
(2020) 02 OHC CK 0007
In the Orissa High Court
Case No : Writ petition (C) No. 21738 Of 2018

Nirmala Nayak

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Odisha Home Guards Act, 1961 — Section 1(3), 2, 2(1), 3, 10, 11

Indian Penal Code , 1860 — Section 21

Odisha Home Guards Rules, 1962 — Rule 2(iv), 2(v), 14(1), 15, 16, 17, 19, 20

Citation : (2020) 02 OHC CK 0007

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : B.K. Nayak, S. Rath, B. Senapati

Final Decision : Allowed

Judgement

B.R. Sarangi, J

1. The petitioner, being the wife of the deceased Home Guard late Bidyadhar Nayak, by way of this writ petition, seeks to quash the communication

dated 23.06.2018 in Annexure-6, whereby the Under Secretary to the Government of Odisha in Home Department has returned to the Commandant

General, Home Guards, Odisha, Cuttack the original application in the prescribed Form-I along with enclosures for compassionate grant in favour of

NOKs of deceased Home Guard-Bidyadhar Nayak, referring to para-6 of the Finance Department Resolution No. 53885/F dated 02.11.2001, on the

ground that such application was not filed within one year from the date of death or injury of the concerned police personnel; as well as

communication dated 11.07.2018 in Annexure-7, by which the petitioner has been intimated by the Commandant Home Guards, Nayagarh that she

does not come under the purview of Finance Department Resolution referred to above and accordingly returned the original application for compassionate grant.

2. The factual matrix of the case, in hand, is that the petitioner's husband Late Bidyadhar Nayak, was engaged as Home Guard in Gania Police Station

in the district of Nayagarh. As per entry serial no. 375 dated 19.02.2005 of Gania P.S. Diary Book, he was engaged in law and order duty at Kantilo

Magha Mela, Kantilo in the district of Nayagarh. On 21.02.2005 at about 3 a.m., while he was on duty, complained some pain in his body, for which

he was immediately shifted to Community Health Centre, Gania, where the medical officer declared him dead. Consequently, postmortem was

conducted on his body and the doctor opined that the cause of death was due to hypertensive heart failure. An enquiry was conducted and on its

completion, the inquiry officer closed the case. The petitioner, being the wife of the deceased Home Guard and legal heir, is entitled to compassionate

grant from the opposite parties as her husband died while was on duty. Consequentially, she approached the authorities time and again by way of

representations, the last of which was dated 26.09.2016 at Annexure-2, but nobody gave any heed to her grievance.

3. Due to inaction on the part of the authorities, she approached this Court by filing W.P. (C) No. 1974 of 2017, which was disposed of on 23.02.2017

with the direction to opposite party no. 3 to consider and dispose of the representation of the petitioner within a period of two months from the date of

receipt of the certified copy of the order. Since no action was taken, the petitioner filed CONTC No. 1249 of 2017, which was disposed of on

15.09.2017 with the direction to the contemnor to comply the order within a period of seven working days. Even then since the contemnor sat over the

matter, she filed another contempt application bearing CONTC No. 771 of 2018 and the same was disposed of in view of further developments in the

matter. Thereafter, vide letter dated 14.04.2017, opposite party no. 3 required certain documents from the petitioner in quadruplicate for onward

submission to opposite party no. 2. On receipt of such documents from the petitioner, as required vide letter dated 14.04.2017 in Annexure-3, the same

were forwarded by opposite party no. 3 vide its letter dated 07.10.2017 to opposite party no. 2. On consideration of the case of the petitioner, opposite

party no. 2 forwarded the application of the petitioner to opposite party no. 1, vide letter dated 07.05.2018, along with all relevant documents, and

requested the Government for payment of Rs. 1.5 lakhs as compassionate grant to next kin of late Bidyadhar Nayak, who died while was engaged in

law and order situation in Kantilo Magha Mela in the district of Nayagarh.

4. Opposite party no. 1, vide communicated dated 23.06.2018 in Annexure-6, by ignoring the recommendation of opposite party no. 2, relying upon

resolution no. 53885/F dated 02.11.2001 of the Finance Department, returned the application form of the petitioner on the ground that she claimed for

compassionate grant after expiry of one year from the date of death of late Bidyadhar Nayak. Pursuant thereto, opposite party no. 3 communicated

the petitioner, vide letter dated 11.07.2018 in Annexure-7, that since the application was submitted much after the death of Home Guard Bidyadhar

Nayak, in view of Finance Department Resolution referred to above, the same was returned to the petitioner. Hence this application.

5. Mr. B.K. Nayak-3, learned counsel for the petitioner emphatically submitted that the husband of the petitioner, being a Home Guard, was to be

regulated by the provisions contained under the Odisha Home Guards Rules, 1962, and the petitioner, being the next kin, is entitled to get compensation

for the damage caused due to death of her husband while he was on duty. He further submitted that the resolution no. 53885/F dated 02.11.2001 of

the Finance Department, relying upon which the application of the petitioner along with the documents have been returned, is only applicable to the

police personnel of the State engaged on naxalite duty. Late husband of the petitioner, being a Home Guard, is neither a police personnel nor engaged

in naxalite duty. Therefore, the resolution dated 02.11.2001 is not applicable to the case of the petitioner. Consequentially, the impugned

communications dated 23.06.2018 and 11.07.2018 in Annexures-6 and 7 respectively cannot be allowed to stand and are to be quashed, and the

opposite parties are to be directed to pay compensation as due and admissible to the petitioner in accordance with law.

6. Mr. B. Senapati, learned Addl. Government Advocate appearing for the State opposite parties, relying upon the counter affidavit filed by opposite

party no. 3, contended that the Government returned the original application in form-I along with enclosures on the ground of limitation, i.e. the date of

death of the deceased and the date of application mentioned in form-1 of the application to be 21.02.2005 and 01.10.2017 respectively. Therefore, the petitioner is not entitled to get compensation.

7. This Court heard Mr. B.K. Nayak-3, learned counsel for the petitioner and Mr. B. Senapati, learned Addl. Government Advocate appearing for the State, and perused the record. Pleadings having been exchanged between the parties and with the consent of the learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

8. The facts, as delineated above, are not in dispute. Therefore, if at the time of his death, the husband of the petitioner was working as Home Guard and was engaged in law and order duty, pursuant to entry serial no. 375 dated 19.02.2005 of Gania P.S. Diary Book, at Kantilo Magha Mela, Kantilo in the district of Nayagarh, are the opposite parties justified in denying compensation to the petitioner and that too taking recourse to the limitation prescribed in Finance Department resolution dated 02.11.2001 at Annexure-8.

9. In order to answer the above question, it is necessary to mention that the legislature of the State of Odisha enacted the Odisha Home Guards Act, 1961 to provide a Volunteer Organization for use in emergencies and other purposes in the State of Odisha. As per sub-Section (1) of Section 2, the State Government shall, for the areas notified under Sub-Sec. (3) of Section 1, constitute a volunteer body called "Home Guards", the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property and public safety and for such other functions as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder. As per Section 11, the members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Penal Code, 1860. In exercise of the powers conferred under Section 10 of the Home Guards Act, 1961, the State Government framed a set of Rules called "The Odisha Home Guards Rules, 1962". Sub-Rule (iv) of Rule-2 defines "Home Guards" as the Home Guards constituted under Section 2 of the Home Guards Act, 1961. Sub-Rule (v) of Rule 2 states "Member of the Home Guards" as a member appointed under Section 3. Following the rules, the husband of the petitioner was appointed as Home Guard. As per sub-Rule(1) of Rule 14, a member of the Home Guards shall obey every order of his

superior officer. Rule-15 envisages about providing uniform and Rule-16 postulates about training. Functions and duties of the Home guards have been defined under Rule 17 and as per Rule 19 their remunerations are fixed. Rule-20 deals with compensation, which reads as follows;

“if a member of the Home Guards suffers any damage to his person or property while under training or on duty, he shall be paid such compensation as may be determined by the State Government; provided that such damage is not caused by his own negligence or willful act or omission in contravention of any of the provisions of the Act or rules made thereunder or orders or directions issued by his superior officer.”

10. In view of the above rules, the petitioner's husband late Bidyadhar Nayak, having expired while was on law and order duty, she is entitled to get compensation. Neither the provisions of the Act nor the Rules framed thereunder prescribes any limitation to make application to get compensation under Rule 20.

11. In Ghaziabad Development Authority v. Balbir singh (2004) 5 SCC 65 : (2004) 5 SCC 65 : AIR 2004 SC 214,1 the apex Court held

“compensation”, according to dictionary, it means, “compensating or being compensated; thing given as recompense”.

12. In Ratni Menon v. Union of India, (2001) 3 SCC 714 : AIR 2001 SC 1333 : (2001) 3 SCC 71,4 referring to Black's Law Dictionary, the apex

Court held “compensation” is shown as equivalent in money for a loss sustained or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred, or recompense in value for some loss, injury or service especially when it is given by statute.

13. In Sandvik Asia Ltd. v. Commissioner of Income Tax, (2006) 2 SCC 508 : AIR 2006 SC 1223, as per P. Ramanatha Aiyar's Advanced Law

Lexicon, 3rd Edn., 2005 the word “compensation” has been defined to mean an act which a Court orders to be done or money which a Court

orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive

equal value for his loss or be made whole in respect of his injury.

14. In K.S.R.T.C. v. Mahadeva Shetty (2003) 7 SCC 197 : AIR 2003 SC 172 the apex Court held the word “compensation” is derived from

the Latin word *compensare* meaning *weight together* or *balance*.

15. The meaning of compensation as has been held by the apex Court in different judgments, *vis-à-vis* Rule 20 of the Odisha Home Guard Rules,

1962 entitles the petitioner to get the compensation due to the death of her husband late Bidyadhar Nayak, who was declared dead while on duty. The

opposite parties are obliged under law to pay compensation to the petitioner, but the same has not been paid despite several approaches made by her

to the authorities. Not only that, when no action was taken by the authorities, the petitioner approached this Court by filing writ petition, wherein this

Court issued direction to consider the representation of the petitioner. As the said order was not complied, she moved contempt application and despite

specific direction the same was also not obliged. But, subsequently, when second contempt application was moved, then only opposite party no. 3, on

14.04.2017, called upon the petitioner to file required documents for onward submission to opposite party no. 2. As such, the opposite party no. 2, on

consideration of such documents recommended the case of the petitioner for payment of compensation, but the same was denied by opposite party no.

1, relying upon the circular no. 53885/F dated 02.11.2001 issued by the Finance Department, which appears to be an outcome of sheer non-application

of mind.

16. On perusal of such resolution dated 02.11.2001, it would be evident that its subject has been captioned as *sanction of special incentive*

package to the police personnel of the State engaged on naxalite duty. Therefore, it can be safely concluded that the said resolution is applicable to

police personnel of the State engaged on *naxalite duty*. Husband of the petitioner was neither a *police personnel* nor was he

engaged in *naxalite duty*, rather he was a *Home Guard* as defined under the Odisha Home Guards Act and Rules framed thereunder,

Therefore, taking resort to such resolution dated 02.11.2001 amounts to sheer non-application of mind by the authority concerned. As such, rejection

of the claim of the petitioner and return of the application form along with the documents, pursuant to Annexures-6 and 7 dated 23.06.2018 and

11.07.2018 respectively, placing reliance on the resolution which is not applicable, cannot sustain in the eye of law.

17. As has been discussed above, the Odisha Home Guard Rules, 1962 prescribes unequivocally for payment of compensation in case a member of the Home Guards suffers any damage to his person or property while under training or on duty. The resolution in question, being in the nature of an administrative instruction, cannot supersede the statutory Rules. Accordingly, it is observed in *G.M. Uttanchal Jal Sansthan v. Laxmi Devi*, (2009)

7 SCC 205 as follows:â?

â??We fail to understand how a mere circular letter which has no force of law shall prevail over the statutory rules. The respondents

themselves have relied upon the decisions of the Court in *DDA v. Joginder S. Monga*, (2004) 2 SCC 297 : AIR 2004 SC 3291 wherein it was

held that executive instructions cannot run contrary to the statutory provisions.â??

18. Similar view has also been taken by the apex Court in catena of decisions.

19. The stand of the opposite parties as taken in the counter affidavit, that since the petitioner filed the application beyond the limitation period, the

same was returned along with the documents, is not at all tenable, as because such limitation prescribed in the Finance Department Resolution dated

02.11.2001 has no application to the claim of the present petitioner, which is guided by Odisha Home Guard Rules, 1962 and Rule 20 thereof does not

contemplate any limitation for payment of compensation as due and admissible in accordance with law. More particularly, when opposite parties no. 2

and 3 had recommended the case of the petitioner for grant of compensation in consonance with the statute, the opposite party no. 1 should have

applied its mind on such recommendation and extended the benefits, instead of returning the application along with the documents to the petitioner. In

absence of any limitation prescribed either under the Odisha Home Guards Act or the Rules framed thereunder, the application submitted by the

petitioner and recommended by opposite parties no. 2 and 3, should have been taken into consideration and the petitioner should have been paid

compensation in accordance with law.

20. In view of above analysis, this Court is of the considered view that the communications dated 23.06.2018 in Annexure-6 and dated 11.07.2019 in

annexure-7 cannot sustain in the eye of law and the same are liable to quashed and are hereby quashed. The opposite party no. 1 is directed to accept

the application of the petitioner along with the documents and sanction compensation in favour of the petitioner for untimely death of her husband while he was on duty as Home Guard. The entire exercise for payment of compensation to the petitioner shall be completed within a period of two months from the date of communication of this judgment.

21. The writ petition is thus allowed. No order to costs.