

*** HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

+ WRIT PETITION No.30961 of 2012

% Date: 12.03.2024

Between:

Smt. Karolla Jayamma.

... Petitioner

AND

Government of Andhra Pradesh
Rep. by the Chief Secretary,
Secretariat at Hyderabad.
and others.

... Respondents

! Counsel for the Petitioner : Sri Palle Sriharinath

^ Counsel for the Respondents : Government Pleader for Home

> HEAD NOTE:

? Cases referred

1. AIR 1974 SUPREME COURT 2092
2. (1979) 1 SCR 302
3. 1996 (2) ALT 504 = 1996 CriLJ 2854
4. AIR 1989 AP 235
5. (1995) 3 SCC 600
6. (2022) 7 SCC 203
7. AIR 2009 SC 3104
8. (2017) 6 SCC 680

HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**WRIT PETITION No.30961 of 2012****ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking to issue a Writ of Mandamus declaring the action of the Respondents in denying the claim of compensation to the Petitioner on account of death of her husband by name Karolla Venkaiah (Prisoner No.6917) in Central Prison at Cherlapally, Rangareddy District, as illegal, arbitrary, discriminatory and without jurisdiction and violative of the fundamental rights guaranteed under Article 21 of the Constitution of India and consequently, prayed this Court to direct the Respondents to award Compensation of Rs.10,00,000/- (Ten Lakhs only) to the Petitioner on account of death of her husband Karolla Venkaiah in Central Prison at Cherlapally, Rangareddy District and for other reliefs.

2. It is the case of the petitioner that she is the wife of Karolla Venkaiah, who was convicted in S.C.No.119 of 2010 by the learned III Additional District and Sessions Judge (FTC), at Medak and sentenced to undergo imprisonment for life for the offence under Section 302 r/w 34 IPC. The said Karolla Venkaiah, was admitted

in Central Prison, Cherlapally, Ranga Reddy District on 11.05.2012 and was assigned Convict Prisoner No.6917. It is further case of the petitioner that questioning the conviction and sentence awarded in S.C.No.119 of 2010, her husband Karolla Venkaiah preferred Criminal Appeal No.506 of 2012 on the file of this Court. While the said Karolla Venkaiah was undergoing sentence of imprisonment in the prison, on 04.07.2012, the Co-prisoner i.e, Dasari Narsimulu S/o. Ramulu, Convict Prisoner No.9772 attacked the Karolla Venkaiah and other inmates with a sharp object, due to which Karolla Venkaiah, succumbed to injuries while undergoing treatment in Gandhi Hospital at 6:30PM. It is further case of the petitioner that her husband-Karolla Venkaiah died due to the injuries inflicted by the Co-prisoner No.9772 and the incident occurred due to gross negligence of the Jail authorities, who failed to prevent the assailant from possessing the sharp weapon while in custody and due to possession of such object, the Co-prisoner could attack the deceased and other innocent persons resulting in death of her husband-Karolla Venkaiah. It is further case of the petitioner that her husband was an agriculturist and on account of his untimely death, she was put to hardship suffering mentally and financially and that the State is liable to pay compensation under public law remedy for deprivation of life and liberty of the deceased. Therefore, the petitioner prayed this Court to direct the

respondents to pay compensation of Rs.10,00,000/- to her on account of death of her husband-Karolla Venkaiah in Central Prison at Cherlapally, Ranga Reddy District.

3. The Respondent No.4, who is working as Superintendent, Central Prison, Cherlapally, has filed counter affidavit on behalf of respondents and stated that the petitioner's husband-Karolla Venkaiah S/o. Pardesh, (Convict Prisoner No.6917), aged about 55 years, R/o. Kusangi Village, Tekmal Mandal, Medak District, was convicted for the offence under Section 302 r/w 34 IPC and sentenced to undergo imprisonment for life in S.C.No.119 of 2010 on the file of III Additional District Judge, Medak at Sangareddy on 10.05.2012 and he was admitted in Central Prison, Cherlapally on 11.05.2012 and undergoing the sentence of imprisonment. It is further stated that the Convict Prisoner No.9772 Dasari Narsimulu S/o. Ramulu was shifted to Central Prison, Cherlapally on transfer from District Jail, Nizamabad on 08.07.2012 and he was undergoing sentence of imprisonment for the offences under Sections 307, 498A, 420 IPC and Section 20(B)(1) of NDPS Act. It is further stated that on the morning of 02.07.2012, said Dasari Narsimulu, stolen broken scissors from barber prisoner and secretly kept them in the bushes near his barrack and on 03.07.2012 during the lockup time he took the broken scissors

from the hidden place and kept them outside the window of his barrack and on 04.07.2012 at about 4:20 AM, he attacked the deceased Karolla Venkaiah and five other convict prisoners, who were in deep sleep by using the said scissors. Immediately, the injured were shifted to Gandhi Hospital, Secunderabad for better treatment and while undergoing treatment, the Convict Prisoner Karolla Venkaiah expired at about 6:10 AM on 04.07.2012. It is further stated that a case in Crime No.441/2012 was registered against the Convict Prisoner Dasari Narsimulu for the offence under Sections 302, 307 IPC and Section 176 Cr.P.C.

4. Pending adjudication of the writ petition, the respondent No.4 has filed additional counter affidavit *inter alia* stating that the unnatural death of a prisoner is governed by Rule No.576 (1) of the Telangana State Prison Rules, 1979 (for short "Prison Rules") and it reads as follows:

"Rule No. 576(1) - In case a prisoner dies in prison due to causes other than natural causes or if the cause of death is not known or if the death has occurred due to suicide or violence or accident or whenever there is any doubt or complaint or question concerning the cause of death of any prisoner, the Superintendent shall inform the officer in charge of the Police Station, having jurisdiction. The Superintendent shall immediately give intimation to the nearest Magistrate empowered to hold inquests. The Magistrate shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable persons, shall make an investigation and draw up a report regarding the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found

on the body, and stating in what manner of by what weapon or instrument (if any) such marks appear to have been inflicted.”

5. It is further stated that in accordance with the said rule, the institution has filed a case in Crime No.441/2012 dated 04.07.2012 on the file of Kushaiguda Police Station and the incident was also reported to the District Collector & District Magistrate, Ranga Reddy District vide letter No.CPCh/RC-I/8101-04/2012 dated 04.07.2012. It is further stated that the subject incident was also reported to the National Human Rights Commission(NHRC), New Delhi, vide crash Message No.CPCh/RC-I/8105-13/2012, dated 04.07.2012 and a case was registered vide NHRC Case No.792/1/19/2012-JCD. It is further stated that a Magisterial Enquiry was conducted into the incident on 19.12.2013 by the Collector & District Magistrate, Ranga Reddy District, and the Magisterial Enquiry Report was submitted to the National Human Rights Commission, New Delhi by the Collector & District Magistrate, Ranga Reddy District. It is further stated that, subsequent to the enquiry in the incident, the National Human Rights Commission, New Delhi, directed the Government of Telangana to award a compensation of Rs.1.00 Lakh to the next of kin of the deceased and accordingly, compensation of Rs. 1.00 Lakh was paid to Smt.Karrolla Jayamma (petitioner herein), W/o.Venkaiah, R/o. Kusangi Village of Tekamal Mandal, Medak

District, on 15.02.2018, vide Cheque No.091302, Dt: 15.02.2018, by the Tahsildar, Tekamal Mandal, Medak District, as confirmed by the Collector & District Magistrate, Medak District, vide Lr.No.C1/695/ 2017 Dt: 18.05.2018. It is stated that in view of paying the said amount as compensation and as the respondents have strictly adhered to Rule 576(1) of Prison Rules, the present writ petition is devoid of merits and ultimately prayed to dismiss the writ petition.

6. Considered the submissions of the learned counsel for the respective parties and perused the record.

7. The learned counsel for the petitioner has vehemently contended that the cause of death of the deceased was only because of the negligence of the respondents as they have not taken all the precautions to prevent the subject incident. Therefore, all the respondents, who are vicariously responsible for the death of the deceased, are liable to pay the compensation to the petitioner.

8. Per contra, the learned Government Pleader for Home appearing for the respondents has submitted that the respondent No.4 and his officials have taken all the precautions and strictly adhered to the Prison Rules and there is no negligence on their

part. It is further submitted that respondents are no way responsible for the death of the deceased and disowned any responsibility to pay compensation on that account as in the absence of any specific finding to the effect that the prison staff caused the death by any torturous acts, the State could not be made vicariously responsible for the death of such deceased which occurred on account of the act of the co-prisoner.

9. The question that falls for consideration in this writ petition is, whether the case is one of deprivation of life or there is any infringement of Article 21 of the Constitution of India and the Jail authorities being the custodian of the prisoners are vicariously liable to pay compensation.

10. It is an admitted fact that the petitioner's husband i.e, Karolla Venkaiah (deceased), was convicted in S.C.No.119 of 2010 by the learned III Additional District and Sessions Judge (FTC), at Medak on 10.05.2012 and sentenced to undergo imprisonment for life for the offence under Section 302 r/w 34 IPC and on 11.05.2012, he was admitted in Central Prison, Cherlapally. While- so on 04.07.2012, the Convict Prisoner No.9772 Dasari Narsimulu S/o. Ramulu attacked the deceased with a sharp object, due to which, the deceased succumbed to injuries while undergoing treatment in Gandhi Hospital, Secunderabad. It is also an

admitted fact that a case in Crime No.441/2012 dated 04.07.2012 was registered against Dasari Narsimulu on the file of Kushaiguda Police Station, for the offences under Sections 302, 307 IPC and Section 176 Cr.P.C. Pursuant to the directions of the National Human Rights Commission, New Delhi, the Government of Telangana paid compensation of Rs.1.00 Lakh to the petitioner on 15.02.2018, vide Cheque No.091302, Dt:15.02.2018, and the same was confirmed by the Collector & District Magistrate, Medak District, vide Lr.No.C1/695/2017 Dt:18.05.2018. It is settled principle of law that right to life enshrined in Article 21 of the Constitution of India is the most precious human rights and it forms the ark of all other rights. The fundamental rights guaranteed under Constitution of India including right to life in Article 21 of the Constitution of India are equally available to a person who is convicted of a crime and is in prison. This aspect was considered by the Hon'ble Supreme Court in ***D.Bhuvan Mohan Patnaik v. State of A.P***¹, wherein it was observed as follows:

“Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India

¹ AIR 1974 SUPREME COURT 2092

or the right to 'practice' a profession..... But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property..... Likewise even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

11. The said principle was reiterated by the Hon'ble Supreme Court in ***Sunil Batra v. Delhi Administration***², wherein it was held as follows:

“It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed..... However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the liberty left to him is then all the more substantial”.

12. Relying on the judgments of the Hon'ble Supreme Court, a Division Bench of this Court in ***State of Andhra Pradesh and others vs. Suramalla Ramulu and others***³, held that the State is liable to pay compensation on account of the death of prisoner which resulted due to failure of authorities to protect him.

13. It is settled law that apart from the Constitutional safeguards, the jail manuals and the rules framed enjoin the officials administering the jails to ensure safety of prisoners. The prisoner being entrusted to their care is entitled to protection and

² (1979) 1 SCR 302

³ 1996 (2) ALT 504 = 1996 CriLJ 2854

it is the responsibility of the prison officials to ensure the life and safety of every inmate of the jail including those who may have been convicted and serving sentence. These authorities are not absolved of this responsibility merely because the prisoners had been convicted by a Court of law and were serving sentence. In plethora of judgments, the Hon'ble Supreme Court and various High Courts held that a prisoner, is not denuded of his fundamental rights and is not deprived of his constitutional right guaranteed under Article 21 of the Constitution of India except to the extent he has been deprived of it in accordance with law.

14. Further, a Division Bench of this Court in ***Challa Ramkonda Reddy v. State of A.P. Rep. by District Collector, Kurnool***⁴, and the Hon'ble Supreme Court in ***Kewal Pati vs. State of U.P. and others***⁵, held that the State is vicariously liable for the death of inmate of the prison.

15. In the light of the decisions of the Hon'ble Supreme Court and this Court as referred supra, there is no dispute that this Court can exercise its powers under Article 226 of the Constitution of India to award monetary compensation for contravention of fundamental rights of the citizen, who is undergoing sentence of imprisonment. The law is settled for payment of compensation,

⁴ AIR 1989 AP 235

⁵ (1995) 3 SCC 600

however for deciding the quantum, there is no formula for custodial death or the death which occurred while serving the sentence of imprisonment. Therefore, this Court safely follows the method adopted in MVOP cases and relies on judgment in **Sanjay Gupta and others vs. State of Uttar Pradesh**⁶, wherein the Hon'ble Supreme Court has held that violation of life and personal liberty, compensation to the victims to be computed in accordance with principles of just compensation as in the case of deciding claims under the Motor Vehicles Act by the Motor Accident Claims Tribunal.

16. In view of the principles laid down by the Hon'ble Supreme Court in the cases referred supra, as the deceased-Karolla Venkaiah, was aged about 55 years on the date of incident and no specific earnings was mentioned by the petitioner, the earnings of the deceased are fixed as per the notification issued by the State Government vide G.O.Ms.No.11 labour Employment Training and Factories (Lab.II) Department dated 17.01.2012, for the unskilled labour as Rs.7170.65. The said amount is rounded off to Rs.7,200/-. Annual income of the deceased would come to Rs.86,400/- (Rs.7,200/- x 12=Rs.86,400/-). Considering the dependency of the deceased, 1/3rd income of the deceased has to

⁶ (2022) 7 SCC 203

be deducted towards his personal expenses and thereby, the net annual income of the deceased would come Rs.57,600/-(Rs.86,400 - Rs.28,800). According to the case of **Sarla Verma vs. Delhi Transport Corporation**⁷, the multiplier for the deceased, who is aged 55 years is '11'. By applying the said multiplier '11', the total loss of dependency of the deceased comes to Rs.6,33,600/- (Rs.57,600 x 11). Further, as per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**⁸, Rs.15,000, Rs.40,000 and Rs.15,000 should be awarded under conventional heads namely, loss of estate, loss of consortium and funeral expenses, respectively. It was further observed that the said amount should be enhanced at the rate of 10% on percentage basis for every three years. Therefore, following the decision in **Pranay Sethi's** case (supra), an amount of Rs.84,000/- is awarded to the petitioner under the conventional heads. Thus the total compensation comes to Rs.7,17,600/- and the same is rounded off to Rs.7,20,000/-. An amount of Rs.1,00,000/- which was already paid as compensation to the petitioner vide Cheque No.091302, Dt:15.02.2018, is deducted from the total compensation of Rs.7,20,000/-, then the compensation payable to the petitioner by the respondents comes

⁷ AIR 2009 SC 3104

⁸ (2017) 6 SCC 680

to Rs.6,20,000/-. The petitioner is entitled for interest at the rate of 6% per annum from the date of death of deceased i.e, on 04.07.2012 to till realization on the compensation amount of Rs.6,20,000/-.

17. In the result, this Writ Petition is allowed and the respondents are directed to pay compensation of Rs.6,20,000/- with interest at the rate of 6% per annum from the date of death of deceased i.e, 04.07.2012 to till realization, to the petitioner, within a period of three months from the date of receipt of a copy of this order.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

C.V.BHASKAR REDDY, J

Date: 12.03.2024

Note: L.R Copy to be marked: YES/NO

(b/o)

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