obviously the benefits under the said memorandum cannot be understood to be available when extremists or their collaborators are the victims of a rival group and claim is made on their amount.

The learned Government Advocate also contends that the Govt., offers financial assistance for victims of extremist violence, out of public coffer, as such victims are innocent citizens who are unconnected with extremist activities and it would be indeed unreasonable to construe the memorandum to mean that, benefits are also available for those who indulge in unlawful activities or act as collaborator, as such construction, it is submitted, who clearly be against public interest.

14. Learned Govt. Advocate also submits that Government circulars where words are not incorporated with as much care as is done by statute draftsman the strict rules of interpretation meant for statutes cannot be brought in use for interpreting such circulars.

Learned Counsel has also referred to the clarificatory Memorandum dated 27-5-2002 (Annexure R 2) to contend that the Govt., has taken a conscious decision indicating that the benefits under the Memorandum dated 1-1-2000 would not be available for the death of extremist or their over ground workers killed by rival group of extremists. Therefore, it is contended that writ petitioners cannot claim any State benefit as their victim son himself was involved with anti State and extremist activities.

15. Having regard to the above arguments of the rival counsels, it may be appropriate at the very outset, to examine the purport of the Government Memorandum dated 1-1-2000, which has been made the basis for the claim raised by the writ petitioners.

The memorandum indicates that the financial assistance is payable to members of public affected in extremist violence, without however excluding such members of public, who themselves are extremist or their collaborators. Although it is submitted that it would not be appropriate to apply the Rules applicable for interpretation of statutes in construing a Government Memorandum, which may be less carefully drafted than a statute, yet it is well known that even the Rule of statutory interpretation, are not rigid and inflexible. Even in *Union of India (UOI) Vs. Rajiv Kumar*, relied on by the learned Counsel for the appellants, it is clearly indicated that:

A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity.

In *Craies on Statute Law* also it is clearly stated that

Where the grammatical construction is clear and manifest and without doubt, that constructions ought to prevail, unless there is some strong and obvious reasons to the contrary.

16. Having regard to the authority of *Craies on Union of India (UOI) Vs. Rajiv Kumar*, , we are of the considered opinion that for strong necessity, even while interpreting statutes, the *casus omissus* can be created. Therefore, when such liberty is available for statutes, we find no difficulty in concluding that when there are strong necessity, as we find in the instant case, the omission of the authors of the Memorandum dated 1-1-2000 can definitely be taken care by the Court and appropriate construction can thereafter be made to take care of situations, which were not perceived at the time of notifying the Memorandum dated 1-1-2000. This omission in the Memorandum dated 1-1-2000 was clarified later by the Government by issuing Memorandum dated 27-5-2002 whereby it is clarified that for victims who themselves are extremists or their collaborators, cannot give rise to a claim for financial assistance, from the State coffer.

17. The intention of the Government in formulating a scheme for granting financial assistant notified through Memorandum dated 1-1-2000 and the earlier Memorandum dated 19-2-1996 are obvious. It was intended to give financial

assistance to innocent victims of public, who obviously have no connection with extremist activities and it would indeed be illogical and inappropriate, merely because the Memorandum dated 1-1-2000 does not categorically say so, to hold that the benefit under the said memorandum would also be available for death of extremists, who are killed by other extremists.

18. As regards the first submissions of Mr. Deb, on his interpretation of the Communication dated 26-4-2003 written by the S.D.M., Khowai, we do not find that the said communication in any way declares the entitlement of the writ petitioners to receive the benefit of financial assistance under Memorandum dated 1-1-2000. What the communication intended was to inform the writ petitioners, to make available all relevant papers and also police report, to initiate the proposal for financial assistance and disposal of the claim and there was no indication in the S.D.M's letter that the claim could not have been rejected, by declaring the disentitlement of the claimants to receive the financial benefits. This submission of Mr. Deb is accordingly negated.

19. Having held that there was no decision by the S.D.M. to give financial assistance and all that was reflected in the S.D.M's. letter dated 26-4-2003 that the claim would be processed if all requisites are made available, we hold that the Government was not estopped from taking a stand that the petitioners have no right to receive financial assistance, in the counter affidavit filed in the writ petition, in the face of the S.D.M's communication dated 26-4-2003. We find no contradiction in the stand of the Government reflected in the counter affidavit and that which is reflected in the S.D.Ms communication dated 26-4-2003, and submissions made by the appellants are accordingly rejected.

20. In the impugned judgment the learned single Judge has construed the Memorandum dated 1-1-2000 by looking into the objective of the memorandum and in our view the said approach of the learned single Judge cannot be considered to be unreasonable. If the Memorandum dated 1-1-2000 is to be literally construed, then even in case of death of a hard core extremists, the surviving family, members can raise a claim of financial assistance from the Government, on the strength of the Memorandum dated 1-1-2000. This certainly cannot be the purpose of the Memorandum dated 1-1-2000 as none should be permitted to benefit by death of people who have shunned the lawful path and have taken the path of extremists.

21. We must not be unmindful of the public interest. If claims are entertained for financial assistance from the State coffer, for the death of those who have acted to subserve the State's interest by their extremist activities, it would send a wrong signal to the innocent members of public for whom the benefits were intended.

22. Of course the victim Umakanta has been described variously as an unlisted collaborator, an active worker, a suspected collaborator or an over ground worker of an extremist group. But it is not clearly indicated by the State as to which of

the above categories, the victim Umakanta actually belonged to. Perhaps this is why the learned single Judge, notwithstanding the dismissal of the writ petition, permitted the writ petitioners to approach the Civil Court to obtain an appropriate declaration that the victim is not a member of an extremist group or was not in any way, involved with extremist activity, either as a collaborator or as an over ground worker.

If victim Umakanta was an innocent member of general populace, the right of the petitioners to receive compensation under Memorandum dated 1-1-2000 cannot perhaps be denied. But since it was not possible for the writ Court itself to determine the actual status of the victim, we are of the opinion that the learned single Judge rightly refused to entertain the writ petition to espouse a claim of financial assistance, under the Government Memorandum dated 1-1-2000.

In view of above, we are in agreement with the conclusion and the reasoning given by the learned single Judge and accordingly we dismiss the writ appeal, permitting the parties to bear their own cost.