

(1990) 07 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 6141 of 1988

Majalise Muntasima Khudad

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-07-1990

Acts Referred:

Constitution of India, 1950 — Article 22, 226, 228

Citation : (1990) ILR (Kar) 3505

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : A.M. Farooq, for the Appellant; Satish S. Doddamani, HCGP for R-1, C.M. Desai, for R-2, S.K.V. Chalapathy, for R-3, I.R. Indra Kumar, for R-4, A. Mahabaieshwara Bhat, for R-5 to R-29, Mohan Reddy, for R-30, for the Respondent

Judgement

K.A. Swami, J.

1 .In this petition under Article 228 of the of the Constitution of India, Majalise Muntasima Khudad, Tippu Nagar, Chamarajpet, Bangalore, has sought for issue of a Writ in the nature of Mandamus directing the 1st respondent to hold an enquiry into the gas tragedy that occurred at Tippunagar, Bangalore, on 5-2-1988 and submit a report recommending compensation to be paid to the victims. The petitioner has also sought for Issue of a direction to respondents-2 to 4 to give compensation to all the victims and their kith and kin as may be recommended by the enquiring authority and for such other Writs or direction as may be deemed fit in the circumstances of the case.

2. Thus this is a public interest litigation filed by the aforesaid Association to secure relief to the members of the families of the deceased and also to the injured in the gas tragedy which took place on 5-2-1988 at Tippunagar in Chamarajapet.

3. Respondent No. 1 is the State of Karnataka. Respondent No. 2 is Hindusthan

Petroleum Ltd. Respondent-2 undertakes to fill gas cylinders at the instance of respondent-30. Respondent-30 - Bharath Petroleum Corporation Ltd., is a supplier. Respondent-4 is a distributor concerned in the case. Respondent-3 is the Insurance Company with which according to the case of the distributor, it has insured to cover the risk concerned in the case. However, respondent-3 does not accept the case of respondent-4. Thus the contesting respondents are respondent Nos. 2, 3, 4 & 30. The remaining respondents are some of the claimants.

5. The incident in question took place on 5-2-1988 at about 1-30 p.m. Sri Ramakrishna, an employee of respondent No. 4 carried one cylinder filled with gas, to deliver it to one Sri K. Sabeer Ahmed, residing at House No. 211,) Main, II Cross, Tippunagar, Chamarajpet, Bangalore-560 018. While installing the gas cylinder, gas started leaking from the cylinder. The inmates of the house ran to a place outside the house. The gas cylinder was removed and the same was brought outside the house in a narrow lane where there was a tin drum filled with water. The cylinder was immersed in it. The gas went on escaping through the water and within a few minutes it caught fire in a big proportion in which nine persons were killed and 28 persons were injured. The names of the deceased and the members of the families of deceased are as follows:

Sl. No.

Name of the deceased

Names of L.Rs.

1.

Mubeen Taj D/o Syed Ameer

1. Syed Ameer s/o late Syed Ghouse 2. Hasseen Taj 3. Syed Shaddeq 4. Nazeem Taj 5. Aseeffa 6. Sammena

2.

Ashrafunnisa D/o Abdul Rahim Sahib W/o Syed Ameer

1. Syed Ameer S/o late Syed Ghouse 2. Haseena Taj 3. Syed Shaddeq 4. Nazeem Taj 5. Asetfa 6. Sammena

3.

Shanaz Begum D/o Mohammed Sameeulla

1. Mohammed Sameeulla S/o late Abdul Nabee Sahib, 2. Rafsya Banu 3. Shafeenaz, 4. Naznenta 5. Qulnaz 6. Basara

4.

Samshad Begum W/o Basha D/o Azmath Pasha

1. Basha W/o late Abdu Khaleeq 2. Iffn 3. Nagama 4. Ashef 5. Asma
5.

Baby Sal ma D/o Basha

1. Basha S/o late Abdul Khaleeq 2. Iffan 3. Nagama 4. Ashef 5. Asma
6.

Siddique

1. Ghouse Khan S/o Ameer Khan

2. Ashrafunnisa W/o Syedkarim 3. Aslam Khan 4. Majed Khan 5. Haseena 6. Nageena 7. Mubbeena 8. Rahman Khan 9. Parveen 10. Shabbeenna 11. Baserra 12. Nattequua 13. Raziya

7. Irshad Ahmed S/o K. Sabbeer Ahmed 1. K. Shabbeer Ahmed S/o late K. Gaffoor 2. A. Shanaz Begum D/o A. Abdul Hameed 3. Faridha 4. K. Shalema 5. K. Zabarea 6. K. Rahilla

8. Kannammal D/o late Vetrayan W/o Thangavelu 1. Mahadesh 2. Murugan

9. Mangamma D/o Vedi 1. Vedi S/o late Vetrayan 2. Chandrajan D/o Muniswami 3. Cauvery 4. Murugan 5. Kummudha

The names of the injured are as follows:

1. Shanaz Begum W/o K. Sabber Ahmed 2. Faridha O/o Khadder Ahmed 3. Rahllia D/o K. Sabber Ahmed 4. Nazeemtaj D/o Syed Ameer 5. Ayaz Ahmed S/o Nazeer Ahmed 6. Arif Ahmed S/o Nazeer Ahmed 7. Seema D/o Haseena Shariff 8. Mohammed Anwar S/o late Mohammed Peer Sahib 9. Zareentaj D/o Abdul Sattar 10. Mohammed Khayum S/o Mohammed Alijan 11. Shabana D/o Abdul Sattar 12. Shahina D/o Mohammed Anwar 13. Reshma D/o Azmathulla 14. Mustaq Pasha S/o Azmathulla 15. Nazeema D/o Noor Ahmed 16. Ayaz Pasha 17. Fahmeda D/o Abdul Latheef 18. Parveentaj D/o Azaj Ahmed 19. Mohseentaj D/o Syed Qaffar 20. Nageentaj D/o Syed Gaffar 21. Noorunneesa 22. Delshad Begum W/o Nayaz Ahmed Shariff 23. Imran Ahmed S/o Nayaz Ahmed Shariff 24. Rani W/o Muthu 25. Syed Ameer

5. After the incident, certain organisations had come forward and paid certain amount to the families of each of the deceased and each of the injured persons. Each of the families of the deceased has been paid a sum of Rs. 10,858/-; and each of the 25 injured persons has been paid a sum of Rs. 6,472/-. Another person by name Ramakrishna, Gas Cylinder Delivery Boy, who is an employee of the 4th respondent, has been paid a sum of Rs. 13,473/-. It is stated that because of his efforts, the damage due to gas cylinder leakage has been mitigated.

6. At this stage, two questions arise for consideration as to the mode and

manner of deciding the claims of several claimants and the payment of interim compensation.

7. There is a controversy between respondents-3 and 4 as to the liability to pay the compensation. It is the contention of respondent-4 that as it has insured the risk with respondent-3 and the policy was in force on the date of the incident i.e., on 5-2-1988, it is not liable to pay the compensation. Respondent-3 disputes this case of respondent No. 4. However, at this stage, it is not necessary to decide these contentions. At this stage, it is also not necessary to decide the claims of the heirs of the deceased and the injured persons. The nature of the incident, extent of injuries caused to each one of the claimants and the extent of loss caused to the members of the families of the deceased due to the death of those persons, amount of compensation and the liability to pay the compensation are matters which are to be determined on proper pleadings and the evidence adduced by the parties. As the injured and the heirs of the deceased persons belong to a very lower strata of the society and as they are not in a position to come up individually to put forth their claims, the petitioner-Association has come forward to advance their case and to see that their claims are decided by appropriate Authority expeditiously.

8. There is no denial of the fact that the incident in question took place on 5-2-1983 at about 1-30 p.m. as referred to above. But the contesting respondents dispute their liability. It is also, true that the compensation for the tortious act in question can be claimed in a regular civil suit but that does not mean that the jurisdiction of this Court under Article 226 of the Constitution cannot be exercised. The jurisdiction of this Court under Article 226 of the Constitution can be invoked not only for the enforcement of the fundamental rights guaranteed by Part III of the Constitution but also for other purposes; in other words for enforcement of other legal rights also. It is also true that this Court does not normally exercise the jurisdiction

under Article 228 of the Constitution whenever there exists an equally efficacious, effective and alternative remedy. But it is relevant, to remember that existence of an alternative remedy does not oust the jurisdiction of the High Court under Article 226 of the Constitution. The rule that this Court should not entertain a petition under Article 22 when there is an equally efficacious and alternative remedy, is not a Rule of Law; but it is a principle the Courts have evolved for the guidance of their own discretion (See Karnataka State Road Transport Corporation and Another Vs. Karnataka State Transport Authority and Another,

9. The case on hand stands on a different footing, because it does not arise out of normal circumstances. A ghastly incident due to leakage of gas from the gas cylinder has taken place in which several persons have died and several persons are Injured. The heirs of the deceased and the injured, as a class, belong to a very low strata of society and they are not in a position to individually approach a regular Civil Court and claim compensation or damages. There is a legal

liability on such of those respondents who are connected with the supply of gas and gas cylinders and their liability has to be adjudicated. The claimants, in law, are entitled to be compensated. The jurisdiction of this Court under Article 226 of the Constitution also carries with it an obligation to do justice to persons whose life, liberty and the rights - fundamental or other legal rights are adversely affected and when such a grievance partakes the character of "class grievance" and not merely "individual grievance" and thereby it assumes the character of public interest. In such a case, irrespective of the fact that such grievance can be agitated before a Civil Court by way of a suit or other proceeding which, in the very nature of things, takes considerable time, cannot be considered to be an alternative efficacious and effective remedy. The case on hand falls in this category wherein exercise of jurisdiction under Article 226 of the Constitution becomes imperative. In such a case, even though it may not be just and convenient for this Court or try the case and record evidence, it has to evolve a procedure consistent with justice and fair-play. Therefore, in such cases, this Court can direct any Court, appropriate to the occasion and subordinate to it, to receive the claim petitions and objections and record the evidence on the controversies arising in the case, and the findings thereon including the amount of compensation payable and submit its findings with the records to this Court. On receipt of the findings and the records, this Court can finally decide the claims. This procedure will ensure full and proper opportunity to the parties to put forth their respective case and prove their claims. Thus, apart from enabling poor claimants to have their claims adjudicated, it also ensures speedy justice. Hence I am of the view that it would be just and appropriate and it would also advance the cause of justice and help the claimants in getting their claims adjudicated if one of the Presiding Officers of the City Civil Court is directed to enquire into the claims, record the evidence and the findings including the amount of compensation payable to each of the claimants and submit his findings to this Court along with the records.

10. As far as interim compensation is concerned, after hearing both sides, I am of the view that at present no interim compensation need be paid to the heirs of deceased Mubeen Taj, Shanaz Begum, Baby Salma, Siddique, Irshad Ahmed and Mangamma, because, these deceased persons were minors on the date of their death and some of them were even four years, seven years, six years and eight years and each of the families has already been paid a sum of Rs. 10,858/- No doubt, the aforesaid amount is not required to be taken into account while determining the compensation payable by the respondents who are liable to pay; but at this stage, such payment would be relevant to be taken into consideration. Therefore, the heirs of the aforesaid deceased persons can wait until their claims are determined. As far as the heirs of deceased Ashrafunnisa, Samshad Begum and Kannammal are concerned, interim compensation is required to be paid to the husband and children of each of the aforesaid deceased persons. Hence I direct that a sum of Rs. 10,000/- be paid to the families of each of the aforesaid deceased persons by respondents 2, 3, 4 and 30 jointly.

11. Out of 26 injured persons, Sri Ramakrishna, who is not added as one of the respondents to the petition is also one of the injured persons. He has been paid a sum of Rs. 13,473/- by certain organisations. Therefore, at this stage, it is stated, by the distributor who is also present in the Court, under whom Ramakrishna was working as gas cylinder delivery boy, and even now continues to work under him that he has been badly injured. Therefore, he is also required to be paid interim compensation of Rs. 10,000/-. The remaining 25 injured persons can be divided into several groups according to the extent of incapacities suffered by them due to the injuries suffered by them in the incident in question. Some of them fall in the group of 15% to 20% and some in the group of 20% to 30% and some in the group of 30% to 45% and some in the group of 45% and above. At this stage, it would not be just and appropriate to award interim compensation on the basis of the alleged incapacity of the injured as that is one of the matters to be determined after trial.

12. The following claimants are handicapped

1. Nazeem Taj D/o Syed Ameer 2. Noorunnisa 3. Imran Ahmed S/o Nayaz Ahmed Sheriff

They are to be paid interim compensation higher than the other injured.

13. Thus on taking into consideration all the facts and circumstances of the case, without expressing any

opinion on the claims of the persons concerned herein, in addition to the directions issued in para 10 above, the following directions are issued to pay interim

compensation:

a) Nazeem Taj, Noorunnisa, Imran Ahmed and Ramakrishna be paid a sum of Rs. 10,000/- each

b) Each of the other injured persons numbering 22 be paid a sum of Rs. 5,000/-.

c) The interim compensation shall be paid by respondents 2 to 4 and 30 jointly.

d) The contention of respondents 2 to 4 and 30 as to their liability to pay the compensation and also the contention of respondent-4 that it is not liable to pay the compensation as it has got the risk insured and, therefore, the Insurance Company alone is liable to pay, are all left open.

d) The interim compensation payable as per this order, by respondents 2 to 4 and 30 is subject to the result of final adjudication in the case and subject to fixation of the liability of respondents-2 to 4 and 30 at the final adjudication. Respondents-2 to 4 and 30 shall each deposit 1/4th of the interim compensation as directed above in the City Civil Court on or before 31-8-1990. The Principal Judge, City Civil Court, shall disburse the interim compensation in terms of this order. According to the final adjudication each one of respondents 2 to 4 and 30

is liable to compensate the other.

14. As the claims involved in this incident are to be enquired into and are to be determined, I direct that each of the injured to file separate claim petitions and the heirs of each of the deceased persons together to file one claim petition before the Principal City Civil Judge, Bangalore, on or before 16-8-1990. As respondents-2, 3, 4 and 30 are represented through a Counsel in this petition, copies of the claim petitions shall be served on their Counsel and acknowledgments be obtained and produced along with the claim petitions. Respondents-2, 3, 4 and 30 shall file their objections on or before 31-8-1990 and deposit interim compensation. Thereafter a date for settlement of claims and framing of issues be fixed. Thereafter, it is open to the Principal City Civil Judge, Bangalore, to try himself all the claims together or entrust them to another Presiding Officer of the City Civil Court. The claims shall be clubbed and tried together and findings be recorded on all the points arising in the case and submitted to this Court along with the records on or before the 30th day of November 1990.

15. It is submitted on behalf of both the sides that after the objections are filed by the respondents, a date may be fixed for settlement of claims as there is every possibility of settling the claims having regard to the nature of the injuries suffered by the injured persons. Therefore, the Principal City Civil Judge, Bangalore, shall, after 31-8-1990 or soon after the objections are filed by the respondents, whichever is earlier, fix a date within 10 days from the date of filing of the objections for settlement of the claims. If the settlement does not become possible or does not take place, then try and record the findings as indicated above on Priority Basis either by himself or by entrusting the same to any other Presiding Officer of the City Civil Court, Bangalore. The records of the Writ Petition, on retaining the true copies of the same, shall also be sent along with this order by Madam to the Principal City Civil Judge, Bangalore.

Post for hearing in the first week of December 1990 or earlier as soon as the findings and the records are received.