



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPASATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

WRIT APPEAL(MD)No.1091 of 2017
and
CMP(MD)No.7505 of 2017

1.The State of Tamil Nadu,
Rep. by the Home Secretary,
Government of Tamil Nadu,
Government Estate,
Anna Salai, Chennai.

2.The Secretary,
Revenue Department,
Government of Tamil Nadu,
Government Estate,
Anna Salai, Chennai.

3.The District Collector and District Magistrate,
Madurai District.

4.The Superintendent of Police,
Madurai District.

5.The Inspector of Police,
Solavanthan Police Station,
Madurai District.

6.The Thasildar,
Vadipatty Taluk,
Madurai District.

: Appellants/R1 to R5 and R7

Vs.

1.M.Nithiya : 1st respondent/Petitioner

2.Dinesh @ Dinesh Kumar : 2nd respondent/6th respondent

Writ Appeal has been filed under Clause 15 of Letters Patent
against the order, dated 15.06.2017 and made in W.P.(MD)No.10913 of
2010 on the file of this court.

Prayer in WP(MD) No. 10913/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the respondents No. 1,2 and 3 to pay compensation to the petitioner for the death of petitioners daughter namely Dhanalakshmi aged nine years, and grant employment to the petitioner on compassionate appointment, consequently directing the respondents to initiate necessary action against the sand offenders operating in Vaigai riverbed at Sholavantan.

For Appellant : Mrs.J.Padmavathi Devi

For 1st Respondent : Mr.R.Alagumani

For 2nd Respondent : No appearance

JUDGMENT

(Judgment of the Court was made by T.KRISHNAVALLI, J)

The Writ Appeal has been directed under Clause 15 of Letters Patent as against the order of the learned single Judge of this court, dated 15.06.2017 and made in W.P(MD)No.10913 of 2010 on the file of this court.

2.It is manifested from the records that the 1st respondent/writ petitioner had filed a writ petition under Article 226 of Constitution of India to issue a Writ of Mandamus directing the appellants 1 to 3/respondents 1 to 3 to pay compensation for the death of the writ petitioner's daughter namely Dhanalakshmi aged 9 years and grant employment to the writ petitioner on compassionate appointment and consequently directing the respondents therein to initiate necessary action against the said offenders operating in Vaigai Riverbed at Sholavanthan.

3.In the writ petition, it was contended by the writ petitioner that the petitioner's daughter Dhanalakshmi aged about 9 years died in an accident by a bullock cart and in pursuance of the complaint, a case stands registered in Crime No.150 of 2010 by the Sholavanthan Police Station, Madurai under Section 304(A) IPC and the writ petitioner gave request for giving compensation and compassionate appointment to her and to take appropriate action against the offenders. It is the further case of the writ petitioner that Rs.1,00,000/ was paid to the writ petitioner out of the Chief Minister's Relief Fund. In the meantime, her husband also died and for that, Rs.10,000/- was paid to the writ petitioner under Social Security Scheme and Rs.1000/- per month is being paid to her towards widow pension from the month of October 2010. Despite the same, she has filed a writ petition seeking compensation, employment and to take action against the offenders.



4.This court by order, dated 10.08.2010 directed the District Collector, Madurai to consider the request of the writ petitioner for compassionate appointment. In so far as the action against the offenders are concerned, penalty was imposed as against 34 persons to the tune of Rs.7,28,800/- and directed to detain one offender under Act 14 of 1982.

5.It is seen from the records that the Accused in Crime No.150 of 2010 was discharged in a Lok Adalat proceedings on receipt of Rs.5,000/- as fine. The writ petitioner has been appointed as 'Sweeper' on temporary basis at the Officer of the Thasildar, Vadipatti and paid salary, out of the contingent fund. In the above circumstances, by order, dated 15.06.2017, the writ petition was allowed with a direction to pay a sum of Rs.10 Lakhs with interest @ 7.5% from 18.08.2010 till payment.

6.Having been aggrieved by the order of the learned single Judge of this court, dated 15.06.2017, the appellants being the respondents in the above writ petition stand before this court with this appeal.

7.Heard Mrs.J,Padmavathi Devi, learned Special Government Pleader appearing for the appellants and Mr.R.Alagumani, learned counsel appearing for the 1st respondent and perused the materials available on record.

8.The learned counsel appearing for the appellants/respondents has contended that the learned single Judge ought to have dismissed the writ petition at the stage of admission itself; that the learned single Judge ought to have considered that all the reliefs sought for by the writ petitioner have been met and action was taken against the offenders and now, the writ petitioner has been given employment and apart from this, she is receiving widow pension and she has been also paid Rs.1,00,000/- and Rs.10,000/- towards compensation; that the State Government cannot be held liable for the negligent act of the driver of the bullock cart and the Government is not a tort-feaser for whose negligence, it could be held liable for payment of compensation. It is well settled that compensation is not intended to be a bonaza and in the present case, the writ petitioner has received Rs.1,00,000/- and Rs.10,000/- and she has been working on temporary basis and further she has been paid Rs.1,000/- per month as widow pension and that bullock cart does not belong to the Government, nor was engaged in a legal sand mining so as to rope the Government as liable. Hence, the impugned order is liable for reconsideration and cancellation, in the interest of public as well as for the sanctity of the statutory rules in force and prayed for allowing the writ appeal.

9.Per contra, the learned counsel appearing for the 1st respondent would contend that the learned single Judge, after



appreciating the entire facts and circumstances of the case, has correctly passed the impugned order, which do not call for any interference by this court. Hence, he has prayed that the writ appeal has to be dismissed.

10. It is not in dispute that the daughter of the writ petitioner was killed in an accident involving a bullock cart, which was engaged in illegal sand mining. It is also not in dispute that the husband of the writ petitioner also died within a week of the death of his daughter. It is manifested from the records that no action was taken by the Government officials under the Tamil Nadu Minor Mineral Concession Rules 1959 against the offenders.

11. It is seen from the records that the case of the writ petitioner for relief under the Chief Minister's Relief Fund, had recommended as early as on 05.08.2010. The District Collector, Madurai has expressed his inability to provide a job for the writ petitioner. Further, the offender case has been referred to Lok Adalat and he has been discharged of the offence on payment of Rs.5,000/- as fine.

12. The learned single Judge has held that the death of the minor daughter of the writ petitioner was caused due to the negligence and dereliction of duty on the part of the officials of the State, who are bound to prevent illegal quarrying of sand, by referring S.Krishnaswamy's case (2016(5) CTC 70) and came to the conclusion that the State which is bound to protect the life and liberty of the citizens, failed to do so and callousness in discharging duties by the officials is made out and the State is liable to compensate the writ petitioner.

13. Further, the learned single Judge has awarded compensation of Rs.10 Lakhs to the writ petitioner by referring the decision reported in 2000(2) SCC 465 (The Chairman, Railway Board Vs. Mrs. Chandirma Das). Admittedly, the school going minor daughter of the 1st respondent was killed in an accident involving a bullock cart engaged in illegal sand mining. There is no action taken against the tort-feaser, namely the 2nd respondent, by the appellants under the Tamil Nadu Minor Mineral Concession Rules, 1959. The discharge of the 2nd respondent from the offence on payment of Rs.5,000/- as fine in Lok Adalat, even when the accident is admitted, is condemnable. Now arbitrariness in essence and substance is the heart beat of fair play. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities. The plea of illegal sand mining goes on despite regular raids being conducted by the Government. However, above all, the State is obliged to protect the life and liberty of the citizens. Therefore, we are of the considered view that the learned single Judge of this court has allowed the writ petition directing the first respondent therein to pay a sum of Rs.10 Lakhs towards compensation for the death of the minor daughter of the writ petitioner in the accident, which do not suffer with any infirmity. Hence, the writ appeal is liable to be dismissed.



14. In the result, writ appeal is dismissed confirming the order of the learned single Judge. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

/True Copy/

Sd/-
Assistant Registrar (T&P)

Sub Assistant Registrar (CS-IV)

To

1. The Home Secretary,
Government of Tamil Nadu,
Government Estate,
Anna Salai, Chennai.
2. The Secretary,
Revenue Department,
Government of Tamil Nadu, Government Estate,
Anna Salai, Chennai.
3. The District Collector and District Magistrate,
Madurai District.
4. The Superintendent of Police,
Madurai District.
5. The Inspector of Police,
Solavanthan Police Station,
Madurai District.
6. The Thasildar,
Vadipatty Taluk,
Madurai District.

+1CC to Mr. R. Alagumani, Advocate, SR.No.83993
+1CC to the Special Government Pleader SR.No.84226

WA (MD) No. 1091 of 2017
12.09.2018

ER
ES/SKN/RSK/SAR 4/17.10.2018/5P/9C