

- THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

± WRIT PETITION No.13067 OF 2014

% 7th June, 2016.

WRIT PETITION No.13067 OF 2014

Smt.Anuradha Ashok Paldhe

.. PETITIONER

VS.

\$ Union of India,
rep. by Chief Secretary and 5 others

.. RESPONDENTS

! Counsel for the petitioner : Sri M.Papa Reddy

^ Counsel for R.1 to R3 : Sri B.Narayana Reddy
Asst. Solicitor General

^ Counsel for R4 to R6 : Government Pleader for Home (A.P.)

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.13067 OF 2014

Between:

Smt.Anuradha Ashok Paldhe

... Petitioner

and

-

Union of India,
rep. by Chief Secretary and 5 others

....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 07.06.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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| 1 | <u>Whether Reporters of Local newspapers may be allowed to see the Judgments?</u> | <u>Yes/No</u> |
| 2 | <u>Whether the copies of judgment may be marked to Law Reports/Journals</u> | <u>Yes/No</u> |
| 3 | <u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u> | <u>Yes/No</u> |

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WP No.13067 of 2014

ORDER::

Petitioner is mother of Sri Amar Ashok Paldhe who was recruited as Seaman-I in the Indian Navy. While he was serving on Eastern Naval Command Clearance Diving Scheme, on the fateful day *i.e.* 21-09-1993, as part of operational exercise called Helo Jumping at Kakinada coast, which requires the divers to dive from the Helicopter into the Sea and

then swim across to the coast, the son of the petitioner being one of the four divers, jumped from the Helicopter into the Sea and supposed to reach the shore by swimming, did not reach the shore, but his dead body could be found in the Sea water after two days. Post-mortem report indicates that there were ante-mortem injuries over the dead body of the deceased, but opinion as to the cause of the death was *reserved* since report of diatom test was awaited. The Board of Enquiry examined into the incident and a finding was given stating that the cause of death was “due to accident”. Feeling aggrieved by the action of the respondents in not furnishing the information relating to the exact cause of death of her son Amar Ashok Paldhe, the petitioner and her husband (since deceased) filed writ petition being WP No.316 of 1995 on the file of Bombay High Court seeking to issue appropriate directions to the respondents to disclose the exact cause of death of the deceased, to conduct diatom test on the preserved parts of the deceased, to collect water samples from the site of the accident, findings of the Board of Inquiry be disclosed, suitable monetary compensation be awarded and the relevant Regulation 209 of Navy Regulations Part II which restricts to furnish copies of Board of Inquiry proceedings be declared as unconstitutional. The respondents in that writ petition filed counter affidavit, among other grounds, pleaded that the Bombay High Court does not have jurisdiction to adjudication upon the *lis* as the incident happened in Kakinada, Andhra Pradesh, and that monetary compensation cannot be awarded under Writ jurisdiction. After filing

counter affidavit, the petitioner has withdrawn the said writ petition on the ground of lack of jurisdiction to maintain the writ petition in that High Court.

2. As no information was forthcoming from the Naval authorities, as to the exact cause of death of the deceased and the diatom test report, given after a period of eight months by the Doctor who conducted autopsy on the dead body of the deceased, opining that the deceased died due to combined effect of shock and haemorrhage and due to multiple injuries and drowning, the bereaved parents of the deceased filed suit OS No.90 of 1997 seeking compensation for the death of their son while in employment of the Indian Navy. In the suit it was pleaded that the death of the deceased occurred on account of negligence and collusion on the part of the authorities and under mysterious circumstances. Whereas, it was contended by the authorities of the Navy that the deceased was put on regular exercise of diving and though he surfaced soon after jumping from the Helicopter, he did not appear thereafter. It was further stated that the death might have occurred due to failure of the deceased to release the weights fixed to the belt. Other grounds of limitation and jurisdiction were also pleaded by the authorities. The trial Court, considering the evidence adduced by the parties, decreed the suit holding the deceased died because of the negligence of the authorities in conducting the diving exercise. The respondents unsuccessfully assailed the judgment rendered in the suit in

this Court in AS No.3504 of 2004 and, thereafter, matter attained finality, as no further appeal was filed. Both the trial Court in the suit and also this Court in first appeal have recorded a finding that death of Amar Ashok Phalde was in suspicious and mysterious circumstances. In the light of this finding, the petitioner, in this writ petition contends that it was the bounden duty of the Naval authorities to look into the matter afresh by constituting an independent Board of Enquiry to know the exact cause of death of her son and also to ensure to the members of the general public, who offer their valuable lives to serve in Indian Navy with a benevolent object to serve the Country, feel safe and confident as to the bona-fides of the Navy. The petitioner also seeks to cause investigation into Cr.No.72 of 1993 registered by the PS Port Police Station, Kakinada. Hence, this writ petition.

3. Counter and additional counter affidavits are filed by 3rd respondent-Flag Officer Commander-In-Chief, Eastern Naval Command, Visakhapatnam, *inter alia*, stating that Board of Inquiry (BOI) was convened to investigate into the death of deceased Sailor and the BOI concluded that the death of Amar Ashok Paldhe was “accidental” and took place while he was performing his duty. The allegation that the Naval authorities were illusive and avoiding to give any direct reasons as to the cause of death of Sailor is denied. That the findings of the Board of Inquiry have been filed into the Court and a copy thereof has also been given to the petitioner under instructions from the competent authority.

That the BOI is only a fact finding body and not a statutory body with powers to punish and take disciplinary action unlike the powers of Court of Inquiry under Army and Air Force Acts. That the petitioner with an ill-intention to misuse the canons of judicial equity has been in the habit of filing frivolous litigation. That there are no major directives rendered in the judgment of this Court in first appeal being AS No.3504 of 2004, except stating that the Sailor died under suspicious circumstances, nothing material remains for the Navy to implement in the said order. That the incident had occurred at open Sea off the coast to which there are no independent witnesses so as to reach a conclusion as to the actual cause of death of the Sailor. The injuries sustained by the Sailor are apparently "accidental" and sufficient in ordinary course of nature to result in death. There has been no anomaly observed by the Courts as to the finding of the BOI and therefore re-convening Board of Inquiry after more than two decades of the incident seems impracticable and it amounts to re-opening the Pandora box. That the BOI is only a fact finding body which arrives at a conclusion based on available records and it does not have the expertise to investigate into the matter of death and related issues since the same requires specialised training and knowledge. That the Police of PS Port Police Station, Kakinada, are solely responsible to investigate into the matter to reach a conclusion as to the actual cause of death since the incident had occurred within the local jurisdiction of Kakinada Port Police Station. Disputed questions of fact cannot be adjudicated by this Court in exercise of jurisdiction under

Article 226 of the Constitution. Issues raised in this writ petition have already been contested at length and majority of them have been adjudicated upon by this Court and the present writ petition is barred by *res-judicata*. That there are absolutely no merits in the writ petition and the same is liable to be dismissed.

4. Reply affidavits are filed to the counter and additional counter affidavits by the petitioner which mostly contain the narration of events revolving the issue. The averment of the 3rd respondent that it lacks the expertise to conduct the investigation is against the very spirit of the Navy Act as Navy Act itself is an embody of self contained comprehensive code. Petitioner is not seeking for adjudication of any disputed facts but in fact the facts which reached conclusion and have become final refers to the cause of death of the son of the petitioner was a suspicious and mysterious circumstances. Administrative inconvenience can never be a ground to stop an enquiry to know the truth. That as a citizen of this Country, the mother of the deceased has every right to know as to who was responsible for the death of her son and the circumstances in which her son suffered two ante-mortem injuries. That when the respondents themselves have expressed inability to investigate into the matter, it is difficult to believe that investigation will be done by them with due seriousness it deserves. That in the circumstances de-novo investigation be directed to be conducted by an independent agency like CBI in the interest of justice.

5. Heard Sri Sunil Ganu, the learned counsel for the petitioner and Sri

B.Narayan Reddy, the learned Assistant Solicitor General of India for the respondents 1 to 3. Perused the material placed on record. Learned counsel for the petitioner states that he is not pressing the writ petition as against R-4 to R-6.

6. From the pleadings of the parties and the contentions raised by the learned counsel representing them, the following points arise for consideration:

1. *Whether the petitioner can maintain this writ petition to issue suitable directions to constitute a fresh BOI, after long lapse of time; &*
2. *Whether res-judicata apply to maintain this writ petition.*

Re Point No.1::

7. Lt. VPS Rawat, was the Operations In-Charge when the Sailor Amar Ashok Paldhe was ordered to dive into the Sea waters from the helicopter. In the affidavit filed by him in WP No.316 of 1995, it has been stated by him that the dive was carried out from a height of 15' and safety precautions were adhered to. Safety boat with diving supervisor and stand by diver to assist divers during emergency was provided at the dive site. It was stated that after each dive, the helicopter was to move 10 to 15 metres for the next dive. In the exercise, the first two divers had safe jump and they signalled so to the operations in-charge, 3rd and 4th divers also dived, Amar Ashok Paldhe was the 4th diver and after the dive, he surfaced and showed his arm, to which Lt. VPS Rawat, assumed that the dive was normal and the helicopter left to pick

up another group of divers. It was further stated that only after embarking the third batch of divers, the pilot of the helicopter informed Lt. VPS Rawat, that one of the diver was missing in Sea water and thereafter rescue operations were carried out. It has come on record that another person who witnessed the incident was diving Supervisor Mr. Talwara who was present in the stand-by Gemini boat, to deal with any untoward incidents. The three divers who dived prior to the dive of the deceased were not examined. Examination of those three divers who dived prior to the dive of the deceased would have revealed certain facts. It has further come on record that out of the four divers, first two divers had safe diving, but as for the 3rd diver, he landed on his chest, and splashed water to call for help after ditching his weight belt. In spite of the awkward jump of the 3rd diver and the rescue boat being engaged in retrieving the 3rd diver, the In-charge of the operations would have been cautious to note that if the 4th diver, the deceased, is made to dive, the rescue boat would not be available to rescue him in case of awkward dive as the boat crew were attending 3rd diver who had an awkward dive. That apart, even after allowing the 4th diver to take dive into the Sea waters, no precaution was taken to see whether he had a proper dive or an awkward dive. Without noticing the same, he could not have withdrawn from the site of dive to embark upon the next batch of Sailors leaving the dived Sailor to gallows.

8. Though the proceedings are initiated under Article 226 of the

Constitution, but this Court cannot be oblivious of the finding recorded by the trial Court in suit OS No.90 of 1997 and as confirmed by this Court in appeal AS No.3504 of 2004. Both the trial Court as well as this Court concurrently held that the deceased died under mysterious and suspicious circumstances. The cloud of doubt could not be cleared by the authorities by examining all the witnesses concerned with the entire exercise to show their bona-fides. Except examining Lt. VPS Rawat, In-charge of the operation Helo jumping, none of the persons concerned with the exercise were examined. In the light of the findings recorded, both by the trial Court as well as this Court, the authorities ought to have been sensitized to find out the exact cause of death of the deceased by re-convening the Board of Inquiry. As held by the Supreme Court in ***AJMER SINGH vs. UNION OF INDIA (1987) 3 SCC 340*** relied on by learned counsel for the petitioner, the relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self contained comprehensive Code and contain elaborate and comprehensive provisions dealing with all the stages, commencing from the investigation offences and the apprehension and detention of offenders and terminating with the execution of sentences and the grant of remissions etc. The Navy Act itself being a complete Code, the respondent-authorities cannot say they do not have expertise to enquire into cause of death of Sailor when already they have ordered BOI earlier in respect of same incident, but which remained inconclusive. This Court is of aware of the fact that much water has flown and there is a

time gap of more than two decades since the incident happened, but the doctrine of legitimate expectation of the parents to know the cause of death of their son cannot be shadowed away on the grounds of prolonged lapse of time and lack of expertise. This Court in **G. NAGESHWAR RAO vs. DIRECTOR GENERAL OF POLICE, ANDHRA PRADESH** (1997 (2) ALD (Cri.) 252), in a case which also filed to investigate into the cause of death of a ninth class school student, at para 12 held thus:

“12. The learned Advocate for respondents 10 to 13 very sincerely pleaded that from the material so far collected or brought to the notice of the police officer, it is evident that respondents 10 to 13 are not involved in the alleged offence. That is not the matter this Court is going to examine in this case. Ultimately, it may be the expression or the suspicion of the petitioner that the cause of death must be due to respondents 10 to 13. The emotional feeling of a parent in such a situation is understandable. He can only deduce the circumstances to strengthen his feeling; but the reason for it is within the realm of the police officer to pursue. There is no consolation for a parent who loses his child in suspicious circumstances except to show that the authorities have done their duty fully and in accordance with law. The question is not whether the allegations of the petitioner are true or not. But, the question is whether his allegations are properly investigated or not and with the type of police officer like respondent No. 5 herein, this Court is not satisfied that he has done such job satisfactorily and in accordance with law.”

The respondent-authorities cannot be allowed to take such a negating stand that they lack expertise to discover the truth and also on the ground of delay as civil proceedings initiated by them became final in the

year 2013. In **SMT. CHARANJIT KAUR vs. UNION OF INDIA's case (AIR 1994 SC 1491)**, relied on by learned counsel for the petitioner, the Supreme Court in a similar fact situation in respect of an Army Officer wherein also *prima facie* it was found that there were acts of omissions and commission on the part of the concerned and the death of the officer occurred in mysterious circumstances and no enquiry made and even if made, its results kept secret, observed that matter required investigation at highest level and entrusted the same to the Chief of the Army Staff to look into the matter personally. In the light of these facts and circumstances of the case, the respondent-authorities cannot be permitted to contend that the cause of death of the deceased was just "accidental" and sufficient in ordinary course of nature to result in death. As observed by this Court in the judgement rendered in the appeal AS No.3504 of 2004, if death occurs in the course of any armed conflict or military operations, no person would accuse the State or the concerned authorities, of any negligence, however, when death occurs in peace time and there are suspicious circumstances surrounding the incident, a close scrutiny becomes necessary, more particularly when the officials of the Navy themselves certified the deceased to be a "*cut above the other divers*". Till now the respondent-authorities could not clarify to the parents of the deceased nor to this Court as to how the deceased died in the said operation, whether there was negligence on the part of the In-charge of the Operation, whether the deceased had an awkward dive and if so, the rescue boat failed to rescue him and whether

there was negligence on the part In-charge of the Operation in not noticing that the 4th diver had an awkward dive and withdrew from the site to embark another batch of divers, whether the crew of the rescue boat were involved in saving the 3rd diver who had a awkward dive and therefore could not come to the rescue of the 4th diver, are all questions of facts which are required to be answered by the authorities to dispel the clouds of doubt from the minds of the parents as to the cause of death of their son. The above facts taken into consideration together with the ante-mortem injuries found on the person of the deceased and both the Courts holding that the deceased died in mysterious and suspicious circumstances, the matter needs to be examined by constituting a fresh Board of Inquiry to find out the cause of death of the deceased based on the evidence available and also findings of the Courts in that behalf. In **POOJA PAL vs. UNION OF INDIA (2016) 3 SCC Cases**) held that Constitutional Courts empowered to direct fresh investigation/reinvestigation and further investigation if statutory agency already in charge of investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. It was further held that as the cause of justice has to reign supreme, a Court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion-Justice then would

become a casualty.

9. The procedure as to Board of Inquiry is provided under Chapter VII in Naval Regulation Part II Regulations 197 to 209. In the instant case, in view of findings of the Division Bench of this Court in appeal AS No.3504 of 2004 it is necessary to hold a fresh Board of Inquiry so as to investigate into the circumstances of suspicious and mysterious death of the deceased so as to find out as to who is responsible for the same and then take appropriate steps in accordance with the Navy Act, 1957, against those persons who have been found to be derelicted of his duties, in accordance with law. Section 184 (1) (2) of Navy Act, 1957 reads as follows:

“Section 184 (1) (2): (1) The Central Government may, by notification in the official Gazette, make regulations for the governance, command, discipline, recruitment, conditions of service and regulation of the naval forces and generally for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for---

(i) Any matter necessary for the purpose of carrying this Act into execution as far as it relates to the investigation, arrest, custody, trial and punishment of offences triable or punishable under this Act.”

10. Chapter 29 of Part-I of the Navy Regulations deals with births, deaths, injuries, inquests etc., which covers Regulations 2901 to 2905.

The relevant Regulation is 2904 which is as follows:

“2904. Sudden or Unnatural Deaths. In cases of sudden or unnatural death in suspicious circumstances the following action shall be taken:

a) Afloat: When circumstances do not permit of the help of shore authorities being obtained for the examination of

the body, the Commanding Officer shall instruct the Medical Officer to examine the body to ascertain the cause of death. The Medical Officer may, if considers it necessary or advisable, after prior consent (in the absence of next-of-kin) of the Commanding Officer, conduct an internal examination of the body. Should there be any appearance of a suspicious character, the Medical Officer shall retain evidence in accordance with the normal medico-legal requirements. He shall also inform the Commanding Officer of his suspicious. The Commanding Officer shall there upon take approximate steps to investigate the case reporting the same to the Senior Officer present or the Administrative Authority who shall thereupon convene a Board of Inquiry. If the ship is near the Indian Port, the Commanding Officer may, if he considers it advisable, inform the Coroner or other approximate Civil Authority ashore so that an inquest may be held. Where, however, the body is to be cremated/buried ashore, the Commanding Officer shall inform the Coroner or other civil authority of the case; action shall also be taken in accordance with Sub-regulation (3) of Regulation 2901 and Sub-regulation (1) of Regulation 2905.

- b) Ashore: A report to the Coroner and or other approximate authorities regarding the death shall be made, and instructions from them shall be carried out.”

11. A reading of the Regulation above noted it is clear that in case of death of a cadet, sudden or unnatural death in suspicious circumstances, the Regulation contemplates constitution of a Board of Inquiry to know the cause of death. Both the trial Court in OS No.90 of 1997 and the findings thereof confirmed in AS No.3504 of 2004 by this Court, on evidence, held that the death of Amar Ashok Phalde was in suspicious and mysterious circumstances. In the light of the above Navy Regulation and also the findings of the Courts, the respondents cannot

contend that they lack expertise to probe into the matter. The point is answered accordingly in favour of the petitioner.

Re Point No.2::

12. Admittedly, the incident happened at Kakinada coast which is situated in Andhra Pradesh and this High Court being the common High Court for the States of the Telangana and the Andhra Pradesh, has jurisdiction to deal with the matter. The petitioner under a bona-fide belief filed the writ on earlier occasion on the file of Bombay High Court and on proper legal advice withdrew the same. The writ petition filed by the petitioner has not been adjudicated on merits and no finding was rendered by that High Court and moreover Bombay High Court has no jurisdiction, as the entire cause of action arose within the jurisdiction of this Court. In such view of the matter filing and withdrawal of the earlier writ petition on the ground of lack of jurisdiction by the petitioner will not operate as *res-judicata* as contended by Assistant Solicitor General to initiate writ proceedings in this Court. The judgments cited by learned Assistant Solicitor General in **MANIBEN DEVRAJ SHAH vs. MUNICIPAL CORPORATION OF BRIHAN MUMBAI** (2012) 5 Supreme Court Cases 157), **POST MASTER GENERAL vs. LIVING MEDIA INDIA LIMITED** (2012 (3) Supreme Court Cases 563) and **ESHA BHATTACHARJEE vs. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY** (2013) 12 Supreme Court Cases 649) have no application to the facts of the case as they dealt with

petitions for condonation of delay under Section 5 of Limitation Act. The point is answered accordingly.

13. For the foregoing reasons the writ petition is disposed of directing the respondent-Naval authorities to constitute fresh Board of Inquiry and such exercise may be completed within a period of six months from the date of receipt of a copy of this order and communicate the findings of BOI to the petitioner who is the mother of the deceased Sailor Amar Ashok Paldhe. Miscellaneous petitions, if any pending in this writ petition, stand disposed of. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 07-06-2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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