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W.P.No.933 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.933 of 2023

K.Padmini

.. Petitioner

vs

1.State of Tamil Nadu
Rep. By its Secretary,
Home Department,
St.George Fort, Chennai.

2.The Secretary to the Government,
Health & Family Welfare Department,
Secretariat, St.George Fort,
Chennai.

3.The Director,
The Directorate of Medical Education,
Chennai.

4.The Dean,
Rajiv Gandhi Government General Hospital,
Chennai.

5.The Commissioner of Police,
Greater Chennai City,
Veppery, Chennai.

6.The Inspector of Police,
Palligonda Police Station,
Vellore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to enhance the compensation amount a sum of Rs.25 lakhs instead of awarding compensation Rs.1 lakh by the 2nd respondent vide proceedings G.O.(2D) No.68 dated 16.04.2019 to the petitioner for loss of the petitioner's



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husband and mental agony by considering the revision filed by the petitioner on 19.04.2021.

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For Petitioner : Mr.R.Govindasamy
For Respondents : Mr.K.Tippu Sultan
Government Advocate
for R1 to R4
Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)
for R5 & R6

ORDER

The petitioner is in a second round of litigation and seeks a mandamus directing the respondents to pay enhanced compensation of a sum of Rs.25 lakhs as against Rs. 1 lakh computed by R2.

2. The husband of the petitioner met with an accident on 20.11.2008 and on 23.11.2008 he passed away in the Rajiv Gandhi Government General Hospital, Chennai. The body was kept in the mortuary for completion of post-mortem. On 24.11.2008, when the petitioner had sought the return of the body, they were handed over a body of an unknown person.

3. Thereafter, representations were made to the Dean of the Rajiv Government General Hospital and the petitioner and her family were duly informed by R4 that there had been a mistake in the mortuary on account of which a wrong body had been handed over to them. The body of the petitioner's husband had been handed over to another family and had not been seen by the petitioner thereafter.

4. The petitioner had earlier approached this Court in W.P.No.



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7764 of 2009, wherein also, the prayer was for a mandamus directing the respondents to pay compensation of Rs.25 lakhs for mental agony caused to her for negligence and handing over of an unknown body in respect of petitioner's husband. That writ petition was disposed on 15.02.2018 and at paragraph 7, the learned Judge states as follows:-

"7. Moreso, when admittedly, the dead body belonging to some other person had been handed over, at this situation, this Court can very well visualise the kind of agony and anguish went through by the family members of the petitioner to perform the last rites. Moreover, the petitioner's and family members had been forcibly denied of their rights to see the body of the deceased before performing final rites to the body. Therefore, this Court is of the firm view that the petitioner is entitled for a reasonable compensation. However, such compensation has to be decided by the Government. Therefore, this Court in the circumstances of the case hereby directs the petitioner to submit a representation claiming adequate compensation, to the second respondent within a period of one week from the date of receipt of copy of the order and thereafter, the second respondent is directed to dispose of the representation by granting some compensation considering the agony and anguish suffered by the petitioner's family members due to the negligent act of the 4th respondent hospital. The order shall be passed by the second respondent within a period of six weeks from the date of the copy of the representation. It is made clear that the petitioner is entitled to compensation. However, the Court leaves it to the discretion of the authority to decide the quantum of such compensation payable."

5. There is thus a specific direction to R2, who is the Secretary, Health Department to consider the representation and dispose the same by granting compensation commensurate with the suffering of the petitioner and the family members due to the admitted negligence of the respondents. R2 was directed to pass necessary orders within six weeks.



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The Court also made it clear the the entitlement of the petitioner to compensate was absolutely unassailable and it was only on the quantum that discretion was given to the authorities.

6. The petitioner thereafter made an application before R2 but instead of looking into the matter himself, assessing the proper facts and applying his mind as to the quantum of compensation that would be payable, the matter was passed on to a Committee. The Committee had recommended a sum of Rs.2 lakhs to be paid to the petitioner and this, according to respondents, would suffice to comply with the directions under order dated 15.02.2018.

7. Despite the directions of the Court being categoric to state that it is the Secretary that must apply his mind to the facts of the case and thereafter decide on the compensation to be paid, there has been no compliance and, the petitioner has not even been granted audience by R2. Ultimately R1, has simply acquiesced with the compensation fixed by the Committee.

8. In a matter of this nature, the respondents must bear in mind that the State, apart from fixing the monetary compensation for negligence, must also show concern in addressing the issue in a sensitive manner. Despite the direction of this Court in the aforesaid direction, there has been scant regard by R2.

9. In light of the discussion as above, this writ petition is allowed and the directions at paragraph 7 of order dated 15.02.2018, are reiterated. The review petition already filed by the petitioner shall be



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revisited, the petitioner be heard by R2 and necessary action be taken within a period of six weeks from today, after hearing the petitioner. No costs.

04.07.2024

Index:Yes/No
Neutral Citation:Yes
ssm
To

- 1.The Secretary,
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- 2.The Secretary to the Government,
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Secretariat, St.George Fort,Chennai.
- 3.The Director,
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