

(2010) 12 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 17224 of 2010

Mrs. V. Krishnaveni, Miss. V. Sowntharya and Master V.
Prasannakumar Petitioners 2 and 3 are rep. by their Mother
and Natural Guardian V. Krishnaveni

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Citation : (2011) WritLR 83

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

**Advocate : P. Saravanan, for the Appellant; C.K. Vishnupriya, Addl. Govt.
Pleader, for the Respondent**

Judgement

R. Sudhakar, J.—This writ petition is filed to call for the entire records relating to the proceedings of Na. Ka. No. 1393/2009/D5 dt 27.1.2009 passed by the 4th Respondent and quash the same consequently direct the 4th Respondent to give Accident Relief Rs. 1,00,000/- and funeral expenses Rs. 2500/- u/s 18(2) and Section 19 of Tamilnadu Agricultural Labourers-Farmers (Social Security and Welfare) Scheme 2006 respectively to Petitioners.

2. This writ petition is filed seeking accident relief under the Tamil Nadu Agricultural Labourers - Farmers (social, security and welfare) scheme-2006, in terms of G.O. Ms. No. 853, Revenue (L.R.I(2) Department) dated 29.12.2006.

3. The scheme is formulated under Sub-Section 1 of Section 3 of the Tamil Nadu Agricultural Labourers-Farmers (Social security and Welfare) Act, 2006 (Act 29 of 2006), (hereinafter referred as "the Act").

4. In the scheme, Clause 2(b) defines "Agricultural Labourer" as follows:

" agricultural labour" means any persons in the age group of 18 to 55 engaged to work in agricultural or allied agricultural operations for wages, but, who does not own any land.

Clause 2 (e) defines dependent as follows:

" (e) "dependent" in relating to an agricultural labourer or farmer means any of the relatives of such member as specified below:

- (i) Wife or husband, as the case may be;
- (ii) Children;
- (iii) Widow and children of the pre-deceased son; and
- (iv) Parents;

Clause 2(f) of the Scheme defines a farmer as follows:

" (f)" farmer" means a farmer in the age group of 18 to 65 years who owns wet land not exceeding 2.50 acres or dry land not exceeding 5.00 acres and engaged in direct cultivation of that land and includes a registered cultivating tenant;

5. The scheme is operated with a fund called the Tamil Nadu Agricultural Labourers -Farmers (Social Security and Welfare) Fund in accordance with Clause 11 and the scheme is managed by the Tamil Nadu Agricultural Welfare Board, established under the Scheme. The District level, Taluk level and village level committee implement the Scheme.

6. A registered member under the scheme is an agricultural labourer or farmer identified by the Village level committee. An identity card will be issued by the Special Tahsildar (Social security scheme) for permanent use by the member as a proof of identity.

7. The scheme provides for accident relief under Clause 18. Clause 19 provides for the assistance to meet the funeral expenses of a registered member. Clause 20 provides for assistance on the natural death of a registered member and Clause 21 provides for assistance to meet the education expenses of children of a registered member. Clause 22 provides for assistance for the marriage of the registered member or of the son or daughter of a registered member. Clause 23 provides for assistance at the time delivery or miscarriage of pregnancy or termination of pregnancy by a registered female member. Clause 24 provides for old age pension for a registered member. It is therefore, clear that the said scheme is benevolent and a beneficial welfare scheme intended for the people, who grow the grains for our daily meal by hard labour in drudgery.

8. In the present case, the scope of the writ petition is referable to a claim under accident relief, which has been negated on a technical plea of delay.

9. One Veluchamy, husband of the first Petitioner, is a registered member under the scheme, registration No. CBE/GP050/0366. He met with an accident on 18.10.2008 and died on 19.10.2008. A post-mortem was conducted on 20.10.2008 and the certificate was issued. The First Information report was lodged on 19.10.2008 i.e. on the date of the death. The dependent/wife made a claim for accident relief in terms of Clause 18 of the Scheme by an application

dated 26.11.2008 to the Special Tahsildar, Social Welfare Scheme, Pollachi Taluk, who by his order dated 27.1.2009 rejected the application stating that it is time barred. A representation was given to the District Collector/ second Respondent, who concurred with a view of the Special Tahsildar and declined to grant the relief stating that the application is time barred. The present writ petition has been filed by the widow of the agriculture labour to quash the orders of the authorities and to grant the relief under the said scheme.

10. The issue which arises for consideration is as to whether the Respondents are justified in rejecting the claim.

11. Clause 18 of the Scheme reads as follows:

18. Accident relief:

(1) A registered member when meets with an accident (either in the working place or in any other place) is eligible to avail the assistance under this clause.

Explanation (1) - For the purpose of this clause " Accident" means death or loss of hands or legs or sight or limbs resulting solely and directly from accident, either in the working place (in the course of his employment) or in any other place but does not include any intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or resulting from the registered member committing any breach of the law or rules or regulations or instructions applicable from time to time.

Explanation (2) - For the purpose of this clause, death due to accident shall include death due to snake bite or caused by any poisonous insects or by lightning.

(2) The risk specified in Sub-clause (1) above covered by the Scheme and the amount of relief or assistances payable shall be as follows:

(a) Death-Rs. 1,00,000

(b) Loss of actual physical separation of total and irrecoverable loss of or use of:

(i) both hands; or)

(ii) both legs; or)

(iii) one hand and one leg; or)Rs. 1,00,000/-

(iv)total and irrecoverable loss of sight)

in both eyes.)

(c) Loss of actual physical separation of total and irrecoverable loss of or use of

(i) One hand; or)

(ii) one leg;) Rs. 50,000/-

(d) Loss of limbs from grievous injuries other than those specified in items (b) and (c) above Rs. 20,000/-

3(a) Immediately upon the happening of any accident resulting in loss of hands or legs or sight or limbs or death, the registered member or his nominee, as the case may be, shall send a report to the Special Tahsildar (Social Security Scheme) and to the Police in Form No. V, within three days of such occurrence of the accident. The Special Tahsildar (Social Security Scheme) shall make an enquiry either on the report of the accident received from the registered member or his nominee. In the absence of First Information Report, issued by the Police, the assistance shall not be given, (emphasis given)

(b) In the case of loss of hands or legs or sight or limbs as specified in items (b) to (d) of Sub-clause (2), the claim shall be made by the registered member concerned and in the event of death of a registered member, the claim shall be made by his nominee in Form No. VI.

(c) In the case of loss of hands or legs or sight or limbs due to accident, the claimant shall produce a medical certificate issued by a Medical Officer not below the rank of a Civil Assistant Surgeon.

(d) In the case of death of the registered member due to accident, death certificate and postmortem certificate issued by a Government Medical Officer not below the rank of Assistant Civil Surgeon or an authority who is competent to issue such certificate shall be produced by the claimant. If there is delay for more than thirty days in getting the post-mortem certificate, the certificate given by the Tahsildar in this regard shall be produced.

(e) The Special Tahsildar (social Security Scheme) shall sanction the relief or assistance to the registered member or his nominee, as the case may be, in respect of accidents specified in Sub-clauses (c) and (d) above respectively.

19. Assistance to meet the funeral expenses of a registered member:

(1) If a registered member dies, the Special Tahsildar (Social Security Scheme) shall sanction a sum of Rs. 2,500/- (Rupees two thousand five hundred only) to the nominee of the deceased registered member to meet the funeral expenses of the deceased registered member.

(2) The application for claiming the amount specified in Sub-clause (1) shall be in Form No. -VII and shall be accompanied by the death certificate of the deceased registered member and the original identity card issued under the Scheme to the deceased registered member. The original identity card shall be returned to such other registered member (s) after making due entries regarding the death of the deceased registered member and due authentication made therein by the Special Tahsildar (Social Security Scheme) for further use of the existing members.

The there days time specified in Clause 18 3(a) has been amended to read as 30 days as per the statement of Special Government Pleader. It therefore follows

that a report has to go to the Special Tahsildar for the purpose of considering the claim, after enquiry. It also specifies that an F.I.R. is necessary for considering the claim.

12. No counter has been filed. However, Mrs. C.K. Vishnupriya, learned Additional Government Pleader relying upon Sub-clause 3 of Clause 18 states that the application is 8 days beyond the 30 days specified in Sub-clause 3 of Clause 18 of the scheme. Therefore, the authorities were justified in rejecting the claim. It is pertinent to point out that earlier the number of days specified for intimation was 3 days and that has been increased to 30 days.

13. In this case, the reason for rejection of the claim by the Special Tahsildar and the District Collector is erroneous and not correct for the following reasons:

(1) Sub-clause 3 (a) of Clause 18 indicates that the report should be sent to the Special Tahsildar (Social security and welfare) scheme and to the police in Form-V within 3 days from the date of such accident by the registered member or the nominee. The special Tahsildar will thereafter make an enquiry. The purpose behind the specification of 30 days is to ensure that there is proper time to make enquiry and that the intimation should come at the earliest point of time. The reason for increasing the period from 3 to 30 in Clause 18(3)(a) was perhaps, done realising the difficulty faced by illiterate agricultural labourers and farmers.

14. The factor that has to be taken into consideration is that Sub-clause 3(a) of Clause 18 clearly states that no assistance should be given in the absence of a F.I.R. Registered with the police. This is a pre-condition for claiming the benefits under the scheme for death due to accident. In this case, admittedly, the accident happened on 18.10.2010 and the day after the accident, i.e. on 19.10.2008, the F.I.R. has been registered and the Police authorities are aware of the accident. The post-mortem certificate was issued on 20.10.2008 to the knowledge of the police. Therefore, the Petitioners on the basis of the first information report registered on 19.10.2008 were under the impression that proper intimation of accident and death has reached the police authority. The First Information Report in this case immediate and there is no delay to cause any suspicion.

15. The question to be considered is whether the delay in submitting a report to the Special Tahsildar and to the Police in Form-V will dis-entitle the Petitioners/dependents of the deceased registered member automatically. This Court is unable to accept such plea by the Respondents as could be seen in Sub-clause 3(d) of Clause 18 where it has been stated that if there is a delay of more than 30 days in getting the post-mortem certificate, a certificate given by the Tahsildar can be produced. It is, therefore, clear that in case of delay, the competent authority can consider the issue on the merits of the claim based on other material like the Tahsildar's certificate.

16. In other words, while formulating the scheme, the possibility of delay for one or other reasons was considered. In any event, Sub-clause 3(a) of Clause 18

only states the report of the Special Tahsildar and the police should be within 30 days of the occurrence. In this case, the first information report was already with the police immediately after accident and the authorities have also participated in the post-mortem proceedings on the subsequent day. The requirement of sending another report to the police will be nothing but a formality. The delay in submitting the application to the Special Tahsildar if at all can be attributed to the illiteracy of the claimants and their reluctance to approach authorities seeking such relief. The inherent fear of illiterate, farmer, labour etc. to approach the officer or authority coupled with the administrative delays deter people from seeking such relief. This is one of the reason pleaded by the Petitioner's counsel.

17. The necessity to send a report to the Special Tahsildar is only to ensure that a proper enquiry should be made for ascertaining the genuineness of the claim for the purpose of granting the benefit or assistance to the dependents of the deceased registered member and to avoid fictitious claims. In this case, records are there to verify the bonafides of the claim. The police authorities have visited the spot, conducted the post-mortem and the F.I.R. is registered immediately after the accident.

18. The meagre delay in this case happened as explained by the Petitioner is due to illiteracy and funeral ceremony formalities. Since the deceased is an agricultural labourer, nothing more can be expected from the dependent/wife more probably an illiterate woman. In this case, there is a delay of eight days in making the application. The F.I.R. however was lodged immediately after the accident. The death of the registered member has been recorded in the post-mortem certificate dated 20.10.2008, which is one day after the death. All these records are with the police authorities. Therefore, there is no scope for the Petitioners to manipulate any document. In a welfare scheme of this nature, strict interpretation of the Scheme, more so, in the case of agricultural labourers will not serve the object, which is sought to be achieved by the State to provide relief to the farmers and agricultural labourers, who blood and sweat feed the hungry million mouths of this nation.

19. Since the Police authorities have already been put on notice of the accident, the F.I.R. was registered and the post-mortem was done to the knowledge of the police authorities, the Special Tahsildar, who has been noticed thereafter, can always verify the bonafides of the claim. The rejection per se on account of marginal delay is not justified. This is a case where equity will override the rigours of law.

20. The reason given by the Special Tahsildar and the District Collector for rejecting the application for grant of death assistance under Clause 18 of the Scheme is perfunctory and not in consonance with the welfare scheme and is therefore set aside and the Special Tahsildar is directed to reconsider the claim on merits and grant the relief subject to compliance of other necessary formalities.

21. This Court is inclined to further direct the Government to consider and amend the provision of the scheme to provide for condonation of delay as applicable in other statutes. The delay may happen due to unforeseen circumstances, more also, due to illiteracy and ignorance. The Government may also indicate to the authorities concerned that scheme, which is intended for the benefit of the downtrodden section of the society should be viewed leniently and benevolently. It should not be rejected on mere technicality as has been done in the present case. The Respondents authority are directed to process the claim within four weeks from the date of receipt of a copy of this order.

22. This writ petition is ordered as above. Consequently, connected miscellaneous petitions are closed. No costs.