

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B.RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

WRIT APPEAL No.957 OF 2016

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This Writ Appeal is filed by the Union of India, Indian Navy Western Naval Command and the Flat Officer, Commanding-in-chief, Eastern Naval Command. It is instituted challenging the order of the learned single Judge in W.P.No.13067 of 2014, which was filed by the first respondent in this Writ Appeal. She is the mother of Sri Amar Ashok Paldhe, who was recruited as Seaman-I in the Indian Navy and who died on 21.09.1993. The writ petition was filed alleging inaction on the part of the appellants as well as the Government of Andhra Pradesh, the Superintendent of Police, East Godavari District, and the Station House Officer, Port Police Station, Kakinada, who are arrayed as respondents 4 to 6 in the writ petition.

2. Hearing the learned Assistant Solicitor General and the learned counsel for the first respondent/writ petitioner, particularly in the light of the grounds 10 to 12, among the grounds in the Memorandum of this Appeal, it was deemed appropriate to consider whether the investigation, which is still pending with the local police, i.e., the Andhra Pradesh Police, could be handed over to the Central Bureau of Investigation, for short, "CBI", constituted under the provisions of the Delhi Special Police Establishment Act, 1946, by vacating the directions contained in the impugned order, which contains direction to the appellants/Naval authorities to constitute fresh Board of Inquiry.

Therefore, on 13.12.2018, the CBI was impleaded as additional respondent and its learned standing counsel took notice on its behalf.

3. When this matter is taken up, learned counsel for the first respondent/writ petitioner as well as the learned Assistant Solicitor General for the appellants expressed that their clients have no objection in the investigation to be handed over to the CBI. Learned counsel for the first respondent/writ petitioner also submitted that his client would welcome such an approach to ensure justice in relation to the demise of her son in the incident, which has now been apparently treated as one 'due to accident'.

4. On the premise that there was inaction on the part of the Naval authorities in furnishing information as to the exact cause of death of her son, the first respondent/writ petitioner and her husband (since deceased) filed the writ petition – W.P.No.316 of 1995 before the Bombay High Court seeking directions for disclosure of the exact cause of death, to conduct diatom test on the preserved parts of the deceased, to collect water samples from the site of the accident and that the findings of the Board of Inquiry be disclosed as well as suitable monetary compensation be awarded. The Naval authorities pleaded that the Bombay High Court did not have jurisdiction in adjudicating upon the *lis* in view of the fact that the incident happened in Kakinada in the State of Andhra Pradesh and that monetary compensation cannot be awarded in writ jurisdiction. Thereafter, O.S.No.90 of 1997 was filed by the parents before the Court of the II Additional Senior Civil Judge, Kakinada. That suit was decreed holding that the

death in question is the result of the negligence of the authorities. That matter attained finality through the decision of this Court in A.S.No.3504 of 2004, in which, the Judgment of the trial Court was unsuccessfully assailed by the appellants.

5. The fact of the matter remains that crime No.72 of 1993 registered by the Port Police Station, Kakinada, is still under investigation. The stand taken by the appellants before the learned single Judge included the specific plea that the Police of 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 the Port Police Station, Kakinada. Through the reply affidavit, the first respondent/writ petitioner had pleaded before the learned single Judge that the authorities having expressed inability to investigate into the matter, it is doubtful whether the investigation would be done by them with due seriousness it deserves. Therefore, the first respondent/writ petitioner pleaded that *de novo* investigation be directed to be conducted by the independent agency like the CBI.

6. Adjudicating the writ petition, the learned single Judge held that the findings recorded by the Board of Inquiry is insufficient to be treated as disclosing the cause of death while it was imperative that the pursuit of the Board of Inquiry ought to have been to that extent. The learned single Judge also held that the officials cannot contend that they lack expertise into the matter. It is on such premise that the impugned order has been issued by the learned single Judge directing the Naval authorities to constitute a fresh Board of Inquiry and communicate findings of that Board of

Inquiry to the first respondent/writ petitioner, who is the mother of the deceased sailor Amar Ashok Paldhe, in a time bound manner as directed.

7. The appellants, Naval authorities, have taken a specific contention in the Writ Appeal that it is the local police at Kakinada, who ought to have investigated the incident to find out the actual cause of death of the deceased, since the incident occurred in their local jurisdiction. The fact of the matter remains that the State Police authorities i.e., Andhra Pradesh Police, including the Port Police, Kakinada, have not completed the investigation in crime No.72 of 1993 till date. The investigation in that case has not reached the stage of final report concluding it either way.

8. While the appellants challenge the order of the re-investigation by the Naval authorities in view of the absence of any specific provision for re-investigation of the case under Chapter VII of Regulations Navy Part II (Statutory), the fact of the matter remains that the first respondent in this Writ Appeal, who is the writ petitioner and mother of the deceased sailor, Amar Ashok Paldhe, is eligible to insist on securing justice relatable to the unnatural death of her son, particularly when the actual cause of death is yet to be ascertained, thereby giving a quietus to the issues arising from the death of the said person in Kakinada. No party has a case before us that the investigation in crime No.72 of 1993 of the Port Police Station, Kakinada, is not to be taken to its logical end. Nor could there be any such view.

9. We have considered the entire materials as available now as part of records of this Writ Appeal and the writ petition, including the Board of Inquiry proceedings, and the law relating to the Indian Navy. Having bestowed our anxious consideration to the facts and circumstances of the case, we are of the view that the investigation in the form of due procedure under Code of Criminal Procedure, 1973, ought to have been carried by the local police. The Board of Inquiry proceedings might have given an impression to the local police that such investigation need not be carried forward at that end. The situational requirement is that proper and complete investigation is to be carried in relation to crime No.72 of 1993 of the Port Police Station, Kakinada, to instill confidence in the minds of the victims, thereby meaning the parents of the deceased as well. This can be achieved on the scales of justice by having the investigation being transferred to the CBI.

10. In the result, it is directed that the investigation in crime No.72 of 1993 of the Port Police Station, Kakinada, shall be transferred to the fifth respondent, the Central Bureau of Investigation, which shall conduct investigation on the basis of the First Information Report independently. However, it will be open to the CBI to consider whether any material already available with the local police in the investigation is to be utilized by the CBI in the process of investigation. It will also be open to the CBI to consider and decide on the utility of any material available with the Naval authorities, who shall also cooperate with such investigation. We hope and trust that the CBI will do the needful to immediately commence the process at that end and expeditiously carry forward due procedure of investigation, having regard to the fact that the

matter relates to a case where the surviving parent of the deceased sailor is awaiting for her due shower of justice as the mother of the victim. In the light of these directions, it is unnecessary to sustain the impugned order either on facts or on the principles of law stated therein. Therefore, without prejudice to the contentions following the Central Bureau of Investigation's investigation, the impugned order of the learned single Judge is set aside. The Writ Appeal is ordered accordingly.

There shall be no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.



THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

17.12.2018
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