

W.P.(MD) Nos.9858 and 9931 of 2021

THE HON'BLE CHIEF JUSTICE
and
P.D.AUDIKEVALU, J.

(Order of the Court was made by the Hon'ble Chief Justice)

The matter pertains to financial assistance to be provided by the State to the heirs or next of kin of persons who lost their lives to Covid-19.

2. A needless controversy has been created by the petitioner in the overzealousness to present the case. The petitioner relies on a judgment rendered in W.P.(Civil) No.546 of 2020 on August 18, 2020 (*Centre for Public Interest Litigation v. Union of India*) by a three-Judge Bench of the Supreme Court wherein it was observed that the 2016 guidelines already in place to deal with compensation to be paid to victims who lose their lives in disasters were appropriate for the same to apply in case of Covid-19 victims.

3. The State has relied on a subsequent decision of two of the Hon'ble Judges, who were parties to the three-Judge Bench,

rendered on June 30, 2021 and reported at 2021 SCC OnLine 443 (*Reepak Kansal v. Union of India*).

4. In the *Reepak Kansal* case, the Supreme Court observed as follows at paragraph 89 of the report:

"89. At this stage, it is required to be noted and it is reported that some States are paying ex gratia assistance to the family members of the persons who have died due to Covid-19 pandemic, like State of Bihar paying Rs.4 lacs, Karnataka paying Rs.1 lac and Delhi paying Rs.50,000/-. However, it is to be noted that the same is paid from the Chief Minister Relief Fund or other relief funds, but not from SDRF. To avoid any heart-burning and discriminatory treatment, it would be appropriate for the National Authority to recommend uniform guidelines while providing for the minimum standards of relief in the form of ex gratia assistance on account of loss of life, as mandated under Section 12 of the Act. However, at the same time, it will always be open for the concerned States to provide for ex gratia assistance on account of loss of life and other reliefs from their own relief funds (other than SDRF) as it would be a policy decision by the concerned States and they

may provide such other relief/reliefs, looking to the availability of the fund. However, merely because some States might have been paying the ex gratia assistance on account of loss of life to the family members of the persons who have died due to Covid-19 pandemic, for the reasons stated hereinabove, no writ of mandamus can be issued directing the Central Government/State Governments to pay a particular sum/amount by way of ex gratia assistance as the utilization of the fund/money by the Central Government would depend upon the priorities fixed by them which includes the money/fund to be used for prevention, preparedness, mitigation, recovery etc. Therefore, what amount to be paid by way of ex gratia assistance to the family members of the persons who died due to Covid-19 pandemic should be left to the National Authority/Central Government."

5. As a consequence, a number of directions was issued at paragraph 95 of the judgment, inter alia, directing the National Disaster Management Authority to recommend guidelines for ex gratia assistance on account of loss of life to the family members of persons who died due to Covid-19 as mandated under Section 12 (iii) of the Disaster Management Act, 2005.

6. The first respondent in WP (MD) No.9858 of 2021 is the National Disaster Management Authority constituted under the said Act of 2005. A counter-affidavit and documents have been filed on behalf of the first respondent. The first respondent relies on the guidelines framed by it pursuant to the order in *Reepak Kansal*. The guidelines received the imprimatur of the Supreme Court by an order of October 4, 2021 by a Bench to which the Hon'ble author of the judgment in *Reepak Kansal* was a party. Indeed, at the top of the order dated October 4, 2021, it is indicated as follows:

"Order on compliance of the judgment and order dated 30.06.2021 Passed in Writ Petition (Civil) No.539 of 2021"

7. At paragraph 10 of the order dated October 4, 2021, several directions have been issued in furtherance of the earlier order dated June 30, 2021 as follows:

"10. In furtherance of our earlier order dated 30.06.2021, it is directed as under:

i) that the next of the kin of the deceased died due to

Covid-19 shall be paid ex-gratia assistance of an amount of Rs.50,000/-, which shall be treated as ex-gratia payment under Section 12(iii) of the DMA, 2005 and which shall be minimum and which shall be over and above the compensation/amount to be paid by the Union of India/State Governments/Union Territories to be declared/provided under different benevolent schemes;

ii) that the ex-gratia assistance of Rs. 50,000/- shall be provided by the concerned States from the State Disaster Response Fund (SDRF);

iii) that the ex-gratia assistance to the next of the kin of the deceased shall be disbursed by the District Disaster Management Authority/District Administration;

iv) that the full particulars and address of the District Disaster Management Authority/District Administration who is required to disburse the ex-gratia assistance of Rs. 50,000/- shall be published in the Print Media and Electronic Media and wide publicity shall be given;

that the same shall be published within a period of one week from today;

it is further directed that such information shall also be published in the prominent offices of the

village/taluk/district, such as, Gram Panchayat Office, Taluk Panchayat Office, District Collector Office, Corporation Office etc.;

v) that such ex-gratia assistance of Rs. 50,000/- shall be disbursed within a period of 30 days from the date of submitting the application to the concerned District Disaster Management Authority/District Administration along with the proof of the death of the deceased due to Covid-19 and the cause of death being certified as 'Died due to Covid-19';

vi) that the amount to be disbursed as per the Guidelines dated 11.09.2021 and as observed hereinabove on the death being certified as Covid-19 death for which the cause of death mentioned in the death certificate shall not be the conclusive and if other documents are provided as discussed hereinbelow, the next kin of the deceased died due to Covid-19 shall be entitled to the ex-gratia assistance of Rs. 50,000/-;

vii) that no States shall deny the ex-gratia assistance of Rs.50,000/- to the next of the kin of the deceased died due to Covid-19 solely on the ground that in the death certificate issued by the appropriate authority, the cause

of death is not mentioned as 'Died due to Covid-19';

viii) that in case of any grievance with regard to certification of the death, the aggrieved person may approach the Committee at District level consisting of Additional District Collector, Chief Medical Officer of Health (CMOH), Additional CMOH/Principal or HOD Medicine of a Medical College (if one existing in the district) and a subject expert, who shall take remedial measures including issuance of amended official document for Covid-19 death after verifying the facts on production of the necessary documents showing that the death is due to Covid-19;

ix) that the Authority/Committee shall carry out the directions as mentioned hereinbelow while considering the case of the deceased as Covid-19. All the States shall constitute such Committee within a period of one week from today and the address location and full particulars of the said Committee at the District level shall be published in Print Media and Electronic Media having wide circulation;

so far as the Corporation area is concerned, a similar Committee be constituted consisting the Deputy Commissioner, Medical/Health, the Chief Medical Officer

of Health of the Civil Hospital in the area, if any, Additional CMOH/Principal/HOD Medicine of a Medical College (if one existing in the district) and a subject expert and their office shall be at the office of the Municipal Corporation of the concerned municipality;

x) it is further directed that in case the decision of the Committee is not in favour of the claimant, a clear reason for the same shall be recorded by the Committee which is called a Grievance Redressal Committee;

xi) as agreed, and as per the Guidelines, the ex-gratia assistance to the families affected by Covid-19 deaths shall continue to be provided for deaths that may occur in future phases of Covid-19 as well."

8. At paragraph 11 of the latest order of October 4, 2021, some of the directions issued at paragraph 16(2) of the earlier order dated June 30, 2021 have been modified as follows:

"11. Now so far as the directions contained in para 16(2) of our earlier order dated 30.06.2021 for issuance of the death certificates/official document stating the exact cause of death, i.e., 'died due to Covid-19' to the family members of the deceased who died due to Covid-19 is

concerned, considering the additional affidavit filed on behalf of the Union of India dated 8.9.2021 and the subsequent clarification in the additional affidavit dated 22.09.2021 and the guidelines dated 3.9.2021, in furtherance of our earlier order dated 30.06.2021, it is further directed as under:

- i) Covid-19 cases, for the purpose of considering the deaths of the deceased due to Covid-19, are those which are diagnosed through a positive RT-PCR/Molecular Tests/RAT or clinically determined through investigations in a hospital/in-patient facility by a treating physician, while admitted in the hospital/in-patient facility;
- ii) that the deaths occurring within 30 days from the date of testing or from the date of being clinically determined as a Covid-19 case shall be treated as 'Deaths due to Covid-19', even if the death takes place outside the hospital/in-patient facility;
- iii) also, the Covid-19 case while admitted in the hospital/in-patient facility and who continued to be admitted beyond 30 days and died subsequently shall also be treated as a Covid-19 death;

iv) Covid-19 cases which are not resolved and have died either in the hospital settings or at home, and where a Medical Certificate of Cause of Death (MCCD) in Form 4 & 4A has been issued to the registering authority, as required under Section 10 of the Registration of Birth & Death (RBD) Act, 1969, shall also be treated as Covid-19 death. However, it is observed and made clear that irrespective of the cause of death mentioned in the death certificate, if a family member satisfies the eligibility criteria mentioned in paragraphs 11(i) to 11(iv) as above shall also be entitled to the ex-gratia payment of Rs. 50,000/- on production of requisite documents as observed hereinabove, and no State shall deny the ex-gratia payment of Rs. 50,000/- on the ground that in the death certificate the cause of death is not mentioned as 'Died due to Covid-19';

v) all concerned hospitals where the patient was admitted and given treatment shall provide all the necessary documents of treatment etc. to the family member of the deceased, as and when demanded, and if any hospital and/or the place where the deceased had taken treatment refuses to furnish such documents, it will be open for the Grievance Redressal Committee to call for such information and the concerned

hospital/institution where the deceased was admitted shall have to furnish such particulars as required for the purpose of establishing that the death was due to Covid-19;

vi) a family member of the deceased who committed suicide within 30 days from being diagnosed as Covid-19 positive shall also be entitled to avail the financial help/ex-gratia assistance of Rs.50,000/- as granted under the SDRF in accordance with the guidelines dated 11.09.2021 issued by the NDMA under Section 12(iii) of DMA, 2005, as directed hereinabove;

vii) if any family member/kin of the deceased died due to Covid-19 has any grievance with respect to non-receipt of the ex-gratia payment of Rs. 50,000/-, it will be open for the aggrieved claimant to approach the Grievance Redressal Committee constituted as observed hereinabove, and the Grievance Redressal Committee shall examine the contemporaneous medical record of the deceased patient, and take a decision within a period of 30 days from approaching the said Grievance Redressal Committee and as observed hereinabove such Grievance Redressal Committee shall have powers to call for the details/documents from the concerned

hospital/hospitals from where the deceased took the treatment;

viii) all endeavours shall be made by the District Disaster Management Authority/District Administration and even the Grievance Redressal Committee to avoid any technicalities and all concerned authority shall act as a helping hand, so as to wipe off the tears of those who have suffered due to loss of a family member died due to Covid-19;

ix) it is further directed that in cases of the death certifications already issued and any family member of the deceased is aggrieved by the cause of death mentioned in the death certificate already issued, it will be open for the aggrieved person to move the appropriate authority who issued the death certificate and/or registering authority and on production of the necessary documents as observed hereinabove, including production of documents, such as, positive RT-PCR/ Molecular Tests/ RAT OR clinically determined through investigations in a hospital/ in-patient facility by a treating physician, while admitted in the hospital/ in-patient facility, the concerned authority shall modify/amend such death certificates. If the person is

still aggrieved, it will be open for the aggrieved person to approach the Grievance Redressal Committee constituted as hereinabove and the concerned registering authority shall ratify/amend the death certificate as directed by the Grievance Redressal Committee."

9. By the relevant order, the National Disaster Management Authority, Ministry of Health and Family Welfare and the Union have been directed to issue guidelines to the States and Union Territories for incorporating directions issued in the order dated October 04, 2021 "which shall be binding to all the States/Union Territories."

10. The upshot of the discussion is that a minimum of Rs.50,000/- per person has to be paid as ex gratia out of the State Disaster Response fund. The directions are binding. Every endeavour should be made to ensure that such basic minimum payment of Rs.50,000/- for the next of kin or the family members or legal heirs of the victims who fell to Covid-19 in the State of Tamil Nadu and the Union Territory of Puducherry is paid as

expeditiously as possible. Further, nothing in the order prevents any State Government or the Government of any Union Territory to pay any further amount. As evident from paragraph 89 of the judgment in *Reepak Kansal*, the amounts paid in some of the States were noticed.

11. The State reports that there have been more than 36,000 deaths thus far due to Covid-19. It is for the State to decide if any further amount is to be paid over and above the minimum amount of Rs.50,000/- as indicated in the relevant Supreme Court order.

12. The State should also put the machinery in place to deal with the grievances in terms of the Supreme Court order and ensure that there is quick disposal of matters at all levels.

13. For such purpose, the State will come up with its own guidelines or set of instructions. The matter will appear a week hence in the anticipation that the draft guidelines or instructions would be ready by then to be implemented immediately. The State

will also indicate whether and to what extent it wants to make payment over and above the minimum amount of Rs.50,000/- as accepted by the Supreme Court.

List on November 19, 2021.

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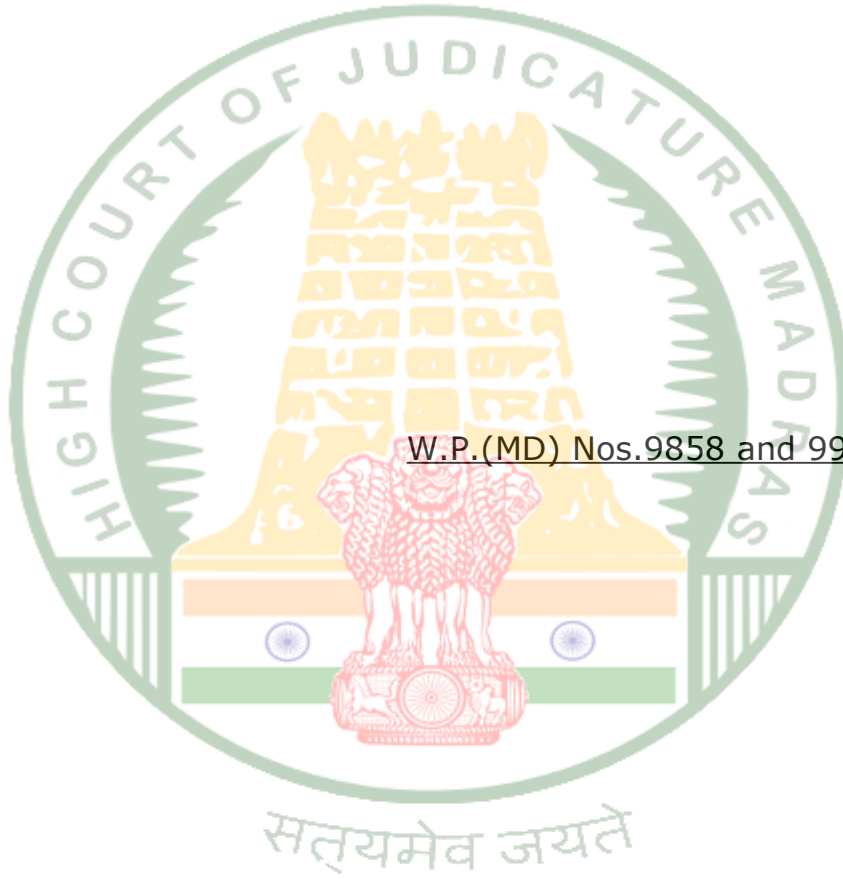


(S.B., C.J.) (P.D.A.,J.)
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