

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 21596 of 2024

Binarani Mandal
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Subhendu Banerjee, Adv. Mr. Atindriya Chakraborty, Adv. Ms. Aratrika Paul, Adv. Mr. Santanu Chakraborty, Adv.
For State	:-	Ms. Priyamvada Singh, Adv.
Hearing concluded on	:-	24.03.2025
Judgment on	:-	09.04.2025

Amrita Sinha, J.:-

1. The petitioner is a widow. Her husband died because of tiger attack. She prays for ex gratia grant in terms of the order of the Forest Department published vide memo 1/123199/2021 dated 26th February, 2021 regarding payment of ex gratia grant to the victims or legal heirs of the victims of depredation caused by wild animals.
2. Reliance has been placed on the order dated 4th October, 2023 passed by a Coordinate Bench of this Court in WPA No. 18598 of 2023 (**Santibala Naskar vs. State of West Bengal & Ors.**) and several other orders passed in similar facts and circumstances.

3. Learned advocate representing the State respondents opposes the prayer of the petitioner. Reliance has been placed on the instruction forwarded by the Deputy Field Director, Sundarban Tiger Reserve mentioning that the place of occurrence of the incident is a prohibited area for fishing, crab collection etc. None can enter the said place without permission. As the deceased entered into a prohibited area without permission, the claim of his legal heir for ex gratia grant cannot be allowed.

4. It has been argued that entry in the prohibited area is an offence. Activities like fishing, crab collection and honey collection are allowed in permitted area under the Sundarban Tiger Reserve; the deceased ought not to have entered the prohibited place. The Sajnekhali Wild Life Sanctuary under Sundarban Tiger Reserve is notified under the Wild Life Protection Act, 1972. The protected areas are very important for conservation of wild life.

5. The Hon'ble Supreme Court in the matter of ***Animal Welfare Board of India vs. A. Nagraja & Ors.*** reported in ***(2014) 7 SCC 547*** held that Article 51A (g) of the Constitution is the magna carta of animal right and Article 21 of the Constitution includes life in all forms including animal life. As the deceased committed an offence by entering into the prohibited area, the State ought not to be burdened with payment of ex gratia amount. Prayer has been made to reject the writ petition.

6. The order of the Forest department dated 26th February, 2021 relying on which the prayer for grant of ex gratia grant has been sought for is annexed to the writ petition. The same mentions that the sanction of payment of compensation for loss of life and property due to depredation by wild animals has been reviewed by the State Government. The Governor was pleased to accord sanction that ex gratia grant will be given to the victims or the legal heirs of the victims of depredation caused by wild animals in the scales as mentioned in the said order. For loss of life, the compensation has been fixed at rupees five lakh subject to certificate regarding cause of death from the appropriate authority.
7. In the instant case, admittedly, there is a certificate and a post mortem report which mentions that the cause of death is tiger attack. The instruction forwarded by the Deputy Field Director, Sundarban Tiger Reserve records that the police report mentioned tiger attack but no field inquiry was conducted and the exact location has not been ascertained. From the petition of the fishermen, it can be understood that the incident occurred in Pachmukhani- 4 forest compartment which lies in the Sundarban Tiger Reserve and the area is the Sajnekhali Wild Life Sanctuary which is a prohibited area for fishing.
8. Though the authority submits that the said area is a prohibited area but there is nothing on record to show that the prohibited area is either cordoned / fenced or demarcated so that the fishermen cannot enter the said place. Assuming that in the midst of the waterbody

fencing or netting cannot be made, but at least some indication ought to have been made to alert the fishermen that they are not permitted to enter the subject place.

9. The fishermen of the Sundarban area mostly belong to the below poverty line category and their only means of life and livelihood is either to catch fish or crab or collect honey. Till the authority puts in place a proper mechanism to prevent fishermen from entering the protected or the prohibited area, there are chances that the fishermen may unknowingly stray inside such area and may fall prey to tiger attack or similar such incidents.
10. It is the bounden duty of the competent authority to ensure that the protected/prohibited areas remain free from public encroachment or infringement. The authority on one hand is not vigilant enough to properly protect the prohibited areas and on the other if an accident occurs, the authority repudiates the claim on the ground that the offender ought not to have entered the prohibited zones.
11. More often than not, the fishermen of the areas are illiterate and unaware of the legal consequences of entering into the prohibited zones. Their fight for hunger compels them to enter into these zones to either catching fish or crab or collect honey. To prevent any fatal incident or accident in the said area, the authority ought to play a proactive role in creating awareness and also provide alternative means and mode of earning their livelihood.

12. Article 51A lays down that it is the fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes and rivers and wild life and to have compassion for living creatures. The order of the State Government does not specifically bar grant of compensation in the event the attack takes place within the prohibited area. The order is an open-ended one which only mentions about grant of compensation due to loss of life due to depredation of wild animals.
13. It goes without saying that prohibited areas are prohibited and protected from entry without permission but as there is no expressed bar for grant of compensation to victims of tiger attack inside a prohibited area, accordingly, the prayer of the legal heir of the deceased for grant of compensation ought not to be rejected. The coordinate Bench of the Court has, under similar circumstances, directed payment of compensation and the orders passed by the Court have been complied with.
14. The Hon'ble Supreme Court in the matter of A. Nagaraja & Ors. recognized the rights of the animals and held that it is the fundamental duty of every citizen to have compassion of living creatures which means concern for suffering, sympathy, kindness etc.
15. In the instant case, it appears that the victim expired in the year 2011, whereas, the application seeking compensation was made in the year 2024. Undoubtedly, there has been enormous unexplained delay

in filing the application seeking compensation. Surprisingly, immediately after filing the application for compensation, the writ petition has been filed. It may be that the petitioner was not aware of the subject scheme and after getting knowledge of it, made application for the grant. The writ petition has also been filed by taking assistance of the Calcutta High Court Legal Services Committee.

16. Though the Court, in usual course of events, could have dismissed the writ petition only on the ground of delay but keeping in view the wretched condition in which the people in the said area live and try to earn their livelihood for basic survival, the Court is minded to allow the prayer of the petitioner.
17. On the date of death, the rate of compensation was far less and the said rate stood revised in the year 2021 long after the death of the victim. As the rate of compensation on the date of death was abysmally low, the Court is inclined to allow compensation at the revised rate so that the petitioner may receive some financial assistance to tide over the financial crisis faced on account of death of her husband.
18. In view of the above, the instant writ petition is disposed of by directing the Conservator of Forests and Field Director being the respondent no. 2 herein to pay compensation to the heirs of the deceased Nirapada Mandal in accordance with the order passed by the Deputy Secretary, Government of West Bengal, Department of Forests

vide memo no. 1/123199/2021 dated 26th February, 2021 at the earliest but positively within a period of eight weeks from the date of communication of this order.

19. The writ petition stands disposed of.
20. No order as to costs.
21. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)