

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2006

CORAM

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

W.P. Nos.1602, 1603 and 1604 of 1999

W.P.No.1602 of 1999

1. Lakshmana Naidu (deceased)
2. Varadammal

(Petitioner No.2 brought as Legal representative of the deceased Bale @ Subramanim as per order of this Court dt.27.4.2006) ... Petitioner

W.P.No.1603 of 1999

1. Angammal (deceased)
2. Chinnaponnu
3. Minor. Ayyammal (now attained majority)
4. Minor. Chinnamani (rep. by 2nd petitioner Chinnaponnu)
5. Villaiammal

(Petitioner Nos.2 to 5 are brought as legal heirs of the deceased Rajamanickam as per order of this Court dt 27.4.2006) Petitioner

W.P.No.1604 of 1999

1. Muthusamy (deceased)
2. Samboornam

(Petitioner No.2 brought as Legal Representative of the deceased petitioner, Muthusamy, as per order of this Court dated 27.4.2006) Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by the Secretary to Government
Department of Home Affairs,
Fort. St. George, Chennai - 600 009.

2. The Secretary to Government
Department of Forests,
Government of Tamilnadu

Fort. St. George, Chennai - 600 009. ... Respondents in all the
above Writ petitions.

Prayer : Petitions filed under Article 226 of the Constitution of
India Praying for the issuance of a writ of mandamus as stated
therein.

For Petitioners : Mr.D.Bharatha Chakravarthi
For Respondents : Mr.S.Gomathy Nayagam, S.G.P.

C O M M O N O R D E R

In all the above three writ petitions, the legal heirs of the
deceased Bale @ Subramaniam (W.P.No.1602 of 1999), Jayaraman
(W.P.No.1603 of 1999) and Rajamanickam (W.P.No.1604 of 1999) are the
petitioners respectively and they have prayed for the issuance of a
writ of mandamus directing the respondents to pay a sum of Rs.5 lakhs
each as compensation for the loss and suffering caused by the
officials of the second respondent by the torture, murder and burning
of the said three deceased persons.

2. In all the three cases, the facts are one and the same. The
averments in the respective affidavits filed in the above writ
petitions are almost identical. The necessary facts for the disposal
of the writ petitions are set out below:

i) The petitioners in the above writ petitions are residents of
Thandanur Village, Attur Taluk, Salem district; forest areas surround
the village. It is the case of the petitioners that forest officials
often insisted Bale @ Subramaniam, Jayaraman and Rajamanickam to help
them in their illegal activities. But they refused to oblige and
hence the forest officials demanded money and threatened to implicate
them in Sandal theft cases. While so, on 29.10.1990, the above said
three persons left their house stating that they are going to Attur
for purchasing cooking utensils; but they never returned back. The
petitioners, with the assistance of their family members and
relatives, met forest and police officials, but the whereabouts of
the said three persons were not known. After 10 days the petitioners
found the burnt remains of the said three persons. A criminal case
was registered and after investigation it was found that 12 forest
officials of various designation namely, (1) Nalandahkrishnamoorthy,
(2) Lazar, (3) Palanivelu, (4) Raju, (5) Kandasamy, (6) Mannar
Mannan, (7) Krishnamoorthy, (8) Lakshmanan, (9) Perumal, (10)
Govindan, (11) Murugesan and (12) Chinnathambi, who were the accused
1 to 12 in S.C.No.209 of 1994 on the file of the Principal Sessions
Court, Salem did the most heinous crime.

ii) It is the case of the petitioners that on completion of the investigation and filing of charge sheets against the abovesaid accused persons it came to the light that on 29.10.1990 at about 6.30 pm, Accused 1 to 4 mentioned above, took Bale @ Subramaniam, Jayaraman and Rajamanickam into custody in the guise of interrogation regarding sandalwood case and took them to Attur Range Forest Office. There, Accused 1 and 4 to 9 beat all the three of them with lathies, sticks and hands and due to grievous injuries Bale @ Subramaniam succumbed to death.

iii) Thereafter, the said accused persons took the body of Bale @ Subramaniam in the Forest Department Jeep bearing registration No.TNT 8997 into the Thakarai Reserve Forest situated within the jurisdiction of Chinnasalem Police Station in South Arcot District and burnt him. Thereafter, the above said accused officials and particularly Accused 3, 4, 6, 9 and 12 on 30.10.1990, took Rajamanickam and Jayaraman to the Sana Mavoo Reserve Forest situated within the jurisdiction of Hosur Police Station in Dharmapuri District by the Forest Department Jeep of Attur Range Forest Office. Thereafter, on 31.10.1990 at about 2.30 am, in the "Pullu Plot" at the Sana Mavoo Reserve Forest, the Accused 3, 4 and 6 held the hands of the Rajamanickam and the Accused 12 caught hold of the legs and the Accused 6 strangled him with his hands and also Accused 4 and 6 forcefully administered poison mixed in brandy and murdered him and all of them burnt his body. On the same day at 3.30 am, Jayaraman was taken by the accused to a place called Pathakottai in the same Sana Mavoo Reserve Forest and there, Accused 3 held his legs and Accused 4, 6 and 9 forcefully administered poison mixed in brandy and murdered and burnt him.

iv) All the above said accused were tried in S.C.No.200 of 1994 by the Learned Principal Sessions Judge, Salem and a judgment dated 06.09.1995 was rendered therein convicting Accused 1 to 4, 6 and 9 under various counts for an offence under Section 302 IPC and were sentenced to life imprisonment.

3. In W.P.No.1602 of 1999, the petitioners are the father and mother of the deceased Bale @ Subramaniam and according to the petitioners their son, at the time of death, was aged about 25 years and was earning Rs.60/- per day as an agricultural coolie. In W.P.No.1603 of 1999, the petitioners are the mother, two wives and two minor daughters of the deceased Rajamanickam and according to the petitioners, at the time of death the deceased was aged about 31 years and was earning Rs.60/- per day as an agricultural coolie. In W.P.No.1604 of 1999, the petitioners are the father and mother of the deceased Jayaraman and according to the petitioners their son at the time of death was aged about 27 years and was earning Rs.60/- per day as an agricultural coolie.

4. The common averments and allegations of the petitioners are that the respective deceased persons were breadwinners of their respective families and because of the brutal murder committed by the above said accused persons, the petitioners underwent untold mental agony and suffering, extreme poverty and hunger and they could not even see the faces of the deceased. The mental agony suffered by the petitioners may not be described in words and the petitioners, by the death of above said three persons, lost their respective breadwinners of their families and they have been deprived of the support of the deceased persons. The petitioners sent various representations to various officials and finally sent a representation dated 15.09.1997 to the respondents. As there was no positive response, the above writ petitions have been filed claiming compensation for the death of the above said persons.

5. According to the petitioners, the respondents are strictly liable to pay compensation for the acts done by the above said Accused persons, who were officials of the Forest Department, as they have violated the fundamental rights of the petitioners as well as the deceased persons.

6. In all the above writ petitions, a sum of Rs.5 lakhs each is claimed as compensation. A counter affidavit has been filed by the first respondent in W.P.No.1604 of 1999 adopting the counter affidavit filed by the second respondent. The original copy of the counter affidavit filed by the second respondent is not available in the Court bundle. However, a xerox copy of the same was furnished by Mr.S.Gomathi Nayagam, Special Government Pleader. No separate counter affidavit seems to have been filed in W.P.Nos.1602 and 1603 of 1999. In the counter affidavit filed in W.P.No.1604 of 1999, the registration of the criminal case against the above said accused persons and the judgment rendered in S.C.No.200 of 1994 by the Principal Sessions Judge, Salem are not disputed but infact admitted. It is stated in the counter affidavit that the Sessions Court, Salem by its judgment dated 06.09.1995 convicted accused 1 and 2 and sentenced them to undergo Rigorous Imprisonment for two years, convicted accused 3, 4, 6 and 9 and sentenced them to undergo Life Imprisonment and acquitted accused 5, 7, 8, 10 and 12. It is further stated in the counter affidavit that disciplinary proceedings under the Tamil Nadu Civil Services (Discipline and Appeal) Rules were initiated by the District Forest Officer against G.Nalandah Krishnamoorthy, Office Assistant and S.Lazar, Forest Guard and an exparte order of removal of service was passed against G.Nalandah Krishnamoorthy. But pursuant to the order passed by the Tamil Nadu Administrative Tribunal, he was reinstated in service and as far as S.Lazar was concerned, the Tamil Nadu Administrative Tribunal stayed all further proceedings and he is in service. As per the averments in the counter affidavit, the following officials were dismissed from

service namely, R.Palanivel (Forest Watcher), R.Raju (Forest Watcher), T.Mannarmannan (Forester) and P.Perumal (Jeep Driver). It is further stated in the counter affidavit that P.Kandasamy (Ranger), S.Krishnamoorthy (Forester), K.Chinnathambi (Forest Guard), A.Lakshmanan (Forest Watcher) are continuing in service. It is relevant to point out that various averments contained in the affidavits filed in the above said three writ petitions relating to the age, daily income and the relationship of the petitioners to the respective deceased have not been specifically denied. It is relevant to extract the last paragraph of the counter affidavit which reads as follows:

"In the above said circumstances, it is therefore prayed that this Hon'ble Court may be pleased to pass suitable orders as may be necessary, deem fit and proper in the circumstances of the case and thus render justice".

It is not even stated in the counter affidavit that the claim made by the petitioners is excessive. Similarly, the liability of the respondents is not disputed.

7. Heard both.

8. The learned counsel for the petitioners relying upon the judgment rendered by a Division Bench of this Court in the case of K.Kabali @ Kabalesswaran Vs. State of Tamil Nadu and Others in Writ Appeal No.587 of 2001 and reported in 2006(2) TNLJ 33 submitted that when the averments and allegations contained in the affidavit on material particulars have not been denied by the respondents in the counter affidavit filed by them and when the age, daily income and the relationship of the petitioners to the deceased are not denied and the quantum of compensation claimed is also not disputed and the very liability of the respondents is not disputed, the petitioners are entitled for compensation as claimed by them and the writ petitions have to be allowed.

9. The learned Special Government Pleader fairly submitted that in view of the fact that the concerned Accused who were responsible for the death of the above said three persons have been convicted by the Sessions Court, Salem by its judgment dated 06.09.1995 rendered in S.C.No.200 of 1994 and the accused happen to be officials of the Government of Tamil Nadu, the petitioners are entitled for a reasonable compensation.

10. Taking into consideration the above said submissions made by the counsel on either side, it has to be held that when there is no dispute as to the cause of the death of the above said three persons and when the Sessions Court Salem has convicted the concerned Accused

who were responsible for the death of the above said three persons, the theory of strict liability applies to the facts of this case. In the above said decision, the Division Bench, after referring to number of judgments of the Apex Court as well as this Court, has held as follows:

"The above decisions make it clear that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the aggrieved person can very well approach this Court for necessary relief, including compensation under Article 226 of the Constitution of India".

And in that case the Honourable Division Bench awarded a compensation of Rs.3 lakhs taking into account of the fact that already a sum of Rs.1 lakh had been paid to the petitioners therein.

11. The Honourable Supreme Court of India in the decision rendered in Nilabati Behara Vs. State of Orissa reported in 1993 (2) S.C.C. 746, awarded compensation to the father of the person, whose death was caused while in police custody. The compensation was ordered in that case as the Court reached the conclusion that the death of the person was caused while in police custody. While considering the question as to the liability of the State for payment of compensation for custodial death, the Court held as follows:

"(A) claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right.'"

The Court further observed that: (S.C.C. pp. 762 - 63, para 17)

"The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the

contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution".

The above said judgment of the Honourable Supreme court of India makes it clear that for the violation of the fundamental rights of a citizen by the State or its servants, in the purported exercise of their powers, the affected citizen can resort to the remedy in public law by taking recourse to Article 226 of the Constitution of India. The Apex Court has also observed in that decision that the compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law. Therefore, it is settled law that compensation can be awarded for violation of fundamental rights in public law domain.

12. The High Court, being protector of Civil liberties of the citizen, has not only the power and jurisdiction, but also an obligation to grant relief in exercise of its jurisdiction under Article 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. The relief in exercise of power under Article 226 of the Constitution of India would be granted once it is established that there has been infringement of the fundamental rights of the citizen.

13. The Honourable Supreme Court of India in the decision rendered in Malkiat Singh Vs. State of U.P. reported in 1998 (9) S.C.C. 351, awarded a compensation of Rs.5 lakhs to the father of the person who was killed in an alleged encounter with police. In the case of R.Dhanalakshmi Vs. Government of Tamilnadu reported in 2004 W.L.R. 346, the learned single Judge of this Court fixed a compensation of Rs.9 lakhs in respect of the custodial death taking note of age, income of the deceased, family circumstances and dependency etc, by applying the multiplier as provided under the Motor Vehicles Act. This Court is of the view that the same principle adopted in 2004 W.L.R. 346 can be adopted to fix the compensation that is payable to the petitioners in the above writ petitions.

14. (i) In W.P.No.1602 of 1999, the age of the deceased Bale @ Subramaniam was 25 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made, the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 25 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200/- up-to-date, it will come to approximately Rs.7,26,620/-.

(ii) In W.P.No.1603 of 1999, the age of the deceased Rajamanickam was 31 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 31 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 17 and the compensation that could be arrived at is Rs.2,44,800/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.2,94,800/- up-to-date, it will come to approximately Rs.7,06,046/-.

(iii) In W.P.No.1604 of 1999, the age of the deceased Jayaraman was 27 years at the time of death; his income per day was Rs.60/-; the loss of income per year will be Rs.21,600/- and if the standard 1/3-rd deduction is made the loss of income will be Rs.14,400/-, if the age of the deceased i.e. 27 years is taken into account, as per the provisions of the Motor Vehicles Act, the multiplier to be adopted will be 18 and the compensation that could be arrived at is Rs.2,59,200/-; towards loss of love and affection a sum of Rs.25,000/- could be easily awarded and towards mental agony and suffering of the petitioners a sum of Rs.25,000/- could be fixed; the death was caused on 29.10.1990, if interest at 9% is awarded on the compensation amount on the sum of Rs.3,09,200/- up-to-date, it will come to approximately Rs.7,26,620/-.

15. As calculated above, the compensation payable comes to more than Rs.5 lakhs and as the petitioners themselves have claimed only Rs.5 lakhs as compensation in each of the writ petitions, this Court is of the view that considering the family circumstances, poverty driven condition of the petitioners, etc., ends of justice would be met if the respondents State is directed to pay a sum of Rs.5 lakhs

to the petitioners, [(i) Varadammal in W.P.No.1602 of 1999 (ii) Chinnaponnu, Minor.Ayyammal, Minor. Chinnamani and Villaiammal in W.P.No.1603 of 1999 and (iii) Samboornam in W.P.No.1604 of 1999], in each of the writ petitions by way of compensation for the death of Bale @ Subramaniam, Rajamanickam and Jayaraman, respectively. The state shall pay these amounts within a period of eight weeks from the date of receipt of copy of this order. The State Government is directed to pay the sum of Rs.1.5 lakhs to the petitioners in the following manner:-

(i) Varadammal in W.P.No.1602 of 1999,

(ii) (a) Rs.25,000/- to Chinnaponnu (Second petitioner), (b) Rs.50,000/- to Minor Ayyammal, (Third petitioner) through her mother and natural guardian Chinnaponnu, the second petitioner herein (c) Rs.50,000/- to Minor Chinnamani (fourth petitioner) through her mother and natural guardian Chinnaponnu, the second petitioner herein and (d) Rs.25,000/- to Villaiammal (fifth petitioner) in W.P.No.1603 of 1999 and

(iii) Samboornam (second petitioner) in W.P.No.1604 of 1999 from out of the said amount of Rs.5 lakhs, and invest the balance amount of Rs.3.5 lakhs in each of the writ petitions within the said period of eight weeks in the following names,

(i) Varadammal in W.P.No.1602 of 1999,

(ii) (a) Chinnaponnu (Second petitioner) Rs.58,000/-, (b) Minor. Ayyammal (Third petitioner) Rs.1,17,000/- through her mother and natural guardian Chinnaponnu (the second petitioner herein) (c) Minor Chinnamani (fourth petitioner) Rs.1,17,000/- through her mother and natural guardian Chinnaponnu (the second petitioner herein) and (d) Villaiammal (fifth petitioner) Rs.58,000/- in W.P.No.1603 of 1999 and

(iii) Samboornam in W.P.No.1604 of 1999

as Fixed Deposits initially for a period of three years with the Tamilnadu Power Finance Corporation. It is made clear that the respective petitioners would be entitled to receive interest accrued on such deposit once in three months. After expiry of the said period of three years, the respective petitioners in each of the writ petitions are permitted to withdraw the amount.

16. Mr.Gomathinayagam, Special Government Pleader submitted that liberty may be given to the State Government to proceed against the actual culprits viz., Accused 1, 2, 3, 4, 6 and 9 in S.C.No.200 of 1994 on the file of the Principal Sessions Judge, Salem and to recover the compensation amount paid to the petitioners in the above

writ petitions. Considering the said submission and the fact that the said Accused persons have been found to be responsible for the death of the above said persons by the Sessions Court, it is just and proper that the compensation amount paid to the petitioners should be recovered from them. Therefore, the State Government is at liberty to recover the compensation amounts that have been directed to be paid to the petitioners in the above writ petitions from the salary, retirement benefits, etc., payable to the accused 1, 2, 3, 4, 6 and 9, after observing the relevant service rules applicable to them.

17. With the above directions, these writ petitions are disposed of. No costs.

srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Secretary to Government
State of Tamil Nadu
Department of Home Affairs,
Fort. St. George, Chennai - 600 009.
2. The Secretary to Government
Department of Forests,
Government of Tamilnadu
Fort. St. George, Chennai - 600 009.

+ 3 Ccs to M/S.Bharathi Chakaravorthy, Sr.No.22705 to 22707.
+ 1 Cc to Government Pleader Sr.No.22957.

HPR (CO)
RSM/30.6.2006

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