
(2004) 05 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2525 of 1993

Krusijibi Kalyan Sangha

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 2 OLR 1

Hon'ble Judges : Sujit Barman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : A.K. Nanda, for the Appellant; Addl. Standing Counsel for for Opp. Parties 1 to 3, for the Respondent

Judgement

A.S. Naidu, J.—The petitioner claiming to be a Krusijibi Kalyan Sangha has filed this Writ application in the garb of a public interest litigation claiming the following substantive relief:

...the opp.parties be directed to pay due compensation by acquiring the lands or in alternative to restore their normal condition for agriculture and pay adequate compensation for the loss of crops since 1991 onwards.

2. According to the petitioner Sangha, on 28.7.1991 there was devastating flood in river Indravati which resulted in massive damage to the Indravati Hydro-Electrical Multipurpose Project and different areas of the district of Kalahandi. Thousands of people of the locality became homeless and their agricultural lands became unfit for agricultural operation due to sand cast. The ares within a radius of ten kilometres of the Project turned to sand dunes ranging from 5" to 50" high. Due to this flood sixteen workmen of the Project lost their lives. It is alleged that though Government had proposed to pay compensation, no steps were taken either for payment of compensation or for restoring the agricultural lands to their original state.

3. After receiving notice, a counter-affidavit has been filed on behalf of opposite

parties 1 to 3. In para-5 of the said counter-affidavit it is averred that the damage as sated in the Writ application was in fact due to unprecedented rains which was an act of God over which Government had no control. It is further averred that adequate steps were taken by Government to mitigate the agony of the local inhabitants. Assistance was provided to each of the land owners for reclamation of this sand cast lands. Sand cast subsidy at the rate of Rs. 1,500.00 per hectare of land and house-building grant for every house which sustained damage were provided. Para-6 of the counter-affidavit reads as follows:

That in reply to the averments made in paragraph-6 of the Writ petition it is submitted that in the flood disaster 17 persons belonging to different districts working in the tunnel expired. Each of the bereaved family was paid ex gratia mentioned below:

- (a) Ex gratia payment @ Rs. 5000.00 each from the calamity relief fund;
- (b) Rs.20,000/- to each family out of Prime Minister's National Relief Fund;
- (c) Rs.25,000/- to each family out of Chief Minister's Relief Fund;
- (d) Rs.5000/- to each family from Indravati Project as Ex gratia payment;
- (e) Rs.3000/- to each of the families by National Project excepting one worker not engaged by them.

Thus, a sum of Rs. 9.83 lakhs was paid to the Bereaved families of the persons who died on 29.7.91 due to flash in river Indravati. The petitioner is put to strict proof of the negligent conduct of the officers.

The allegation in the Writ application that the cultivable lands of several cultivators became useless is strongly repudiated in the counter-affidavit and according to a survey conducted by the Soil Conservation authorities no land had become useless. It is also stated that in fact due to the aforesaid mishap, cultivable lands in the area became rather more useful for banana and other seasonal cultivation, thereby increasing the pro rata income and potentiality of the land.

4. A separate counter-affidavit has also been filed on behalf of opposite party No. 2, representing the Irrigation and Power Department of the Government of Orissa. While denying the allegations levelled in different paragraphs of the Writ petition it is averred that due steps were taken to pay sand cast subsidy to all the affected persons by the revenue authorities according to the norms prescribed in the Orissa Relief Code. Apart from the aforesaid subsidy, the authorities of the Project had also paid the following reliefs:

- (i) Distribution of relief to the marooned families at Mukhiguda - Rs. 62,170.00
- (ii) Distribution of relief of the marooned families at Mahulpatna - Rs. 9,400.00
- (iii) Payment of house grants on the advice of Tahsildar - Rs. 3,000.00

(iv) Grant ear-marked for hutments in and around Project colonies - Rs. 8,000.00

It is further emphatically stated that the Government provided all possible reliefs to the affected people.

5. On the basis of the aforesaid pleadings it is now to be considered as to whether the petitioner is entitled to any relief in the present Writ application. Surprisingly none of the land owners said to have sustained any damage have been impleaded as parties to this Writ application. Though the petitioner asserts that it is a voluntary and social organization created to protect the interest of the agriculturists of the district, no substantial material has been produced before this Court to substantiate that the petitioner Sangha is a registered organization, nor is there any document to show the legal status of the petitioner. The names of members of the said Sangha are also not disclosed, inasmuch as no materials are available in the Writ application disclosing the names of the agriculturists who had suffered damage loss, nor are there particulars or description and extent of their lands.

6. In course of hearing Mr. Nanda, learned Counsel for the Petitioner, forcefully submitted that this Court while entertaining a P.I.L. should adopt judicial attitude and shift from the old draconian concept and the traditional jurisprudential system- affectation of the people. He also submitted that the Court should take a liberal view and direct the Government to look into the grievance of the farmers. The said contentions are strongly repudiated by the learned Government Advocate. It is stated that all possible reliefs had been extended to the people of the area who were affected by the unprecedented rains and mishap.

7. It is no more res integra that a Writ petition under Articles 226 and 227 of the Constitution of India can be moved not only by the aggrieved individual, but also by a public spirited individual, or a journalist, or the National Human Rights Commission, or a social action group or a public body or an association, for the enforcement of Constitutional or legal rights of some other person; provided such other person is unable to approach the Court for redress of his own grievance owing to -

(a) such person being in custody; or

(b) such person belongs to a class or group of persons who are in a disadvantageous position on account of poverty, disability or other social or economical impediment and are unable to enforce their rights.

None of these basic ingredients are satisfied in the present case. The petitioner Sangha has not filed any document which would reveal that it is an association authorized to mitigate the grievance of the agriculturists. It has also not filed any document to show the aims and objects for which the Sangha was created or formed, nor has it enclosed any document which would reveal the persons whom it represents. At the cost of repetition it is once again reiterated that the Writ Petition does not reveal the names of the farmers who had been affected or the

particulars of their lands, and to what extent.

8. In the counter-affidavit the State has taken a specific stand that in consonance with the Orissa Relief Code steps had been taken by the concerned authorities to provide adequate relief to the persons who had been affected by the calamity.

9. In the absence of names of the farmers who allegedly suffered and the particulars of the lands which, according to the Petitioner, were sand dunned, no effectual relief can be granted. Further the Writ application also does not satisfy the basic ingredients of a Public Interest Litigation.

The legal status of the petitioner-Sangha is also not disclosed. No averment has been made in the Writ petition to the effect that the persons who really suffered were in such a disadvantageous position on account of poverty, disability or due to social or economical impediment/that they were unable to approach this Court themselves and were unable to enforce their rights. In the absence of such ingredients, according to us, this Writ application in the garb of PIL cannot be entertained.

Sujit Barman Roy, C.J.

10. I agree.