

BAIJU K G v. DR V P JOY , (2022-2)206 PLR 691 (SC) , 2022 SCeJ 0579 , 2022 PLRonline 0266

Supreme Court of India

Before : Justice Dr Dhananjaya Y Chandrachud , Justice Surya Kant.

BAIJU K G – Petitioner,

Versus

DR V P JOY – Respondent.

Contempt Petition (Civil) No 244 of 2021

Constitution of India, 1950 Art. 21 - The right to health is an integral part of the right to life under Article 21 of the Constitution - Without health, the faculties of living have little meaning and Court would be justified in taking recourse to the coercive arm of law - Large number of people affected by the use of a toxic pesticide called Endosulfan, leading to a spread of mental and physical ailments among residents of areas that were impacted by its use - Court by its order dated 10 January 2017 directed the State Governments to compensate all the affected persons by distributing an amount of Rs 5 lakhs to each affected person within three months - Not complied - The Government of Kerala has done virtually nothing for five years - Most of the victims, are from the marginalized segments of society and in a serious condition - Onus of a public wrong can be attributed to the State if it fails to protect the fundamental rights of the citizenry and compensation can be awarded in such cases - The inordinate delay by the State Government in compensating the persons affected by the use of Endosulfan not only reflects its failure to comply with the order of this Court but also further compounds the violation of the fundamental rights of such persons - The failure to redress the infringement of their fundamental rights becomes more egregious with each passing day - Directions issued.

Cases referred to :

1. *Para 4: Nilabati Behera Vs. State of Orissa, (1993) 2 SCC 746*

Petitioner Counsel: Mr. P.N. Ravindran Mr. P.S. Sudheer Mr. Rishi Maheshwari Ms. Shruti Jose Mr. Bharat Sood. Respondent Counsel: Mr. Nishe Rajen Shonker Mrs. Anu K. Joy Mr. Alim Anvar

JUDGEMENT

Dr Dhananjaya Y Chandrachud, J. - (13.05.2022) - A contempt petition has been instituted before this Court by the residents of Kasargod district in Kerala who were affected

by the use of a toxic pesticide called Endosulfan. The use of the pesticide led to a spread of mental and physical ailments among residents of areas that were impacted by its use. A writ petition was instituted before this Court by the persons affected by the use of Endosulfan. This Court by its order dated 10 January 2017 directed the State Governments to compensate all the affected persons by distributing an amount of Rs 5 lakhs to each affected person within three months. This Court also directed the State Governments to consider the feasibility of providing medical facilities and treatment for life-long ailments arising from the effects of Endosulfan, considering the larger number of affected persons. It is submitted by the petitioners, whose names are mentioned in the list of Endosulfan victims prepared by the Government of Kerala, that the Government has failed to comply with the order. The petitioners are yet to be compensated and the medical facilities have not been improved because of which the affected persons in Kasargod District are compelled to travel to Trivandrum, about 600 kms away for their treatment.

2. A compliance report dated 9 May 2022 has been filed by the Chief Secretary to the Government of Kerala. The report indicates that on 16 March 2022, the Chief Secretary convened a meeting in connection with the need for disbursing compensation to the victims of Endosulfan, in compliance with the judgment of this Court dated 10 January 2017. A team of officials from the Health and Revenue departments has been constituted to visit the homes of 3704 victims to whom compensation is yet to be provided. Of these victims, 102 are found to be bedridden, 326 to be mentally disabled, 201 to be physically disabled, 119 to be afflicted with cancer while 2966 fall in the residual category. The Government of Kerala has done virtually nothing for five years. Besides the fact that the delay is appalling, the inaction is in breach of the orders of this court.

3. The State Government has now taken a decision on 15 January 2022 by issuing GO(Rt) No 1877/2022/Fin to authorize the disbursal of an additional amount of Rs 200 crores for providing compensation to the victims of Endosulfan. As of date, an amount of Rs 5 lakhs has been disbursed only to eight persons who are the petitioners who have moved these contempt proceedings. We fail to understand the logic or the rationale of the State Government in disbursing compensation only to those who have the ability to move this Court.

4. There are a large number of victims to whom no compensation has been provided despite the passage of over five years since the date of the judgment of this Court. Most of the victims, as the data before the Court indicates, are from the marginalized segments of society. Many of the victims are in a serious condition to whom compensation on an urgent basis has to be provided. In *Nilabati Behera v. State of Orissa*,¹ (1993) 2 SCC 746, this Court had discussed the basis of awarding compensation in public law proceedings. This Court had observed that the onus of a public wrong can be attributed to the State if it fails to protect the fundamental rights of the citizenry and compensation can be awarded in such cases. Justice AS Anand in his concurring opinion had observed that:

“34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the

indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings..." (emphasis supplied)

The inordinate delay by the State Government in compensating the persons affected by the use of Endosulfan not only reflects its failure to comply with the order of this Court but also further compounds the violation of the fundamental rights of such persons. The failure to redress the infringement of their fundamental rights becomes more egregious with each passing day.

5. That apart, in the order of this Court dated 10 January 2017, the State Government was directed to consider the feasibility of providing medical facilities or treatment to deal with life-long health issues arising out of the effects of Endosulfan, particularly having regard to the large number of persons involved. The State Government has not disclosed what steps it has taken to provide for medical treatment and rehabilitation to these victims. The right to health is an integral part of the right to life under Article 21 of the Constitution. Without health, the faculties of living have little meaning. We would be justified in taking recourse to the coercive arm of law. However, our immediate concern is providing relief and rehabilitation to the victims who are suffering. We accordingly issue the following directions:

(i) Since the payment of compensation has been made, though belatedly to eight

petitioners who have moved these proceedings, costs quantified at Rs 50,000 each shall be paid over in addition to each of the eight persons within a period of three weeks from the date of this order;

- (ii) The Chief Secretary shall hold monthly meetings to ensure that the judgment of this Court dated 10 January 2017 is diligently implemented by undertaking the process of (a) identifying the victims of Endosulfan and drawing up a list of beneficiaries; (b) ensuring the disbursement of compensation of Rs 5 lakhs to each of the victims; and (c) taking steps for ensuring due medical facilities within reasonable distance from their places of residence in terms of the earlier directions of this Court.
- (iii) An affidavit of compliance shall be filed before this Court indicating the progress which has been made between the date of this order and the next date of listing.

6. List the Contempt Petition on 18 July 2022.