

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.12.2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.680 of 2016 & against

W.P.No.92/16

C.M.P.No.9014 of 2016

Dr.K.M.Ravichandran ... Appellant

Vs.

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

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 05.04.2016 made in W.P.No.92 of 2016, on the file of this Court.

W.P.No.92/16: This Writ peition filed under Aticle 226 of the constitution of India praying for issuance of a writ of certiorari Calling for the records relating to the impugned order Na. Ka. No.5904/H1/2015 dt 8.10.2015 and 14.12.2015 made in Na. Ka. No.5904/2015/H1 passed by the respondent quash the same.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.Rajamathivanan

J U D G M E N T
सत्यमेव जयते

[Order of the Court was made by P.VELMURUGAN, J.]

The writ appeal is arising out of the judgment dated 05.04.2016 made in W.P.No.92 of 2016.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioner aggrieved by the orders passed by the respondent in Na.Ka.No.5904/H1/2015, dated 08.10.2015 and Na.Ka.No.5904/2015/H1, dated 14.12.2015, directing payment of the amount to the deceased, pursuant to the direction issued by the Supreme court.

3. Facts culled out in brief necessary for the disposal of the writ appeal are as follows:-

3.1. The appellant 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 medical profession for the past 20 years and he has earned good name among the general public. He has been doing the medical profession as a charity for majority of his patients. 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 of septic tank in the hospital of the appellant, he 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 Municipality had engaged its employees and vehicle to carry out the cleaning work under the care and supervision of the employees of the respondent.

3.2. During the course of undertaking 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 as a 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 appellant, the death of the said Chinnusamy occurred purely on account of the fault of the respondent who had failed to provide safety measures to protect its own contract workers. Though the appellant 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 him with a view to coerce and extract money. The appellant 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 appellant 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, deposited for a

period of 13 years. On maturity, the son of the deceased viz., Karthik would get a sum of Rs.7,50,000/-. The appellant subsequently came to know that the said fixed deposits have been renewed for a further period of three years on 07.08.2013. Accordingly, the issue was over as early as in the year 2001. While so, now after nearly 14 1/2 years, the respondent-Municipality has issued a notice dated 08.10.2015 vide Na.Ka.No.5904/H1/2015, directing the appellant 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 appellant had submitted his objections dated 09.12.2015, denying his liability to pay the said amount and also pointed 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 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 appellant to pay Rs.10 lakhs to the family of the deceased Chinnusamy.

3.3. According to the appellant, 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 appellant has filed the Writ Petition.

4. After considering the facts and circumstances of the case, the learned Single Judge dismissed the Writ Petition. The concluding paragraph is extracted hereunder:-

"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."

5. Aggrieved against the order of the learned Single Judge, the appellant has filed the present Writ Appeal.

6. The learned counsel for the appellant would submit that the appellant remitted Rs.750/- on 10.04.2001 to carry out the work of cleaning septic tank and the said work was done on 13.04.2001. Again the appellant had remitted Rs.750/- on 16.04.2001 and the remaining work was done on 28.04.2001. However, the respondent-Municipality had failed to provide safety measures to the workers at the time of carrying out the cleaning work and therefore, the respondent has to take the responsibility for payment of compensation. He would further submit that as per the averments made in the counter affidavit, the above cleaning work was done on 28.04.2001 without the knowledge or permission of the respondent-Municipality, if so, the respondent-Municipality has got no right to issue the impugned order for and behalf of the undisclosed victim who did not take any steps in the manner known to law. He would further submit that the alleged occurrence took place on 28.04.2001 whereas, the Act called "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" came into force only on 18.09.2013 and therefore, it should not be enforced against the appellant by giving retrospective effect. He would further submit that the direction given in para No.23.3 of the order in W.P.(C)No.583 of 2003 is not given against the appellant, whereas, it is for the respondent Municipality / Government to pay the compensation in compliance with statutory obligations. However, the respondent misquoted the judgment dated 27.03.2014 passed by the Hon'ble Supreme Court and issued a communication dated 31.01.2015 as per the whims and fancies of the authorities. Hence, the learned counsel prays for allowing the Writ Appeal.

7. The learned Standing Counsel appearing for the respondent would submit that the learned Single Judge, on a thorough consideration of the materials and the judgment of the Supreme Court, has disposed of the writ petition and hence, prayed for dismissal of this writ appeal.

8. It is not in dispute that the appellant had engaged the services of the deceased Chinnusamy on 28.04.2001. While he was cleaning the septic tank of R.K.Hospital, belonging to the appellant, the said Chinnusamy died due to suffocation caused as a result of poisonous gas that emanated from the septic tank. It is also not in dispute that a case in Crime No.454 of 2001 was registered by the Namakkal Town Police Station under Section 174 of Cr.P.C.

9. The inhuman practice of manual scavenging has been deprecated in several decisions of the Hon'ble Supreme Court and in a recent decision in the case of SAFAI KARAMCHARI ANDOLAN reported in (2014) 11 SCC 224, the Hon'ble Supreme Court has issued various directions. At this stage, it would be beneficial to refer the operative portion of the said Judgment.

"14) We have already noted various provisions of the 2013 Act and also in the light of various orders of this Court, we issue the following directions:-

....

(iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs. 10 lakhs for each such death to the family members depending on them.

....

15) In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. Inasmuch as the Act 2013 occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction."

(emphasis supplied)

10. The main contention of the learned counsel for the appellant is that as per the averments made in the counter affidavit, the cleaning work was done on 28.04.2001 without the knowledge or permission of the Municipality. If that be the case, the Municipality has no right to issue the impugned order for and behalf of the undisclosed victim who did not take any steps in the manner known to law. It is contended that in the absence of any agreement or contract between the appellant and the respondent, the respondent-Municipality cannot act as a recovery agent for the family of the deceased.

11. It is pertinent to note that the Director of Municipal Administration, Chepauk, Chennai-5, wrote letters in Roc.No.6468/2013/J2 dated 31.01.2015 to all Commissioners of the Corporations, Municipalities and the Regional Director of Municipal Administration, stating that in pursuance of the judgment of the Hon'ble Supreme Court, a meeting was convened by the Government on 31.01.2015 to discuss about the modalities to be followed for disbursement of compensation of Rs.10,00,000/- to the dependents of the sewer death victims and the following instructions were given in the meeting:-

"There are three categories of sewer deaths occurred.

(i) Death of ULB staff, who have discharged the duty of sewer cleaning work officially.

(ii) Death of employees who have been deployed by the private contractors (engaged by ULBs) for executing the sewer cleaning work.

(iii) Death of workers engaged by private property owners in their premises.

In respect of the category (i) Urban Local Bodies have to make the payment as per the Supreme Court directions from their General fund on or before 02.02.2015 and to send the xerox / scanned copies of the Demand Draft to this office on 02.02.2015 before 6 p.m. in order to send the consolidated report to the Government for onward submission to the Hon'ble court.

In respect of the second category, on behalf of the occurrence engaged by the ULBs compensation have to be initially paid by the ULBs from their General fund and action has to be initiated against the contractors to recoup the amount. Copies of the notices issued to such contractors have also to be sent to this office.

In respect of deaths occurred in the private houses, the property owners or the persons engaged these workers are responsible to make the payment. Necessary notices have to be issued to all the concerned by the local bodies (under the provisions of "Prohibition of employment as manual scavengers and their Rehabilitation Act 2013" and in the light of judgment of Supreme Court dated 27.03.2014) and copies of the served notices to be sent to this office for onward submission to the Court through the Government."

12. Admittedly, the appellant would come under the category No.(iii), viz., Death of workers engaged by private property owners in their premises and therefore, the respondent-Corporation rightly issued the notice, demanding a sum of Rs.10,00,000/-. In order to comply with the direction of the Hon'ble Supreme Court, the Officials of the Corporation conducted a meeting on 31.01.2015 and sent letters to all the Corporations and Municipalities and in order to comply with the directions given by the Director of Municipal Administration, Chepauk, Chennai-5, the respondent-Corporation after verifying the details from the records found that the said Chinnusamy died on 28.04.2001 while he was cleaning the septic tank of R.K.Hospital, belonging to the appellant, without the permission of the Municipality and therefore, the said contention is not acceptable.

13. The next contention of the learned counsel for the appellant is that the appellant remitted Rs.750/- on 10.04.2001 to carry out the cleaning of septic tank and the said work was done on 13.04.2001. Again the appellant had remitted Rs.750/- on 16.4.2001 and the remaining work was done on 28.4.2001, but however, the municipality had failed to provide safety measures to the workers at the time of carrying out the cleaning work and therefore, the respondent has to take the responsibility for payment of compensation. If the said contention is true, when the deceased Chinnuswamy came for the work, the appellant could have stopped him from doing the work and asked him to do the work with all the safety measures. Since he is a doctor, the appellant was in the know of things with regard to safety aspect. It is clear that the appellant has not engaged the worker through Corporation but engaged him directly without informing the Officials of the local body. Further, from a perusal of typed-set of papers produced by the respondent, it is seen from the log book pertaining to the vehicle in TN-28-F 1986, two trips were operated on 13.04.2001 in the property belonged to the appellant for cleaning the under ground septic tank. The appellant's contention is that the amount paid by him on 16.04.2001 was for the work to be done on 28.04.2001. Since 13.04.2001 itself two trips were operated, the appellant's contention that he remitted Rs.750/- on 10.04.2001 to carry out the cleaning of septic tank and the said work was done on 13.04.2001 and again the appellant had remitted Rs.750/- on 16.04.2001 and the remaining work was done on 28.04.2001, is incorrect and the same is rejected.

14. The next contention of the learned counsel for the appellant is that the appellant has already deposited a sum of Rs.1,50,000/- in the fixed deposit receipt Nos.7097 and 7098, dated 12.05.2001 for Rs.1,00,000/- and Rs.50,000/-, respectively, in the name of the minor son of the deceased Chinnusamy and nominated one Anagamuthu, as a guardian for the minor Karthik and since the appellant deposited the money in the year 2001, the value of money paid at the time is much more than the value of the money demanded now as compensation. The appellant produced a copy of the account statement of the fixed deposits provided by the Namakkal Co-operative Urban Bank Limited. On a perusal of the said statement, it is seen that the interest accrued from the deposits have been taken from time to time, and the balance as on 12.12.2017, is a sum of Rs.1,50,000/- being the Principal and Rs.4,350/- being interest. Since as per the Hon'ble Supreme Court directions in W.P.(C).No.583 of 2003, (Safai Karamchari Andolan and others Vs. Union of India), dated 27.03.2014, Rs.10,00,000/- has to be paid to the legal heirs of a person who died in sewerage work and further the appellant engaged the services of the deceased Chinnusamy, without the permission of the respondent, and already paid a sum of Rs.1,50,000/-, the appellant shall pay the balance amount of Rs.8,50,000/-. The learned Single Judge after considering all the facts, rightly dismissed the Writ Petition. This Court does not find any infirmity in the order passed by the learned Single Judge.

15. Since the learned counsel for the appellant made a request to pay the said amount of Rs.8,50,000/-, in monthly equal installments, we feel it appropriate to grant five months time to the appellant to pay the said amount of Rs.8,50,000/-, at the rate of Rs.1,70,000/- each per month, payable from the month of January 2018 onwards.

16. Accordingly, the appellant is directed to pay a sum of Rs.8,50,000/- in five equal monthly installments, at the rate of Rs.1,70,000/- per month. It is made clear that the appellant shall pay each installments on or before 10th of every succeeding month. As soon as the receipt of the said amount, the respondent shall deposit the said amount in a nationalized bank in a fixed deposit, for the first three installments and hand over the fixed deposit receipts to Mr.Karthik so as to enable him to withdraw the accrued interest once in three months and for the next two installments, the respondent-Corporation is directed to give the amount to the deceased son, viz., Mr.Karthik, with immediate effect.

16. The Writ Appeal is dismissed with the above observation.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

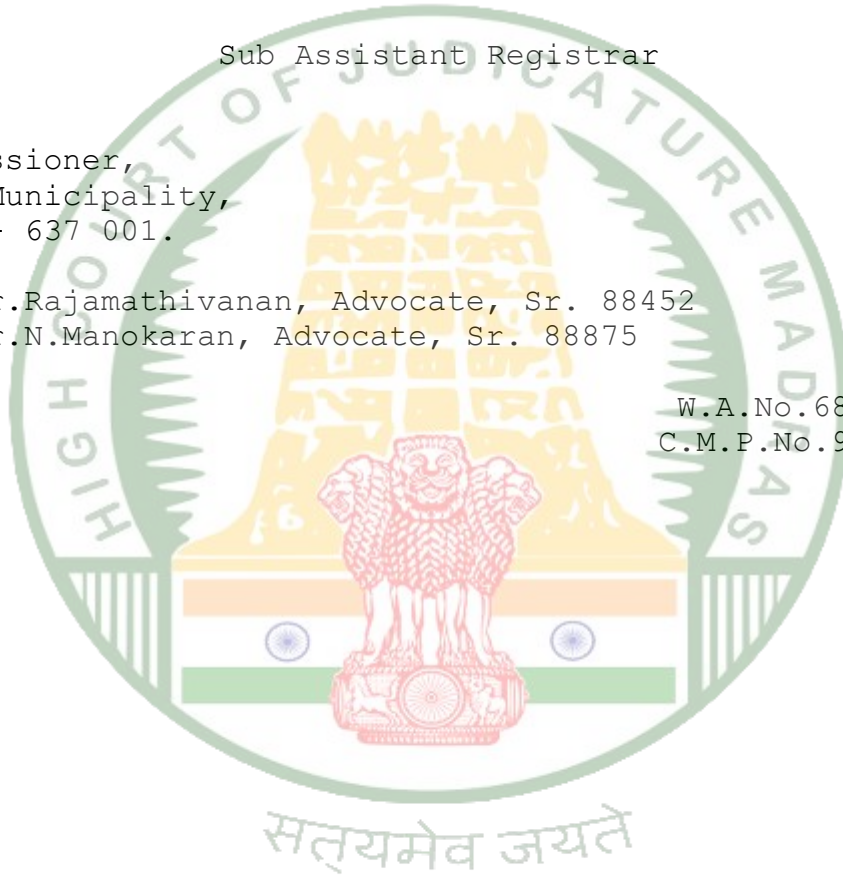
To

The Commissioner,
Namakkal Municipality,
Namakkal - 637 001.

1 cc to Mr.Rajamathivanan, Advocate, Sr. 88452
1 cc to Mr.N.Manokaran, Advocate, Sr. 88875

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RJ (CO)
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