
(2014) 01 JH CK 0070

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 2584 of 2011

Gopi Nath Ghosh

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 2 AJR 665 : (2014) 1 JLJR 345

Hon'ble Judges : R. Banumathi, C.J.; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Anup Kumar Agrawal, for the Appellant; Rajiv Ranjan Mishra, GP-II, for the Respondent

Judgement

R. Banumathi, C.J.—Based upon the newspaper report published in the Hindustan Times dated 24.1.2011, the petitioner has filed this Public Interest Litigation to issue writ of mandamus directing the respondents to immediately settle all claims of compensation and Government employment as per the existing schemes for civilian deaths that might have occurred in the course of violence between the State Security Forces and the Naxalities and for other directions. The petitioner claims himself to be a human rights activist and to be working for the rights of workers in the unorganized sector especially for Tendu Leaf Pickers in West Singhbhum district of Jharkhand and for other human rights issues.

2. The case of the petitioner is that there are revised guidelines of the Central Scheme for assistance to civilian victims/family of victims of terrorist, communal and naxal violence dated 25.1.2010, which states that an amount of Rs. 3,00,000/- (Rs. 3 lakhs) would be given for each death or permanent incapacitation to the affected family under the scheme. According to the petitioner, in various districts, like West Singhbhum, East Singhbhum, Simdega, Gumla, Lohardaga, even though many persons were killed in violence between the police force and the banned armed groups, compensation and Government employments had not been granted to the families of the deceased who died as

early as in 2001. The petitioner has sought and obtained information under the Rights to Information Act and has furnished in paragraph 15 of the petition the details of information as to the number of deaths and compensation disbursed. Alleging that the respondents have failed to implement the then Schemes for providing relief and rehabilitation to the victims of the violence, the petitioner has filed this PIL with the prayer that the respondents are to be directed to evolve an effective mechanism for grant of compensation and for implementation of rehabilitation measures for the victims of the violence.

3. The State of Jharkhand has filed a detailed supplementary counter-affidavit stating that the State of Jharkhand is committed for payment of ex gratia to the victims or their dependents who died/injured in Naxal violence. Referring to the schemes of the State Government and also the Central Government schemes, it is stated that during 2009-10, there were 64 reported cases of civilian death/injury in Naxal violence and during the year 2010-11, there were 96 reported cases of civilian deaths/injury and in such cases (64 + 96), compensation has been paid to all the victims/dependents as per the scheme prevalent on the date of incident. It is farther stated that the State of Jharkhand is very sincere and conscientious with respect to payment of compensation to the victims/dependents of Naxal violence and that the State Government is regularly paying compensation to the victims of Naxal violence as per the policy decision of the State of Jharkhand and has paid crores of rupees as compensation and therefore, this Public Interest Litigation is liable to be dismissed.

4. We have heard learned counsel for the petitioner, Mr. Anup Kumar Agrawal, and Mr. Rajiv Ranjan Mishra, learned GP-II, for the respondent-State of Jharkhand.

5. It is seen from the supplementary counter-affidavit that on the date creation of the State of Jharkhand (i.e. on 15.11.2000), only the State Government had policy to grant compensation to the victims/dependents of Naxal violence as per the circular of the State of Bihar No. 1972 dated 9.8.2000, by which provision had been made for payment of compensation of Rs. 50,000/- to the victims of Naxal violence/dependents. After creation of the State of Jharkhand, the Government of Jharkhand issued circular no. 3002 dated 8.11.2001 by which provision has been made for payment of compensation of Rs. 50,000/- in case of death, Rs. 10,000/- in case of permanent disability and Rs. 2000/- in case of serious injury to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 8.11.2001 and 16.2.2006. The State of Jharkhand had issued another circular no. 423 dated 16.2.2006, wherein provision had been made for payment of Rs. 1,00,000/- in case of death, Rs. 50,000/- in case of permanent, disability and Rs. 10,000/- in case of serious injury as compensation to the victims of Naxal violence or their dependents and the said circular was effective for Naxal incidents occurred between 16.2.2006 and to date. According to the respondent-State, during the said period, compensation has been paid to the victims as per the said circular of

the State Government.

6. Central Government, vide letter no. 11044/11/2011-VTV dated 29.6.2012, issued guidelines with effect from 22.6.2009, wherein provision has been made for payment of Rs. 3,00,000/- in case of death/permanent incapacitation (50% and above) as compensation to the affected family under the scheme and the said amount of compensation will be paid by the Central Government. As per the said circular, in case the employment is given to any family member of a victim of terrorism/Naxal violence, the dependent will not be entitled to the assistance under the scheme. It further provided that in case, employment has already been given after release of assistance under the scheme, the assistance amount shall not be withdrawn from the victims of Naxal violence/terrorism.

7. As per the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made to constitute a District Level Committee under the chairmanship of District Magistrate/Collector/Deputy Commissioner/ District Superintendent of Police/District Medical Officer/District Welfare Officer/ District Child & Women Development Officer and the officer who may be nominated by the State Government as its member and the said Committee shall identify beneficiaries and verify eligibility of the beneficiaries for assistance under the scheme. In the said guidelines of the Central Government, with effect from 22.6.2009, provision has been made for examining eligibility claims of the beneficiaries; the District Committee has to see the police report/FIR/death-cum-postmortem certificate in case of permanent incapacitation, birth certificate of the claimant (if minor) and any other documents as may be considered necessary for determining the rightful beneficiaries/claimants. The guidelines of the Central Government provided that the District Committee shall send its recommendation to the Joint Secretary, Ministry of Home Affairs, New Delhi, in the prescribed form with a copy to the Home Department of the State Government. According to the respondents, during the said period, recommendation for payment of compensation has been made for the victims of Naxal violence as per the guidelines of the Central Government effective from 22.6.2009.

8. Circular of the Central Government, vide letter no. 11044/11/2011-VTV dated 29.6.2012 (with effect from 22.6.2009), provides for the assistance to the victims of Naxal violence/terrorism. The following guidelines have been provided therein:-

4. Eligibility

i) The financial assistance would be given to the family member(s) in the event of death or permanent incapacitation of the victim, in terrorist, communal or naxal violence.

ii) Assistance would be given to the surviving spouse in case of death/permanent incapacitation of the husband or the wife, as the case may be. However, if both the husband and the wife die in same incident of violence, the family would be

entitled to get the assistance, in each case.

iii) Families of the victims would be eligible to get assistance under the scheme even if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the Government or any other source except when a similar scheme is already being implemented by the Central Government

iv) Next of kin of employees of Central Government, CPSEs, Autonomous Institutions and other Government Organizations including State Governments/ State PSEs and similar organizations of State Governments will also be eligible to receive financial assistance of Rs. 3 lakhs in case of death/permanent incapacitation (50% and above) on account of incidents of Terrorist/communal/naxalite violence.

v) The total compensation amount, available in the SRE states/districts would be Rs. 4 lakhs (Rs. 1 lakh from SRE and Rs. 3 lakhs from the Central Scheme). In the other areas, the assistance would be limited to Rs. 3 lakhs.

vi) Foreign Nationals and NRIs shall also be eligible/covered under the scheme w.e.f. 1.4.08 i.e. the date from which this scheme has been made effective.

vii) Those permanently incapacitated, and the members of the family of the victims killed/permanently incapacitated in the terrorist, communal or naxal violence would be given a health card by the District Health Society, functioning under the National Rural Health Mission. This card would entitle them to free medical treatment in respect of injuries due to violence and all other major illnesses. Medical care will also be provided to the beneficiaries of the scheme as a special case under the on-going schemes of the Ministry of Health and Family Welfare, viz. Rashtriya Arogya Nidhi and the National Trauma Care Project.

viii) Children in the family would continue to be entitled for assistance admissible under the project "Assist", implemented by the National Foundation for Communal Harmony (NFCH) of the MHA.

ix) No other criteria regarding income of the family would be considered for the eligibility under this scheme.

x) The perpetrators of violence or their family will not be entitled to any assistance under the scheme.

xi) The eligible claimants can file their claims in prescribed proforma (Annexure-I) within 3 years of the relevant incident of terrorist, communal or naxal violence through the concerned DM/State Government. The time limit however can be relaxed in deserving cases by the Central Government on the recommendations of the State Govt. or by the Central Government suo motu.

5. Assistance

i) An amount of Rs. 3 lakh would be given for each death or permanent incapacitation to the affected family under the scheme.

ii) The amount of Rs. 3 lakh would be put in a fixed deposit account [Joint or Single in the name of the Family members]] in a Nationalized bank. (If there is no nationalized bank within the vicinity of the beneficiary, account may be opened in any scheduled commercial bank) It would have a minimum lock-in period of 3 years or if there are only minor children in the family, till the eldest child attains the age of majority, whichever is later.

iii) The interest on the above sum would be credited directly by the bank to the beneficiary's saving account on a quarterly basis:

iv) At the end of the lock-in-period, the principal amount of Rs. 3 lakh would be transferred directly to the saving account of the beneficiary, if the beneficiary is the spouse of the victim.

v) In case of death or permanent incapacitation of the beneficiary, his or her Next of Kin would operate the account.

vi) In case of permanent incapacitation, the victim himself/herself would be the beneficiary. However, if he/she is not in a position to operate the account, then his/her nominee would operate the account.

6. Procedure to be followed at the District level

i) A District Level Committee, under the chairmanship of District Magistrate/Collector/Dy. Commissioner, and having as its members the District Superintendent of Police, District Medical Officer, District Social Welfare Officer, District Child and Women Development Officer and an officer who may be nominated by the State Government would identify beneficiaries and verify their eligibility for assistance under the scheme.

ii) While examining eligibility claims, the District Committee would look into the Police Report/FIR, Death-cum-Postmortem Certificate in the event of death, and Medical Certificate in the event of permanent incapacitation, birth certificate of the Claimant (if minor), and any other documents as considered necessary for determining the legitimate claimant.

iii) In case of permanent incapacitation, a certificate from the District Medical Officer would be required to show that the victim has suffered 50% and above disability, which is of permanent nature and there are no chances of variation in the degree of disability, and the injury renders the victim unfit for normal life for the rest of his life.

iv) In choosing the beneficiary in the family, the NOK (Next of Kin) concept would be applied.

v) The District Committee will satisfy itself that the victim has suffered/died due to terrorist, communal or naxal violence, as the case may be, and the beneficiary has been identified as per the scheme. It would also verify that the victim has not suffered/died due to any incident of crime or natural reason.

vi) The District Committee would, so far as possible, make its recommendation in (Annexure-II) within 15 days of receipt of claim for assistance to victims/family of terrorist or communal violence.

vii) The District Collector may, on his own, recommend assistance under the scheme with suitable justification.

viii) The processing of the application, as per the provisions of the scheme, shall be completed within 3 weeks, including the recommendations of the District Committee.

ix) The sanction order will be issued by the DM/DC on behalf of the State Government. A copy of the sample sanction order which is presently being issued by the MHA is at annexure-III. A copy of the Sanction letter will be sent to the Home Department in the State. A copy of the sanction order will be endorsed to IS-II Division Ministry of Home Affairs New Delhi.

x) The DM/DC will issue the cheque in the name of the beneficiary. Whenever feasible the assistance shall be disbursed by way of electronic transfer to the victim's/NOK bank account.

xi) The State Government shall undertake to widely disseminate information about the scheme, and to undertake its publicity.

7. Procedure to be followed after the issue of cheque

i) The District Collector/District Magistrate/Dy. Commissioner, as the case may be, would deposit the cheque in the FD account of the beneficiary, with instructions to the Bank that no premature withdrawal may be allowed.

ii) Standing instructions would be given to the Bank to credit the quarterly interest during the lock-in-period and the principal amount after the lock-in-period, directly into the account of beneficiary.

8. Procedure to be followed by Ministry of Home Affairs

i) After the DM/DC has made the payment to the NOK of the victims of terrorist/communal/naxal violence under the Scheme, the State Government may submit the proposal to MHA for reimbursement in the prescribed proforma (Annexure-IV) on half-yearly basis (by 31st December & 30th June of each year).

ii) The reimbursement will be considered on the basis of audited accounts in this regard. However, to ensure that the State does not suffer because of delay in audit of accounts, ad hoc releases will be made on the basis of accounts furnished by the State Government and due scrutiny by WD, MHA. These ad hoc payments will be adjusted after final audited accounts are made available. The Central Government will make 70% payment immediately and balance 30% after receipt of audit verification report by the Internal Audit Wing of MHA.

iii) The States shall ensure that the amount claimed under the Central Scheme for Assistance to civilian Victims of Terrorist, Communal and Naxal violence is not

claimed under any other scheme of the Government of India i.e. there shall not be duplication of the claim. The States shall give an undertaking/"certificate that no reimbursement has been claimed for these items under any other scheme.

iv) The revised guidelines will be applicable from the financial year 2012-13.

v) The State Government/UTs shall incur all expenditure (which will be reimbursed by MHA), with respect to proposals in connection with incidents which occur from April, 2012 onwards. Proposals in respect of incidents which have taken place prior to April, 2012 and which have not so far been sent by the State Governments to MHA will also be considered by the concerned State Governments for approval and reimbursement by MHA. The proposals which have been sent to MHA but are pending for want of complete documents from the State Government will also be considered by State Government for approval and subsequent reimbursement from MHA.

9. Saving Clause

In case of any clarification required/difficulty faced in implementation of the scheme, suitable orders/clarifications will be issued by the Internal Security-II Division of the MHA.

9. According to the State Government, as per the above guidelines dated 29.6.2012 and also the guidelines of the Central Government issued, vide letter no. 11021/1/2013-VTV dated 24.10.2013, under the Central Scheme, in deserving cases, a financial assistance of Rs. 3,00,000/- is given for each death or permanent incapacitation case (disability of 50% or above) to the affected family subject to the condition that no employment has been provided to any of the family members of the victims. In the circular dated 29.6.2012, Central Government stated that the amount of compensation to be paid by the Central Government would now be paid by the State Government, which, in turn, would get it reimbursed from the Central Government. As per the said circular of the Central Government, the scheme of payment was made effective from 22.6.2009. In para (22) of the supplementary counter-affidavit filed on 2.12.2013, the State of Jharkhand clearly stated that even for the incidents, which had taken place prior to 29.6.2009, where no payment had been made, the dependents would be covered by the new scheme. In the supplementary counter-affidavit, it is stated that out of 23 applications, payments have been made in 15 cases and 8 cases are still in the process of verification. In the supplementary counter-affidavit, the State Government has referred to the number of cases with number of applications received and also the number of case where compensation were settled as per the said scheme of compensation/ Central scheme of compensation. It is stated that some of the applications are pending. In the above facts and circumstances, this Public Interest Litigation is disposed of with the following directions:-

(I) The respondents are directed to ensure strict observance of payment of compensation as per the Central Scheme, vide letter no. 11044/11/2011-VTV

dated 29.6.2012 and letter no. 11021/1/2013-VTV dated 24.10.2013 and also as per the applicable State schemes.

(II) The first respondent is directed to settle the compensation claims in respect of the pending applications in various districts and dispose of the same within a period of six months and not later than one year.

(III) In future, as and when application is received claiming compensation/benefits of the Scheme, the first respondent is directed to ensure that the application is considered and disposed of within a period of six months from the date of its receipt by the respective District Magistrate/Deputy Commissioner/District Committee.

(IV) The first respondent is directed to circulate this order along with the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 (w.e.f. 22.06.2009) to Home. Secretary, Director General of Police and to all the Deputy Commissioners/Superintendents of Police, who, in turn, shall ensure its circulation to all the Sub-Divisions/Blocks/Police Stations for strict observance of the guidelines.

(V) The Registrar General of the High Court is directed to forward a copy of this order along with the copy of the Guidelines on Central Scheme for Assistance to Victims of Terrorist and Communal Violence issued vide letter No. 11044/11/2011-VTV dated 29.06.2012 to Jharkhand Legal Services Authority (JHALSA) and JHALSA is directed to circulate copy of this order along with the Central Scheme for Assistance to Victims of Terrorist and Communal Violence to all District Legal Services Authorities (DLSA) and also to Sub-Divisional Legal Services Committees with a direction to create awareness by holding intensive legal awareness camps at all the levels including District/Sub-Divisions/Blocks/Panchayats/Villages/Tola/Mohalla/Basties about the Central Scheme available to the victims of terrorist and communal violence.