

(2006) 11 OHC CK 0029
In the Orissa High Court

Shiva Prasad Samantaray and Others	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Citation : AIR 2007 Ori 76 : (2007) 103 CLT 339 : (2007) 1 OLR 181 Supp

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—This writ petition has been filed by the Petitioners in the guise of Public Interest Litigation with a prayer to direct the Additional Director of C.B.I., Bhubaneswar, O.P. 8 to make an inquiry regarding illegal sanction of benefits under Indira Abas Yojana Scheme deviating the prescribed Guidelines and also selecting such persons, who are not eligible for getting such benefits by including the names of such ineligible persons in the "Below Poverty Line" (B.P.L.) list. The Petitioners have further alleged that such list has been prepared without proper inquiry and to favour certain persons and such persons have also been allowed to construct Indira Abas Houses over the Government land in Paradeepgarh Gram Panchayat in the District of Jagatsinghpur.

2. According to the Learned Counsel for the Petitioners, the action of the Project Director (D.P.) of District Rural Development Agency (DRDA), Jagatsinghpur, O.P. 5 is not free from doubt and more particularly he is a party to all the irregularities committed in Paradeepgarh Gram Panchayat regarding grant of such benefits under the said Scheme.

3. A counter affidavit has been filed on behalf of the Collector, Jagatsinghpur through the Block Development Officer, Kujang Block, O.P. 6 denying all such allegations.

4. It is worthwhile to mention here that this Court by its Order dated 2.9.2002 directed the O.Ps. not to disburse any further fund under the Indira Abas Yojana to raise constructions over the Government land pending disposal of the writ

petition. Thereafter, this Court by Order dated 10.2.2003 found that a number of cases were filed before this Court complaining of illegality and irregularity and alleged corruption in the matter of preparation of list of persons Below the Poverty Line and in the matter of allotment of funds to construct houses under the Indira Abas Yojana. Various allegations in the writ petition go to show that some of the Officers had not preformed their duties properly and that the Norms and Guidelines set out were not duly followed by them. This Court while considering all those aspects in the interest of public, directed the Vigilance Department of the State to make an investigation into the questions as to whether the Rules and Norms, as prescribed for allotment of funds to construct houses to Persons Below the Poverty Line under the Indira Abas Yojana have been properly followed and whether the list of persons Below the Poverty Line has been prepared duly in accordance with the Rules, Regulations and Orders. This Court also directed that after the investigation is completed, the report of the Investigating Agency will be filed in this Court. It was also clarified that if the relevant Rules and Guidelines were not followed, appropriate proceedings under the relevant provisions of law be initiated by the Vigilance Department. On 8.8.2005, when this matter was listed, Learned Standing Counsel for the Vigilance Department submitted that despite repeated demands, the Project Director, D.R.D.A., Jagatsinghpur was not producing the B.P.L. records of the beneficiaries to verify whether or not, the records were prepared in accordance with the prescribed norms as ordered by this Court. Taking a serious note of the allegation of the Learned Counsel for the Vigilance Department, this Court directed the Project Director, D.R.D.A., Jagatsinghpur, O.P.5 to cooperate with the Vigilance Department and produce all relevant records, as may be required by the Vigilance Department, otherwise the Court will be constrained to take serious action against him.

5. On 13.7.2006, it was again alleged by the Learned Counsel for the Vigilance Department that the Project Director, D.R.D.A. was not at all cooperating with the Superintendent of Police (Vigilance). So this Court directed the Superintendent of Police (Vigilance) and the Project Director, D.R.D.A., Jagatsinghpur to appear in person before this Court on 25.7.2006. On the said date they appeared in person and an affidavit was filed on behalf of the said Project Director stating therein that whatever records were available with him with regard to B.P.L. had been supplied to the Superintendent of Police (Vigilance) and other records as required by him were damaged and were not available. This Court directed the Project director to make available all the data, which were stored in the computer and other records, if any, with regard to the records, which were stated to be destroyed for the purpose of inquiry investigation. Once the said data documents were supplied to the Superintendent of Police (Vigilance), he would complete the inquiry within two weeks thereafter and produce the report before this Court immediately.

6. Accordingly, the inquiry report is produced before this Court today. In the meantime, the intervention petition of the persons selected as beneficiaries and

granted benefits under the Indira Abas Yojana, has been allowed and they are represented through Mr. S. Mohanty, Learned Counsel, who submits that this writ petition is devoid of merit, as the Petitioners have no locus standi to file the same. In this regard our attention is drawn to a decision of this Court in the case of Somadarsan Mohanty Vs. Union of India (UOI) and Others, in which, Mr. S. Mohanty, Learned Counsel, incidentally was the Petitioner in his personal capacity. In the said writ petition, a direction was sought for to the C.B.I, to investigate into the allegation of kick-back of crores of rupees for withdrawing the condition of captive use of ore extracted from the lease hold mine. This Court relying upon various decisions of the Apex Court including the decision in the case of Vinoy Kumar Vs. State of U.P. and Others, , held that:

Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determinate class of person is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

It was ultimately, held that the said writ petition is not maintainable at the instance of the Petitioner in the said case.

7. In our considered view, the facts which gave rise to the case in Somadarsan Mohanty (Supra) are clearly distinguishable from the facts of the present case. In the present case, allegations have been made that persons, who are not Below the Poverty Line have been enlisted due to their political influence and have been successful in getting favour of the administration by inclusion of their names in the B.P.L. list, as a consequence of which they have been benefited under the said Indira Abas Yojana Scheme, even though they were not entitled to the same. Considering such allegations, which, if accepted, would show that it will clearly establish mala fide and arbitrariness on the part of the authorities in disbursing the amount to the disentitled beneficiaries under the above Scheme, we are of the view that this petition involves public interest and cannot be thrown out as not maintainable, as has been contended by the Opposite Parties. Various instances have been brought before this Court by the Learned Counsel for the Petitioners, by which the Petitioners are in reality espousing the cause of genuine beneficiaries, who should have been included in the B.P.L. List and should have got the benefit of the Scheme and such persons are unable to approach the Court due to poverty.

8. From the report received from the Vigilance Department pursuant to the previous direction of this Court, gross-irregularities in implementing the Indira Abas Yojana Scheme by the Project Director, D.R.D.A. and the B.D.O., Kujanga, have been highlighted. In our considered view, it would be appropriate in the facts of the present case to pass necessary orders on the said report by the Vigilance Department.

9. Further Learned Counsel for the Vigilance Department submits that, if so

directed, a formal F.I.R. will be registered and the matter can be investigated. In the fitness of things prevailing, as revealed from the report, we dispose of the writ petition with a direction to the Vigilance Department to register a formal F.I.R. and proceed with the investigation in accordance with law. If ultimately, any person is found to have committed any offence punishable under law, it would be open to the Vigilance Department to take appropriate steps as per the relevant provisions of Prevention of Corruption Act, Penal Code or any other penal law dealing with such offences.

The report submitted before this Court be kept in a sealed cover. A copy of this Judgment be supplied to the Learned Counsel for the State as well as the Learned Counsel for the Vigilance Department, to work accordingly.

M.M. Das, J.

10. I agree.