

WPC 15147 OF 2012 LINK

MIG LAS

Legal plea in line of SC plan

LALMOHAN PATNAIK

Cuttack, Oct. 4 2012: A PIL for legal aid service for the middle-income group people in the state has been filed in Orissa High Court.

In her petition, 49-year-old Jayanti Das, a resident of Cuttack city, has sought introduction of a legal aid scheme by the high court in line with the Supreme Court Middle-Income Group Legal Aid Scheme.

Though the scheme, formulated by the Supreme Court, has been in vogue since 1995, no such initiative is taken at the Orissa High Court level for litigants, who belong to the middle income group. Jayanti's counsel, Ashis Kumar Mishra, presented preliminary arguments when the petition came up for hearing yesterday.

Taking note of it, the division bench of Chief Justice V. Gopala Gowda and Justice B.K. Mishra accepted the petition for examination and order. The court, however, did not fix any date for passing the order.

The petition said the Supreme Court had introduced the scheme to provide legal aid services to the middle-age group persons, whose monthly income does not exceed Rs 60,000 or annual gross salary, Rs 7.5 lakh.

The scheme is available under the Supreme Court Middle-Income Group Legal Aid Society for the litigants to file or defend cases in the top court.

The state government had introduced the Odisha State Legal Aid and Advice Scheme. Accordingly, the Odisha Legal Aid and Advice Board (now the Odisha State Legal Services Authority) has been providing free legal services to the weaker sections of the community. While the Chief Justice of Orissa High Court is the society's patron-in-chief, the senior high court judge is the executive chairman.

But, there is no such legal aid or advice programme for persons belonging to the middle-income group, the PIL contended, seeking formation of the Orissa High Court Middle-Income Group Legal Aid Society in line with the top court.

According to the petition, middle-class people, who can't afford the expensive litigation in the Supreme Court, can avail of services of the Supreme Court Middle-Income Group Legal Aid

Society for not more than Rs 20,000. A sitting judge of the Supreme Court with the attorney general of India as its ex-officio vice-president heads the society.

The society consists of 30 senior advocates, apart from 100-odd lawyers. Even a senior advocate, if engaged by a client, can charge a maximum of Rs 9,000 for three days of hearing or the entire case. The amount would start from Rs 3,000 depending upon the stage of the petition.

Jayanti, a social activist, has also filed a PIL, seeking the court's intervention against liquor shops near temples, schools and other educational institutions in Cuttack city.

WP(C) 15147/2012 SMT.JAYANTI DAS M/S.ASISH K.MISHRA

G.MAJHI

(Endorsement of the **DR(J) V/S**

dt.28.8.12 may kindly be REGR.GEN,SUPREME CO

seen.)

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P. (C) (PIL) NO: _____/2012

CODE NO: 219900

In the matter of:

Smt. Jayanti Das

...Petitioner

-Versus-

The Register General, Supreme Court of India

& Ors

...Opposite Parties

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-

Cuttack

Counsel for the Petitioners

Date: 17.8.2012

(Sri Ashis Kumar Mishra)

Advocate

High Court of Orissa, Cuttack

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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P. (C) (PIL) NO **15147/2012**

CODE NO: 219900

In the matter of:

An application under Article 226 & 227 of the Constitution of India;

And

In the matter of:

An application of Public Interest Litigation;

And

In the matter of:

An application for a direction to the Opposite Parties to immediately formed a society under the Hon'ble High Court of Orissa as per the Supreme Court Middle Income Group Legal Aid Society to protect the Middle Class Income Group of Orissa to provide legal service to the middle income group citizens of Orissa whose gross income is not exceeding Rs 60,000/- p.m. or Rs 7,50,000/- ;

And

In the matter of:

Smt. Jayanti Das, aged about 49 yrs,

W/O Sri K.B.Das,

At: Chintamani Niwas, Mahamadia Bazar,

PO: Chandini Chowk, PS: Lalbag,

Dist: Cuttack

...Petitioner

-Versus-

1. The Register General,
Supreme Court of India,

New Delhi

2. The Secretary,
National Legal Service Authority (NALSA),

New Delhi

3. The Register General,
High Court of Orissa,

Cuttack

4. The Secretary,
Orissa State Legal Services Authority,

Cuttack

...Opposite Parties

The matter out of which this writ petition arises
was never before this Hon'ble Court in any form.

To

The Hon'ble Sri V. Gopala Gowda, B.Sc., LL.B.,

The Chief Justice of Orissa High Court and
His Companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above named;

MOST RESPECTFULLY SHEWETH:-

1. That the present petitioner is a social activist and she has taken the shelter of this Hon'ble Court in aggrieved to, that there is no such legal aid service authority in the State of Orissa or under the Hon'ble High Court of Orissa to protect the interest of the Middle Income Group citizens of Orissa as per the Supreme Court Middle Income Group Legal Aid Society which provide legal service to the middle income group citizens i.e. citizens whose gross income is not exceeding Rs. 60,000/-p.m. or Rs.7,50,000/- and for which the present petitioner has taken the shelter of this Hon'ble Court in the present petition in the interest of the people who belongs to the Middle Income Group.
2. That the constitution of India promotes equal justice to all its citizens and Article 14 of the Constitution of India provides that the State shall not deny to any person equality before Law or equal protection of laws within the territory of India and Article-38 further envisages that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order which justice, economic and political shall inform all institutions of national life and in spite of such constitutional promise the poor, illiterate, weaker section in our country suffer day in and out in their struggle for survival and they are unable to approach the appropriate courts of law on account of their poverty and ignorance of their legal rights even though they suffer injustice and in such situation they feel that equality and freedom are the rights which are to be enjoyed by the privileged and few and keeping in view the above scenario of the society the Law Commission of India in its 14th Report (1958) observed as follows:

“equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought must have an equal opportunity of access to the court and of presenting their cases to the court but the access to the courts is by law made dependent upon the payment of court fees and the assistance of skilled lawyers is in most cases necessary for the proper presentation of a party’s case in a court of law. In so far as a person unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fall in their purpose. Unless some provision is made for assisting the poor man to pay court-fee and lawyers fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.” All the above are being provided in the website of the Orissa State Legal Aid Service and a copy of the said is annexed with this petition as Annexure-1.

3. That in order to over come such situation and to provide access to justice for all the Parliament by its 42nd amendment incorporated Article 39-A in the Constitution which directed Government for providing equal justice and free Legal Aid to indigent persons who are unable to fight for justice by reason of economic and other disabilities.

“Article 39-A. Equal justice and free legal aid –The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities.” Accordingly the State Government established/introduced Orissa State Legal Aid and Advice Scheme under Orissa State Legal Aid and Advice Programme and constituted Orissa Legal Aid and Advice Board for providing free legal services to the weaker sections of the Community but beside the all there is no such legal aid or advice programme for the persons who are coming from the Middle Income group.

4. That keeping in mind the Hon'ble Supreme Court of India formulated a scheme for the Middle Income group persons as " the Supreme Court Middle Income Group Legal Aid Scheme" with an intended to provide legal services to the middle income citizen i.e. citizen whose gross maximum income per month does not exceed Rs.20,000/- or Rs. 2,40,000/- per annum and in appropriate case even allow applicant having income up to Rs.25,000/- per month or Rs.3,00,000/- per annum. The scheme is self supporting and the initial capital of the Scheme shall be contributed by the First Executive Committee. A copy of the scheme is annexed with this petition as Annexure-2.
5. That the Scheme will not be applicable to cases mentioned below, falling under the jurisdiction of the Supreme Court:
 - (a) Reference under Section 130A of the Custom Act, 1962,
 - (b) Reference under Section 35 H of the Central and Excise and Salt Act,1944,(c) Reference under Section 82C of the Gold (Control) Act, 1968,(d) Reference under Section 7(2) of the M.R.T.P. Act, 1969,
 - (e) Reference under Section 25 J of the Income Tax Act, 1961,
 - (f) Reference under Art. 317(1) of the Constitution,
 - (g) Election under Part III of the President and Vice-President Act, 1952,(h) Election of Member of Parliament and Members of State Legislature under the Election Law,
 - (i) Appeal under Section 55 of the M.R.T.P. Act, 1969,
 - (j) Appeal under Clause (b) of Section 130 E of the Customs Act, 1962,(k) Appeal under Section 35 L of the Central Excise and Salt Act, 1944, (i) Review matters.
6. The litigant can approach the Middle Income Group Society in two situations viz. To file or defend a case in the Supreme Court, this would include:
 - i. Appeal / Special Leave Petitions, Civil or Criminal, against an order of the High Court,
 - ii. Writ Petition / Habeas Corpus,
 - iii. Petition for transferring a case, civil or criminal, pending in one State to another State within India, and
 - iv. Legal advice regarding proposed legal proceedings in Supreme Court.

7. That the Supreme Court Middle Income Group Society has a panel of Advocates including Advocate-on-Record under the Scheme. While drawing up the panel care is taken to include one Advocate, but not exceeding two, knowing Regional Language in the territory of India in which the work is conducted in the Court below. The panel Advocates shall given an undertaking in writing that they will abide by the terms and conditions of the Scheme upon assignment of a case under the Scheme. The Society will obtain a list of 3 names of Advocates in the order of preference from the panel maintained by the Committee. The applicant may indicate any 3 names both in relation to the Advocate-on-Record or the arguing counsel or the Senior Counsel as the case may be. The Committee would attempt to honour the choice indicated. The Committee would be at liberty to assign the matter to any Advocate-on-Record / arguing Counsel, Senior Advocate of the Panel. The final right to assign the papers of the applicant under the Scheme to any Advocate-on-Record or the arguing counsel or Senior Counsel will remain with the Supreme Court (Middle Income Group) Legal Aid Society.
8. That Interested litigant shall have to fill up the prescribed form and to approach The Secretary (Supreme Court Middle Income Group Legal Aid Society, 109- Lawyers Chambers, Post Office Wing, Supreme Court Compound, New Delhi-110001) of the Scheme by filing an application in the prescribed form along with the relevant documents. After receiving the application from applicant, legal aid society assign that papers to Advocate-on-Record to examine the matter and take effective steps only upon being satisfied that it is a fit case to be proceeded with. The view expressed by the learned Advocate-on-Record will be final in so far as the eligibility of the applicant for obtaining the benefit of the Scheme is concerned. Upon such an endorsement being made either upon the case papers or in any accompanying letter, the Supreme Court Middle Income Group Legal Aid Society shall return the papers forthwith to the applicant and deduct a sum of Rs.350/- only towards service charges.
9. That the applicant shall have to deposit the fee indicated by Secretary, which will be in accordance with the schedule attached to the Scheme. It is only upon payment of the said amount that the Secretary will register the case as a case under the MIG Legal Aid

Scheme and proceed to forward the papers to the Advocate-on-Record/Arguing Counsel/ Senior Counsel on the panel, for opinion. The amount indicated by the Secretary on the basis of the estimate details shall be deposited by the applicant in cash or in the mode of Bank Draft. The initial expenses for printing of forms and other office expenses would be borne by initial corpus of the Scheme.

10. That the applicants are required to submit the applications forms to the MIG Society along with full documentations. For instance, if he / she seeks to file an appeal against the order of the High Court, he/ she is required to submit a certified copy of the order of the High Court, Petition copy filed by him/her in the High Court, copies of the Lower Court judgments/order and other relevant documents. If these are in a language other than English, translated copies in English should be submitted. That required fee and expenses as per schedule as assessed by the Secretary.
11. That The Scheme is known as "SUPREME COURT MIDDLE INCOME GROUP LEGAL AID SCHEME". The scheme is self supporting and the initial capital of the Scheme shall be contributed by the first Executive Committee. The schedule of fee and expenses as appended to the Scheme shall be in force and is liable to be amended by the Society from time to time.
12. That THE OFFICE BEARERS OF THE SCHEME - Under the Rules and Regulations of the Society, the Chief Justice of India shall nominate a sitting judge of the Supreme Court to be the President and the Attorney General of India shall be the Ex-Officio Vice President of the Society. Nine Members of the Executive Committee including the Secretary and the Treasurer shall be the members of the Executive Committee for a period of three years. On expiry of the said period, or at any time earlier as thought fit by the Hon'ble Chief Justice of India can re-constitute the Executive Committee in consultation with the Hon'ble President. The Hon'ble Chief Justice of India in consultation with the President of the Society can nominate the Secretary and the Treasurer of the Society from amongst the members of the Executive Committee. The office bearers of the Scheme shall meet at least once in two months or earlier if so deemed / expedient and necessary.

13. The Scheme will be applicable for case intended to be filed in Supreme Court. The rates of fee payable to an Advocate or to a Senior Advocate (if engaged at the request of the litigant) will be such as indicated in the Schedule appended to this Scheme as applicable from time to time. There will be a panel of Advocates including Advocate-on-Record under the Scheme. While drawing up the panel care be taken to include one Advocate, but not exceeding two, knowing Regional Language in the territory of India in which the work is conducted in the Court below. The panel Advocates shall given an undertaking in writing that they will abide by the terms and conditions of the Scheme upon assignment of a case under the Scheme. Every person who desires to avail of the services of an Advocate empanelled under the Scheme will have to approach the Secretary of the Scheme by filing an application in the prescribed form annexed hereto along with the relevant documents. The applicant may indicate any 3 names both in relation to the Advocate-on-Record or the arguing Counsel or the Senior Counsel as the case may be in the order of preference from out of the panel maintained by Society. The Society would attempt to honour the choice indicated. However, the final right to assign the papers of the applicant under the Scheme to any Advocate-on-Record or the arguing Counsel or Senior Counsel will remain with the Supreme Court Middle Income Group Legal Aid Society.
14. That any intending litigant desirous of availing the benefit of the Scheme shall have to fill up the form prescribed and accept all the terms and conditions contained therein. The proforma shall also contain a schedule of fee and expenses as application from time to time. A sum of Rs.500/- shall be payable to the Supreme Court Middle Income Group Legal Aid Society (SCMIGLAS) as service charges. The schedule shall indicate the fee payable for various items of work and shall also indicate the Court fees and the approximate expenses for preparation of the Court record. The applicant shall have to deposit the fee indicated by the Secretary, which will be in accordance with the schedule attached to the Scheme. It is the Secretary, who will register the case under the MIG Legal Aid Scheme and proceed to forward the papers to the Advocate-on-Record/Arguing Counsel/Senior Counsel on the panel for opinion.

15. That in relation to the approximate expenses for preparation of the Court record, the Secretary will upon a perusal of the papers determine as to what would be the approximate amount necessary for the purpose of such preparation of the Court record, and in accordance with the schedule indicate the same to the applicant. If, however, for any reason, the amount which is due to the learned Advocate-on-Record under the scheme exceeds the amount indicated by the Secretary then the applicant will be duty bound to make good the difference upon the Secretary certifying it to be so under the Scheme.
16. That the Executive Committee of the Scheme will open a S.B. Account with the UCO Bank, Supreme Court Compound in the name of "Supreme Court Middle Income Group Legal Aid Society". The account will be operated by any three members of the Executive Committee authorised by the Committee and the signature of any two members shall be sufficient to operate the account.
17. That on the assigning of a case to an Advocate under the Scheme the intending litigant will be directed to deposit with the Society the fee and expenses as per schedule as assessed by the Secretary. The payment to the Advocate or the service charges payable to the Scheme as stated in the schedule shall be in cash or bank draft. The Advocate-on-Record shall submit his bill on the basis of the amounts prescribed in the schedule with regard to printing, Court fee and his appearance fee along with a copy of the filing memo in token of a proof of filing the Petition / Appeal for which the claim is made. The Advocate will inform the Society about the admission of any matter so that the client can be requested to pay the fee for processing the Appeal, without which information it will not be possible for the Committee to recover the amount from the client and pay to the Advocate on hearing of the case. The fee to the Advocate in regular matter shall be made on receipt of a bill from the Advocate at the time of the conclusion of the final hearing of the matter.
18. That once the case is assigned to an Advocate it is the responsibility of the Advocate to deal with the matter as he/she deems fit in the interest of the client and the Advocate is required to communicate directly with the litigant and the Society will not monitor

assignment and final disposal of the matter. However, the Society will intercede upon the receipt of a complaint in writing. That after a complaint is received by the Society from the litigant and/ or the concerned Advocate against the litigant / Advocate then the Committee after enquiry may take such action as is deemed fit and necessary. That if the Advocate who is appointed under the Scheme is found negligent in the conduct of the case entrusted to him, then he will be required to return the brief together with the fee which may have been received by him from the applicant under the Scheme. Further, the Society would not be responsible for the negligent conduct of the case but the entire responsibility will that be of the Advocate vis-a-vis the client. The name of the Advocate would however, be struck off from the panel prepared under the Scheme.

19. That all sums received under the scheme including grants in aid will be accounted for by a person to be nominated in that behalf and duty audited. The amount so received under the Scheme will be used to defray all the expenses including the salaries and all expenses duly approved by the Executive Committee. A Contingent Fund of the Scheme will be created to meet the miscellaneous expenditure in connection with the case under the Scheme by requiring the applicant under the Scheme to deposit upto the stage of admission, a sum of Rs.750/- in addition to the charges required to be deposited with the Society, out of this contingent fund, the fee of the auditor for auditing the account, printing of forms of application, vakalatnama, affidavit of facts, binding of registers for maintaining account etc., shall be made. Thus at the time of handling over the case papers, the applicant will have to make payment of the estimated fee, expenses that are indicated by the Secretary as well as a sum of Rs.750/-.
20. That the amount indicated by the Secretary on the basis of the estimate details shall be deposited by the applicant in cash or by way of a Bank Draft. In the event of the learned Advocate taking the view that the case is not fit one for an appeal to the Supreme Court, then the entire amount after deduction Rs.750/- towards minimum service charges of the Committee shall be refunded to the applicant by way of cheque. The initial expenses for printing of forms and other office expenses would be borne by initial corpus of the

Scheme. The pattern of payment of fee to the Advocates under the Scheme will be same as per the schedule as applicable from time to time.

21. That the present petition has been filed on the following amongst other rounds:

GROUNDS

22. That as there is such a beautiful and appreciating scheme has been formulated in the apex court to give legal aid to the persons who are coming from the background of Middle Class Income Group, there is no such legal aid authority has been set up in the High Court level for which the litigant who are coming from such background are being harassed and suffer and theirs basic fundamental rights and theirs Constitutional rights are being violated.
23. That after the Independence of sixty six years the provision of Indian constitutions has not been implemented properly for which the persons who are coming behind the Middle Class Income Group are being ignored so far the free legal aid is concerned and for which they are being exploited.
24. That Part IV of the Indian Constitution is having the Directive Principle of State Policy and under the said Part in Article 39-A it has mentioned as "Equal Justice and Free legal aid" but a particular section of the society are being sideline from the said and for whom it is most essential to provide free legal aid to protect their constitutional rights.
25. That when the Hon'ble Apex court has formulated a scheme for the Middle Class Income Group to provide legal aid in the same respect the Hon'ble High Courts should implemented such scheme but in the present case neither the Apex Court nor the High Courts has done so in the High court level to protect the Middle Class Income Group by forming such a society.
26. That for the which the present petitioner without getting any other way has taken the shelter of the Hon'ble Court and most respectfully prays that this Hon'ble Court may be pleased to pass the following orders:

PRAYER

That by considering the above facts and circumstances it is therefore prayed that this Hon'ble Court may be graciously pleased to:-

1. direct the Opposite Parties to register a Society within a stipulated period of time as per the Supreme Court Middle Income Group Legal Aid Society in the High Court of Orissa as High Court of Orissa Middle Income Group Legal Aid Society to protect the Middle Income Group
2. pass any other order(s)/direction(s) as would be deemed fit and proper in the facts and circumstances of the case;

And for which act of kindness, the petitioner as in duty bound shall ever pray.

Cuttack

By the petitioners through

Date:17.8.2012

Advocate

AFFIDAVIT

I, Smt. Jayanti Das, aged about 49 yrs, W/O Sri K.B.Das, At: Chintamani Niwas, Mahamadia Bazar, PO: Chandini Chowk, PS: Lalbag, Dist: Cuttack do hereby solemnly affirm and state as follows:-

1. That I am the petitioner in this writ petition.
2. That the facts stated in this petition are true to the best of my knowledge and belief.

Identified by

Advocate

DEPONENT

CERTIFICATE

That due to non-availability of cartridge papers thick white paper has been used.

Advocate