

(1996) 11 OHC CK 0017

In the Orissa High Court

Case No : Original Jurn. Case No. 777 of 1996

Smt. Nirmala Kumari Lal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-11-1996

Acts Referred:

Constitution of India, 1950 — Article 162, 47

Citation : AIR 1997 Ori 169 : (1997) 83 CLT 303

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : Bibakananda Bhuyan, S.K. Panda, B.N Das and R. Roy, for the Appellant; Jairaj Behera, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner assails the memorandum of the Finance Department. Government of Orissa, fixing a cut off date 19-10-83 for eligibility to grant a Green Card and the benefits and incentives thereunder. Prayer is made for quashing Clause (j) of Annexure 4 of the memorandum and for a direction to issue a Green Card in her favour.

2. The petitioner's case is that she is serving as a Sister Tutor in the A.R.M. training centre. Phulbani since 1-3-85 and married to one Jugal Kishore Barik on 28-12-74, who is serving as a P.E.T. in Government High School, Rampatuli in the district of Phulbani. It is the case of the petitioner that out of their wed-lock they have two issues, a daughter born on 14-6-76 and a son on 27-7-78 and after the second issue, she being aware of the population growth and in order to have a small family of their own for upliftment of their economical development and having known the family planning welfare adopted by the Government of India, she had undergone tubectomy operation on 21-1-80 at the district headquarters hospital, Phulbani. It is stated that the Government of India in new 20 Point Programme emphasized on a planned family and family planning has been accepted as a National Programme for last four decades and for popular

acceptance of such planned family Government offered several incentives as a motivational measures and on such line, the State Government has also formulated the policy vide Government notification dated 19-10-83, a copy whereof is Annexure 1 giving certain incentive to parents at the age group of 15 to 48, having two children or less and who would go for terminal methods i.e. tubectomy/vesectomy would be given a green card and as a distinct group the said Green Card holders will be entitled to several benefits as contemplated therein. It is the petitioner's claim that she having fulfilled all the criteria in terms of Annexure 1 made an application on 5-10-95 to opposite party No. 3 for issuance of necessary green card in her favour for availing the benefits provided by the Government. But however opposite party No. 3 declined to issue the same on the ground that the petitioner is not eligible for such a green card, she having adopted family Planning prior to the notification. A copy of the order of the refusal has been annexed as Annexure 3. The opposite parties have filed a counter affidavit controverting the claim of the petitioner. The learned Addl. Government Advocate appearing on their behalf rely on the documents annexed to the writ application to repel the petitioner's claim.

3. Heard Shri Bibekananda Bhuyan, learned counsel for the petitioner and Sri Jairaj Behera, learned Additional Government Advocate for the opposite parties. It is the contention of Shri Bhuyan that in view of the Government decision dated 19-10-83 in Annexure 1 that parents in the age group of 15 to 48 having two children or less, who will go for terminal methods i.e. tubectomy/ vasectomy would be given a Green Card and the Green Card holders as a distinct group would be entitled to the benefits enumerated therein and the petitioner having undergone tubectomy operation after the birth of the second child, she was entitled to a Green Card but for no reason and on a misconception of the Government decision, the Chief District Medical Officer, Kandhamal, Phulbani rejected the application of the petitioner dated 2-10-95 on the ground that she was not eligible for the Green Card. The learned counsel referring to Clause 4 of the Government decision dated 19-10-83 in Annexure I contends that in view of the Government decision dated 19-10-83, the Office Memorandum dated 4th June, 1985 of the Government of Orissa in Finance Department, copy whereof is Annexure 4, in particular, Clause J of para 3 was illegal, arbitrary and discriminatory, It is his submission that the Cause-J of paragraph 3 stipulating that the benefits of incentive allowance would be sanctioned from the first day of the month following the sterilisation after 19-10-83 of the Health and Family Welfare Department, Orissa, was illegal and arbitrary.

4. The learned Additional Government Advocate referring to the averments in the counter affidavit and the annexures thereto contends that it is verified from the District Headquarters Hospital, Phulbani that the petitioner underwent tubectomy operation on 21-1-80. But the case of the petitioner does not come within the scope of Government Resolution No. 3470/7/H dated 10-10-83 in the Health and Family Welfare Department, copy whereof is Annexure A to the counter affidavit, paragraph 4 of the Government order clearly indicates that the parents of the age

group of 15-48 years having two children or less who would go for terminal methods i.e. tubectomy/vascctomy would be given a green card and as such the petitioner having adopted the terminal method on 13-1-81, the scheme is not applicable to the petitioner and she is not entitled to green card. In other words, the learned counsel submits that in Government Resolution dated 19-10-83 a green card would be given to either of the parents, in the age group of 15 to 48 years having two children or less who would go for terminal methods, would go to show that the parents adopting terminal methods after 19-10-83 are only eligible for a green card and the consequential benefits. It is further submitted that the mode of issue of a green card and the entitlement have been indicated in the letter of the Government dated 30-11-83 in Annexure-B and under Clause 5 a register was to be maintained at the level of the Chief District Medical Officer as well as at the Directorate level allotting one page for each P.H.C., where green card number, name of the person with address and name of the Public Health Centre and district shall be recorded. Inasmuch as under Clause 7, it is clearly mentioned that the entitlement of the Green Card has been recorded at paragraph 6 of the green card and as soon as any of the benefits are given to the card holder, the same shall be entered in the appropriate places in pages 1-12 of the card with date, signature and seal of the officer concerned. It is his submission that Annexure-B prescribed the process of issue of green card and the mode of its issue. In Annexure-Clearification: with regard to green card holders and their entitlements have been given by the Government. Inasmuch as it has been indicated that the Resolution dated 19-10-83 would be applicable with effect from 19-10-83 and not from an earlier date and as such, the petitioner being an employee of the Health and Family Welfare Department is supposed to be aware of the decision communicated in letter dated 24-2-84 in Annexure-C and therefore the challenge made to the decision of the Government of the year 1984. in the year 1996 is grossly barred by time. The other contentions of the learned counsel for the petitioner have also been refuted by the learned Additional Government Advocate.

5. Having heard the learned counsel for the parties, the main question that arises for consideration is as to whether or not the petitioner was entitled to a green card in terms of Government Resolution dated 19-10-83, she having undergone the terminal methods, tubectomy on 13-1-81. The Government in Health and Family Welfare Department in Resolution No. 34707 dated 19-10-83. copy thereof is Annexure 1 to the writ petition as well as Annexure-A to the counter affidavit at para 4 thereof reads thus:

4. "Considering the above aspects. State Government have been pleased to decide that either of the parents in the age group of 15-48 years having two children or less who would go for terminal method i.e. tubectomy/vascctomy. would be given a Green Card. As a distinctive group, the Green Card holders will be entitled to :--

(a) 5% of all houses both in rural and urban areas irrespective of whether they

arc built by Govt. or by housing board.

(b) 8 decimals of land free of premium/salari as against 4 decimals now given.

(c) 5% of all new LICH & MIGH loans.

(d) 5% seats each in Medical College. Engineering Colleges, Polytechnic including ITIs will be reserved for their children.

(e) Two advance increments should they happen to be Government Servants."

6. In the preamble of the Government Resolution dated 19-10-83 (Annexure 1), the avowed purpose of the Resolution has been reiterated. Purpose of the Government Resolution, as appears from the aforesaid Resolution, is that the decennial growth rate from 19 to 12 and family size from 4.3 to 2.3 by ensuring that 60% of the people in the productive age group of 15-48 are protected against unwanted pregnancies. It is said that such an ambitious demographic improvement cannot be attained unless popular acceptance is secured for a small planned family. Until family welfare becomes actually popular and a participatory programme, some incentives have to be offered as a motivational measures etc. Thus, the purpose of the Government Resolution offering different benefits thereunder are incentives or motivational force for adopting the terminal methods. The word "incentive" as per Chambers Dictionary (New Edition) means : inciting encouraging-igniting that which incites to action a stimulus". Thus, taking the ordinary meaning of the word "incentives" read with the Government Resolution with its preamble, would suggest that the benefits under Annexure-1 dated 19-10-83 are for the purpose of inciting or encouraging persons to go for the terminal methods to restrict the family at two children. It cannot be from this understood, that anybody and everybody who has less than two children or has no children at all are entitled to the incentives thereunder. For example, it may be that a couple might not have any children for medical reasons, are they not contributing to reduce the population growth ? Would they be entitled to the incentives The answer would be "No". In that view of the matter, we are of the considered opinion that the very concept of the incentive and the Government Resolution is for inducement and a motivational force for the persons within the age group to go for terminal methods and thus, it can only be prospective. In the present case. The petitioner admittedly adopted the terminal methods prior to coming into force of the Resolution of the Government dated 19-10-83 and as such, such incentive is not available to her inasmuch as the Resolution in Annexure-1 does not spell out that it is to be given effect to with retrospective effect in absence of which retrospective effect cannot be inferred. The petitioner has also not challenged the Government Resolution dated 19-10-83 in Annexure-1. Annexure-4 is only a clarification with regard to the incentives to the persons holding Green Cards, inasmuch as in Clause-J thereof, it has been stipulated that the benefits would be sanctioned on the first day of the month following the date of sterilisation, alter 19-10-83, i.e. the date of issue of the Resolution dated 19-10-83 of Health and Family Welfare Department.

Thus, we find no infirmity or illegality in the Government Resolution and thus, the writ petition is devoid of any merit.

7. In the result, the writ petition is dismissed, but in the facts and circumstances of the case. there shall be no order as to costs.

P.C. Naik. J.

8. I agree.