



W.P.(MD).No.6259 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.02.2025

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.6259 of 2022

Maria Albi

.. Petitioner

Vs.

- 1.The Director General of Shipping,
Director General of Shipping Office,
Jahaz Bhavan, Watch and Hirachand Marg,
Mumbai-400 001.
- 2.The Secretary to Government,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi - 110 001.
- 3.The Union of India,
Represented by its Secretary to Government,
Ministry of External Affairs, Akbar Bhavan,
Patiala House, Isil Building,
New Delhi – 110 011.
- 4.The Protector General of Emigrants,
Ministry of Overseas Indian Affairs,
9th Floor, Akbar Bhavan, Chanakyapuri,
New Delhi - 110 021.
- 5.The District Collector,
Nagercoil,
Kanyakumari District.

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents to issue death certificate of the petitioner's husband Robert Xavier Raj on the basis of the report given by the Nigerian Police.

For Petitioner : Mr.T.Selvakumaran

For R-1 to R-4 : Mr.V.S.Karthi

For R-5 : Mr.A.Kannan
Additional Government Pleader

ORDER

The Writ Petition seeks for issuance of Writ of Mandamus to direct the respondents to issue a death certificate for the petitioner's husband, one Robert Xavier Raj on the basis of the report given by the Police in the Republic of Nigeria and for consequential orders.

2. The petitioner's husband, Robert Xavier Raj, was a merchant seaman. He had joined the services of M/s.Noah Marine Service Private Limited, Mumbai. He was deputed as an Engineer to work in M.T.ITB Jacksonville ship. The ship was plying under St.Kitts and Nevis Flag. He joined the ship at Nigeria on 12.07.2011.



W.P.(MD).No.6259 of 2022

WEB COPY

3. When the ship was anchored 10 nautical miles away from the coast of Nigeria, it suffered a massive explosion. The incident took place on 04.09.2011. On 09.09.2011, the Navy of Nigeria, which had assisted in extinguishing the fire, discovered that out of the 15 member crew, 10 alone survived. Out of the five remaining crew, the Navy of Nigeria was able to recover the dead bodies of four. The dead body or any remnants of the petitioner's husband could not be traced. Pleading that the first respondent had violated its Shipping Order No.5A of 2006 dated 17.03.2006, the writ petitioner has approached this Court for the aforesaid relief. The petitioner, enclosing the certificate issued by the Police of Nigeria, seeks for a direction that a death certificate be issued for her husband.

4. Notice was ordered in the Writ Petition. Mr.V.S.Karthi has entered appearance for the respondents 1 to 4 and Mr.A.Kannan, learned Additional Government Pleader appears for the fifth respondent.

5. Mr.T.Selvakumaran appearing for the petitioner invites my attention to the report dated 28.09.2011, that has been issued by the Nigerian Police attached to the Ports Authority at Lagos. He states that the Police in Nigeria have certified that the petitioner's husband is missing and therefore, on this



W.P.(MD).No.6259 of 2022

basis, a death certificate could be issued to the writ petitioner. He also relies upon the proceedings of the District Collector, Kanyakumari District at Nagercoil in Roc.C4/6105/2021, dated 02.03.2021, to substantiate this plea.

6. Per contra, Mr.V.S.Karthi relies upon the very same report of the Nigerian Police to state that insofar as the five missing crew members are concerned, dead bodies of four had been recovered. This is conclusive about their death. With respect to the writ petitioner's husband, he points out that neither his dead body nor any remnants were recovered from the site.

7. Mr.V.S.Karthi draws my attention to the instructions that have been given by the first respondent/Director General of Shipping to the effect that the first respondent is willing to issue a “presumed death certificate” for the petitioner's husband, on the petitioner or any next of kin of the deceased approaching the first respondent for the said certificate. He adds that the Director General of Shipping had taken all possible efforts to find out as to what happened to the writ petitioner's husband. In fact, the GPS tag that was worn by the writ petitioner's husband is also not traceable. Hence, he pleads that appropriate directions be given in the Writ Petition. In the alternate, he urges that if the petitioner wants a death certificate for her husband, the appropriate



W.P.(MD).No.6259 of 2022

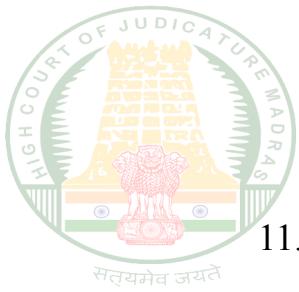
remedy is to approach the Civil Court and seek for declaration invoking Section

108 of the Indian Evidence Act.

8. The learned Additional Government Pleader supports the report filed by the District Collector, Kanyakumari District and states that unless and until there is a clear cut evidence to show that the petitioner's husband had died in the accident, it would not be possible to issue a certificate to that effect.

9. I have carefully considered the submissions of all sides.

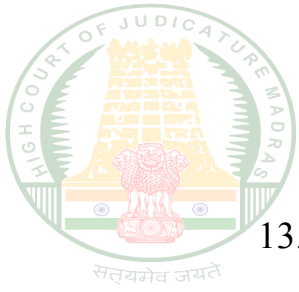
10. The fact that the husband of the petitioner was working in M.T.ITB Jacksonville ship is not in dispute. It is also not in dispute that on 04.09.2011, when the ship was anchored on Lagos, it suffered a fire explosion. It is also not in dispute that the ship was manned by a 15 member crew and that out of the 15, 10 survived the explosion. Out of the remaining five, the Nigerian Police have been able to recover the dead bodies of four. With respect to the writ petitioner's husband, the Nigerian Police were not able to recover even a trace of the body to certify that he is no more. It is theoretically possible, as stated by Mr.Selvakumaran, that due to the fire explosion, the body of Mr.Robert Xavier Raj could have been lost beyond trace.



W.P.(MD).No.6259 of 2022

11. The procedure for the issuance of a death certificate is that the State authorities in the place where the accident or death occurred, to certify the death of the said person. Such a certificate has to be co-endorsed by the Indian High Commission in that country. On receipt of the said record in India, recording the death, a formal certificate is issued. Sadly, in this case, the report of the Nigerian Police is not conclusive about the death of the writ petitioner's husband. It only states that an explosion took place and out of 15, 10 survived and the dead bodies of the remaining four were recovered. In such circumstances, a way out suggested by the first respondent would assist the writ petitioner.

12. In cases similar to the present case on hand, the first respondent issues a “presumed death” certificate. Such a certificate is issued whenever the next of kin of the missing seafarer applies for it to the Director, Seamen's Employment Office. When an application is made, the first respondent directs the Director, Seamen's Employment office to issue the “presumed death” certificate to the parties. It is not in dispute that the writ petitioner nor any other next of kin of the deceased have sought for such a certificate.



W.P.(MD).No.6259 of 2022

13. In the light of the above discussion, the writ petitioner shall forthwith apply to the first respondent for issuance of a “presumed death” certificate. On receipt of such a request, the first respondent shall immediately give the certificate as per its undertaking given to Mr.V.S.Karthi.

14. If the presumed death certificate is insufficient for any purpose that the petitioner wants to put it use to, it is always open to the petitioner to approach the jurisdictional Civil Court seeking a declaration that Mr.Robert Xavier Raj is dead.

15. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs.

05.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Director General of Shipping,
Director General of Shipping Office,
Jahaz Bhavan, Watch and Hirachand Marg,
Mumbai-400 001.



W.P.(MD).No.6259 of 2022

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W.P.(MD).No.6259 of 2022

V.LAKSHMINARAYANAN,J.

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W.P.(MD).No.6259 of 2022

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