

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.4206 of 2009

ORDER:

The petitioner seeks Writ of Mandamus for a direction to the respondents 1 to 6 to declare the death of the sister of the petitioner viz. Venna Anantha Lakshmi by issuing a death certificate as she died in a train accident on 31.07.2008 in Goutami Express at Kesamudram Area.

2a) The petitioner's case is that his sister—Venna Anantha Lakshmi worked as Jail Head Warder at Chenchalguda Central Prison, Hyderabad and retired on 31.07.2008 and got into Goutami Express to go to Rajahmundry from Secunderabad with railway ticket No.32323756 and boarded coach S-10. In the middle of the night when the train reached the limits of Kesamudram area of Warangal District, the said coach got fire and it was completely burnt wherein the sister of the petitioner was travelling. On receiving the information, the petitioner submitted a written report dated 02.08.2008 to the Divisional Superintendent of Police, Khazipet, Warangal District to investigate about the status of his sister. The 1st respondent in his letter No.C.137/Accdt/2738/08, dated 28.08.2008 stated that DSP/Khazipet was not in a position to give complete information with regard to the death of the petitioner's sister in the accident and further stated that after finalization of formalities by GRP/Khazipet authorities, the 1st respondent would finalize the death of his sister. The Assistant Director, Public Information Officer, Andhra Pradesh Forensic Science Laboratory,

Hyderabad through his letter No.75/RTI/2005/FSL/08/2943 dated 18.12.2008 informed that the unidentified dead bodies cannot be subjected to DNA profiles as they were completely burnt and turned into ashes. The petitioner submits that till date his sister V.Anantha Lakshmi was not found to have been alive and so, she must have been completely burnt and turned into ashes. The petitioner made representation to the 6th respondent to declare the death of his sister and issue death certificate. However, no such certificate was issued so far.

Hence the writ petition.

b) Respondents 1 and 3 filed counter wherein it was stated that the name of Smt.V.A.Lakshmi was in the chart date 31.07.2008 relating to S-10 coach of Gautami Express and the said lady passenger got reserved ticket with PNR No.113-9008781 and the name of said V.A.Lakshmi is also included in the list of missing persons prepared by DSP/DRP/Khazipet. It is further submitted that in the letter dated 28.08.2008, it was communicated for the information of the petitioner that the confirmation regarding the deaths and other related particulars can be had from GRP/Khazipet and the petitioner misconstrued the contents of the letter.

c) It is further submitted that so far 16 dead bodies were identified and certified and those bodies were handed over to their respective relatives. The identification of remaining bodies was in progress with Government Railway Police (GRP), Khazipet in active coordination with the Forensic

Science Laboratory, Red Hills, Hyderabad. The proper authority to declare the death and issue the death certificate was the Deputy Superintendent of Police, Government Railway Police, Khazipet. The Railway authorities of South Central Railway were pursuing the matter with GRP in this regard.

d) Respondent No.2 filed separate counter stating that on the intervening night of 31.07/01.08.2008 the Train No.2738 Goutami Express bound to Kakinada from Secunderabad met with fire accident in between Kesamudram and Tallapusalapalli Railway Station. After due investigation it came to light that 27 persons were missing. Out of which, 16 were identified as dead basing on various process including DNA profiling test conducted by Andhra Pradesh Forensic Science Laboratory, Hyderabad.

e) It is further submitted that 29 samples of body remains were collected from the scene of offence. Out of which, sample D-21 was identified as that of two deceased. Out of the remaining 28 samples, the Forensic Professors of Kakatiya Medical College, Warangal opined that 10 samples vide Nos.D-7, D-8, D-13, D-15, D-16, D-17, D-18, D-20, D-23 and D-24 were unfit for DNA profiling test and the body remains were preserved in the Mortuary Room of Kakatiya Medical College, Warangal. After forwarding the remaining 18 samples to Forensic Science Laboratory, Hyderabad the samples D-2 and D-3 were also identified. The Andhra Pradesh Forensic Science Laboratory, Hyderabad experts conducted DNA test and identified 10 members viz. N.S.Raju (D1), Dandiprolu Ramulamma (D4), Roshini Mukherjee (D9), K.V.K.Mohan Rao (D10), Hari Shanker (D11), B.K.Amma (D12), G.Madhusudhan Rao (D22), Sathi

Trinadha Rao (D25), Vipparla Satya Sai Babu (D27) and Mudu Bala (D29). Thus the remaining samples are 6. Out of the remaining 6 samples, 3 samples vide Nos.D-5, D6 and D28 were found unfit for comparison and they conducted test for the remaining samples—D-14, D19 and D-26 with the samples of blood collected from the blood relatives of the remaining 10 missing persons, but they did not match. They also informed both the samples D-14 and D19 belong to one body.

f) It is further submitted, all efforts made to establish the identity of the remaining 11 persons (27-16) proved futile and as there was no use of keeping the body remains in Kakatiya Medical College Mortuary for about six months, since there was no hope of establishing their identify, a requisition was filed before the Tahsildar and Executive Magistrate, Kesamudram with a request to accord permission for disposal of the 16 samples of body remains which are preserved at the Mortuary Room of Kakatiya Medical College, Warangal. Permission is awaited from Tahsildar and Executive Magistrate, Kesamudram.

g) It is further submitted that as per the reservation chart 10 persons viz. (1) Y.Satyanarayana, (2) Ehakota Mangayamma (3) V.Anantha Lakshmi (the sister of the petitioner),(4) Sathi Chandra Sekhar, (5) R.Satyanarayana, (6) Chitrapu Santha Kumari, (7) Peretala Gollabai, (8) Peratla Satya Prabhavathi, (9) Dr.Ravi Kumar and (10) Smt. N.Seethamahalaxmi are still missing. It is further submitted that sofaras the sister of the petitioner was not identified and hence the question of issuing death certificate to the petitioner does not arise. A case in Cr.No.191 of 2008 under Section

Accidental Fire and Section 174 Cr.P.C. was registered on the file of Railway Police Station, Warangal and it is under investigation. Unless the death of the petitioner's sister is confirmed, the respondent—investigating officer cannot issue necessary proceedings for the issuance of death certificate. The respondent thus prayed to dismiss the writ petition.

3a) When the matter came up for hearing, learned counsel for petitioner would submit that since it is an admitted fact that the sister of the petitioner travelled in the ill-fated train Goutami Express in S-10 coach on 31.07.2008 which was caught fire and as she has not returned alive till now, in all probability she must have died. Therefore, the respondent authorities can grant death certificate by presuming her death under Section 114 of Indian Evidence Act.

b) Referring to order in W.P.No.7205 of 2009 dated 17.02.2010, learned counsel would submit that in respect of death of one of the passengers—R.Satyanarayana in the same train and in the same bogie i.e. S-10, having regard to the permissibility to draw presumption of death by virtue of Section 114 of Indian Evidence Act, this Court directed the respondent authorities therein to issue certificate to the effect that the concerned passenger died in the said accident and also granted related reliefs. Learned counsel would submit that present writ petition can be disposed of in terms of the covered matter.

4) A perusal of the order in W.P.No.7205 of 2009 would show, it relates to the death of R.Satyanarayana victim in Goutami Express on

31.07.2008 who happened to travel in S-10 Berth No.49. The DNA profiling test could not be done as some of the bodies were charred to such an extent that they became invalid for DNA test. In those circumstances, learned single Judge of this Court having considered that the victim—R.Satyanarayana had travelled in S-10 coach in Goutami Express on 31.07.2008, opined that his death can be presumed under Section 114 of Indian Evidence Act and accordingly directed the authorities to issue death certificate.

5) In para-6 of the counter filed by respondent No.2, the name of R.Satyanarayana (concerning to W.P.No.7205 of 2009) is referred as one of the passengers who along with V.Anantha Lakshmi and others, was found missing. Therefore, it is clear the order in W.P.No.7205 of 2009 applies in all its fours to the case on hand.

6) In the instant case also, as per the counters filed by the respondents, it is an admitted fact that petitioner's sister—V.Anantha Lakshmi travelled in S-10 coach of Goutami Express on 31.07.2008. The petitioner avouches that after the accident, his sister was not found alive and she has not returned to home either. Having regard to the gravity of accident, which caused the entire S-10 coach including most of the passengers charred to ashes, the death of V.Anantha Lakshmi in the ghastly incident can be presumed under Section 114 of Indian Evidence Act as laid down in W.P.No.7025 of 2009.

7) In the result, this Writ Petition is allowed with the following directions.

1. Respondent Nos.1 and 2 are directed to issue certificate to the effect that sister of the petitioner viz. V.Anantha Lakshmi died in the Goutami Express train accident occurred on 31.07.2008.

2. On the basis of said certificate issued by respondents 1 and 2, respondent No.6 is directed to issue death certificate to the effect that the sister of the petitioner—V.Anantha Lakshmi died in Goutami Express train accident on 31.07.2008.

3. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 25.09.2018
Murthy

U. DURGA PRASAD RAO, J

