

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.3252 of 2020

and

W.M.P.(MD) No.2758 of 2020

T.Kaliammal

.. Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep., by The Principal Secretary,
The Home Department,
Fort St. George, Chennai.
- 2.The State of Tamilnadu,
Rep., by The Secretary,
The Tamil Nadu Legal Service Authority,
North Road, Chennai.
- 3.The State of Tamilnadu,
Rep., by The Principal Secretary,
Department of Health and Family Welfare,
Fort St. George, Chennai.
- 4.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai.

- 5.The Chairman,
District Legal Service Authority,
District Court Building,
Thoothukudi.
- 6.The District Collector,
Office of the District Collector,
Thoothukudi District.
- 7.The Superintendent of Police,
Office of the Superintendent of Police,
Thoothukudi District.
- 8.The Inspector of Police,
All Women Police Station,
Kadambur, Thoothukudi District.
- 9.The Dean,
Government Hospital and Medical College,
Thoothukudi District.
- 10.The District Legal Services Authority,
Thoothukudi.

.. Respondents

***[R10 – suo motu impleaded vide Court order
dated 14.06.2023 in W.P.(MD) No.3252 of 2020]***

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to provide fair and reasonable compensation for the petitioner's daughter, in accordance with law.

For Petitioner : Mr.R.Alagumani
For RR1 to 4 : Mr.T.Amjadkhan
Government Advocate
For R5 : Mr.A.Hajamohideen

ORDER

The petitioner, who is the mother of a mentally challenged daughter, who has been ravaged and impregnated by a “wolf in sheep's clothing”, old enough to be her father, has knocked at the doors of this Court seeking compensation for this wrong inflicted on her daughter.

2. The family comes from indigent circumstances. The mother is an agricultural coolie and the father works as a Watchman in a private company. They are blessed with two children, a son aged about 18 years, who is undergoing his B.Com course at Mano Arts College in Thoothukudi District and a daughter, who is the victim. The victim is mentally as well as physically challenged. Since the husband is employed at Chennai, the mother and children are living alone. Being an agricultural coolie, the petitioner is forced to leave the daughter alone

and go for her work. The accused, who is about 55 years of age and a neighbour, had taken advantage of the victim's physical and mental disability and has committed aggravated penetrative sexual assault on her not once, but on several occasions. The condition of the victim is such that she was not even in a position to narrate the ordeal to her mother. It was only when she had become pregnant, that the mother came to know about the same and immediately, a complaint was lodged at All Women Police Station, Kadambur, Tuticorin, and an FIR too was registered under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”). The petitioner has moved this Court for a mandamus to terminate the pregnancy, provide police protection to the petitioner and her family members and to provide reasonable fair and compensation to the victim.

3. By orders of this Court dated 18.02.2020, the Dean, Government Hospital Medical College, Thoothukudi District, who is the 9th respondent, was directed to examine the petitioner's daughter and submit a detailed report about her status and age of the foetus and also her medical fitness for the termination of pregnancy. It is seen that this Court

had directed the 9th respondent to terminate the pregnancy of the victim and the same has also been complied with. Thereafter, an interim compensation of a sum of Rs.1,00,000/- had been sanctioned to the victim.

4. Meanwhile the accused had died and it is stated that the criminal proceedings have been closed as abated. This Court had attempted to examine as to whether there is any chance to rehabilitate the mentally challenged victim for which purpose, the Dean, Government Hospital Medical College, Thoothukudi, was asked to appear and submit a report regarding the rehabilitation scheme and the rehabilitation centres that have been set up particularly with reference to the mentally challenged female children by the Government of Tamil Nadu. The Dean had listed the name of St.Joseph Charitable Trust at Adaikalapuram, Tiruchendur, as one such institute.

5. Learned counsel for the petitioner was asked to obtain the consent of the mother of the victim for sending the victim to this rehabilitation centre, where she would have to remain inhouse. The

Dean had made it clear that it was open for the mother to come and see the victim every week end. However, the mother has not accepted the suggestion and it is natural considering the fact that her daughter had suffered. The records would further show that at the time of terminating the pregnancy, the victim was under the care of the State in a rehabilitation centre and has been later taken back by her parents.

6. A counter has been filed by the fifth respondent, who is none else than the Chairman of the District Legal Service Authority, a reading of which would show the lack of a humane approach in filing the very response. The counter is matter of fact and the legal jargon totally lacking in sensitivity. The very object of the Legal Services Authority Act is to “provide free and competent legal services to the weaker sections of the society *to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability*”. The very object of this Act is lost from a reading of the counter filed by the fifth respondent. Instead of assisting the Court in trying to rehabilitate and compensate the victim, who is a mentally and physically

challenged girl, the fifth respondent has washed its hands off the case and prays that the writ petition be dismissed. The least said about the counter the better.

7. Here is a pathetic case of the victim, a minor and mentally challenged, who had undergone aggravated penetrative sexual assault at the hands of the accused, not once but on several occasions. Unfortunately, before he could be visited with any punishment at the hands of law, he had passed away. The Special Court, without adhering to the provisions of Section 33(8) of the POCSO Act and Rule 7(1) and Rule 7(2) of the Rules, which are hereinbelow extracted, closed the case as charge abated:

“Section 33(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

***Rule 7. Legal aid and assistance.** - (1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.*

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987)."

8. This closure is yet another action which has caused grave injustice to the victim and to some extent, shows the apathy displayed to a person of the victim's condition. By closing the case, the bar under Section 362 of the Code of Criminal Procedure would kick in and the victim cannot turn to the Court for further compensation. The petitioner has therefore, rightly approached this Court. This Court has the power to remedy this wrong. In its unreported judgment in Criminal Appeal No. 1890 of 2014, the Hon'ble Supreme Court has discussed in detail the power of this Court exercising jurisdiction under Article 226 of the Constitution of India by referring to the earlier judgments and has held as follows:

"50. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful reference can be made to, amongst others, A V Venkateswaran v Ramchand Sobhraj Wadhwani, (1962) 1 SCR 573 and

U P State Sugar Corporation Ltd. v Kamal Swaroop Tandon, (2008) 2 SCC 41. The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to safeguard rights of citizens. For exactly this reason, this Court has never laid down any strait-jacket principles that can be said to have “cribbed, cabined and confined” [to borrow the term employed by the Hon. Bhagwati, J. (as he then was) in E P Royappa v State of Tamil Nadu, AIR 1974 SC 555] the extraordinary powers vested under Articles 226 or 227 of the Constitution. Adjudged on the anvil of Nawab Shaqafath Ali Khan (supra), this was a fit case for the High Court to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield.”

9. The Hon'ble Supreme Court in its judgment in ***Tekan Alias Tekram Vs. State of Madhya Pradesh (Now Chhattisgarh)*** reported in ***(2016) 4 SCC 461***, where the Court was dealing with the case of a blind and illiterate girl being subjected to sexual intercourse on the promise of marriage under the Victim Compensation Scheme to provide rehabilitation to the victims, has issued direction to all the States and Union Territories to formulate a uniformed scheme for providing victim

compensation in respect of rape/sexual exploitation with the physically handicapped women taking into consideration the frame framed by the State of Goa for rape victim compensation.

10. The Government of Tamil Nadu issued G.O.(Ms) No.33, Social Welfare and Nutritious Meal Programme [SW.5(2)] Department, dated 03.10.2020, wherein the Commissioner of Social Defence had requested to issue orders to establish a separate fund called “Tamil Nadu Child Victim Compensation Fund” under the POCSO Act, 2012, wherein an initial allocation of Rs.14.96 Crores as recurring expenditure was made. This request was considered by the Government and a fund called the “Tamil Nadu Child Victim Compensation Fund” under the POCSO Act for awarding interim compensation of Rs.20,000/- and a quantum of compensation of a minimum amount of Rs.50,000/- to a maximum amount of Rs.10,00,000/- as detailed in the annexure to the Government Order was passed. The Government had set aside a sum of Rs.2 Crores as an initial compensation to this fund. The annexure to this Government Order provide quantum of compensation, which is produced herein below:

Sl.No. (1)	Particulars of offence (2)	Minimum Limit of Compensation (3)	Maximum Limit of Compensation (4)
1.	Penetrative Sexual Assault	₹4 Lakh	₹7 Lakh
2.	Aggravated Penetrative Sexual Assault	₹5 Lakh	₹10 Lakh
3.	Sexual Assault	₹1 Lakh	₹2 Lakh
4.	Aggravated Sexual Assault	₹2 Lakh	₹4 Lakh
5.	Grievous Physical Injury or any mental Injury requiring rehabilitation	₹1 Lakh	₹2 Lakh
6.	Pornography	₹50,000	₹1 Lakh
7.	Loss of life	₹5 Lakh	₹10 Lakh
8.	Loss of any Limb or part of body resulting in 80% permanent disability	₹2 Lakh	₹5 Lakh
9.	Loss of any Limb or part of body resulting in 40% and below 80% permanent disability	₹2 Lakh	₹4 Lakh
10.	Loss of any Limb or part of body resulting in above 20% and below 40% permanent disability	₹1 Lakh	₹3 Lakh
11.	Loss of any limb or part of body resulting in below 20% permanent disability	₹1 Lakh	₹2 Lakh
12.	In case of pregnancy on account of Sexual Assault	₹3 Lakh	₹4 Lakh

13.	Loss of Foetus i.e. Miscarriage as a result of Assault or loss of fertility	₹2 Lakh	₹3 Lakh
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11. Thereafter, under G.O.Ms.No.32, Social Welfare and Women Empowerment [SW.5(2)] Department, dated 10.07.2021, guidelines for the compensation and administration of the Tamil Nadu Child Victim Compensation Fund under the POCSO Act was approved by the Government. The guidelines provide the compensation and administration, eligibility for compensation, procedure for grant of compensation, sanction of funeral expenses in the case of death of a child victim etc. This guidelines sets out the eligibility criteria as follows:

“2. Eligibility for compensation A child or his/her family shall be eligible for the grant of compensation under the Fund where:-

(i) An order is made by the special court on its own or an application filed by or on behalf of the child for an interim compensation or final compensation.

(ii) The interim compensate paid to the child shall be adjusted against the final compensation if any.

3. Procedure for grant of compensation

(i) Whenever an order for interim compensation

is made by the special court under section 33(8) of the said Act to meet immediate needs of the child for relief or rehabilitation at any stage, the District Child Protection Officer shall send a proposal by enclosing the copy of such order of the special court, copy of the First Information Report from the concerned Police Station to the Commissioner / Director of Social Defence within two working days from the date of order by the Special Court. The Commissioner / Director of Social Defence shall disburse an interim compensation within ten working days from the date of receipt of proposal from the District Child Protection Officer.

(ii) The special court shall determine the quantum of compensation and forward the directions to the Commissioner / Director of Social Defence with a copy marked to District Child Protection Officer concerned. On receipt of such directions the Commissioner / Director of Social Defence shall disburse the compensation within thirty days, in accordance with the provisions of the Fund.

(iii) The compensation awarded by the special court shall be disbursed to the child or his family, as the case may be, from the Fund. While marking payment of the amount of compensation, the Commissioner / Director of Social Defence shall ensure that all the

provisions of the Fund are strictly complied with.

(iv) Any other compensation paid to the child or his family by the State Government in relation to the offence, such as insurance, ex-gratia, Hon'ble Chief Minister's Public Relief Fund, Hon'ble Chief Minister's Accident Relief Fund, Child Assistant Fund or interim relief under the Fund or any payment under any other Act or any other State-run Scheme / Fund, shall be considered as part of the compensation amount decided under the Fund. The child or his family who have already received compensation amount from the other sources mentioned above shall be deemed to have been compensated under the Fund and shall not be entitled to separate compensation under the Fund. If the quantum of compensation ordered by the special court under the Fund is higher than the payments made to the child or his family from the other sources mentioned above, the balance amount shall be paid from the Fund."

12. In the aforesaid circumstances, the victim is definitely entitled to compensation and compensation of the maximum limit. She would fall within the conditions stipulated in Serial Nos.2 and 12 of the Annexure to G.O.(Ms) No.33, thereby being entitled to a sum of Rs.

14,00,000/-.

13. In fine, this Court exercising jurisdiction under Article 226 of the Constitution of India directs that a compensation of a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) be paid to the victim. This sum shall be deposited in an interest bearing account with the mother as the guardian. The mother shall be permitted to withdraw interest every month. The said sum shall be utilised only for the up keep and the rehabilitation of the victim. The District Child Protection Officer shall visit the home of the Victim once in three months and submit a report to the District Legal Services Authority, Thoothukudi. The District Legal Services Authority shall ensure compliance of the above. In case, the report would state that the amounts are not being used for the welfare of the victim, then an application shall be made to this Court for modifying the orders by the District Child Protection Officer. In case, the mother requires substantial amount for the benefit of the victim, she can make an application to this Court for appropriate order. The amount of Rs. 14,00,000/- shall be paid from and out of the Tamil Nadu Child Victim Compensation Fund by the fifth respondent within a period of four weeks

from the date of receipt of a copy of this order and report compliance to this Court.

14. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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