

THE HIGH COURT OF TRIPURA
AGARTALA

MFA (W/C) 06 of 2011

1. Smt. Kanchana Chakma,
Wife of Late Sukramani Chakma.
2. Miss. Bababa Chakma,
D/O. Late Sukramani Chakma.
3. Shri Biswamani Chakma,
S/O. Late Sukramani Chakma.

All of the Appellants are residents of
Chakmaghat, P.S. Teliamura,
District – West Tripura.

..... *Appellants.*

- Vs. -

1. The State of Tripura,
Represented by the Secretary,
Revenue Department, Government of
Tripura, Agartala, West Tripura.
2. The District Magistrate & Collector,
Dhalai, Ambassa, P.S. Ambassa,
District – Dhalai Tripura.
3. The Block Development Officer,
Chowmanu R.D. Block, P.S. Chowmanu,
District – Dhalai Tripura.
4. The Panchayet Secretary,
North Longtarai Gram Panchayat,
P.S. Chowmanu, District – Dhalai Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Mr. Samarjit Bhattacharjee, Advocate.
For the respondent No.2.	: Mr. A. Pal, Advocate,
Date of hearing &	: 09.10.2015.

delivery of
Judgment & order.

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

The short question which arises for consideration this appeal is whether the provision of the Workmen's Compensation Act would apply to persons engaged under the National food for Work Programme.

2. I have perused the National food for Work Programme (NFFWP) and the Objective is contained in Clause 1.1 and 1.2 of the Scheme which reads as follows:-

"1.1 OBJECTIVE

To provide additional resources apart from the resources available under the Sampoorna Grameen Rozgar Yojana (SGRY) to 150 most backward districts of the country so that generation of supplementary wage employment and providing of food-security through creation of need based economic, social and community assets in these districts is further intensified."

"1.2 TARGET GROUP

The NFFWP will be open to all rural poor who are in need of wage employment and desire to do manual and unskilled work. The Programme will be self-targeting in nature."

3. Thereafter, a reference may be made to Chapter -III of the Scheme which relates to wages under the NFFWP. The said clause reads as follows:-

"3. WAGES UNDER THE PROGRAMME

3.1. The wages under the NFFWP shall normally be paid partly in foodgrains and partly in cash.

3.2, The wages to be paid under the NFFWP both for skilled and unskilled labour shall not be less than the minimum

wages fixed by the State Government under the relevant Statute for agricultural labourers as applicable to the rural areas.

3.3. Equal wages shall be paid under the programme to both men and women workers.

3.4. Payment of wages shall be made on a fixed day in a week preferably a day before the local market day.

3.5. In case the executing Agencies do not pay the wages for a category of employment at the rate notified for the relevant schedule of employment under the relevant Statute, the District Panchayat/intermediate Panchayat shall withhold further release of funds to that implementing agency and inform the fact to the concerned authority for suitable action against the erring official under the relevant Statute and also inform the Central Government.

3.6. Where the Central Government finds that the above provisions are not being followed, it may withhold further release of resources under the programme to the District concerned.”

4. Clause 3.1 clearly provides that wages under the Scheme can be paid partly in foodgrains and partly by way of cash. Therefore, there is an element of cash wages and an element of foodgrain in lieu of wages. It is also provided that the wages should not be less than the minimum wages fixed by the State Government at the relevant time.

5. In clause 2, provision has been made that wages should be paid by giving 5 kgs of foodgrains per man day subject to the condition that minimum of 25% of the wages must be paid in cash. Therefore, the Scheme itself clearly spells out a system of paying wages. The purpose of the Scheme as enumerated in Clause 1.1 is to provide 'Sampoorna Grameen Rozgar Yojana' i.e. complete employment in rural areas in the 150 most backward

districts of the country. The Target Group under Clause 1.2 is all the rural poor who are in need of wage employment and desire to do manual and unskilled work. The Scheme clearly mentions that the wages cannot be less than the minimum wages. Therefore, the Scheme envisages employment of persons on almost a regular basis in case they have no other sources of employment in the rural areas.

6. The learned Commissioner, Workmen's Compensation held that the Food for Work Scheme is a welfare scheme declared by the Government and does not come within the purview of employment. I am not in agreement with this finding of the learned Commissioner. The definition of workman in the Workmen's / Employees Compensation Act reads as follows:-

**"2.(n). "workman" means any person who is –
(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."**

7. It will be pertinent to mention that prior to the year 2000 the words "other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business" were part of the definition. These words have now been omitted. This clearly shows that the

intention of the legislature was that after the year 2000 even casual employees would fall within the meaning of the word Workman or Employee. Therefore, whether the employment was casual or regular is not material. The question is whether it was employment within the meaning of the Workmen's Compensation Act or not. The Scheme has been framed by the Central Government. The funds are provided by the Central Government but the implementing authority is the State. Therefore, when the State engages people under the National Food for Work Programme, it becomes the employer and the person granted work becomes a workman. The Scheme is under the control of the Collectors who are to engage the persons and manage the Schemes. The Panchayats and the Rural Development Department of the State Government are required to implementation of these Schemes. Thus, I am clearly of the view that the employment is of such nature which falls within the purview of the Workmen's Compensation Act.

8. The claimants alleged in the claim petition that the deceased Sukramani Chakma was engaged by the Panchayat Secretary of Langtarai Gram Panchayat under the Food for Work Scheme and while he was doing his work he was electrocuted in front of the house of Pabitra Das when he received an electric shock. Notice was sent to the respondents i.e. the State of Tripura, District Magistrate & Collector, Ambassa, BDO, Chowmanu R.D.

Block and the Panchayat Secretary of North Langtarai Gram Panchayat but none cared to appear before the Commissioner, Workmen's Compensation.

9. It is urged by Mr. A. Pal, learned counsel that there is no proof of the employment of the deceased under the Scheme. This is something which should have been raised before the Commissioner. One cannot lose sight of the fact that the purpose of the Scheme is to grant benefit to the poorest of the poor in the rural and the most backward districts of the country. The record with regard to the employment is maintained by the authorities of the State i.e. the Panchayat Secretary and the BDO etc. That record is in the custody of the State. Neither before the trial Court where the State was *ex parte* nor even before this Court the State has made any effort to produce that record which was in its custody to show that the deceased was not employed under the Food for Work Programme at the relevant time. It is also submitted by Mr. Pal, learned counsel that only the substantial question of law be decided and the factual aspects may not be decided in this appeal. This submission has been made only for the purpose of being rejected. It is totally devoid of any merit whatsoever. This Court has to do justice between the parties. This Court cannot send a poor workman to face the might of the State which has been so negligent that neither before the Commissioner nor before this Court, it has made any attempt to produce the

record to show that the deceased was not employed under the Food for Work Programme.

10. Normally, I would have remanded the case back for this purpose but when the State is a party and even at the High Court level the State does not make any effort to produce the records adverse inference will have to be drawn against the State that the deceased was employed under the Food for Work Programme.

11. Lastly, coming to the issue of wages. It is true that wages have not been strictly proved. However, the Scheme itself provides that the wages cannot be less than the minimum wages at the relevant time. The death took place on 03.07.2005. Judicial notice can be taken of the minimum wages prescribed by the State Government and accordingly, assess the compensation. The remaining wages at the relevant time was Rs.60/- per day or Rs.1,800/- per month. 50% of this wages have to be multiplied by the relevant factor and since the deceased was aged 28 years old, the relevant factor is 211.79. Therefore, the compensation works out to Rs.1,90,611/- (Rupees One lakh ninety thousand six hundred eleven). On this amount, the claimant is entitled to interest @12% per annum from the date of incident i.e. 03.07.2005 till payment of the amount.

12. The State is directed to deposit the amount in the Registry of this Court within 3(three) months from today.

13. Appeal is allowed in the aforesaid terms.

14. Send down the LCRs forthwith.

CHIEF JUSTICE

sima