

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-03-2015

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Writ Petition No. 1901 of 2014

V. Baby

.. Petitioner

Versus

1. The State Commissioner for Disabilities
A-15/1, Model School Road
Thousand Lights, Chennai - 600 006

2. The District Collector
Nagapattinam District
Nagapattinam

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to order No.Na.Ka.26382/2005/J.1, dated 23.06.2005 passed by the second respondent and Order No.1/2012 in File No.3690/DAW II-2/2007 dated 18.07.2013 passed by the first respondent and quash the same and consequently direct the respondents to grant Tsunami compensation as per G.O. Ms. No.574 dated 28.12.2004 by payment of Rs.1,00,000/- (Rupees One Lakh Only) together with interest at 12% per annum on the said sum from 29.12.2014 to the date of payment and all other consequential benefits.

For Petitioner : M/s. Giridhar and Sai

For Respondents : Ms. P. Rajalakshmi
Government Advocate

ORDER

Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents. By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner has come forward with this writ petition seeking to quash the order dated 23.06.2005 passed by the second respondent and also the Order dated 18.07.2013 passed by the first respondent and consequently direct the second respondent to grant Tsunami compensation to her as per G.O. Ms. No.574 dated 28.12.2014 to the tune of Rs.1,00,000/- (Rupees One Lakh Only) together with interest at 12% per annum on the said sum from 29.12.2004 to the date of payment together with other consequential benefits.

3. The petitioner is the wife of Late. Velan Shamban. The petitioner is an uneducated person and residing at Vadamalai Kizhaku, Manakadu Post, Vetharanyam Taluk, Nagapattinam District. According to the petitioner, her husband was a handicapped person and had suffered 55% of permanent physical impairment inasmuch as his leg was amputated below his knee due to the injuries sustained by him in an accident and he was wearing an artificial limb. The petitioner claims that her husband used to purchase fish at Kodaikhari Seashore, Nagapattinam, sell them in retail by travelling in his bi-cycle by which he earned Rs.2,000/- per month. According to the petitioner, her husband was the sole bread-winner of her family consisting of the petitioner, her husband and two minor children.

4. According to the petitioner, on 26.12.2014, her husband had gone to the sea shore to purchase fish and at that time the Tsunami waves struck the coastal area due to which her husband was thrown into the sea. In the impact, the petitioner's husband claimed to have consumed mud mixed with sea water. It is also claimed that both his lungs were damaged and he developed severe respiratory problems and primary neurogenic shock. Immediately, the petitioner's husband was taken to a private hospital at Thiruthuraipoondi in an unconscious stage. As the petitioner was unable to pay the medical bills, her husband was shifted from the private hospital to Government General Hospital, Thiruthuraipoondi on 31.12.2014. As the petitioner's husband required intensive treatment and such facilities were not available at Government Hospital, Thiruthuraipoondi, he was shifted to Government Head Quarters Hospital, Thanjavur. During transit to Government Hospital, Thanjavur, at about 06.30 pm, the petitioner's husband died due to the natural calamity on 26.12.2014 and a death certificate dated 31.12.2014 was issued by the Senior Civil Surgeon Medical Officer, Government Hospital, Thiruthuraipoondi.

5. With these facts, the petitioner submitted a representation to the second respondent seeking to grant Tsunami Relief Package of Rs.1 lakhs to her on the death of her husband in terms of G.O. Ms. No.574 dated 28.12.2004. The second respondent, by an order dated 27.06.2005 rejected the request of the petitioner by passing a five line order by stating that on enquiry, it came to light that the petitioner's husband was a handicapped person provided with an artificial limb and therefore, there is no possibility for him to venture into sea to purchase or sell fish. The petitioner was totally shocked by the manner in which such order of rejection dated 27.06.2005 was passed by the second respondent. Therefore, she invoked the jurisdiction of the first respondent by filing a complaint as contemplated under Section 62 (b) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (hereinafter called as 'The Act'). The said complaint was taken on file by the first respondent as Case No. 2999 of 2007. As the complaint was pending for a long time without being disposed, the petitioner approached this Court by filing WP No. 7153 of 2012 praying for a Writ of Mandamus directing the first respondent to pass orders on the representation dated 07.02.2011

sent by her counsel and issue a copy of the order passed in Case No. 2999 of 2007. By order dated 06.09.2012, this Court directed the first respondent herein to hear the petitioner, consider the claim made by her and pass necessary orders bearing in mind the G.O. Ms. No.574 dated 28.12.2004 within a period of eight weeks. Since the first respondent did not comply with the direction issued by this Court in the order dated 06.09.2012 in WP No. 7153 of 2012, the petitioner filed Contempt Petition No. 1357 of 2013. In the contempt petition, notice was issued to the first respondent for the hearing on 19.07.2013. One day prior to the date of hearing of the Contempt Petition No. 1357 of 2013, the first respondent passed the order dated 18.07.2013 dismissing the complaint given by the petitioner. Therefore, when the contempt petition was listed for hearing on 19.07.2013, the learned Special Government Pleader produced a copy of the order dated 18.07.2013 passed by the first respondent. In view of the same, the contempt petition was closed on 19.07.2013 with liberty to the petitioner to challenge the order dated 18.07.2013 passed by the first respondent in a separate proceeding. This is how the petitioner is before this Court with this writ petition challenging the order dated 23.06.2005 passed by the second respondent and 18.07.2013 passed by the first respondent.

6. On perusal of the impugned proceedings, it is clear that the impugned order dated 18.07.2013 passed by the first respondent is in total violation of the order dated 06.09.2012 made in WP No. 7153 of 2012. By the said order dated 06.09.2012, in WP No. 7153 of 2012, this Court directed the first respondent to consider the claim of the petitioner, afford an opportunity of hearing to her and then pass orders on merits and in accordance with law in the light of G.O. Ms No.574, Revenue Department dated 28.12.2004. Admittedly, the petitioner was not heard by the first respondent before passing the impugned order dated 18.07.2013. Therefore, the impugned order dated 18.07.2013 passed by the first respondent is in violation of the directions issued by this Court on 06.09.2012 in WP No. 7153 of 2012.

7. The other limb of direction issued by this Court in the order dated 06.09.2012 in WP No. 7153 of 2012 is that the first respondent shall pass orders in the light of G.O. Ms. No.574, Revenue Department dated 28.12.2004. In Clause 6 of the said Government Order dated 28.12.2004, the District Collectors of the respective Districts were requested to identify the legal heirs of the deceased persons and disburse the amount in the form of an account payee cheque or a post office savings bank account after obtaining the appropriate stamped receipt from the beneficiaries. The District Collectors were also requested to prepare a list containing the names of persons dead family-wise and the legal heirs to whom the above relief amount is payable with details of address and to send the same to the Finance Department along with the stamped receipt for the amount disbursed duly attested by an officer not below the rank of Tahsildar. The object of issuing the said G.O. Ms. No.574 dated 28.12.2004 by the Government is to grant some financial assistance in the form of a solatium to those who have lost their family members in the Tsunami disaster. The amount

ordered to be paid under the said G.O. Ms. No.574 dated 28.12.2014 is Rs.1,00,000/- to the legal heirs of the deceased. Admittedly, the sum of Rs.1,00,000/- cannot be construed as a compensation for the life of any person, including the life of the husband of the petitioner. Such amount was ordered to be paid as a solatium to the family members who have lost their bread winner or a family member. Therefore, what was provided in the Government Order is only a relief under the Chief Minister's Public Fund and it was not a compensation paid by the Government. Thus, the object of the policy decision taken by the Government in disbursing solatium is to rehabilitate the family of the deceased who have lost their lives in the Tsunami waves to some extent with financial succor. For the purpose of disbursement of such amount, the District Collectors of the respective Districts were entrusted with the task of conducting an enquiry to ascertain as to who are the legal heirs of the deceased victims in the Tsunami disaster and to whom the claim amount can be paid.

8. As noted above, in the present case, the second respondent, without regard to the guidelines issued by the Government in G.O. Ms. No.574 dated 28.12.2004, simply rejected the claim made by the petitioner on the ground that her husband was a physically handicapped person with an artificial limb and there was no possibility for him to venture into the sea shore to either sell or purchase fish. Such a finding rendered by the second respondent is absolutely perverse. In fact, after coming into force of The Act, there could not be any discrimination in the matter of employment between a normal person and a physically challenged person merely on the ground that the person was suffering from disability. The specific case of the petitioner is that her husband was moving around in bi-cycle and engaged in purchase and/or selling fish and when he went to the sea shore on 26.12.2014, he was struck by Tsunami waves and it resulted in his death. When such being the case, the the second respondent ought to have conducted appropriate enquiry to ascertain the validity of the claim made by the petitioner instead of rejecting it on the ground that there is no possibility for the husband of the petitioner to have engaged in any business.

9. A perusal of the order passed by the first respondent gives an impression that the first respondent is aggrieved by the action of the petitioner in filing the Contempt Petition before this Court. In order to avoid such contempt proceedings, one day prior to the listing of the Contempt Petition before this Court, the first respondent appears to have passed the order dated 18.07.2013. In the order dated 18.07.2013, the first respondent travelled beyond the scope of the order passed by the Government and made a rowing enquiry in to the matter behind the back of the petitioner without furnishing any material to her. The first respondent also gone to the extent of disbelieving the death certificate issued by the Senior Civil Surgeon Medical Officer, Government Hospital, Thiruthuraipoondi over which first respondent has no jurisdiction. The death certificate issued by the Senior Civil Surgeon Medical Officer, Government Hospital, Thiruthuraipoondi certifying the death

of the petitioner's husband shows that he suffered from primary neurogenic shock due to the Tsunami disaster. Such death certificate issued by the competent person can be presumed to have been validly issued unless and until it is proved to be false by cogent material evidence. Therefore, this Court is of the view that the first respondent has committed a serious error in disbelieving the death certificate issued to the petitioner's husband while rejecting her complaint.

10. It is true that there was another death certificate produced to certify the death of the petitioner's husband wherein it is stated that the petitioner's husband consumed mud mixed with sea water. Of course, such certificate issued can at best be treated as a supportive document to certify the death of the petitioner's husband. At any rate, the first death certificate produced by the petitioner clearly discloses that due to the ailment suffered by the petitioner's husband in the Tsunami waves, the petitioner's husband died. These documents are sufficient proof to enable the petitioner to receive the relief package which was in the nature of solatium ordered to be disbursed from the Honourable Chief Minister's Relief Fund. Therefore, the manner in which the first respondent proceeded to deal with the claim of the petitioner and rejected her claim is wholly arbitrary and unreasonable.

11. The petitioner has filed the complaint under Section 62 (b) of The Act before the first respondent seeking to direct the second respondent to disburse the Tsunami relief package. As per the provisions of the Act, the first respondent is empowered to exercise his powers either suo motu or on the basis of an application filed by a victim and to look into the complaint to conclude as to whether the non-implementation of any of the matters concerning the persons with disability warrants interference or not. In the present case, having regard to the nature of the complaint given by the petitioner, the first respondent ought to have taken a pragmatic approach to the matter to examine as to whether the reasons given by second respondent to reject the claim of the petitioner that her husband was a disabled person and he could not have engaged in any avocation is valid and proper. Instead, prima facie it appears that the first respondent attempted to reject the complaint given by the petitioner solely on the ground that the petitioner has approached this Court by filing a Contempt Petition No. 1357 of 2013. Therefore, the order passed by the first respondent cannot be sustained.

12. For all the above reasons, I hold that the orders, which are impugned in this writ petition, are wholly arbitrary and perverse and therefore, they are set aside. The writ petition is allowed. The second respondent is directed to disburse the sum of Rs.1,00,000/- to the petitioner as per G.O. Ms. No.574 dated 28.12.2004 within a period of three weeks from the date of receipt of a copy of this order. If the amount is not disbursed within the time stipulated, the petitioner is entitled for payment of interest on the said amount at the rate of 12% per annum from the date of the death of the petitioner's husband namely 31.12.2004 till the date of

payment. No costs. Consequently, MP No. 2 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The State Commissioner for Disabilities
A-15/1, Model School Road
Thousand Lights, Chennai - 600 006

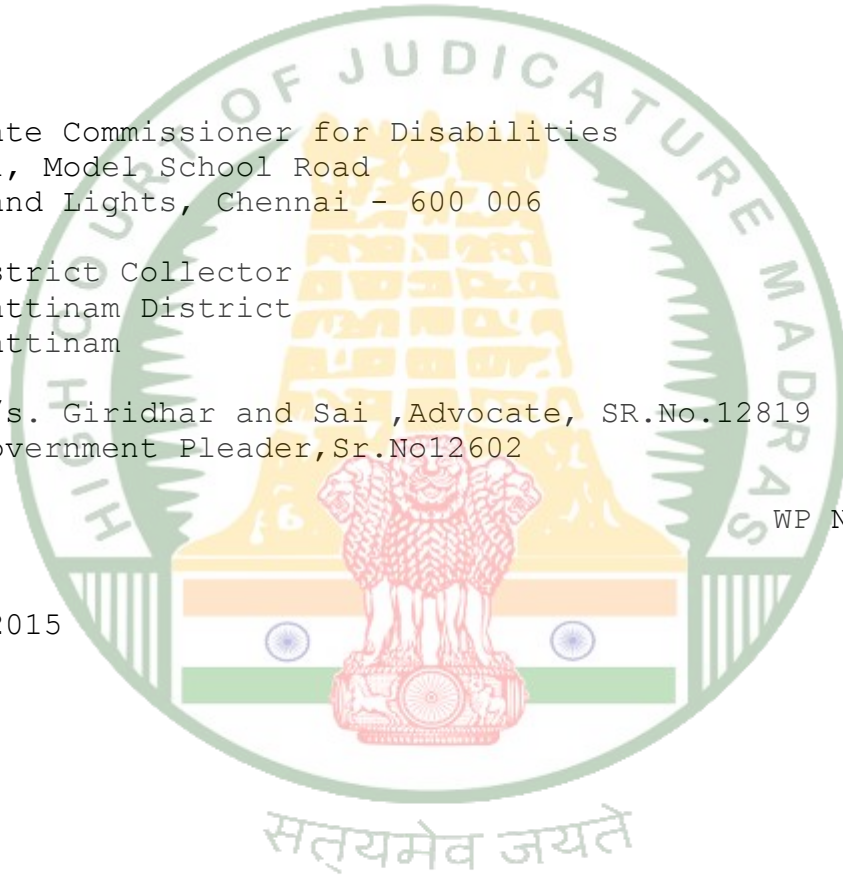
2. The District Collector
Nagapattinam District
Nagapattinam

1 cc to M/s. Giridhar and Sai ,Advocate, SR.No.12819

1 cc to Government Pleader, Sr.No12602

WP No. 1901 of 2014

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