

(2008) 09 OHC CK 0082
In the Orissa High Court
Case No : Writ Petition (C) No. 795 of 2002

Prasanna @ Prasanna Kumar Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Citation : (2008) CLT 807 Supp : (2008) 2 OLR 658 Supp : (2008) OLR 807 Supp

Hon'ble Judges : I.M. Quddusi, J;A.K. Parichha, J

Bench : Division Bench

Advocate : R.C. Rath, B. Das, S.K. Swain and S.K. Acharya, for the Appellant;
A.G.A., for the Respondent

Judgement

I.M. Quddusi, J.—In this writ petition, the Petitioner has prayed for quashing of the order dated 6.3.2002 (Annexure-10) passed by the Collector, Cuttack-opposite party No. 2 rejecting the claim of the Petitioner for ex gratia payment of Rs. 75,000.00 for the death of his daughter during the Super Cyclone in the year 1999 and for a direction to opposite party for payment of the aforesaid financial assistance.

2. During 29/30th of October, 1999 a Super Cyclone struck the coastal districts of Orissa. Thousands of people lost their lives and many more were left homeless. After the super cyclone ex gratia and financial assistance of Rs. 75,000.00 was sanctioned from the Prime Minister's Relief Fund in respect of bereaved families of persons who died due to the super cyclone on 29.10.1999 and 30.10.1999. Petitioner is a resident of Dulanapur under Banki Police Station in the district of Cuttack which was severely affected by the super cyclone. The case of the Petitioner is that his daughter Sakuntala Rout aged about 2 years suffered from Viral Encephalitis and was admitted to Banki Sub-divisional Hospital which is at a distance of 28 kilo metres from his village on 28.10.1999 for treatment. On that date after some treatment, she was referred to Sishu Bhavan, Cuttack for further treatment. Since by that time cyclone red alert had already been given and the fury of cyclone had already started, he could not

move his daughter to Sishu Bhavan and took her to his house. Unfortunately, his daughter died due to wall collapse on 30.10.1999. The fact of death was registered in the concerned P.H.C. vide Registration No. 346 dated 2.11.1999. Immediately after the Super Cyclone the local R.I. enquired into the matter and gave his report on 18.11.1999 that the death of the daughter of Petitioner occurred on 30.10.1999 due to wall collapse in super cyclone. Thereafter the Tahasildar conducted necessary enquiry and was satisfied that the death of the daughter of the Petitioner occurred due to wall collapse during the super cyclone on 30.10.1999 and therefore he recommended the case to the Sub-Collector, Banki for recommendation and onward transmission to the Collector, Cuttack for consideration of sanction of ex gratia in favour of the legal heirs of the deceased pursuant to which the Sub-Collector, Banki on 26.11.1999 recommended to the Collector, Cuttack for further action whereafter the Collector sanctioned the financial assistance in favour of the Petitioner on 3.11.1999. It is the further case of the Petitioner that pursuant to a notice dated 16.12.1999 inviting public objection in the matter of sanction of financial assistance, 143 persons of the village of the Petitioner including the local Sarpanch, Panchayat Samiti Member, Ex-Sarpanch, Ex-Samiti Member and some-Ward Members of the Panchayat intimated the Tahasildar, Banki that the daughter of the Petitioner died due to wall collapse during the super cyclone on 30.10.1999. As the opposite parties, delayed disbursement of the financial assistance, the Petitioner filed O.J.C. No. 11126 of 2000. This Court by order dated 19.4.2001 passed in the aforesaid OJC directed the Collector, Cuttack to look into the matter and take appropriate steps in accordance with law. It was further directed that the amount should be disbursed as early as possible, preferably within a period of three months from the date of communication of the order if it was found that the Petitioner was to receive any amount. Pursuant to the aforesaid order passed by this Court the matter was again enquired into by the Collector. The Collector after going through all the relevant documents came to the conclusion that the claim of the Petitioner did not merit consideration and therefore rejected the same. Hence, this writ petition.

3. Counter affidavit has been filed by opposite party No. 4. It is stated in the counter affidavit that pursuant to the order dated 19.4.2001 passed by this Court in O.J.C. Np.11126 of 2000 a thorough scrutiny was made and it was found that the death of the child took place on 28.10.1999 and not on 30.10.1999. The stand taken by opposite party No. 4 is that the Medical Officer, P.H.C. Dompara vide his letter No. 25 dated 7.1.2000 intimated that the death of Sakuntala Rout occurred on 28.10.1999 due to viral Encephalitis but the legal heirs of the deceased managed to obtain a death certificate showing the date of death to be 30.10.1999. The enquiry report of Medical Officer, P.H.C, Dompara has been annexed as Annexure-A/4 to the counter. It is further stated in the counter affidavit that according to the instruction of the Collector, Cuttack, the Tahasildar, Banki invited public objection to the grant of financial assistance to the legal heirs of Sakuntala Rout by beat of Drum and some of the villagers filed their

objection in the matter, copy of which is annexed to the counter as Annexure-B/4. The Collector rejected the claim of the Petitioner after verifying the records, materials and procedural irregularities etc. The further case of opposite party No. 4 is that since the matter was considered earlier and due opportunity was provided to the Petitioner, there was no necessity to further heard the Petitioner. The reconsideration has been made on the basis of the records available.

4. We have perused the report of the Medical Officer, Dompura P.H.C. dated 7.1.2000. in which the Medical Officer has stated that Sakuntala Rout was admitted in Sub-divisional Hospital, Banki on 28.10.1999 at 5.30 a.m. in unconscious state with high temperature and convulsion and her condition was not good for which the case was referred to Sishu Bhavan, Cuttack at 10 a.m. on same day for further treatment as she was suffering from viral encephalitis. It is further stated in the report that Sri Krupasindhu Rath of Dulanapur who is the family priest of the Petitioner stated before him that the death occurred on 28.10.1999 and he performed the Dasaha on 7.11.1999. The report further states that some village people of Dulanapur stated before the Medical Officer that the death of Sakuntala Rout took place on 28.10.1999. The copy of the bed head ticket annexed to the writ petition does not indicate the time of admission. Against the column "D.O. Return 5.3 p.m. appears to have been mentioned. In the rejoinder, the Petitioner has stated that Saran Rath is his family priest and not Krupasindhu Rath. Krupasindhu Rath was the Ex-Sarpanch of the G.P. and is inimically disposed towards him due to political rivalry. Akshya Barik, the barber who used to render service to the family of the Petitioner and Saran Rath, stating to be the family priest of the Petitioner have filed affidavit stating that Sakuntala Rout died on 3.11.1999 and they performed the Dasaha and Ekdasaha on 8.11.1999 and 9.11.1999 respectively. From the order dated 29.9.2001 (Annexure-10) it appears that the Collector has considered the objection filed against the claim of the Petitioner but has not considered the representation made in support of the claim. Moreover, no opportunity of being heard was provided to the Petitioner before passing the impugned order. The Collector has accepted the statement of Krupasindhu Rath that he performed the Dasaha on 7.11.1999. Whether Krupasindhu Rath was the family priest of the Petitioner has not been verified. Had an opportunity been provided the Petitioner could have been able to clarify the matter. We are, therefore, of the considered opinion that the matter needs re-consideration by the Collector.

5. We, therefore, quash the order dated 29.9.2001 passed by the Collectors as communicated vide letter dated 6.3.2002 and remit the matter to him for reconsideration and appropriate decision after affording an opportunity of hearing to the Petitioner.

The writ petition is accordingly disposed of.

There would be no order as to costs.

A.K. Parichha, J.

6. I agree.