



W.P(MD)No.21719 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21719 of 2015

Ommaithurai

... Petitioner

Vs.

1.The Secretary to Government,
Government of Tamilnadu,
Department of Mines and Minerals,
Secretariat, Fort St.George, Chennai.

2. The Secretary to Government,
Government of Tamilnadu,
Most Backward Classes Welfare Department,
Secretariat, Fort St. George, Chennai.

3.The District Collector,
Dindigul.

4.The Additional Director,
Tamilnadu Geology and Mines Department,
District Collector's Office, Dindigul.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the



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respondents to consider and pass orders upon the representation of the petitioner dated 23.09.2015 for issuance of compensation of Rs.25 lakhs for the death of the Petitioner's son named Sivakumar in the Quarry Pond situated in Survey No.835-1A16 at Anjukuzhipatti village, Dindigul East Taluk, Dindigul District.

For Petitioner : Mr.N.Shankar Ganesh

For Respondents : Mr.N.GA.Nataraj,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The case of the writ petitioner is as follows:-

The petitioner's son / Sivakumar aged about 13 years was studying in 8th standard in Government Higher Secondary School, Vembarpatti, Dindigul District. He was staying at Government Hostel for Most Backward Classes boys. On 11.07.2015, Sivakumar and his friends went to have swim in the quarry pond situated in S.No.835/1A16 at Anjukuzhipatti village, Dindigul East Taluk. Sivakumar and another



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student by name Moorthy died due to drowning. Crime No.308 of 2015 was registered on the file of Sanarpatti Police Station under Section 174 of Cr.P.C. The quarry pond was not fenced and no visible sign boards had been erected. A representation was submitted seeking payment of compensation of Rs.25,00,000/-. Since the representation was not considered, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Reliance is placed on the order dated 06.09.2021 made in W.P.Nos.4771 and 4779 of 2019.

4.The respondents have filed counter affidavit. The learned Government Advocate took me through averments set out in the counter affidavit and called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is seen that the petitioner's son was staying at Government Hostel. He was aged around 13 years. The hostel is



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obviously under the control of a warden. 11.07.2015 happened to be a Saturday. The petitioner's son could not have been allowed to leave the hostel premises without permission. The warden would claim that without his knowledge, the petitioner's son left the hostel premises to have bath in the quarry pond. This explanation set out in the counter affidavit cannot be accepted. The hostel warden was obviously negligent. But obviously, the warden could not have foreseen that the boys would die due to drowning. That is in a case of remote cause. The warden cannot be made liable for the remote consequence flowing from his act of negligence.

6.The occurrence is no doubt tragic. A group of boys had consciously gone to the quarry pond and there, the unfortunate occurrence had taken place. If without being aware of the existence of the dangerous spot, the victims had fallen and died, the authorities can be blamed for not having put up the fencing or warning board. Putting up the board or fencing would have made no difference when the boys had made up their minds to go to the quarry pond. Since the petitioner's son was a minor, the Court will not be justified in invoking the principle of



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volenti non fit injuria. In such cases, the Government on its own comes forward to award ex gratia payment. Even in the counter affidavit, the stand taken by the District Collector is that the petitioner has rushed to this Court even when his request was being processed.

7.The quarry was located in S.No.835/1A16. The learned Government Advocate made available “A” Register entries. It is seen that it is a patta land standing in the name of one Muthu. The private pattadar has not been impleaded as party in the writ petition. For an occurrence that had taken place in a private patta land, the Government cannot be made liable.

8.I have already held that the warden was negligent and the petitioner's son could not have been allowed to leave the hostel premises without proper authorization. Admittedly, no leave letter was given by the petitioner's son. Thus, there is ground for fastening liability on the State. Since in such cases ex gratia payment is awarded, the first respondent is directed to pay a sum of Rs.2,50,000/-. This amount shall be deposited in the name of the mother of the deceased child. In the



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event of there being no mother, the said amount shall be paid to the writ petitioner herein. This shall be done within a period of ten weeks from the date of receipt of a copy of this order.

9.This writ petition is allowed accordingly. No costs.

28.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Secretary to Government,
Government of Tamilnadu,
Department of Mines and Minerals,
Secretariat, Fort St.George, Chennai.
2. The Secretary to Government,
Government of Tamilnadu,
Most Backward Classes Welfare Department,
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- 4.The Additional Director,
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G.R.SWAMINATHAN, J.

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