

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2339 of 2010

C.Kannaiyan (Deceased)

2.Jaya

3.Venda

(P2 and P3 are substituted as LRs
of deceased P1, as per order dated
08.08.2024 in WMP.No.1243/2024
in W.P.No.2339 of 2010)

... Petitioners

Vs.

1.Deputy Commissioner of Labour-1
Commissioner for Workmen's Compensation
Chennai 600 006.

2.Selvam

3.The Commissioner
Corporation of Chennai
Ripon Building, Chennai 600 003.

4.The Chairman
Chennai Metropolitan Water Supply &
Sewerage Board
No.1, Pumping Station Road
Chennai 600 002.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in I.A.No.108 of 2009 in W.C.No.29 of 2002 pending on the file of the first respondent quash the order dated 10.11.2009 and direct the first respondent to dispose W.C.No.29 of 2002 on merits.

For Petitioners : Mr.A.Prabhakara Reddy

For Respondents : Mr.K.Surendran for R1
Additional Government Pleader
R2- Not ready in notice
Mr.G.T.Subramanian for R3
(Corporation)
Mr.Jeery V.V.Sundar for R4
(CMWSSB)

ORDER

This Writ Petition is filed challenging the impugned order made in I.A.No.108 of 2009 in W.C.No.29 of 2002, which dismissed the application for condonation of delay in filing the restoration application.

2. The fourth respondent herein, the *Chennai* Metropolitan Water Supply & Sewerage Board, is the Authority that looks after establishing and maintaining the drainage system in the City of *Chennai*. The third respondent Corporation is the local body that administers the City of *Chennai*. While so, one *Selvam*, the second respondent in the Writ Petition, is employed as a contractor by the fourth respondent to supply labour and to carry out maintenance works. While so, he was said to have brought in one *Sridhar*, aged about 22 years, in the year 2000 to work on his various projects. Under the part of the contract work for clearing the block/choking of the underground sewer, the said *Sridhar* was employed without any protective gear as a manual scavenger. Since he had not come out for a long time, information was given to the Police and the Fire Service, who came and found that he had died and took the body out. A case was also registered in Cr. No.703/2000 and there can be no doubt whatsoever that the said *Sridhar* died while he was employed as a manual scavenger when he was sent inside the underground sewer without any protective gear.

3. In that scenario, the father of the deceased, namely *Kannaiyan* had filed the Workman compensation claim before the first respondent namely Deputy Commissioner of Labour Workman Compensation in WC.No.29 of 2002. However, he was not present for the hearing in the year 2007 when the matter was taken up five years after the filing of the case. Therefore, the matter was dismissed for default. In the year 2008, an application was filed for restoration of the case and it was restored. Again on 27.11.2008, the matter was dismissed for default. Again the matter was restored to the file. Once again, the matter was dismissed for default and therefore, the present petition is filed with the petition for condonation of delay in filing the restore application. The first respondent found that repeatedly the matter had been dismissed for default and therefore, finding no merits in the petition, dismissed the Interlocutory Application as against which the Writ Petition is filed.

4. The learned counsel for the petitioner would submit that this is a case of manual scavenging and the society is guilty of having let the said

Mr.Sridhar perform manual scavenging and therefore, the approach of the first respondent Deputy Labour Commissioner in dismissing the case for default is unwarranted. When the petition is filed under Labour Welfare Legislation, the approach of dismissing it as if is a commercial civil suit is incorrect in law. He would further submit that the father and the mother also died and one of the sisters also died and the plight of the family was not considered. Even when the father was alive, he was sick and ailing and therefore he could not follow up on the issue. It could also be seen that when the matter was filed in the year 2002, the same was also kept pending till the year 2007. When the parties hail from rural areas and suddenly after five years the matter was taken up and dismissed for default, a lenient view should be taken in the matters of restoration of the petition. In any event, now we are in the year 2024 and now instead of remanding the matter back, this Court itself can determine the compensation and direct the respondents to pay.

5. The said prayer is opposed by the learned counsel for the third respondent/Corporation on the ground that firstly, certain basic facts have to be proved as to the death of the person, the age of the person and the

dependency on whether they are living in the family or not. In this case, they allowed it to be dismissed for default even before the trial was undertaken, and therefore, this case can be restored to the file of the concerned Authority, and orders cannot be passed by this Court.

6. The learned counsel for the fourth respondent/Chennai Metropolitan Water Supply & Sewerage Board would submit that the order passed by the Authority is correct in law. When repeatedly the petitioners have allowed the matter to be dismissed for default, the Court should not come to the aid of the petitioners. When the petitioners adopted a reckless attitude and left the matter to be dismissed for default, no plea of any ignorance or lack of knowledge should be entertained by this Court. For this purpose, the learned counsel would rely upon the judgement in ***D.Dayabhai and Co. Pvt. Ltd., Mumbai Vs. Narayan Ganu Thangdi and others (2019 (3) Mh.L.J 360)***¹, more specifically paragraph No.24 of the said judgement.

1 (2019 (3) Mh.L.J 360)

7. I have considered the submissions of the Learned Counsel for the petitioner that the matter cannot be remanded at this point in time and that objection of the respondent that there must be some evidence on record. In view, therefore, the third petitioner who was present in the Court was examined by this Court as *P.W-1*. The first information report was marked as *Ex.A.1*. The copy of the ration card at the relevant point of time was marked as *Ex. A.2*. The Learned Counsel appearing on behalf of the respondents also cross-examined *P.W-1*. The said exercise was done only to prima facie ascertain as to the dependants of the deceased.

8. This case does not need any elaborate reasoning. Suffice it to state that one of our fellow human beings died of manual scavenging. This violates all tenants of human rights. Even at the relevant time, the action of the manual scavenging of the sewer stood prohibited by *The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*. The matter is no longer *res integra*. The Hon'ble Supreme Court of

India in *Safai Karamchari Andolon and Others -Vs- Union of India (2014 11 SCC 224)*² has mandated grant of a sum of Rs. 10 Lakhs to the family of the person who dies in sewer cleaning. Paragraph 23.2 reads as follows:

“23.2.If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:

(a)Sewer deaths— Entering sewer lines without safety gear should be made a crime even in emergency situations. For each such death, compensation of Rs 10 lakhs should be given to the family of the deceased.

(b)Railways— Should take time-bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.”

² (2014 11 SCC 224)

Further, the Hon'ble Supreme Court of India in *Dr Balram Singh -Vs- Union of India & others (2023 INSC 950)* had while increasing the amount presently to 30 Lakhs, clarified that the above amount of Rs. 10 lakhs will be payable for all cases from 1993. Paragraphs 96(4) & (5) read as under:

“96...

(4) The court hereby directs the Union and the States to ensure that the compensation for sewer deaths is increased (given that the previous amount fixed, i.e., ₹ 10 lakhs) was made applicable from 1993. The current equivalent of that amount is Rs. 30 lakhs. This shall be the amount to be paid, by the concerned agency, i.e., the Union, the Union Territory or the State as the case may be. In other words, compensation for sewer deaths shall be ₹ 30 lakhs. In the event, dependents of any victim have not been paid such amount, the above amount shall be payable to them. Furthermore, this shall be the amount to be hereafter paid, as compensation.

(5) Likewise, in the case of sewer victims suffering disabilities, depending upon the severity of disabilities, compensation shall be disbursed. However, the minimum compensation shall not be less than ₹ 10 lakhs. If the disability is permanent, and renders the victim economically helpless, the compensation shall not be less than ₹ 20 lakhs.”

The Division Bench of this Court has been issuing repeated directions in W.P. No.17380 of 2017, including detailed directions dated 29/10/2024, reiterating the position.

9. Therefore, the fourth respondent is bound to pay the compensation. In this case, when the employee died of manual scavenging, the authorities ought not to have left the matter for the father of the victim to approach the labour commissioner for compensation. Even when a petition is filed at least at that stage, immediately the authorities should have agreed to pay the compensation. The Labour Commissioner before whom the petition was pending ought to be alive to the facts situation. Even if the petitioner does not appear, proactive steps should have been taken to summon the petitioner and compensation ought to have been paid. It was extremely unfair on the part of all the respondents. Needles to mention that if the second respondent contractor has not performed his part of the obligation in providing protective gear etc., it will always be open to the fourth respondent to initiate proceedings against its own contractor for recovery of the entire or portion of the damages which is awarded by this Court.

10. The death certificate of the father is also produced. It is also categorically stated that the mother died. Yet another sister has also

predeceased, then two of her children are living with one of the sisters. Therefore I hold that two sisters namely *Venda*, and *Jaya* and two minor children namely, *Mohan* and *Vijaykumar* being the children of the other deceased sister *Kalyani* are alone the dependants entitled to receive the compensation. From the cross-examination, it can be seen that all of them were unmarried and were living in the same family as dependants of the said person as of date of the death.

11. Therefore, the writ petition is allowed on the following terms:

(i) The impugned order made in I.A. No.108 of 2005 in W.C. No. 29 of 2002 dated 10/11/2009 is set aside;

(ii) It is not necessary to further adjudicate the W.C. No.29 of 2002, given the authoritative pronouncement of the Hon'ble Supreme Court of India that the family of the deceased will be entitled to a compensation of a sum of Rs. 10,00,000/-;

(iii) Accordingly the fourth respondent shall pay a sum of Rs. 10,00,000/- to the petitioner and the family members as follows:

(a) A sum of Rs. 3,30,000/- to the second petitioner Jaya;

(b) A sum of Rs. 6,70,000/- to the third petitioner Venda. Of the said sum, a sum of Rs. 3,40,000/- shall belong to her and the balance of Rs. 3,30,000/- shall belong to the minor children of deceased Kalyani, namely, Mohan and Vijayakumar. Venda, being the guardian who is taking care of the minor children shall spend the said sum on their education and upbringing;

(c) The compensation amount shall be paid by drawing demand drafts in the name of Jaya and Venda as aforesaid within six weeks from the date of receipt/production of the website uploaded copy of this order, without waiting for the certified copy of the Order;

(d) The demand drafts shall also be accompanied by a letter of apology on behalf of this society as a whole, which is responsible for a fellow human being sent inside the sewer line for cleaning and for the delay in disbursing the compensation.

(e) No costs.

Epilogue:

It is easy to blame the authorities. *Mahatma Gandhiji* said,

“It is not enough that we clear the villages which are occupied by our Parish brethren. They are amenable to reason and persuasion. Shall we have to say that the so called higher classes are not equally amenable to reason and persuasion and to hygienic laws which are indispensable in order to live a city-life?”

When we, the inhabitants of the city, push everything inside the drains and sewers indiscriminately, it is nothing short of a homicide by the insensitive society. How many more lives do we want to sacrifice before learning that we must treat and maintain our sewers and drains as pristine as our arteries carrying blood to our brains?

17.12.2024

Neutral Citation : Yes
dna

To

- 1.The Deputy Commissioner of Labour-1
Commissioner for Workmen's Compensation
Chennai 600 006.
- 2.The Commissioner
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- 3.The Chairman
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