

ITEM NO.10

COURT NO.11

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 110/2006

PEOPLE'S RIGHTS & SOCIAL RES.CENTRE &ORS

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH APPLN. (S) FOR INTERIM DIRECTIONS, PERMISSION TO FILE ADDITIONAL DOCUMENTS, DIRECTIONS, EXEMPTION FROM FILING O.T., EXEMPTION FROM FILING O.T., PERMISSION TO FILE ADDITIONAL AFFIDAVIT, IMPLEADMENT AND OFFICE REPORT)
(FOR FINAL DISPOSAL)

Date : 04/05/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Divya Jyoti Jaipurkar, Adv.
Ms. Madhur, Adv.
Mr. Shreeji Bhavsar, Adv.
Ms. Jyoti Mendiratta, Adv.

Mr. Prashant Bhushan, Adv.
Ms. Amiy Shukla, Adv.

Mr. Sanjay Parikh, Adv.
Mr. Ninni Susan Thomas, Adv.
Ms. Anitha Shenoy, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG
Ms. Hemantika Wahi, Adv.
Ms. Puja Singh, Adv.

Mr. K. Venkataramani, Sr. Adv.
Mr. B. Balaji, Adv.
Mr. Muthuvel Palani, Adv.

Mr. Awadhesh Kumar Singh, Adv.
Mr. K. L. Janjani, Adv.
Mr. S. A. Siddiqui, Adv.
Mr. Zaid Ali, Adv.
Mr. A. K. Singh, Adv.
Mr. W. A. Qadri, Adv.
Mr. D. S. Mahra, Adv.

Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Mr. Aditya Raina, Adv.

Mr. S. S. Shamsberry, AAG, Rajasthan
Mr. Amit Sharma, Adv.
Mr. Prateek Yadav, Adv.
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Ms. Ruchi Kohli, Adv.

Mr. V. G. Pragasam, Adv.
Mr. S. Prabu Ramasubramanian, Adv.

Mr. Suryanarayana Singh, AAG, H. P.
Ms. Pragati Neekhra, Adv.

Mr. T. L. V. Rama Chari, Adv.
Mr. K. V. L. Raghavn, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. P. V. Yogeswaran, Adv.

Ms. Manita Verma, Adv.
Mr. Amol Chitle, Adv.
Ms. Bhakti Pasricha, Adv.
Mr. D. S. Mahra, Adv.
Mr. G. S. Makhan, Adv.

Mr. Sunil Fernandes, Adv.
Mr. Puneeth K. G., Adv.

Mr. Devashish Bharuka, Adv.
Ms. Anu Tyagi, Adv.

Mr. A. P. Mayee, Adv.
Mr. A. Selvin Raja, Adv.

Mr. Vartika Sahay, Adv.
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Mr. Joydeep Mazumdar, Adv.
Mr. Parijat Sinha, Adv.
Ms. Reshmi Rea Sinha, Adv.

Mr. Yakesh Anand, Adv.
Mr. Sanjeev Anand, Adv.
Mr. Nimit Mathur, Adv.
Ms. Sonam Anand, Adv.

Mr. Guntur Prabhakar, Adv.
Mr. Parijat Sinha, Adv.

Mr. Gopal Singh, Adv.

Mr. G. N. Reddy, Adv.
Mr. Gopal Prasad, Adv.
Mr. V. G. Pragasam, Adv.
Mr. Milind Kumar, Adv.

Mr. T. Harish Kumar, Adv.
Mr. B. S. Banthia, Adv.

Mr. Rajiv Nanda, Adv.

Mr. Samir Ali Khan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Employees State Insurance Corporation (ESIC), having its Headquarter at New Delhi, is impleaded as party-respondent through its Director General.

This writ petition was filed in the year 2006, praying for a direction to the respondents to constitute a high level committee with the participation also of the NGOs to investigate the occurrence of the occupational disease namely, Silicosis and for evolving an action programme so as to alleviate the grievances of those workers who have died in between on account of the said disease.

It is seen that the National Human Rights Commission, pursuant to the directions of this Court dated 05.03.2009, had undertaken a detailed inquiry and had submitted a report on 12.11.2010. The relevant portion of the report reads as follows :-

"After hearing both the Chief Secretaries

of the State and other senior functionaries, the Commission is of the view that the State of Gujarat did not act in the manner in which it was expected to discharge their constitutional obligation of protecting the lives of workers, who died due to Silicosis.

It is important to note that the Supreme Court of India has given a wider meaning to life in which it was observed that a person is entitled to lead a dignified life free from any exploitation and in an environment, which is conducive to his health and well being.

The Supreme Court of India has also held that Right to Health, Medical Aid to protect the health and vigour of a worker under Article 21 is a fundamental human rights to make the life of workman meaningful and purposeful with a dignity of a person.

It was stressed upon the representatives of both the Governments that while considering the human rights of poor people and recommending compensation to the next of the kins of the deceased labourers, the Commission will have to adopt a liberal

interpretation. The strict principles of evidence as are applicable to criminal trials are not applicable in the case of human rights violations when the life of poor labourer is at stake and his health is in jeopardy. The State Enforcement Agencies should have taken appropriate measures to protect their human rights.

On the basis of the above, it is established that the tribals residing in Madhya Pradesh had gone to work in quartz/stone crushing factories situated in Godhra, Gujarat and after contracting the dreaded disease of Silicosis they returned back to their native plaes and later died.

It is also established that the State Enforcement Agencies of Gujarat have failed to adopt appropriate preventive measures, which could have saved the lives of the poor labourers.

Thus the State of Gujarat has failed to protect the life of workers, who died of Silicosis and next of the kins of the 238 persons, who died of Silicosis while working in stone crushing units in the State of Gujarat are entitled for compensation from the State Goverment of

Gujarat.

The Commission recommends that a sum of Rs. 3,00,000/- (Rupees Three Lakhs only) each be given to the next of the kins of the 238 deceased (mentioned in the list submitted by District Collectors, Jhabua and Alirajpur) by the State Government of Gujarat.

Out of above mentioned amount, it is also recommended that a sum of Rs. 1,00,000/- (Rupees One Lakh only) be given to the next of the kins of the deceased in cash and rest of the amount of Rs. 2,00,000/- (Rupees Two Lakhs only) be kept in fixed deposit, which will be available to the next of the kins of the deceased in the shape of monthly interest.

Chief Secretary, Government of Gujarat to submit Compliance Report alongwith proof of payment within eight weeks.

The Commission also recommends that 304 persons, who are suffering from Silicosis and are staying in the State of Madhya Pradesh be given a rehabilitation package by the State Government of Madhya Pradesh. The details of package awarded to each of the victims of Silicosis be communicated to

the Commission within eight weeks."

It appears that the report was not taken to its logical conclusion by either payment of money or deposit of the amount.

When the matter came up before us on the last occasion i.e. on 27.04.2016, we had requested Mr. Tushar Mehta, learned ASG, to look into the matter and assist the Court as to the way forward.

It appears that there is a dispute as to the liability also of the Employees State Insurance Corporation (ESIC). Today, we have impleaded the ESIC on the party array.

We do not find that the dispute with regard to the liability to pay should any longer stand in the way of the report of the National Human Rights Commission submitted as early as in November, 2010, being implemented, particularly in view of the fact that the said report was not challenged by the State of Gujarat. Therefore, in the interest of the kith and kins of those people who died on account of the disease and in the interest particularly of those orphan children of those deceased, we are of the view that the State of Gujarat should forthwith comply with the direction of the National Human Rights Commission in its report dated 12.11.2010.

Accordingly, we direct the State of Gujarat to pay an amount of Re. 1 Lakh (Rupees One Lakh) each to the kins of the 238 deceased, who have been identified by the NHRC, and also arrange to deposit an amount of Rs. 2 Lakhs (Rupees Two Lakhs) each in their names in Fixed Deposits, so that the monthly interest

accruing therefrom can be availed by the kins of the deceased.

The payment and deposit shall be made within a period of one month from today.

We make it clear that the above payment is subject to the settlement of disputes between the ESIC and the State of Gujarat and if it is found that the ESIC is liable to make the payment, the Corporation will be bound to compensate the payment made by the State of Gujarat in terms of this order, alongwith accrued interest.

The distribution will be made by the District Collectors of Jhabua and Alirajpur Districts of Madhya Pradesh. In order to facilitate the District Collectors to make the payment as above, the Chief Secretary of the State of Gujarat shall transfer Rs. 3 Lakhs (Rupees Three Lakhs) each in respect of the 238 deceased in favour of the District Collectors of Jhabua and Alirajpur (as per the list submitted by the District Collectors before NHRC).

It is made clear that this interim direction for payment and deposit is subject to further orders on liability to pay interest.

It is also made clear that in case there is any difficulty in identifying the persons referred to in the list by the District Collectors, it will be open to seek appropriate assistance from the ESIC.

There is also a direction in the order dated 12.11.2010 of the NHRC that the State of Madhya Pradesh should take appropriate steps for rehabilitation of 304 people who have been identified as affected by the disease Silicosis. We direct the

Chief Secretary to file an affidavit before this Court as to the steps already taken by the State of Madhya Pradesh for rehabilitation of those 304 people as early as in the year 2011. The affidavit shall be positively filed within one month from today.

We make it clear that what is to be stated in the affidavit is not the policy decision, but the action taken on the policy.

In our order dated 19.02.2016, we had issued a direction to the Central Pollution Control Board (CPCB) to file an affidavit as to the action taken on the suggestion in the report of the Committee on the Silicosis and Pneumoconiosis diseases due to the pollution from industries located in Godhara, Gujarat. Neither is there any appearance of the Central Pollution Control Board nor any affidavit has been filed on the report of the Committee. In that view of the matter, we direct the Chairman of the Central Pollution Control Board to be present before this Court on the next date of hearing.

Post the matter on 11.05.2016 at 10.30 AM (as first item).

(Jayant Kumar Arora)
Sr. P.A.

(Renu Diwan)
Court Master