
(1998) 09 MAD CK 0073
In the Madras High Court
Case No : W.P.No.10 of 1990

R. Nandakumar

APPELLANT

Vs

State of Tamil Nadu and 2 others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 332

Citation : (1998) 3 CTC 628

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. P. Rathinam, for the Appellant; Mr. S. Gopinathan, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, who is a native of Kulithalai, Trichy District presently practising Advocate of this court, has approached this court with the

following prayer:-

To issue a writ,

a) directing the first respondent to pay compensation to the families of the deceased Mr. Mukkan and Arokkiyasamy a fair and reasonable amount

as this court may deem fit and proper;

b) directing the first and second respondents to take measures to give effective medical treatment to the injured Ponnusamy, Palanisamy and others

whose names are given to the authorities and for payment of compensation to the injured in the firing;

c) ordering any other relief or order as this court may deem fit and proper in the circumstances of this matter; and

d) ordering cost of this petition.

2. The brief facts leading to the filing of the writ petition are as follows:-

According to him, at the time of filing of the writ petition in the year 1990, he was a graduate and studying Chartered Accountancy. He read a

news item in the press on 14.12.89 and subsequently regarding police firing in Vaiyampatti in Manapparai Taluk. Since he is a native of

neighbouring taluk, he took interest in knowing about the follow up action by the authorities concerned. He collected relevant information from the

newspapers. It is stated that English daily Indian Express (Madras Edition) dated 15.12.89 published a news item under a caption ""One dies in

firing, as mob attacks police"" wherein it was stated that one person was killed and about 30 others, including Police men, were injured when Police

opened fire on a 1000 strong mob which gheraoed the Vaiyampatti Police Station, about 60 km from Kulithalai on the Trichy Dindigul Road, on

Wednesday night. It is further stated that the body of a man was found hanging from a tree behind the Vaiyampatti Police Station a few days back.

The local people complained to the police, but the police allegedly did not do anything about this, the body began to putrify. The people began to

suspect foul play. They assumed that the man had been murdered by the police and the body hung from the tree. Telegrams were sent to the Chief

Minister, top Police Officials and the Trichy District Collector; but nothing happened. The said incident was published in other dailies as well as

weeklies and in Tamil weekly magazines. The deponent of the affidavit met the victim and others. Likewise he met one Kuttikara Thomas, father of

Arokkiyasamy who died in the firing. It is stated that Arokkiyasamy was the only bread-winner of his family and due to his death, the family

members are facing crisis. Apart from the death of Arokyasamy, a number of persons got injured in the firing and some of them are seriously

injured. The police had registered a case in Crime No. 258 of 1989 under Sections 147, 148, 323, 332, 341, 353, 427 and 307 of Indian Penal

Code. It is further stated that there were more than one death in the police custody in the recent past and a rape was said to be committed by a

Sub-Inspector. In respect of the death of one Mookan, whose body was hanging in the tree within the compound of the Police Station and also

death of another person by name Arokyasamy in Police firing two enquiries were

conducted at the instance of the Government.

It is further stated that Mookan alias Ayyappan, aged about 35 years who died due to torture by police-was a resident of Kunda Goundanur near

Balaviduthi in Manapparai Taluk. It is further seen from the affidavit that one Ayyavu Naicker, a resident of Cheethapatti Village gave a complaint

to the police regarding theft of his two wheeler. When the said Mookan had a quarrel with some of the residents of Kallupatti, he was brought to

the Police and they found that he had stolen the said two wheeler. He was illegally kept in the Police Station in Vaiyampatti and tortured by police.

He was treated by a local doctor. It is stated that inasmuch as the family of the deceased Mookan who was said to be tortured and killed by the

police personnel of Vaiyampatti Police Station, he is entitled for a reasonable amount of compensation. Likewise, the family of the deceased

Arokyasamy who died in the Police firing on 13.12.89 are also entitled to a reasonable compensation. In such situation, by way of public interest

litigation, he has filed the present writ petition for appropriate relief in favour of the victims.

3. On behalf of the respondents, first respondents has filed a counter affidavit disputing various averments made by the petitioner. It is stated that

the present petition is not maintainable. It is stated that on 13.12.1989, a dead body was found hanging from a tamarind tree within the premises

of Vaiyampatti Police Station. Suspecting some foul play, a group of persons ranging about 2000 local people constituted an unlawful assembly

around 6.45 p.m. in front of the police station and obstructed the vehicular traffic in the busy Tiruchy-Dindigul National Highway and attempted to

enter into the Police Station with a common intention to assault the policemen and cause destruction of public properties. The Tahsildar declared

the assembly as unlawful and directed them to disperse. At that stage, the necessity to restore normal traffic on the National Highways, and to

protect the public properties and records kept in the Police Station and save the lives of officials provided no other alternative except to resort to

firing. In the police firing, one Arokkiyasamy of Karungulam village succumbed to bullet shot injuries and nine other persons sustained injuries. The

Revenue Divisional Officer and Sub-Divisional Magistrate, Tiruchy held inquest on the dead body of the said Arockiaswamy. The Sub-Collector

and Sub-Divisional Magistrate, Karur held inquest on the dead body found hanging subsequently. The Magisterial enquiry under Police standing

order 144 (3) was ordered to enquire into the circumstances and jurisdiction or otherwise for the police firing. The enquiry was conducted by the

District Revenue Officer and Additional District Magistrate, Tiruchy. The financial relief of Rs.10,000 from the Chief Minister's Public Relief Fund

was also granted to the family of Arokkiasamy and Rs.1000 each to the nine persons who were injured in the course of events connected with

police firing. The Government in letter dated 5.3.90 have accepted the findings of the Additional District Magistrate, Tiruchy that the police firing

was justified. Also on the findings of the sub-collector and Sub Divisional Magistrate, Karur the Government have ordered prosecution against the

police personnel who were found responsible for the death of Mookan whose dead body was found hanging in a tamarind tree within the premises

of Vaiyampatti Police station. In such circumstances, according to the respondents, the petitioner is not entitled to any relief as claimed by him,

accordingly prayed for dismissal of the writ petition

4. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondents.

5. Mr.P. Rathinam, learned counsel appearing for the petitioner, has raised the following contentions:-

(i) In the light of the report of the sub collector, Karur and of the fact that the prosecution was launched against the concerned Police Officers, it is

clear that the said Mookan was done to death by Police; accordingly the widow, who is the only legal heirs of the deceased Mookan is entitled a

reasonable compensation from the Government;

(ii) The legal heirs of Arokiasamy who died due to police firing are also entitled a reasonable compensation, since the grant of Rs. 10,000 by the

Government for the same is inadequate;

(iii) The persons who sustained various injuries due to police firing are also entitled to reasonable compensation.

On the other hand, learned Government Advocate appearing for the respondents, after taking me through the various averments in the counter

affidavit , has contented that in order to ascertain the truth, the Government have ordered enquiry with regard to both the incidents and necessary

follow up action were also taken by the Government; accordingly the present Writ Petition is mis-conceived and liable to be dismissed.

6. I have carefully considered the rival submissions.

7. This is a public interest litigation filed by the petitioner, who is a native of Kulithalai, Trichy District, wherein he has prayed for compensation to

the families of deceased Mookan and Arokiasamy as well as payment of compensation to the persons injured in the Police firing. It is seen from

the pleadings of both sides that on 13.12.1989 a dead body was found hanging from a Tamarind tree within the premises of Vaiyampatti Police

Station, Manapparai taluk. Suspecting some foul play, a group of persons ranging about 2000 local people assembled unlawfully in front of the

Police station and obstructed the vehicular traffic and also threatened that the body hanging from the tree should not be removed till the arrival of

the District Collector and Superintendent of Police of the District. According to the respondents, the group of persons ranging about 2000 without

heeding to the advice, attempted to enter into the police Station with the common intention of assaulting Police men and causing damages to public

properties. It is further stated that in order to restore normal traffic on the National Highways, and to protect the public properties and records

kept in the Police Station and save the lives of officials, they resorted to firing. In the police firing, one Arokiasamy of Karungulam village

succumbed to buck shot injuries and nine other persons sustained injuries. It is also seen from the records that Revenue Divisional Officer and

Sub-Divisional Magistrate, Trichy held inquest on the dead body of the said Arokiasamy and that the Sub- Collector and Sub-Divisional

Magistrate, Karur held inquest on the dead body found hanging subsequently. The Magisterial enquiry under Police Standing Order 144 (3) was

ordered to enquire into the circumstances and justification or otherwise for the police firing. The enquiry relating to the firing was conducted by the

District Revenue Officer and Additional District Magistrate, Tiruchy. The sub collector and sub Divisional Magistrate, Karur, conducted an enquiry

with regard to the death of Mookan. It is also seen from the counter affidavit that the Government have accepted the report of the District Revenue

Officer justifying the police firing and ordered financial relief of Rs.10,000 from the Chief Minister's Public Relief Fund in favour of the family of

Arokiasamy and Rs.1000 each was paid to 9 persons who were injured in the course of events connected with police firing. Likewise the

Government have accepted the report of the sub collector and sub Divisional Magistrate, Karur and as directed by the authority, the Government

have prosecuted 3 Police Officers in connection with the death of Mookan.

8. No doubt, in the counter affidavit the first respondent has stated that inasmuch as the petitioner has nowhere sustained any injury and in the

absence of any claim from the persons concerned, the present writ petition is not maintainable. I have already stated that the petitioner is the

resident of a neighbouring village and at present a practising Advocate of this Court. Taking note of the events which took place, I am of the view

that the petitioner is competent to approach this court for the cause of the victims and accordingly, I hold the writ petition is maintainable.

9. Now, I shall consider whether the family members of deceased Mookan are entitled to any compensation as claimed by the petitioner. In the

additional affidavit filed by the petitioner, it is stated that the deceased Mookan had left his wife by name N. Nallammal. She and Mookan were

married 8 years ago and had no children and the parents of both of them are no more. In the additional affidavit it is stated that at present she is

living under the protection of her brother S. Pichai of Ponnagoundanur village. She does not work after the death of her husband and is being taken

care of by his brother who is himself a poorly paid agricultural labourer in a dry area. It is stated that she is an illiterate person and has no property

or income whatsoever. It is seen that during investigation in connection with a theft case, the police from Vaiyampatti Police Station arrested the

said Mookan while he was in the custody of the police for interrogation according to the petitioner, due to torture and third degree method, the

said Mookan died. In this regard, it is relevant to point out the report of the Sub Collector, Karur. After examining several witnesses, the Sub

Collector has concluded thus:-

While one has to give much importance to the medical opinion, one cannot lose sight of the circumstances in which the dead body was detected.

Discussing the possibilities of suicide by hanging , the possibilities of the deceased climbing up all the way up a big tamarind tree to a height of as

much as 36 looks somewhat unreasonable. Moreover, if the deceased was an

escaped detainee, he would not have probably selected a tree within the police station premises to commit suicide. Secondly as Dr. Venkatachalam would point out, while in intoxication it might not have been quite easy for the deceased to have climbed up the tree. On the other hand, if one, for a moment, gives a piece of one's mind towards the possibilities of a homicide, the probabilities of somebody other than the police personnel, having indulged in foul play and hung the dead body in a tree inside the police station premises, also looks somewhat less. However, the treatment given by the Homeopathy Doctor Thiru Habibur Rahman to the deceased on the two occasions at the instance of the S.I. of Police (Thiru Natarajan) gives one the impression that the injury so treated would have been caused by the police and thus one tends to presume that the detained Ayyappan could have been beaten and ill-treated, if not tortured by the policemen concerned.

The above paragraph, in any case, contains a short discussion on the various probabilities, but does not prove any point conclusively. After examining all the possibilities, it has to be stated that whether the death of Thiru Ayyappan could be a case of suicide or a homicide could not be decided. The direct involvement of any police personnel in causing his death, has not been established.

Thus these circumstances leading to the death in this case could not be deciphered. That the deceased Thiru Ayyappan had been detained in hand/leg-cuffs and tied to a pillar in the police station and probably was beaten and ill-treated, is, however, all that one can reasonably infer.

In the end, from the records available in this case, and the statements of the witnesses made before me, it is held that the following police personnel are jointly and severally responsible for the offences noted below:-

Names of Policemen Offences committed

1. Thiru Natarajan. 1. Wrongful confinement as defined in Section 340 I.P.C. read with Section

S.I. of Police (Crime) 343 I.P.C. (since the deceased has been detained for more than 3 days.

Manapparai

2. Vadivel, S.I. of 2. Voluntarily causing hurt as in Section 321 I.P.C.

Police (L.O.) Varyampatti

3. Jebamani, Gr.

I.P.C 1682 Vaiampatti P.S.

Thiru Vadivel, Sub-Inspector of Police (Law and Order), Vaiyampatti has also failed to maintain his pocket note book up- to-date.

It appears that some other Police Constables have been involved in the case of Ayyappan at different times in different ways. However, the degree

of their involvement varies and anybody's contribution to any offence has not been specifically made out. It is also reasonable to believe that these

Police Constables could have only acted to the dictates of their superiors i.e., the Sub-Inspector or the writers etc., Thus it can at best be said that

they owe a vicarious responsibility.

It is clear from the report that even though the Enquiry Officer has not rendered a definite finding, he came to a conclusion that the 3 Police

Officers are jointly and severally responsible for wrongful confinement and voluntarily causing hurt. It is also seen from the records that the

Government after accepting the report of the Sub Collector, Karur in G.O.Ms.No.74, Public (Law and Order-A) Department dated 12.1.1990

initiated criminal prosecution against the said Police Officers through District Collector, Tiruchirapalli. No doubt, ultimately the criminal case filed

against the above mentioned 3 Police Officers ended in acquittal. The fact remains that the Police Officers concerned in that Police Station were

alone responsible for the death of Mookan. It is unfortunate that the enquiry Officer did not render a clear finding on the basis of the evidence. As

observed by the II Additional Sessions Judge while acquitting all the 3 Police personnel, the Officers concerned and the other Policemen alone

were responsible for the said incident. It is painful to note that even after the receipt of the report of the Enquiry Officer and after launching

prosecution against the persons concerned neither the District Collector nor the Government have taken any effort in compensating the widow of

the deceased Mookan. I have already observed, the deceased had left his widow as his only legal heir and in such circumstances, it is but fair and

proper some reasonable amount has to be paid for her survival. (Italics Supplied)

10. Regarding the death of Arokiasamy in the firing and injuries to several persons, the District Revenue Officer and Additional District Magistrate

conducted an enquiry and submitted a report justifying the police firing. However, he has recommended for taking departmental action against the

2 Officials of the Police Department, namely, Deputy Superintendent of Police, Manapparai and Sub Inspector of Police, Vaiyampatti for their

slackness to collect evidence and take appropriate action to tackle the mob with sufficient force in time. The said report has been accepted by the

Government. In pursuance of the said report, the Government have sanctioned a sum of Rs.10,000 from the Chief Minister's Public Relief Fund to

the family of Arokiasamy and Rs. 1000 each to 9 persons, who were injured in the course of events connected with the police firing. In view of the

report of the District Revenue Officer, we have to find out whether the payment of the amount of Rs.10,000 to the family of deceased Arokiasamy

and Rs.1000 to each of the injured persons is justified or not?

11. Before considering the quantum of fair and reasonable compensation to the victims referred to above, I shall consider some of the judicial

decisions on this aspect.

12. Mr. P. Rathinam, learned counsel appearing for the petitioner, has brought to my notice a decision of Kanakaraj, J., rendered in

W.P.No.8270 of 1987 dated 7.12.1990. In that case one Delhi, who was residing in Sathyamurthy Nagar, Vyasarpadi was arrested by the

Inspector of Police, Vyasarpadi on 13.1.1986. It was alleged that the said Delhi was tortured in the Police Station, as a result of which, he fell

unconscious and later he was taken to the Stanley Medical College Hospital where he was declared dead. The news of his death spread in

Vyasarpadi and on the morning of 30.1.86 a crowd collected at the Police Station demanding information about the deceased. The Police resorted

to lathicharge and tear-gas and subsequently resorted to firing which caused death of three persons and injuries to many others. Executive .

Magistrate, viz., P.A., to the Collector conducted an enquiry. After nearly two months, a sum of Rs.2,000 was awarded to each of the dependents

from the Chief Minister's Relief Funds. Thereafter, the petitioners in that case have approached to this court to issue a writ of mandamus and to

direct the Government of Tamil Nadu to order payment of compensation to the petitioners as a result of the death of the said persons in the firing

which took place on 20.1.1985. After referring earlier decisions of the Supreme

Court and after considering the claim of the petitioners and the respondents therein, the learned judge has directed payment of Rs.30,000 to each of the petitioners and also directed the Government to disburse the same within six weeks. The said decision undoubtedly supports the present claim of the petitioner.

13. For payment, of medical expenses to the injured the learned counsel appearing for the petitioner very much relied on a decision reported in

Madras High Court Advocates" Association etc. v. State of Tamil Nadu and 3 others, 1995 (2) L.W.412. In that decision, this court after

directing the handing over the investigation to the Central Bureau of Investigation, directed the Government of Tamil Nadu to bear the medical

expenses that would be incurred by the victim Mr. R. Shanmugasundaram.

14. The other decision relied on by the learned counsel for the petitioner is reported in Baggiam Doraiswamy v. State of Tamil Nadu 1994 (2)

L.W. 687. The case relates to custodial death and the compensation was claimed by the widow of the deceased. After referring to various earlier

decisions of this court as well as the Apex Court, Mishra, J., (as His Lordship then was) directed the Government to pay compensation of Rs.1

Lakh in favour of the victim-petitioner in that writ petition. The said decision is directly applicable to our case.

15. The other decision referred to by the learned counsel for the petitioner is in the case of Padmavathi, C. v. The Commissioner of Police 1991

W.L.R. 189. In that case, their Lordships in the Division Bench appointed a One Man Commission to go into the illegal custody and detention of

persons who either are not caused in any case at all or if caused are not produced before the nearest Magistrate within a period of 24 hours of

such arrest!

16. The other decision referred to is in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, which speaks about

power of this court under Article 226 of the Constitution of India to issue direction for payment of compensation to the victims, particularly, for the

custodial deaths. The other decision is in the case of Miss Radha Bai Vs. Union Territory of Pondicherry represented by its chief Secretary and

others, wherein fop removal of an officer of the Pondicherry Government for the mental agony and sufferings, loss of reputation and honour, Their

Lordships of the Apex Court finally directed Union Territory of Pondicherry to pay a sum of Rs.3 Lakhs as compensation.

17. In the light of catena of judicial decisions referred to above, I hold that this court is competent to award fair and adequate compensation to the

victims, particularly, in the case of custodial death and firing. As observed by their Lordships of the Supreme Court in Smt. Nilabati Behera alias

Lalita Behera Vs. State of Orissa and others, referred to above, in appropriate cases this court by exercising jurisdiction under Article 226 of the

Constitution is empowered to issue appropriate direction for payment of compensation. As stated earlier, in the case of death of Mookan, it is

unfortunate that inspite of the report of the Sub Collector, Karur, even after launching prosecution against the concerned Police Officers, the

Government failed to pay any compensation to the widow of the deceased. I have already stated the family back-ground and the financial position

of the victim. It is also brought to my notice recent order of the Government in G.O.Ms.No.833 Public (Law and Order. B) Department dated

22.5.98 wherein the Government have further enhanced payment of compensation to the families of those who were killed in communal/caste

clashes from Rs.50,000 to Rs.2 Lakhs. It is also clarified that the same is equally applied to the families of the victims of communal clashes and

SC/ST victims of atrocities who are paid compensation as per the SC/ST (PA) Rules, 1995. No doubt, the said Government Order is not directly

applicable to the case on hand. However, the learned counsel has brought to my notice that even for the victims due to communal clashes, the

Government itself decided to pay compensation at the rate of Rs.2 Lakhs in cases of death with retrospective effect from 1.1.1997. In the light of

the particulars furnished by the petitioner in the additional affidavit and in as much as the widow was not paid any amount, taking note of the fact

that she is not having any issues and living with her brother, I am of the view that the ends of justice will be met if the respondents are directed to

pay a sum of Rs.1 Lakh as compensation. In the case of death of Arokiasamy in police firing, I have already stated that the Government have

sanctioned Rs.10,000 to the family of the deceased Arokiasamy. In the affidavit it is stated that the deceased Arokiasamy had left the family

consisting of his parents Kuttikkara Thomas (60 years), Jesaliammal (55 years); brothers Jesuraj (36 years) Joseph (26 years) and sister

Kanikkaimery (15 years). Taking note of the family circumstances, I am of the view that a direction has to be issued for payment of Rs.50,000

each to his father and mother. With regard to compensation to the injured persons, even in the counter affidavit of the first respondent, it is stated

that 9 persons who were injured in the course of the events connected with the police firing, a sum of Rs.1000 was paid. In the additional affidavit

the petitioner has highlighted the nature of injuries, period of treatment. Taking note of all the above aspects, I am of the view that all the 9 persons

are to be paid Rs.5000 each. With regard to the damage to the properties, as claimed in the affidavit, in the absence of any additional tangible

materials, it is not possible for this court to issue direction for the same.

18. In the light of what is stated above, I hereby pass the following order:-

(i) Respondents are directed to pay compensation of Rs. 1,00,000 in favour of N. Nallammal, wife of deceased Mookkan, residing at

Ponnagoundanur, Balaviduthi Post, (via) Vaiyampatti, Tiruchy District within a period of four weeks from to-day. Out of the said amount, a sum of

Rs.25,000 may be paid directly to the said victim and the balance of Rs.75,000 may be invested in her name in any one of the Nationalised Bank

or in any other Scheme sponsored by the State Government in a Fixed Deposit Scheme. The periodical interest is to be paid directly to her:

(ii) Respondents are directed to pay a sum of Rs.50,000 each in favour of Kuttikara Thomas and Jesali Animal, parents of the deceased Aroki-

asamy within a period of four weeks from to-day.

(iii) Respondents are directed to pay a sum of Rs.5,000 to each of the nine persons who were injured in the course of the events connected with

the police firing within a period of four weeks from today

(iv) It is open to the respondents to deduct amounts already paid in favour of the families of the deceased Arokiasamy and injured persons; and

(v) Respondents are also directed to pay cost of Rs.1,000 in favour of the counsel for the petitioner within a period of four weeks from to-day.

19. Writ Petition is allowed on the above terms. This Court appreciates the efforts taken by the petitioner as well as the counsel in pursuing the

present public interest litigation. It is also noted that but for their efforts, the victims would not secure adequate relief as directed above.