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Location: ORISSA HIGH COURT, CUTTACK
Date: 03-Oct-2024 19:03:05

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10604 of 2023

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Rina Rout **....** ***Petitioner(s)***

-versus-

State of Odisha and Others **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner(s) : *Mr. Surendra Nath Kar , Adv.*

For Opposite Party (s) : *Mr. Dhananjaya Mund, AGA*
Mr. Karunakar Jena, Adv.
for O.P.7

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-28.08.2024
DATE OF JUDGMENT:-24.09.2024

Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the Petitioner has approached this Court for the third time, seeking a specific direction to the Opposite Parties for releasing of the Capital Investment Subsidy, which has been unjustly withheld despite multiple representations and prior judicial orders.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The petitioner aimed to establish a commercial broiler project under a self-employment scheme provided by the State Agricultural Policy.

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(ii) The petitioner's project was selected, approved, and she was given the go-ahead to proceed. Upon nearing the completion of the project, the petitioner applied for the release of the Capital Investment Subsidy, which was part of the scheme.

(iii) A complaint was lodged against the project on the grounds of environmental pollution, leading to an inquiry by the appropriate authorities. The petitioner complied with the suggestions made by the Pollution Control Board and made subsequent requests for the release of the subsidy.

(iv) After repeated requests for the release of the subsidy were ignored, the petitioner approached this Court in W.P. (C) No. 7278 of 2016. The Court directed the concerned authorities to dispose of her representation, but the subsidy remained unreleased.

(v) Subsequently, the petitioner filed a second writ petition W.P. (C) No. 12908 of 2016, which was disposed of on 06.07.2018. This Court directed the petitioner to comply with the suggestions of the Pollution Control Board and resubmit her representation, after which the subsidy for 4000 birds was to be released within 15 days of compliance.

(vi) The petitioner complied with the suggestion from the Pollution Control Board and made a representation to the opposite parties on 10.07.2019 for the release of the subsidy.

(vii) The opposite parties, in response, informed the petitioner on 23.04.2019 that the release of the subsidy could not proceed because the model code of conduct for the general elections was in effect.

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(viii) The petitioner continued to engage with the authorities, including opposite party no. 4, for joint verification of the project. However, instead of releasing the subsidy, the opposite parties returned her proposal, effectively closing the opportunity for receiving the subsidy.

(ix) Aggrieved by the inaction of the opposite parties, the petitioner has approached this Court for the third time, seeking a direction to release the subsidy.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The petitioner submitted that despite completing all the necessary steps and complying with the Pollution Control Board's suggestions, the subsidy has still not been released, which is a violation of the scheme under the State Agricultural Policy.

(ii) He further submitted that the authorities have failed to comply with the previous orders to release the subsidy within 15 days of compliance.

(iii) The petitioner contended that the reason provided by the opposite parties, that the subsidy was delayed due to the model code of conduct during elections, as an inadequate and arbitrary excuse for not processing her legitimate claim.

(iv) He further contended that the actions of the opposite parties, including the decision to return her subsidy proposal without proper justification and deprived her of her legitimate claim of the subsidy.

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III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) It is submitted that the writ petition is not maintainable on both legal and factual grounds and should be dismissed at the outset. The petitioner's proposal was subjected to multiple verifications and meetings, with the final decision pending before the State Level Committee, which decided to return the proposal for further action at the district level.

(ii) It is contended that based on the procedural developments and the actions taken so far, the Opposite Parties assert that this Writ Petition lacks merit and should be dismissed.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard learned counsel for the parties and meticulously perused the records placed before this Court. At the very outset, it is apparent that the petitioner, in compliance with the directives of the Pollution Control Board, duly implemented the requisite suggestions in her project. Notwithstanding such compliance, the petitioner's project has been subjected to unwarranted and undue delays in the disbursement of the Capital Investment Subsidy, ostensibly due to procedural lapses and administrative bottlenecks.

6. It is well-established in law that procedural rules, while essential, should not overshadow substantive rights or hinder the delivery of justice. Procedure is meant to serve as a tool to facilitate justice, not as an instrument to obstruct or perpetuate injustice through oppressive or

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punitive way. Procedural law is intended to assist, not dominate; it is a servant to justice, not its master.

7. To this effect, the Supreme Court, in the case of ***Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors***[1] held that

> *"The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence - processual, as much as substantive."*

8. In the present case, the petitioner has approached this Court on multiple occasions. Notably, in W.P. (C) No.12908 of 2016, this Court had directed the opposite party to resolve the matter within 15 days, contingent upon the petitioner's compliance with the recommendations of the Pollution Control Board. The petitioner duly complied with those directives. Notwithstanding the petitioner's compliance, the opposite party failed to release the subsidy, citing various administrative delays as the reason for inaction

9. As a result of these administrative bottlenecks, the petitioner has been compelled to bear various costs, including the expenses incurred repeatedly in approaching this Court and the undue waiting time for the release of the subsidy. It appears that a broader trend of insincerity and dereliction of duty among public authorities has emerged in this case. Such negligence and failure to fulfil official responsibilities constitute serious misconduct. Consequently, higher authorities are

[1] AIR 2006 SUPREME COURT 396

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duty-bound to ensure that their officials discharge their duties with the utmost diligence and dedication. Any lapse or failure in this regard must be thoroughly investigated, and appropriate disciplinary actions should be promptly be initiated to address such misconduct.

10. To this effect, the Madras High Court in the case of ***Union of India v. Kommu Sumathi*** [2]held that *"In recent years, these public authorities are found to be frequently negligent and committing dereliction of duty in respect of dealing with such appeals and other cases. There is a general trend that the public authorities are having lack of sincerity and committing dereliction on duty. These negligence and dereliction of duty are serious misconducts and, therefore, the higher authorities are bound to ensure that the officials are performing their duties and responsibilities with utmost care and with devotion to duty."*

11. Accordingly, this Writ Petition is hereby allowed. The Opposite Parties are directed to disburse the subsidy amount to the Petitioner, along with interest at the rate of 10% per annum, to compensate for the loss sustained by the Petitioner as a result of the undue and inordinate delay attributable to the Opposite Parties.

12. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 24th Sept., 024/

[2]2021 SCC OnLine Mad 427