

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2009

CORAM:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSICE M.DURAIWAMY

Writ Petition No.5802 of 2006
and
W.P.M.P.Nos.6286 and 6287 of 2006

T.K.Jestin Marshall ... Petitioner
Vs.

1. State of Tamilnadu,
rep. by its Secretary,
Home Department, Fort St.George,
Chennai-9.
2. The Secretary,
Public Department,
Government of Tamilnadu,
Fort St.George, Chennai-9.
3. Director General of Police,
State of Tamil Nadu,
Police Headquarters,
Mylapore, Chennai-600 004.
4. Rajamani
5. Muthukkuviyal

.. Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, as stated therein.

For petitioner : Mr.R.Diwakaran
For respondents: Mr.D.Sreenivasan, Addl.G.P.
for RR-1 to 3
Mr.V.Chandrakanthan for R-4

ORDER

(The Order of the Court was made by S.J.Mukhopadhaya,J)

The Writ Petition in public interest is preferred by the petitioner for issuance of a Writ of Mandamus, to direct the first and third respondents to frame appropriate procedure to register an FIR and in the course of investigation and trial in crimes committed against disabled persons, especially against a deaf and/or dumb persons, with the assistance of an interpreter with the knowledge of sign language or in the presence of a person who could communicate with the deaf and dumb person and to set up Criminal Injuries Compensation Board as per the guidelines of the Supreme Court in the case of "Delhi Domestic Working Women's Forum Vs. Union of India", reported in 1995 (1) SCC 14 and to pay compensation to the victims of sexual assault.

2. The case was taken up from time to time and pursuant to the Court's orders, one of the destitute victim was examined by a Doctor, and certain directions were issued, which were complied with by the respondents.

3. On 13.6.2006, the State Government was directed to frame appropriate procedure to register the FIR, the course of investigation and trial and compensation payable in crimes committed against the disabled persons, especially against the deaf and dumb persons, and for constitution of Criminal Injuries Compensation Board, as per the direction of the Supreme Court in the aforesaid case.

4. In spite of such direction, no scheme has been framed by the State. A counter affidavit has now been filed on behalf of the respondents-State, wherein, the procedures have been suggested, which are being intended to be conducted by the Government, as quoted hereunder:

"14. With regard to various grounds raised in the said Writ Petition, it is submitted that the following procedures have been suggested and are being intended to be adopted:

(i) The Department of Social Welfare may be entrusted with the responsibility providing assistance the form of legal representation to the disabled victims.

(ii) The Social Welfare Department in liaison, with the Free Legal Aids Service can prepare a panel of willing Advocates. The disabled victims can then select the Legal representative of their choice from this panel.

(iii) All Women Police Stations (AWPS) in each Sub Division may be specifically entrusted with the responsibility of handling the cases registered on complaints preferred by the disabled victims. A disabled victim approaching any other Police Station will be informed of this new facility for the disabled victims available at the All Women Police Station and then redirected to the All Women Police Station for submission of the complaint.

(iv) Requisite wide publicity will have to be given to this new system of All Women Police Station dealing with compliance from the disabled victims.

(v) The panel of willing Advocate to aid disabled victims shall be displayed prominently in all All Women Police Station since the victim needs to be provided with Legal representation at the Police Station itself. It will be mandatory to inform a disabled victim coming to All Women Police Station to lodge a complaint without any legal assistance of his/her right for legal representation before any questions were asked. The victims will be instructed to go through the panel and select their Advocates.

(vi) In case the victim is a deaf and dumb person who cannot write, a requisition will be sent to the Commissioner for Rehabilitation of the Disabled, who in turn will direct a Government Teacher from the Government or Government Aided School for hearing Handicapped, to give necessary assistance.

(vii) If the victim is accompanied by his/her parent, guardians or any other relatives or any other person who is conversant with the victim's sign language their assistance can also be utilized for drafting the complaint with the concurrence of the victim.

(viii) The complaint as well as the Sec.161 Cr.P.C. Statements of the victim will be recorded with the assistance of a teacher from the deaf and dumb school of the above mentioned persons. Sec 161 Cr.P.C. statements of the teacher or such other person drafting the complaint will also be recorded.

(ix) At the time of trial, the deaf and dumb witness can depose the evidence in the Court using sign language and gesture, which would be translated by the same teacher or the other person, who has assisted at the time of recording of compliance. The teacher-person will also have to depose in the Court of law.

(x) The Government Order relating to award of compensation of the disabled victims viz, the Victims Assistance fund created as per Government Order

Ms.No.1258, Home (Pol-XII) dated 21.08.1995 and modified by Government Order Ms.No.89, Home (Pol-XII) Department dated 24.01.1997, may also be suitably modified to include the disabled victims. Enhancement of the amount of assistance paid to the disabled victims, compensation to the disabled victims irrespective of the judicial outcome of the trial and assistance towards meeting out the trial needs by the victims may also be considered by the Government.

It is therefore, prayed that this Hon'ble Court may be pleased to accept the above said procedures in registering the FIR, in conducting the investigation and trials in the crimes committed against disabled persons especially against deaf and dumb persons and pass suitable orders as may be deemed fit and proper in the circumstances of the case and dismiss the Writ Petition and thus render justice."

5. Learned counsel appearing on behalf of the petitioner was also asked to give suggestions. In reply, it is submitted on behalf of the petitioner that the Scheme submitted by the National Commission for Women in respect of relief and rehabilitation of victims of rape, should also be taken into consideration for framing the appropriate procedures to register the FIR, course of investigation and trial and compensation payable in crimes committed against the disabled persons.

6. We have heard the learned counsel for the parties and perused the records.

7. It would be evident that the Supreme Court, as back as in 1995, in the case of "Delhi Domestic Working Women's Forum Vs. Union of India" reported in 1995 (1) SCC 14, has already made the following observations/direction:

"18. Having regard to the above positions, the third respondent will have to evolve such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India, will examine the same and shall take necessary steps for the implementation of the scheme at the earliest."

8. This Court also, by order dated 13.6.2006, has directed the State Government to frame appropriate procedure to register the FIR, the course of investigation and trial and compensation payable in crimes committed against the disabled persons, especially as against the deaf and dumb persons, as per the guidelines of the Supreme Court in the said case of "Delhi

Domestic Working Women's Forum". Inspite of such direction, the State Government has not come out with the necessary scheme in terms of the Supreme Court's direction and the direction of this Court, as referred to above.

9. In the circumstances, we remit the case with a direction to the respondents to frame a Scheme and publish the same in the Gazette, within a period of three months from the date of receipt/production of a copy of this order. The Secretaries of Home, Public and Social Welfare Departments, are directed to ensure compliance of the Court's order, failing which, it will be open for the petitioner to bring the matter to the notice of this Court for initiating appropriate proceedings against the concerned Officers.

10. Let a copy of this order be handed over to Mr.D.Sreenivasan, learned Addl.G.P., for information to the aforesaid Officers concerned and other Officers concerned.

11. The Writ Petition stands disposed of with the above observations/directions. No costs. W.P.M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary,
State of Tamilnadu,
Home Department, Fort St.George, Chennai-9.

2. The Secretary, Public Department,
Government of Tamilnadu,
Fort St.George, Chennai-9.

3. Director General of Police,
State of Tamil Nadu, Police Headquarters,
Mylapore, Chennai-600 004.

4. The Secretary to Government,
Social Welfare Department,
Secretariat, Chennai-9.

5.Mr.D.Sreenivasan,
Additional Government Pleader,
High Court,Madras.

6.The Member and Secretary to Legal
Services Authority, Chennai, High Court, Madras.

+1cc to Mr.V.Chandrakanthan, Advocate Sr 65197
+1cc to Govt. Pleader Sr 65016

PUR(CO)
km/11.12.

W.P.No.5802 of 2006



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