

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.38923 Of 2020
(Through hybrid mode)**

State of Odisha and others* *Petitioners

Mr. A.K. Sharma, AGA

-versus-

Radhakanta Tripathy and another* *Opposite Parties

None

CORAM: JUSTICE ARINDAM SINHA

**ORDER
29.06.2022**

**Order
No.**

5.

1. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State, petitioners before Court. He submits, impugned is direction contained in communication bearing action date 17th February, 2020. He submits, the Commission exceeded its powers in directing Chief Secretary to Government of Odisha to pay compensation of Rs.1 lakh each to four deceased persons, who died of diarrhoea. He relies on sections 13 to 18 in Protection of Human Rights Act, 1993 to submit, apart from anything else, the Chief Secretary ought to have been given opportunity of hearing. Simply issuance of show cause notice and rejection of the reply resulted in the communication. He submits further, under

section 18 the Commission can only recommend but there has been direction to pay.

2. He draws attention to reply dated 30th October, 2019 to the show cause and submits, inquiry by State revealed, the villagers had dug well. There was also a stream. They drank water from the well and stream. Examination of water collected from the well and stream revealed presence of modified virulent strain of vibro cholera. Apart from taking all steps to provide medical assistance to the villagers, the administration conducted group meeting and told the villagers not to drink from the well and stream. Also, continuation of tank and pipe water supply was directed. In the circumstances, the administration could not have been directed to pay compensation.

3. In spite of issuance and service of notice upon opposite party no.1, who was complainant before the Commission, said opposite party goes unrepresented.

4. Keeping apart for the moment provision in section 18, it appears, reason given in support of direction for payment of compensation in impugned communication is as follows.

“Since there is admitted fact of death of persons due to diarrhea on account of negligence of the authority concerned, the State is vicariously

liable to compensation the NoK of the deceased.

Hence, the show cause notice is hereby confirmed.”

5. From documents disclosed in the writ petition and perusal of impugned communication, it does not appear the Commission itself launched an inquiry. There not having been inquiry, section 16 did not stand attracted as there was no question of the Commission considering it necessary to inquire into conduct of any person or form opinion that reputation of any person is likely to be prejudicially affected. Simply the Commission issued show cause notice by order dated 8th July, 2019 in the proceeding, commenced by it on complaint lodged by opposite party no.1.

6. In said reply dated 30th October, 2019, the administration apprised the Commission of inquiry made by it to reveal, the villagers had dug well and had been drinking water from it and a stream. Water sample revealed presence of modified virulent strain of Vibro Cholera. The administration also reported, inter alia, continuance of tank and pipe line water supply to the village. In absence of inquiry made by the Commission, this assertion of State cannot be disbelieved to effect that tank and pipe line water supply was existing, for it to be continued.

7. Section 18 provides for steps during and after inquiry. As aforesaid there was omission by the Commission to conduct inquiry and as such section 18 could not be invoked by it for any of the steps to be taken thereunder. Having said that, the provision only empowers the Commission to recommend.

8. For reasons aforesaid impugned communication is found to have been issued in excess of authority. It is set aside and quashed. Nevertheless, fact remains that four persons have died. State is to consider their existing policies on compensation, whether thereunder or ex-gratia has to be paid to the next of kin.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks