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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No. 20742 of 2014

B.Krishnaveni

... Petitioner

Vs.

The District Collector
Chennai District
Chennai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus to call for the records on the file of the respondent pertaining to the proceedings in ref.Na.Ka.Mo. E-1/31215/2013 dated 11.04.2014 and quash the same and consequently directing the respondent to pay the compensation to the petitioner for the sudden death of her husband P.Balan.

For Petitioner : Mr. D.Bharathy

For Respondent : Mr. M.Rajendiran
Additional Government Pleader

O R D E R

The order of rejection dated 11.04.2014 declining the request of the petitioner for grant of compensation is under challenge in the present Writ Petition.

2. The husband of the petitioner late P.Balan was working in Chennai Corporation as Assistant in Malaria Department and was retired and was receiving pension in the residential area at Ooteri wherein the petitioner's family was residing, a canal work was done by PWD and Chennai Corporation for the clean of Nalla Kallvay. The petitioner had fallen into the hole and during the rainy season and died on 28.11.2012. The petitioner states that the accident occurred due to the negligence on the part of the public authorities. They had not taken effective



steps to close the hole while performing the works in that locality. Thus, the petitioner submitted an application seeking compensation. The said application was rejected on the ground that there is no provision under the scheme to grant compensation. Therefore, the petitioner has chosen to file the present Writ Petition.

3. This Court elaborately considered the scheme relating to grant of compensation in respect of death in public places. In W.P.No. 8385 of 2014 etc., batch dated 29.10.2021 and the relevant paragraphs are extracted hereunder:-

"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.



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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 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



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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 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



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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 petitioners raised a ground that, in the event of approaching the competent Court of law for claiming compensation under other Statutes, the said applications will be rejected on the ground of delay. It is needless to state that the period of pendency of writ petition before High Court is to be taken into consideration, if any petition to condone the delay is filed by the applicants.

21. Shri. Shiv Das Meena, I.A.S., Additional Chief Secretary to Government, Municipal Administration and Water Supply Department, has responded to the views



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expressed by this Court and communicated the letter, dated 28.10.2021 to the learned Additional Advocate General~V of Tamil Nadu. The swift action taken by the Additional Chief Secretary to Government of Tamil Nadu, stands appreciated.

22. The Principal Secretary, Revenue and Disaster Management Department, Government of Tamil Nadu, Chennai ? 600 009 is suo~motu impleaded as respondent R3 in all these writ petitions for the purpose of participating in the discussion to be conducted by the State for formulating guidelines.

23. In view of the facts and circumstances, this Court is inclined to pass the following orders:

(1) The respondents are directed to formulate the guidelines and determine the quantum of compensation/ex gratia to the victims of accidents occurring in public places within a period of eight weeks from the date of receipt of a copy of this order.

(2) The writ petitioners are directed to submit their respective applications to the competent authority for compensation/ex gratia within a period of 12 weeks from the date of receipt of a copy of this order and the said applications are to be considered based on the guidelines to be formulated and the decision is to be taken within a period of eight weeks from the date of issuance of the guidelines/policies to be formulated by the respondents.

(3) Payment of compensation/ex gratia by the Government is not a bar for the eligible victims to claim Insurance benefits and compensations under various other welfare legislations in the manner



known to law."

4. In view of the Judgments cited supra, the petitioner is at liberty to submit a fresh application after formulating the scheme by the Government and in the event of filing any such application, the case of the petitioner has to be considered with reference to the terms and conditions to be formulated and the said application shall not be rejected merely on the ground of delay.

5. The factum relating to the accident is to be considered and appropriate relief needs to be granted based on the terms and conditions which is to be framed by the Government pursuant to the order dated 29.10.2021 passed in W.P.No. 8385 of 2014 etc., batch.

6. With the above said directions, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

vsg

To

The District Collector
Chennai District
Chennai.

+1cc to the Government Pleader, SR.No.67902

W.P.No. 20742 of 2014

RSV(CO)
CB(04/01/2022)