

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.9540 of 2009

1.P.Rupas (deceased)
Son of Mr.Perumal

2.R.Theresa, W/o P.Rupas
No.3125 HUDCO Nagar,
1st Cross Street,
Kattuppakkam, Chennai-600 056.

(P2-substituted as LR of the
deceased sole petitioner vide
order dated 27.11.2020 made in
W.M.P. No.4505/2020 in WP 9540 of 2009) Petitioner

vs.

The Secretary,
Public (L & O-A) Department,
Fort St. George, Chennai-9

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondent to enhance the monetary compensation to the petitioner by Rs.10,00,000/- for custodial death of the petitioner's son namely Stephen in the hands of Police Officials belong to Namakkal Police Station on 21.06.1995.

For Petitioner : Mr.T.Ramkumar

For Respondent : Mr.G.K.Muthukumar, Spl.G.P.

ORDER

The facts are largely undisputed in this case. The original Petitioner was the father of the deceased. His son, Stephen, died in police custody at the Namakkal Police Station on 21.06.1995, and a sum of Rs.10,00,000/- was claimed by the father as enhanced monetary compensation. While the writ petition was pending, the original Petitioner died and was substituted by his wife, i.e., the deceased Stephen's mother. Pursuant to Stephen's death, the Sub-divisional Magistrate, Namakkal, conducted an inquiry under Section 174 of the Criminal Procedure Code, 1973 (the Cr.P.C.) and submitted a report to the effect that the Petitioner's son was tortured by the police. Based on the said report, a charge sheet was filed

against the Sub-Inspector of Police and three Constables belonging to the Namakkal Police Station. The case was prosecuted before the learned Principal Judge, Salem and culminated in the conviction of the Sub-Inspector of Police and three Constables, who were awarded the punishment of life imprisonment.

2. Shortly after the death of the Petitioner's son, a sum of Rs.50,000/- was paid to the original Petitioner from the Tamil Nadu Chief Minister's Relief Fund. Such payment was received pursuant to G.O.Ms.No.824 dated 19.07.1996. After the judgment of the criminal court, which was pronounced on 19.12.2000, the original Petitioner submitted several representations between the years 2001 and 2005 requesting for reasonable compensation. Reference may be made to the notice issued on behalf of the original Petitioner by his lawyer on 17.05.2005. By this notice, the official Respondents were called upon to pay a sum of Rs.10 lakhs as compensation. The present writ petition was filed on account of the reply dated 19.07.2005 from the Secretary to Government stating that a sum of Rs.50,000/- was sanctioned and paid in the year 1996 and that, therefore, it is not possible to sanction any further amount as compensation.

3. The learned counsel for the Petitioner adverted to the above facts and contended that the admitted position is that the Petitioner's son died in police custody. In the criminal proceedings that were instituted subsequent thereto, the guilt of the accused police officials was established beyond reasonable doubt, thereby resulting in their conviction and sentencing to life imprisonment. Thus, the learned counsel contends that the culpability of the Government has been established beyond doubt and that the logical corollary is that the Government is obligated to pay just and reasonable compensation to the Petitioner.

4. With regard to the delay in filing the writ petition, the learned counsel submits that the judgment in the criminal proceedings was pronounced on 19.02.2000. Shortly thereafter, the Petitioner submitted representations to the District Collector, Namakkal, claiming compensation. Finally, a reply dated 19.07.2005 was received from the Government rejecting the claim for compensation. In the facts and circumstances, he contends that the delay has been duly explained and that the Petitioner cannot be non-suited on account of delay especially in the facts and circumstances.

5. The learned Special Government Pleader admits that the facts and circumstances leading to the death of the Petitioner's son are truly tragic. In recognition of the State's obligation, he submits that G.O.Ms.No.823 was issued on 19.07.1996 and

pursuant thereto, an amount of Rs.50,000/- was paid to the Petitioner in the year 1996, as evidenced by the documents on record. He further submits that the sum of Rs.50,000/- would appear meagre at this distant point of time, but was a substantial sum in the year 1996. He also points out that the said sum of Rs.50,000/- was duly recovered from the police officials who were responsible for the horrific incident, in specific proportions, as specified in the above G.O. Consequently, he contends that it is not possible to consider the Petitioner's request for additional compensation at this juncture. Indeed, he submits that it would be impossible to recover it from the culpable police officials at this distant point of time. For all these reasons, he submits that the writ petition is liable to be rejected.

6. The responsibility of the Government and its officials for the tragic death of the Petitioner's son has been established beyond reasonable doubt in this case. Indeed, it is the admitted position that the Petitioner's son died while in custody at the Namakkal Police station and that such death was caused by the convicted police officials. Therefore, the only question that arises for adjudication is: whether the petition is liable to be rejected on the ground of delay or for any other reason? The Petitioner's son died on 21.06.1995 and the sum of Rs.50,000/- was paid some time towards the end of the year 1996. While it is true that the cause of action to claim compensation arose immediately upon the custodial death of the Petitioner's son, it cannot be lost sight of that the culpability of the specific police officials, who were charged with murder, had not been established at that time. For instance, it was theoretically possible that the Petitioner's son committed suicide while in police custody or met with an accidental death. It is only upon the conclusion of the proceedings before the criminal court in the year 2000 that it was established beyond all reasonable doubt that the death of the Petitioner's son was neither an accident nor due to suicide but was caused by the convicted police officials. Clearly, this enhanced the liability and responsibility of the Government inasmuch as it was no longer merely payment of compensation for custodial death, but payment of compensation for custodial death caused by the convicted police officials. Therefore, the Petitioner clearly had a fresh cause of action after the judgment was delivered by the criminal court at least as regards the claim for enhanced compensation. Although there is some delay in filing the writ petition even when reckoned from the date of the judgment of the criminal court, several representations were issued between 2001 and 2005 and, eventually, the Government rejected the Petitioner's claim on 19.07.2005. In the facts and circumstances, the writ petition is not liable to be rejected for that reason.

7. The next question is whether the writ petition is liable to be rejected because Rs.50,000/- had been paid as compensation earlier. The contention of the learned Special Government Pleader that the sum of Rs.50,000/- was a reasonable sum in 1996 is not completely devoid of merit, but the question remains whether such sum constituted just compensation in the facts and circumstances. In my view, even after reckoning the cost of living and value of money in 1996, it cannot be said that the payment of a sum of Rs.50,000/- constituted just compensation for the horrific death of the Petitioner's son. The said sum appears to have been paid from and out of the Chief Minister's Relief Fund. Indeed, there is no indication in the relevant documents that it was paid as full and final compensation. Besides, as stated earlier, at that point of time, the culpability of the police officials had not been established. Therefore, it should be reckoned as ex-gratia compensation and not full compensation to the Petitioner.

8. Upon the death of Stephen's father while the writ petition was pending, the sole Petitioner today is the widow of the original Petitioner and the mother of the deceased. Keeping in mind the totality of facts and circumstances, the Petitioner is entitled to additional compensation. In arriving at this conclusion, I have taken into account the now firmly entrenched position that a public law remedy, including by way of compensation, is available to a person aggrieved by a custodial death. By way of precedent, it is sufficient to cite *In re: Inhuman Conditions in 1382 Prisons*, (2017) 10 SCC 658, wherein all relevant judgments were surveyed.

9. All that remains is the determination of quantum of compensation. The deceased was about 19 years old when the incident occurred and he had his entire adult life ahead of him. While his life can never be resurrected, some succour, however inadequate in context, should be extended to his mother. Sufficient particulars are not available with regard to the employment status of the deceased or even with regard to his educational status. Therefore, it is difficult to apply the multiplier or adopt any other precise method to arrive at just compensation. More than 10 years have lapsed after the filing of the writ petition and the diminishing value of money in light of inflation cannot be lost sight of. On the other scale, one must weigh the receipt of a sum of Rs.50,000/- by the original Petitioner in the year 1996, and bear in mind that such sum was not nominal or negligible at that point of time. As pointed out by the learned Special Government Pleader, it may not be possible for the Government to recover anything further from the culpable Government servants. Nonetheless, such inability to recover does not per se absolve the Government of liability

although it is a material factor in deciding on the quantum of compensation given that some delay is attributable to the Petitioner. Thus, after taking into account all the material facts and circumstances cumulatively, I am of the view that the payment of a sum of Rs.3,00,000/- would constitute just compensation to the current Petitioner. The Respondents are directed to pay the said sum to the Petitioner within a period of two months from the date of receipt of a copy of this order. In case the said sum is not paid within two months, it will carry interest at 9% per annum from the expiry of two months until payment thereof to the Petitioner.

10. W.P. No.9540 of 2009 is allowed on the above terms. There will be no order as to costs. Consequently, the miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub-Assistant Registrar

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To

The Secretary,
Public (L & O-A) Department,
Fort St. George, Chennai-9.

+1CC TO MR.T.RAMKUMAR, ADVOCATE, SR.NO. 12472

PCH(CO)
KKN 27.04.2021

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