

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
(PUBLIC INTEREST LITIGATION PETITION)
CRIMINAL MISCELLANEOUS PETITION – OF 2008
IN
WRIT PETITION (CRIMINAL) NO. 119 OF 2007

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

KARTAM JOGA and Ors.

...PETITIONERS

VERSUS

STATE OF CHHATTISGARH

...RESPONDENTS

UNION OF INDIA

Application for Ad-Interim Directions for the Constitution of an Independent enquiry committee into human rights violations by Salwa Judum and conditions in the camps and refugee settlements

The petitioners/applicants respectfully state as under

1. Two writ petitions namely, Nandini Sundar and others vs. State of Chhattisgarh (WP (Civil) No. 250 of 2007) and Kartam Joga vs State of Chhattisgarh and others (WP (Cr) No. 119 OF 2007) are pending before this Court seeking redressal against a vigilante group called Salwa Judum which is sponsored, armed, and abetted by the State of Chhattisgarh. The contents of the main writ petition may please be read as part of this application. The local tribal population, dependent for the most part on subsistence agriculture, is being subject to the gravest human rights violations by this vigilante group, Salwa Judum. The State of Chhattisgarh has justified this on the ground that this operation is essential to combat Naxalite insurgency. As a matter of fact Naxalite insurgency has grown following the vigilante group spawned by the state. As a result, the local tribal population that even otherwise had a very fragile existence, has been forced out of its traditional land and livelihood and into camps run by the Salwa Judum, or have been forced to flee into the forests and

neighbouring states, particularly Andhra Pradesh, where they live a precarious life. Caught between the insurgency of the Naxalites and the counter insurgency of the State are the innocent, poor tribals who wish to be part of neither. The State of Chhattisgarh admits support to Salwa Judum but simultaneously claims that the same is a spontaneous movement.

2. It is the case of the petitioners that to render effective justice in the matter raised by the aforesaid two Writ Petitions, it would be proper and useful for this court to have an interim, factual assessment of the nature and extent of human rights violations in the wake of the Salwa Judum. Starting with the Bandhua Mukti Morcha case, this Hon'ble Court has appointed Commissioners and Commissions to act as its eyes and ears in Court. This practice has been followed, among others, in the Punjab Mass Cremations case and the Agra Mental Asylum case.
3. The grievances of the petitioners have already been set out with full details in WP 119, particularly names and dates, including the names of villages [pg. 42-52], enforced migration [pg 59], killing of 537 people [pg. 24-40], arson to property [pg. 42-52], outraging of women [pg. 26, 41], and above all, enforced internment of the villagers in camps. There are as many as 47238 persons interned in about 20 camps (pg. D). As many as 105 affidavits detailing extreme violence and suffering faced by the villagers have been annexed to the petition (pg 56-61, Volumes I and II).
4. Independent statutory/governmental bodies have already given reports pointing to the 'enormous tragedy' visited on the adivasis, including killings, rape, arson, loot, their forced internment in camps, refugee migration to neighbouring states, as well as the policy of arming civilians, particularly minors, and called for an independent investigation: The report dated 24.01.2008 of the National Commission for Protection of Child Rights (NCPCR), (Annexure P/14 at page 107) and the report dated 21 December 2006 of the National Commission for Women (NCW) (Annexure P/7 at page 239 in WP 250 of 2007). In addition, the Second Administrative Reforms Commission set up by the Central government headed by Shri Veerappa Moily has also criticized the policy of Salwa

Judum as amounting to a delegation of powers to an extra-constitutional authority (Annexure P/27 at page 234).

5. There have also been further objective views including the statement by Mr. Jairam Ramesh, Union Minister of State for Commerce, that tribals are caught between the Salwa Judum and Maoists and are paying the price, and that Salwa Judum should be reviewed (pg. 97), and the statement of the Union Minister of Tribal Affairs, P. R. Kydiah, that tribals should not be armed to fight tribals and Salwa Judum should be ended (pg. 99).

It is thus evident that concerns have been expressed at the highest and most responsible levels over the spawning of this vigilante group and that three statutory/governmental organisations have found widespread crime and violation of fundamental rights and all have called for remedial action. Despite this, neither the State of Chhattisgarh nor the Union of India have done anything to remedy this situation. The state of Chhattisgarh continues to justify this movement which fact has also caused concern to the three institutions referred to above as expressed in their various reports.

6. It would be in the interest of justice that the State be directed to take immediate action to restore those held in camps to their lands, and assist them as well as returning refugees from Andhra Pradesh with seeds, cattle, and other essentials necessary to restart agriculture, in time for the current sowing season.
7. It is also imperative that an independent agency be directed to prosecute members of the Salwa Judum for their acts of gross violence as it is clear that the State of Chhattisgarh cannot be expected to act fairly and impartially in this matter.
8. But before measures of reparation are fashioned by this court, in order to render effective justice, it is essential to order an impartial and time bound illustrative enquiry by persons of eminence and unimpeachable

integrity to assist the court with the facts of the situation. The enquiry must focus on:

1. A documentation of the violation of rights of the tribals, including killings, rape, arson and loot, based on
 - a.) Visits to 2-3 selected locations in Andhra Pradesh, e.g. Cherla in Khammam district where public hearings can be held and testimonies received,
 - b.) Visits to sample villages in Dantewada district of Chhattisgarh which have suffered killings, rape, arson and loot. A list of villages which have given testimonies regarding killings, rape, arson and loot has already been annexed as Annexure P/4 Colly, but are annexed hereto for the Court's convenience as **Annexure P-1.**
 - c.) Visits to sample camps in Dantewada district, with a concentration of civilians. A list of camps has already been annexed in Annexure P15 of WP 250 of 2007 at page 279 but is being annexed here for the Court's convenience as **Annexure P-2.**
2. The circumstances in which, and the means by which, people have been displaced from their homes and forced into camps
3. The conditions in the camps, including a.) availability of food, b.) sanitary and health conditions, c.) employment, d.) the residents right to move freely, e.) charges of sexual exploitation of women, including SPOs, f.) education of children, g.) the long term policy regarding residence in camps, and the lands which have been left behind in villages, e.) the number of those wishing to return to their villages.
4. The circumstances in which and the means by which people have been displaced from their homes and forced to flee from Chhattisgarh to Andhra Pradesh, based on hearings and testimonies in selected locations in Andhra Pradesh.
5. The condition in the refugee settlements of Andhra Pradesh, including a.) availability of food, b.) employment, c.) the number of those wishing to return to their villages, d.) their rehabilitation

requirements, such as houses, livestock, seeds, basic household items.

6. The condition of residents in villages which have been affected by Salwa Judum, including availability of a.) food, b.) schools, c.) anganwadi, d) health workers, e.) access to markets, f.) rehabilitation needs such as houses, livestock, seeds, basic household items, g.) threat perceptions from the Naxalites and Salwa Judum, and their security needs.
 7. A methodology of identifying the perpetrators to bring them to justice.
 8. The method and extent of the arming of civilians by the state, such as the number of guns and licenses distributed since 2005.
9. The petitioners pray that the following names be considered as part of an Independent Commission reporting to the Court. The Commission, which may consist of two-three persons, should include at least one woman to investigate cases of rape and sexual violence:
- A. Justice (rtd.) B.N. Srikrishna (former Judge, Supreme Court of India) or
Justice K. Ramaswamy (former Judge, Supreme Court of India) or
Justice (rtd) H. Suresh (former Judge, Bombay High Court)
- AND/OR
- B. Mr. J.M. Lyngdoh, (former Chief Election Commissioner) or
Mr. Nitin Desai (former Under-Secretary General, UN; former Chief Economic Advisor, GOI) or
Mr. D. Bandopadhyay (Chairperson, Planning Commission Expert Group on Development Issues to deal with Discontent, Unrest and Extremism)
- AND
- C. Dr. Syeeda Hamid (Member, Planning Commission) or
Dr. Meenakshi Gopinath (Member, National Security Advisory Board)
10. It is also prayed that this Hon'ble Court may issue suitable directions to enable the Independent Commission appointed by it to elicit truthful and

voluntary statements, since the villagers are overawed by the Salwa Judum, Government and Naxalites, particularly in the camps, which are controlled by Salwa Judum. The Commission should also be enabled to visit the villages of its choice freely, without obstacles by any agency, and get such information, as necessary, from the Government.

11. On the last date of hearing i.e. 31-3-08 the petitioners had obtained this Hon'ble court's permission to file such an application for an independent inquiry as the present one.

Prayer:

It is therefore prayed that this Hon'ble Court may, as an interim measure, pending an early final hearing,:

- i) appoint an illustrative fact-finding Commission of independent persons to enquire into the circumstances of displacement, conditions in the camps, and the other violations of rights by the Salwa Judum in the state of Chhattisgarh;
- ii) be pleased to give all such directions as are required to empower such a Commission to conduct its enquiry in a free and fair manner and to enable the local population to depose fearlessly before it.
- iii) direct rehabilitation of people in camps and refugees elsewhere at the earliest
- iv) direct prosecution of the guilty by an independent prosecuting agency;
- v) and pass such other orders as thought fit.