

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN
W.A No.651 of 2017

1.A.Ranganayaki

2.K.Santhanagopalakrishnan

...Appellants/Petitioners in
WP.sr.No.146474/2016

Vs

1.The Chief Manager,
Southern Railway,
Park Town, Chennai - 600 003.

2.The Chief Security Officer,
Railway Protection Force,
Southern Railway,
Park Town, Chennai - 600 003.Respondents/Respondents
in WP -do-

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.Sr.No.146474 of 2016 dated
24.04.2017.

WP.sr.No.146474/16: Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus
directing the respondents to pay to the petitioners a sum of
Rs.3 Crores towards Compensation for the death of their daughter
S.Swathi on 24.06.2016 at Nungambakkam Railway Station due to
the negligence of the respondents together with interest at 12%
per annum from 24.06.2016.

For Appellant : Mr.Kuberan for
M/s.Rank Associates

For Respondents : Mr.P.T.Ramkumar

J U D G M E N T

K.K. SASIDHARAN, J.

The Registry of the High Court entertained a doubt with
regard to the maintainability of the writ petition filed by the
appellants against Southern Railway claiming compensation on
account of the brutal murder of their daughter Ms.S.Swathi at
Nungambakkam Railway Station. The Registry in its note indicated
that there is an alternative remedy available to the appellants
and as such, the writ petition is not maintainable. The learned
single Judge sustained the objection raised by the Registry. The

order is under challenge in this intra court appeal.

Submissions

2. The learned counsel for the appellants contended that on account of the pecuniary limit, it would not be possible to claim a sum of Rs.3 crores from the Railways by filing a petition before the Railway Claims Tribunal. According to the learned counsel, the learned single Judge was not correct in directing the appellants to approach the Railway Claims Tribunal or the Civil Court.

3. The learned Standing Counsel for the Southern Railways contended that the remedy open to the appellants is only to approach the Railway Claims Tribunal with a claim petition or the Civil Court with a Civil Suit for compensation. According to the learned Standing Counsel, the writ petition against the Southern Railways claiming compensation is not maintainable before the writ court exercising jurisdiction under Article 226 of the Constitution.

Discussion

4. Ms.S.Swathi, the daughter of the appellants was murdered on 24 June, 2016 while she was waiting for a train at Nungambakkam Railway Station. The murder took place at Platform No.2 of the Nungambakkam Railway Station. The appellants, being the parents of the deceased claimed compensation from the Railways by filing the subject writ petition. The Registry entertained a doubt with regard to the maintainability of the writ petition. According to the Registry, the proper course is only to approach the Railway Claims Tribunal. The learned single Judge concurred with the views expressed by the Registry.

5. The core question is as to whether a writ petition of this nature is maintainable before the Writ Court under Article 226 of the Constitution.

6. The issue raised by the appellants is no longer res integra in view of the string of decisions rendered by the Hon'ble Supreme Court invoking public law liability and more particularly, the cases filed against the railways claiming compensation under Public Law.

7. The appellants filed the writ petition for compensation against the Railways. There is no point in directing the appellants to approach the Railway Claims Tribunal. The Tribunal is empowered to take up cases, in case, the claim is less than Rs.8 lakhs. The appellants claimed a sum of Rs.3 crores. It would not therefore be possible for the appellants to file a claim petition before the Railway Claims Tribunal.

8. A practising advocate of the Calcutta High Court claimed compensation for a foreign national as she was gang-raped by many including the employees of the Railways in a room at Yatri Niwas attached to the Howrah Station of the Eastern Railway. The order passed by the High Court of Calcutta awarding a sum of Rs.10 lakhs as compensation was challenged before the Hon'ble Supreme Court in *Chairman, Railway Board and others v. Chandrima Das and others* [(2000) 2 SCC 465]. Before the Supreme Court, the Railway Board challenged the maintainability of the claim made by the writ petitioner. While negating the plea regarding maintainability, the Hon'ble Supreme Court referred to the earlier decisions on public law remedy. The Supreme Court observed that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was held that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Supreme Court further observed that public law remedies have also been extended to the realm of tort. The Supreme Court cited several decided cases on public law liability including the cases relating to custodial deaths, rape, medical negligence and other tortious acts and negated the contentions taken by the Railways.

9. There is a clear distinction between "Public Law" and "Private Law". It is the dispute between the citizen on the one hand and the State or other public bodies on the other, which is resolved in a dispute filed under public law. As observed by the Hon'ble Supreme Court in *Common Cause, A Regd. Society v. Union of India* [(1999) 6 SCC 667], public law claim is entertained to maintain the rule of law and to prevent the State or public bodies from acting in an arbitrary manner or in violation of the rule. It is always open to the constitutional court to examine the actions of the State in case if they pertain to the public law domain. Similarly, the Court would refrain from examining the action if they pertain to the field of private law.

10. The Registry by returning the writ petition on the ground of maintainability virtually acted as the Court and exercised judicial function. The Registry has no authority to reject the writ petition on the ground of availability of alternative remedy. It is for the Court to decide whether the writ petition should be entertained in a matter, in spite of alternative remedy. It is always open to the Court to entertain the writ petition notwithstanding the alternative remedy available to the party. We therefore hold that it is not within the province of the Registry to return the writ petition on the ground of alternative remedy.

11. In the subject case, the action pertains to the public law domain and as such, the writ petition is maintainable before the High Court. We are therefore of the view that the learned single Judge was not correct in dismissing the writ petition filed by the appellants on the ground of availability of alternative remedy.

12. In the result, the order dated 24 April, 2017 is set aside. The Registry is directed to number the writ petition and post the same before the learned single Judge as per roster.

13. The intra court appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Chief Manager,
Southern Railway,
Park Town, Chennai - 600 003.

2.The Chief Security Officer,
Railway Protection Force,
Southern Railway,
Park Town, Chennai - 600 003.

+1 cc to M/s.Rank Associates sr 75538

+1 cc to M/s.P.T.Ram kumar Advocate sr 75653

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