

(2016) 08 SC CK 0194

In the Supreme Court Of India

Case No : Civil Appeal No. 7999 of 2016 (Arising out of SLP (C) No. 15115 of 2011)

Shramik Adivasi Sangathan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Citation : (2016) 168 AIC 75 : (2016) 4 CivCC 317 : (2016) 11 JT 468 : (2016) 4 RecentApexJudgments(RAJ) 709 : (2016) 7 Scale 715 : (2016) 15 SCC 108

Hon'ble Judges : T.S. Thakur, CJI, R. Banumathi and Uday Umesh Lalit, JJ.

Bench : Full Bench

Advocate : Prashant Bhushan, Rohit Kumar Singh, Anuj Sukula, Ms. Neha Rathi, Advocates, for the Appellant; Mishra Saurabh, Ankit Kumar Lal, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Uday Umesh Lalit, J.—Leave granted. This appeal challenges the judgment and order dated 07.12.2010 passed by the High Court of Madhya Pradesh at Jabalpur dismissing Writ Petition No.1064 of 2010.

2. The appellant organization working in the Districts of Harda, Betul and Khandwa of Madhya Pradesh is said to have been formed by activists Ms. Shamim Modi and Mr. Anurag Modi as part of initiative of Tata Institute of Social Sciences, Mumbai for field level intervention to demonstrate effective models of creative development.

3. Ms. Shamim Modi had earlier filed Writ Petition No.4644 of 2004 in the High Court of Madhya Pradesh at Jabalpur submitting inter alia that she had come across illegal excavations and violations of the Forest Conservation Act, 1980. I.A. No.5550 of 2007 was filed in this Writ Petition highlighting an incident where a forest ranger had beaten up two tribals on 11.07.2007, in respect of which information was lodged with Harda SC/ST Police Station on 12.07.2007 but no

FIR was registered. The matter was taken up by the High Court on 30.07.2007 when the injured tribals appeared in-person. The High Court recorded their statements, asked the District Judge (Vigilance) to inquire into the allegations made in the application and directed that the injured tribals be given medical attention.

4. The aforesaid writ petition thereafter came up on 17.07.2008. The High Court noted that while working as Project Officer the petitioner had noticed illegal excavations by various private persons including contractors and violations of the Forest Conservation Act, 1980. The High Court expressed that the concerned authorities would look into the matter. As regards the grievance that the petitioner and her husband were being harassed by the Forest and Police Officials, it was observed that no relief in that behalf could be granted in Public Interest Litigation and that it was open to the petitioner to seek appropriate remedies in law, if advised. With these observations, the writ petition was disposed of.

5. On 22.01.2010 the appellant organization filed Writ Petition No.1064 of 2010, in public interest, in the High Court submitting that said Ms. Shamim Modi and Mr. Anurag Modi had approached the High Court through various public interest litigations to expose the nexus between bureaucrats and politicians and that as a result they were being harassed and victimized. It was further submitted that certain officers of forest and police department were functioning as feudal lords, considering adivasis as their subjects and that the adivasis were being implicated in false and frivolous cases. Some instances were given in the writ petition and it was inter alia prayed:-

"{D} To examine the cases in which closure has been filed to protect the Forest and Police officials and suggest actions against the erring officers as shown in Annexure P-39 and P-40.

{E} To review the cases of inaction by the Police officials in the complaints filed by the tribals against the Forest and Police officials as shown in Annexure P-10, P-25, P-27 and P-28 of the Petition."

6. In response, it was submitted on behalf of the State that the writ petition was barred by res judicata in view of the order dated 17.07.2008 passed by the High Court in Writ Petition No.4644 of 2004. It was further submitted that pursuant to the order dated 30.07.2007 passed in said Writ Petition No.4644 of 2004 an enquiry was conducted by District Judge (Vigilance) and the incidents alleged by the writ petitioner were not found to be correct. Accepting the submission of the State, the High Court found that the incidents narrated in the present petition had taken place prior to 17.07.2008 except one instance which had allegedly taken place on 13.07.2009 in respect of which Crime No.106 of 2009 was registered against the tribals under Sections 147, 146, 353, 332, 186, 336, 506 and 342 of the Indian Penal Code. The High Court concluded that all the issues raised in Writ Petition No.1064 of 2010 with regard to alleged victimization of

tribals prior to the order passed in Writ Petition No.4464 of 2004 were barred by principles of res judicata and could not be permitted to be agitated. As regards the incident dated 13.07.2009 leading to the registration of Crime No.106 of 2009, it was observed that the petitioner had adequate remedy under Section 154(3) of the Code of Criminal Procedure. With this view, the High Court dismissed Writ Petition No.1064 of 2010. It is this judgment and order passed by the High Court, which is presently under challenge.

7. This Court by its order dated 13.05.2011 issued notice to the respondents. The matter thereafter appeared on some occasions and on 13.08.2012 this Court passed the following order:

"Having heard learned counsel for the parties, we issue the following directions for the time being:

1. A District Level Grievance Redressal Authority shall be set up each in Harda, Betul and Khandwa Districts of Madhya Pradesh. By 31st August, 2012 the State Government shall issue an appropriate notification establishing the Authority.

2. The broad responsibilities of the Authority would be :

a. To receive information in respect of the filing of a complaint or case alleged to be false or refusal to register FIR or an abuse of authority by any governmental authority or person (including the police) within the said districts. For the time being, information pertaining to the incidents which had taken place within the last one year prior to the receipt of the information shall be looked into;

b. Upon receipt of any such information, to examine the information and if it is substantiated, the Authority will submit a recommendatory report to the District Judge, the State Legal Services Authority and the Chief Secretary for appropriate action, including disciplinary action. The Authority shall follow up the implementation of its recommendations;

c. To take the assistance of any non-governmental organization or retired government officer for examining the correctness of the information. In doing so, the Authority shall recommend a reasonable honorarium to the non-governmental organization or retired government officer for their services; and

d. To take on any other task associated with the above responsibilities.

3. The Chief Justice of the Madhya Pradesh High Court is requested to nominate a retired District Judge to head the Authority within fifteen days of the notification establishing the Authority. The head of the Authority will be called its Chairperson.

4. In addition to the Chairperson, the Authority shall have four members, to be recommended by the Chief Justice in consultation with the Chairperson of the State Human Rights Commission, the Lokayukta and the Chairperson of the State Public Service Commission. The Chief Justice if requested to make the recommendation by 30th September, 2012.

5. By 15th October, 2012 the State Government shall issue a notification constituting the Authority as recommended by the Chief Justice. The notification will be given wide publicity through the print and electronic media in the three districts mentioned above.

6. The Secretary of the District Legal Services Authority appointed under Section 9 of the Legal Services Authority Act, 1987 will be the ex-officio Secretary to the Authority and will assist the Authority in its functioning.

7. The services to be rendered by the Authority shall essentially be pro bono. However, as a token of appreciation for their services, the Chairperson and members of the Authority shall be paid a token honorarium of Rs. 2000/- per month by the State Government.

8. Office space and minimum secretarial assistance, necessary for the effective functioning of the Authority, shall be provided by the District Judge or the District Legal Services Authority or the State Government.

9. In terms of Section 12 of the Legal Services Authorities Act, 1987 every member of a Scheduled Tribe is entitled to legal services, free of any charge. Wide publicity through the print and electronic media in the three districts mentioned above shall be given to this statutory mandate by the State Government.

10. If any member of a Scheduled Tribe belonging to any of the three districts above-mentioned is arrested, intimation thereof shall be given in writing by the arresting officer to the Chairperson of the Authority and the Secretary of the District Legal Services Authority within 24 hours of the arrest. The Secretary of the District Legal Services Authority shall be bound to provide free legal aid to any such person.

11. In the event of any doubt in the understanding or implementation of these guidelines, the decision of the Authority shall be final."

8. Consequently, Grievance Redressal Authorities ('GRA' for short) have been set up in the Districts of Harda, Betul and Khandwa. However, according to the appellant, no substantial work has been undertaken. In the affidavit dated 22.02.2016 filed on behalf of the appellant following assertions are made:

"3. That accordingly the GRAs were set up in each of the three districts belatedly, but there were many functional difficulties faced by them and the same were brought to the notice of this Hon''ble Court by the petitioner through various affidavits from time to time and this Hon''ble Court was pleased to issue certain directions like increasing the honorarium of the members of the GRAs etc. in order to make them functional.

4. That the GRA in Harda has not been made functional till date.

5. In Betul District, the GRA has passed just one order in last three years and all other complaints are remaining undecided:

a. Despite many complaints of non-registration of FIR, no recommendatory report was passed in any of the matters.

b. Despite many complaints of abuse of power by the authorities, no recommendatory report was passed in any of the matter.

c. Despite arrests of the tribals, in none of the case the GRA has provided any free legal aid.

6. The GRA of Khandwa District didn't get many complaints."

9. We heard Mr. Prashant Bhushan, learned Advocate in support of the petition and Mr. Misra Saurabh, learned Advocate for the respondents. In the submission of Mr. Bhushan, though GRAs have been set up no effective progress could be achieved and the grievances highlighted in the original petition still remain unaddressed.

10. We have considered the entire record and find that the assessment made by the High Court while dismissing Writ Petition No.1064 of 2010 was not correct. In the earlier petition, Ms. Shamim Modi had highlighted instances of illegal excavations and violations of the Forest Conservation Act, 1980 and by way of I.A. No.5550 of 2007 attention was invited to the incident which occurred on 11th, 12th and 13th of July 2007. None of the matters dealt with in the present petition were detailed in the earlier Writ Petition. Merely because those incidents had taken place before the order dated 17.07.2008 was passed by the High Court, it could not be said that the matters stood barred by principles of res-judicata. The instances highlighted in the present petition are completely independent of those projected in the earlier petition and as such are required to be considered on their own merits. The High Court, in our view, was not right in dismissing the petition on the ground of res-judicata. Having come to that conclusion, logically the matter must be remitted to the High Court for fresh consideration but we refrain from doing so.

11. Since the issues and grievances highlighted in the writ petition would in any case have required some assessment of factual aspects of the matter and since the persons alleged to be victims come from the disadvantaged and underprivileged strata, this Court deemed fit to direct constitution of GRAs. Such authorities have since then been constituted and it is for the GRAs now to take up the responsibility and make appropriate recommendations. Given the fact that Secretary of the District Legal Services Authority is the ex-officio Secretary of such GRA and the recommendatory report would be made to the District Judge, the proceedings would inspire confidence and redress all the grievances. In our view, ends of justice would be met if following directions are issued:-

a) GRAs for Harda, Betul and Khandwa constituted pursuant to the Order dated 13.08.2012 passed by this Court shall look into every case highlighted in Writ Petition No.1064 of 2010 filed by the appellant and such other similar grievances and make their report/reports to the concerned District Judges as early as

possible and in any case not later than three months from the date of this Judgment.

b) If the report/reports so made by GRAs make out a case as alleged, the concerned Station House Officer shall do well to act accordingly and the cases in question shall be taken to logical end, in a manner known to law.

c) State of Madhya Pradesh shall extend every possible help in terms of financial and manpower assistance to GRAs to complete the task given to them.

12. With the aforesaid directions, this appeal stands disposed of, without any order as to costs. Before parting, we make it clear that we have not and shall not be taken to have expressed any opinion on the merits of any of the cases highlighted by the appellant and required to be dealt with by GRAs. Said cases must be dealt with purely on merits.