

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2016

PRONOUNCED ON : 05.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.92 of 2016

and

W.M.P.Nos.43 & 4422 of 2016

Dr.K.M.Ravichandran ... Petitioner

Vs.

The Commissioner,
Namakkal Municipality,
Namakkal - 637 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.5904/H1/2015, dated 08.10.2015 and 14.12.2015 made in Na.Ka.No.5904/2015/H1 passed by the respondent and to quash the same.

For Petitioner : Mr.N.Manokaran
For respondents : Mr.R.Sivakumar
for M.Rajamathivanan

ORDER

This writ petition has been filed by the petitioner challenging the impugned orders in Na.Ka.No.5904/H1/2015, dated 08.10.2015 and Na.Ka.No.5904/2015/H1, dated 14.12.2015, passed by the respondent, whereby the petitioner was directed to pay a sum of Rs.10 lakhs as compensation to the family of the deceased Chinnusamy, who had died on 28.04.2001 while doing clearing work in the septic tank in the premises of the petitioner's hospital.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2.1.The petitioner is a Doctor by profession and he is running a hospital in the name and style of 'R.K.Hospital' at Door No.11-A, Mohanur Road, Namakkal. He has been in the Doctor profession for the past 20 years and he has earned a good name among the general public. He has been doing the medical profession as a charity for majority of his patients.

2-2.The respondent-Municipality is having a separate wing to carry out the sanitary cleaning work through its scavengers. In order to carry out the cleaning the under ground septic tank in the petitioner's hospital, the petitioner paid a sum Rs.750/- under Chalan No.118, dated 10.04.2001, to the respondent. In the course of carrying out the said work, again the respondent demanded a sum of Rs.750/- and the same was also paid on 16.04.2001. The respondent-Municipality had engaged its employees and vehicle to carry out the cleaning work under the care and supervision of the staffs of the respondent.

2-3.During the course of carrying on the cleaning work, it appears that one of the contract employee by name Chinnusamy, who was engaged by the respondent-Municipality, died due to suffocation caused in the result of poisonous gas emanated from the septic tank on 28.04.2001. In this regard, on the complaint of one Angamuthu, a case in Crime No.454 of 2001 was registered by the Namakkal Town Police Station under Section 174 of Cr.P.C. According to the petitioner, the death of the said Chinnusamy occurred purely on the fault of the respondent who had failed to provide safety measures to protect its own contract workers. Though the petitioner did not directly engage the deceased Chinnusamy to carry out the clearing work in the septic tank, all the other scavengers/contract workers employed by the respondent-Municipality gathered in front of his clinic and they agitated against the petitioner with a view to coerce and extract money. The petitioner was not in a position to manage the huge mob and forced to yield to the mob psychology and various other attending circumstances prevailed at that time. Purely out of sympathy and on humanitarian ground, the petitioner had agreed to deposit a sum of Rs.1,50,000/- in the name of the minor son of the deceased Chinnusamy. Since the wife of the deceased Chinnusamy had deserted him, the father of the deceased by name Perumal was nominated as a guardian for the minor Karthik in the fixed deposit receipt Nos.7097 and 7098, dated 12.05.2001 for Rs.1,00,000/- and Rs.50,000/-, respectively, for the period of 13 years. On maturity, the son of the deceased viz., Karthik would get a sum of Rs.7,50,000/-. The petitioner subsequently came to know that the said fixed deposits have been renewed for the further period of three years on 07.08.2013. Accordingly, the issue was over as early as in the year 2001.

2-4.While so, now after nearly 14 ½ years, the respondent-Municipality has issued a notice dated 08.10.2015 vide Na.Ka.No.5904/H1/2015, directing the petitioner to pay a sum of Rs.10 lakhs as per the judgment of the Hon'ble Supreme Court in W.P.(C).No.583 of 2003, (Safai Karamchari Andolan and others Vs. Union of India), dated 27.03.2014. In response to the said notice dated 08.10.2015, the petitioner had submitted his objections dated 09.12.2015, denying his liability to pay the said amount and also pointing out the obligation on the

part of the respondent-Municipality to pay the said amount to the employee who was officially engaged to clear the sewer. After the receipt of the petitioner's objection dated 09.12.2015, the respondent-Municipality has passed the impugned order dated 14.12.2015 in Na.Ka.No.5904/2015/H1, directing the petitioner to pay Rs.10 lakhs to the family of the deceased Chinnusamy.

2-5. According to the petitioner, the impugned orders dated 08.12.2015 and 14.12.2015 have been passed by the respondent, by misquoting the order passed by the Hon'ble Supreme Court in W.P.(C).No.583 of 2003 (Safai Karamchari Andolan and others Vs. Union of India) dated 27.03.2014 and the said case was relating to the inhuman practice of manually removing night soil, which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers, carrying excrements and baskets to dumping sites for disposal. Hence, the petitioner has come forward with the present writ petition seeking to quash the impugned orders passed by the respondent.

3. When the matter came up on 05.01.2016, this Court has granted interim stay of the impugned orders.

4. On appearance, the respondent has filed a petition in W.M.P.No.4422 of 2016 seeking to vacate the interim order of stay. In the counter, the respondent-Municipality has stated that four such deaths had occurred after the year 1993, including the death of the deceased in this case viz., Chinnusamy. Insofar as the other three deceased persons are concerned, Rs.10 lakhs each was already paid by the respondent-Municipality. Whereas, in the present case, the deceased workman Chinnusamy was engaged by the petitioner on his own, without any information or prior permission from the respondent-Municipality, to execute work in his premises and on execution of such private work, the death had occurred on 28.04.2001. Hence, the notice dated 08.10.2015 was issued to the petitioner calling upon him to pay the compensation amount. But, the petitioner made a representation dated 09.12.2015 stating that he had engaged the services of the said person, to clean the septic tank, with due permission from the respondent-Municipality, by making payment of Rs.750 on 10.04.2001. According to the petitioner, on 28.04.2001, when the death had occurred, the said Chinnusamy was working in his premises only on the due authorisation by the respondent-Municipality, which is denied by the respondent-Municipality. On the basis of the payment of Rs.750/- made by the petitioner on 10.04.2001 to clean their septic tank, a second trip was operated on the same day. For that additional work, the petitioner was directed to pay an additional amount of Rs.750/- and the petitioner had also made that additional payment on 16.04.2001. Whereas, admittedly, the death of the said Chinnusamy had occurred on 28.04.2001, while executing some other scavenging work in his premises, for which neither

the petitioner had sought any permission nor made any payment to the respondent-Municipality. On 28.04.2001, the petitioner had engaged the service of the said Chinnusamy purely on his own wish, without any prior permission from the respondent-Municipality. Hence, the petitioner is liable to be pay the compensation amount of Rs.10 lakhs to the family of the deceased.

5.Heard the submissions made by the learned counsel for the petitioner as well as the learned counsel appearing for the respondent.

6.The petitioner herein is a Doctor by profession and he is running a hospital in the name and style of "R.K.Hospital" in Namakkal. While so, on 28.04.2001, a workman of the respondent-Municipality viz., one Chinnusamy was doing cleaning work in the septic tank within the premises of the petitioner and he died due to suffocation caused by the poisonous gas emanated from the septic tank. On humanitarian ground, the petitioner had also deposited a sum of Rs.1,50,000/- in fixed deposit in the name of the son of the deceased Chinnusamy and since the wife of the deceased had already deserted him, the father of the deceased was appointed as guardian of the minor son of the deceased. Under such circumstance, after a period of 14 ½ of years from the date of occurrence, the petitioner received a letter dated 08.10.2015 from the respondent, directing the petitioner to pay a sum of Rs.10 lakhs as compensation to the family of the deceased Chinnusamy.

7.It is seen that the impugned orders have been issued by the respondent-Municipality directing the petitioner to pay the compensation, in the light of the decision of the Hon'ble Supreme Court W.P.(C).No.583 of 2003 (Safai Karamchari Andolan and others Vs. Union of India), dated 27.03.2014. In the said case, the Hon'ble Supreme Court, while dealing with the issues relating to the Prohibition of employment as manual scavengers and their rehabilitation, has held in para 14(iii) as follows:-

"(iii)Identify the families of all persons, who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) for each such death to the family members depending on them".

8.According to the respondent-Municipality, since in the instant case death had occurred after 1993, while doing cleaning work in the septic tank in the premises of the petitioner, notice was issued to the petitioner to pay the compensation amount of Rs.10 lakhs to the family of the deceased.

9. But, the petitioner sent a reply dated 09.12.2015 stating that the petitioner had paid a sum of Rs.750/- under Chalan No.118, dated 10.04.2001 to the respondent to carry out the cleaning work in the septic tank and thereafter, the respondent-Municipality sent their workers to do the cleaning work and the cleaning work was carried out by the workmen of the respondent-Corporation on 13.04.2001. Again another sum of Rs.750/- was paid on 16.04.2001 by the petitioner to the respondent, to clean another septic tank in the premises of the petitioner. Hence, on 28.04.2001, the staff were sent by the respondent-Municipality to the hospital of the petitioner and while carrying out the work, the employee Chinnusamy died due to suffocation. Thus, according to the petitioner, only with the permission of the respondent-Municipality, the work was carried out by the employee of the respondent and since the respondent-Municipality failed to provide safety measures, the death had occurred; hence, it is for the respondent-Municipality to pay the compensation to the family of the deceased. However, on humanitarian ground, the petitioner had paid a sum of Rs.1,50,000/- to the son of the deceased, by depositing the said amount in the bank in fixed deposit for a period of three years, in the name of the son of the deceased and on the date of maturity, the son of the deceased would get Rs.7,50,000/- from the said deposit. Thus, according to the petitioner, the petitioner need not pay any further compensation to the family of the deceased as claimed by the respondent-Municipality.

10. Per contra, the learned counsel for the respondent-Municipality, by producing the documentary evidence, submitted that originally, on 10.04.2001 the petitioner paid a sum of Rs.750/- for cleaning the septic tank in his premises and the work was executed on 13.04.2001. Since there was an additional work executed on the said date, on 2nd trip, a further payment of Rs.750/- was demanded by the respondent-Municipality. Accordingly, the petitioner paid another sum of Rs.750/- on 16.04.2001, for the additional work carried out on 13.04.2001. Thereafter, the petitioner did not get any permission from the respondent-Municipality to engage the service of the employee of the respondent to do cleaning work on 28.04.2001. Therefore, it is incorrect to state that the petitioner paid another sum of Rs.750/- to engage the staff of the respondent-Municipality on 28.04.2001. Without the permission of the respondent-Municipality, the petitioner had again on his own wish engaged the said Chinnusamy on 28.04.2001, on which date death had occurred. Therefore, the respondent-Municipality need not pay any compensation and it is the petitioner who has to pay the compensation. In fact, the respondent-Municipality has paid compensation in respect of three deaths which occurred while carrying out the work with the consent of the respondent-Municipality.

11. Keeping the submissions made on either side, I have carefully perused the materials available on record. In

fact, in the affidavit itself, the petitioner has admitted that he had paid Rs.750/- under Chalan No.118, dated 10.04.2001 to the respondent and that in the course of carrying out the said work, again the respondent demanded Rs.750/- and the same was paid on 16.04.2001. Therefore, even as per the statement of the petitioner, the petitioner had paid the amount to the respondent-Municipality only in respect of the work that had been carried out on 13.04.2001. The petitioner is not able to produce any evidence to show that he had obtained the permission of the respondent-Municipality to engage the employee of the respondent to carry out the work on 28.04.2001. Therefore, from the materials on record, it is clear that the petitioner engaged the services of the deceased Chinnusamy, without the permission of the respondent-Municipality. Therefore, the petitioner is liable to pay the compensation amount. Further more, the impugned notice was issued by the respondent-Municipality, only in the light of the order of the Hon'ble Supreme Court in the case in W.P.(C).No.583 of 2003 (Safai Karamchari Andolan and others Vs. Union of India), dated 27.03.2014. Therefore, the question of conducting any enquiry does not arise, as submitted by the learned counsel for the petitioner during the course of his argument.

12.For the foregoing reasons, the writ petition is liable to be dismissed and accordingly, the same is dismissed. Since the petitioner has already paid Rs.1,50,000/-, the petitioner shall pay the balance amount of Rs.8,50,000/-, preferably within a period of four weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To
The Commissioner,
Namakkal Municipality,
Namakkal - 637 001.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.21590
+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.21462

SCD(CO)
EU(11/04/2016)

W.P.No.92 of 2016