

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

H.C.P. No. 1615 of 2018

Govindammal

..Petitioner

Vs.

1. Union of India rep. by its
Secretary to Govt.,
Ministry of Defence,
New Delhi.
2. Union of India rep. by its
Secretary to Govt.,
Ministry of External Affairs,
New Delhi.
3. Head Quarters,
Direct General Border Road,
Seema Sadak, Bhawan Ring Road,
Delhi Cantt - 110 010.
4. Chief Record Officer (GREF),
GREF Center, Dight Camp,
Pune - 411 015.
5. Head Quarters,
The Commander,
762, Border Road Task Force,
Pincode - 930 762.
C/o. 56 APO
6. The Officer Commanding,
126 Road Construction Coy (GREF),
PIN 930 126,
C/o 56 APO
7. The Inspector of Police,
Padam Police Station,
Padam (Vill), Zangla-Post,

Zanskar Tehsil,
Kargil Dist,
PIN No. 194302,
Jammu & Kashmir.

8. The Deputy Superintendent of Police,
Zanskar Tehsil, Zangla (Post Office),
Kargil District,
Jammu and Kashmir,
Pin 194302.
9. The State rep. by
Superintendent of Police,
O/o. The Superintendent of Police,
Krishnagiri District.
10. The Inspector of Police,
Town Police Station,
Krishnagiri.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus to produce the body of his son M. Sivakumar G.S. No. 179016Y DES before this Hon'ble Court and set him at liberty.

For Petitioner :: Ms. Selvi George

For Respondents:: Mr.N. Rajan, SCGSC
for R1 to R6
Mr.R. Prathap Kumar,
Addl. Public Prosecutor
for R9 & R10

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

The present Habeas Corpus Petition has been filed to produce the body of the petitioner's son, M. Sivakumar G.S. No. 179016Y DES before this Hon'ble Court and set him at liberty.

2. From the counter affidavit filed by the 6th respondent on behalf of respondents 1 to 8, it is disheartening to note that the petitioner's son, M. Sivakumar, who was serving in the army is said to have been buried while discharging his duty when he was deployed for execution works at Padam-Kilima-Nirag Road Sector in Jammu and Kashmir. It is stated in the counter affidavit that on 18.09.2017, the petitioner's son was engaged in drilling work on hard rock with remote operated SPM rock drill make Sandvik DC on Padam-Kilima-Nirag Road Sector as usual. On the said date, at about 9hrs, while drilling,

suddenly, Maz Stanzin Dadul, who was helping the petitioner's son in the said work, saw that huge portion of overhanging rock mass of size around 9mtr x 2.05mtr x 15mtr was coming down. Though he immediately whistled to alarm Sivakumar so as to enable him to escape from the spot, he could not find time to escape, as the rockslide occurred all on a sudden within a second, with huge amount of dust. As a result, the rockslide came down and fell over the SPM rock drill machine and the petitioner's son. Due to heavy rock slide, the petitioner's son M. Sivakumar and the SPM rock drill machine are suspected to have been buried under the debris or fallen inside the Zanskar river, which is flowing just below the accident spot. In spite of vigorous search operation with the help of manpower, excavator machine and two sniffer dogs from 17 Army Dog Unit and after making all possible sincere efforts, only SPM rock drill machine was found in completely damaged condition from the accident spot under the debris, but Sivakumar could not be traced out.

3. Therefore, it is clear that the petitioner's son, very unfortunately, was buried while discharging his duty. Recording the same, the HCP is closed.

4. It is stated in the counter affidavit that financial assistance of Rs.40,500/- has been paid vide this office Letter No. AF/179016Y/MSK/29/E1 dated 28.09.2017 to NOK through the representative of the department. All documents for initiating the pension paper was also handed over to the said representative by NOK duly signed and all terminal benefits will be initiated immediately on receipt of documents from NOK duly signed.

5. In view of the above position, respondents 1 to 6 are directed to settle the terminal benefits, except family pension, payable to the petitioner's son Sivakumar to his wife, child and the petitioner, who are his legal heirs.

6. Though Mr.N. Rajan, learned counsel for respondents 1 to 6 would oppose the grant of benefits to the petitioner, the same is rejected for the reason that the petitioner, being the mother of the deceased is entitled to a share in the terminal benefits payable as a Class I Legal Heir, excepting family pension. It is made clear that all terminal benefits have to be settled without any discrimination.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

nv

To

1. The Secretary to Govt., union of India
Ministry of Defence,
New Delhi.
2. The Secretary to Govt., union of India
Ministry of External Affairs,
New Delhi.
3. Head Quarters,
Direct General Border Road,
Seema Sadak, Bhawan Ring Road,
Delhi Cantt - 110 010.
4. Chief Record Officer (GREF),
GREF Center, Dight Camp,
Pune - 411 015.
5. Head Quarters,
The Commander,
762, Border Road Task Force,
Pincode - 930 762.
C/o. 56 APO
6. The Officer Commanding,
126 Road Construction Coy (GREF),
PIN 930 126,
C/o 56 APO
7. The Inspector of Police,
Padam Police Station,
Padam (Vill), Zangla-Post,
Zanskar Tehsil,
Kargil Dist,
PIN No. 194302,
Jammu & Kashmir.
8. The Deputy Superintendent of Police,
Zanskar Tehsil, Zangla (Post Office),
Kargil District,
Jammu and Kashmir,
Pin 194302.
9. The Superintendent of Police,
O/o. The Superintendent of Police,
Krishnagiri District.

10. The Inspector of Police,
Town Police Station,
Krishnagiri.

11. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1615 of 2018

BR(CO)
GS(22/10/2020)