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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-11-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.5673 of 2011

R.Kantha

...Petitioner

vs.

- 1.The State of Tamil Nadu,  
Represented by its Secretary,  
Home Department,  
Fort St. George,  
Chennai - 9.
  - 2.The Secretary,  
Public and Social Welfare Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
  - 3.The District Collector,  
Kanchipuram District,  
Kanchipuram.
  - 4.The Panchayat President,  
Thirumony Panchayat,  
Panchayat President Office,  
Thirumony,  
Kanchipuram.
  - 5.The Project Director,  
TANSACS (Tamil Nadu State Aids  
Control Society),  
417, Pantheon Road,  
Egmore,  
Chennai - 600 008.
- (R-5 impleaded vide order of  
Court dated 10.08.2011 made  
in MP No.1 of 2011 in WP 5673 of 2011)

..Respondents



Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to provide immediate shelter and compensation for the loss sustained by the petitioner on 12.01.2011.

For Petitioner : Ms.P.Uma

For Respondents-1 to 3: Mr.C.Jaya Prakash,  
Government Advocate.

For Respondent-4 : No Appearance

For Respondent-5 : Ms.C.N.G.Niraimathi

#### O R D E R

The relief sought for in the present writ petition is to direct the first respondent to provide immediate shelter and compensation for the loss sustained by the petitioner on 12.01.2011.

2. The petitioner states that her husband and herself are living with HIV Positive due to marital relationship. They have two children of 4 years and 2 years of age respectively. The children are not infected, but affected due to parent's status. The husband of the petitioner is working as Project Coordinator in KNP+ and DIC-Drop In Centre, which are getting support from Tamil Nadu Aids Control Society. On 12.01.2011 at 02.30 A.M., early morning, the petitioner's hut in Periyar Street, Thirumany set to fire, which is made up of Cadjan leaves, while her husband, herself, her two daughters and two children of her sister were sleeping. The husband of the petitioner woke up because of the effect of hot air inside the hut and they escaped from the burning hut.

3. The learned counsel for the petitioner made a submission that when a criminal case was registered on 12.01.2011 before the Chinglepet Taluk Police Station in FIR No.11 of 2011, the petitioner submit an application, seeking compensation, as they lost their livelihood, including their shelter.

4. This Court has considered the issues relating to grant of compensation in respect of such accidents or criminal activities in public places in WP Nos.8385 of 2014, 30655 of



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2013 and 35028 of 2012 dated 29.10.2021 and the relevant paragraphs 7 to 20 are extracted hereunder:-

"7. The learned Additional Advocate General submitted a copy of the letter, dated 28.10.2021, sent by the Additional Chief Secretary to Government, wherein, it is conveyed that the State Government, Revenue and Disaster Management Department, vide G.O.(Ms).No.268, dated 18.08.2017, have issued orders for grant of relief of Rs.1,00,000/- from the Chief Minister's Public Relief Fund to the family of the persons, who lost their life for a variety of reasons such as natural calamities, communal clashes, accidents including explosive accidents, bomb blasts, decoit raids, attacks by wild animals, costly surgery and other medical treatments, factory/mill lockouts/lay off, public cause served by certain institution, etc. There is no specific mention about the persons, who died due to fall of trees in public places in the above said Government letter. If any accident occurred due to natural calamity within the Chennai District, the Collector, Chennai District is the competent authority to sanction the compensation, if eligible. The letter further reads by stating that, for the purpose of framing guidelines in this regard, wider consultation with the Revenue and Disaster Management Department, Greater Chennai Corporation, Director of Municipal Administration and Commissioner of Town Panchayats have to be made and thus, requested some time for forming a consensus and arriving at a conclusion and framing guidelines for payment of compensation/ex gratia payment by the Government to the families of the victims.

8. This Court is of the considered opinion that the facts prevailing in the public domain are that, there are wide range of discrimination in the matter of settlement of compensation to the families of the victims by the Government. One cannot brush aside the allegations in view of the fact that compensations are being paid by the Government on many such circumstances, but



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unfortunately, the compensations are quantified and settled in an inconsistent manner and based on several other extraneous and political considerations.

9. This Court is of the strong opinion that, State, being the protector of all citizens, must ensure that, discrimination in settlement of ex gratia payment or compensation in similar circumstances are avoided. Any such discrimination will lead to unconstitutionality. No citizen can be discriminated in the matter of payment of compensation. No doubt, the compensation to be paid may differ from person to person based on variety of factors, however, such compensations are to be guided by schemes and policy. The Motor Vehicles Act, 1988, for example, contemplates the method of calculating just compensation. Constitutional Courts have also issued guidelines in order to minimise the inconsistencies in determining the quantum of compensation in motor accident cases. Principles are derived. Various considerations are shown for the purpose of determining the quantum of compensation to be paid by the Insurance Companies and by the other companies.

10. Question arises whether the principles adopted in motor accident cases under the Motor Vehicles Act can be followed in cases where accidents occur in public places, as in the present case, a tree fell down and accident happened and a person died.

11. It is needless to state that motor accident cases cannot be compared with the accidents happening due to the act of God or on some occasions, due to the negligence on the part of the public authorities in maintaining the public infrastructures. The scheme of insurance under the Motor Vehicles Act is entirely different and thus, such a scheme cannot be adopted for the purpose of grant of compensation/ex gratia payment in the cases of accidents occurring in public places due to falling of tree, lightning, flood and on account of natural calamities, etc., as pointed out by the



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Government in its letter. Thus, a different yardstick is required for the purpose of forming the guidelines.

12. Citizens of our great nation are using the public infrastructures provided by the State. Footpaths, public toilets, markets, Roads, Elevators, etc., and many such public places are utilized by the citizens in general. Due to the act of God or due to the negligence of the public authorities in certain circumstances, if any accident occurs, and any person sustains injuries, no doubt, he must be compensated to some extent at least to meet out the emergency circumstances, as the State being a welfare State is duty bound to save the citizen, who is in distress on account of such accidents.

13. The Executives of the State play the pivotal role in maintenance of infrastructures in public places. The State has to ensure that such public infrastructure facilities are maintained up to the standards, so as to avoid such accidents in public places resulting loss of life. Undoubtedly, the Executives are duty bound to conduct inspections periodically and ensure such accidents do not happen at any circumstances. However, beyond their control, sometimes it happens. Thus, in such circumstances, the welfare State must look into the grievances and pay compensation at least to support the family in such emergency circumstances in an uniform manner.

14. Unfortunately, the facts prevailing in the public domain are disturbing the mind of this Court. Everyday, newspapers and media are informing the public in general that, in one case, a sum of Rs.1 Crore compensation is paid along with Government employment and in another case, a sum of Rs.50 Lakhs compensation is paid and in yet another case, a sum of Rs.5 Lakhs is paid and Rs.1 Lakh, so on and so forth. The basis for determination of quantum of compensation is absolutely unexplained and remains as mystery. The basis is not known to the public at large. It lacks transparency, which is required and



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a mandate under the Constitution. Similarly placed persons, who are victims of such public accidents, must be in a position to know, what is the actual compensation for which they are entitled to receive from the Government. It is as if the Executives can quantify the compensation at their own whims and fancies or based on certain extraneous considerations.

15. This Court is of the considered opinion that political considerations or any other consideration cannot be a ground for determining the quantum of compensation. Citizens of our great nation are to be treated equally, uniformly, consistently, in the manner known to the Constitution of India. We, the people of India, resolved and formed the Constitution. Thus, the payment of ex gratia in similar circumstances must be paid in an uniform manner and any inconsistency or discrimination is undoubtedly unconstitutional and can never be approved.

16. Thus, circumstances warrant formation of policy so as to consider the cases in an uniform manner for payment of compensation/ex gratia, across the State of Tamil Nadu, to the eligible victims.

17. Constitutional principles of equality, social justice, reasonableness must be adhered to, while framing guidelines for the purpose of paying ex gratia payment/compensation to the victims in respect of accidents occurring in public places. However, the Government has to consider the quantum of compensation to be paid and it is the prerogative of the Government to decide the quantum of compensation to be paid.

18. It is to be borne in mind that the Government is dealing with the tax payers' money. While dealing with the tax payers' money, every Government of the day is expected to perform the solemn functions in a transparent manner and to ensure that citizens are treated equally and without any discrimination. This being the basic principles to be kept in mind before forming the guidelines in such matters where ex gratia



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payments are announced for the accidents occurring in the public places, this Court is of an opinion that it is imminent to frame guidelines as expeditiously as possible, as a large number of cases are pending before the Government and before the Courts.

19. Courts are also granting compensation for victims with reference to the accidents in public places. However, one cannot dispute that the Courts are determining the compensation in its own way based on the facts and circumstances of each case. This Court is of the humble opinion that quantum of compensation if allowed to be determined in the absence of guidelines, no doubt, it will lead to discrimination and inconsistency, which is not desirable. In such circumstances, where issues relating to the accidents are disputed, then an enquiry is imminent. The petitioner's negligence is to be considered in cases, where the accident itself is disputed. Thus, quantification of compensation in the writ petitions, no doubt, may lead to inconsistency and discrimination. Thus, Courts are expected to be cautious, while fixing compensation in the absence of guidelines. The judgments, wherein higher compensations are granted are relied upon and such inconsistency result in denial of just compensation or appropriate compensation to the victims. Just or reasonable compensation is the 'subjective satisfaction' and can never be the satisfaction of the High Court in a writ proceedings. Thus, Constitutional mandate requires, State should formulate guidelines for the purpose of payment of compensation/exgratia to the victims, who are falling under the particular category. Since many number of writ petitions are pending before the High Court, the State is duty bound to formulate the guidelines/policies as quickly as possible, so as to minimize the inconsistency or discrimination in the matter of payment of ex gratia/compensation to the victims of the accidents in public places.

20. At this juncture, the learned counsels appearing on behalf of the





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Chennai - 600 008.
- +1 CC to Mrs.P. Uma, Advocate sr 59534  
+1 CC to The Government Pleader sr 59779.

W.P.5673 of 2011

KG(CO)  
SP(30/11/2021)