

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.8249 of 2018

Meenava Thanthai K.R.Selvaraj Kumar
Meenavar Nala Sangam
rep. By its President
Mr.M.R.Thiyagarajan
Having Office at No.48 East Madha Church Street
Royapuram
Chennai 600 013. Petitioner

Vs

1. The Secretary to Government
Union of India
Ministry of Shipping
Transport Bhavan
New Delhi 110 001.
2. The State of Tamil Nadu
rep. By its Secretary to Government
Fisheries Department
Fort St. George
Chennai 600 009.
3. The District Collector
Thiruvallur District.
Thiruvallur.

4. The District Collector
Singaravelar Malligai
Rajaji Salai
Chennai 600 001.
 5. The District Collector
Kancheepuram District.
 6. M/s. Kamarajar Port Limited
rep. By its Chairman
4th Floor, Super Specialty Diabetic Centre
(Erstwhile DLB Building)
Rajaji Salai
Chennai 600 001.
 7. MT DAWN Kanchipuram
Arya Voyagers Private Limited
rep. By its Managing Director
No.15 B Chandermukhi Building
Narman Point
Mumbai 400 021.
 8. MT B.W.Maple
M/s. Interocean Shipping I P Limited
(Local agent for M/s. BW Maple)
3 Jafar Syrang Street
Chennai 600 001.
 9. The Director of Fisheries
485, 5th floor
MTB Building
Anna Salai
Anna Colony
Nandanam
Chennai.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the second respondent to pay the compensation to the persons affected by oil spillage happened on 28/1/2017 due to collide of ships M.T.DAWN Kanchipuram and MT BW Maple near Kamarajar Port, Chennai.

For petitioner ... Mr.A.Kalaiselvan
for Mr.K.Mageshwaran

For respondents ... Mr.Christopher Kishore Vincent
for R.1.

Mr.E.Manoharan
Additional Government Pleader
for R.R.2 to 5 and 9.

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be a public interest litigant, and espousing the cause of fishermen, President of Meenava Thanthai K.R.Selvaraj Kumar, Meenavar Nala Sangam, a registered body, has filed the instant writ petition for a mandamus, directing the Secretary to the Government, State of Tamil Nadu, Fisheries Department, Chennai, second respondent, to pay compensation to the persons affected by the oil spillage, which occurred, on 28/1/2017, due to collision of ships M.T.Dawn Kanchipuram and MT BW MAPLE, near Kamarajar Port, Chennai.

2. Contending inter alia that due to the said collision, several fishermen were affected, the above said Association has filed Application No.14 of 2017, before the National Green Tribunal (South

Zone), praying for restoration of the environment by removing the oil layer with scientific methods and to provide compensation for the affected persons.

3. Petitioner has sent a representation, dated 10/5/2017, to the Secretary to the Government, Fisheries Department, second respondent, to consider the following:-

a. In pursuance to the specific order of the Hon'ble Tribunal, the department of Fisheries shall take it to consideration the following factors.

b. The fishermen, who are directly doing fishing profession, shall be given interim compensation of Rs.2,00,000/- per head, as per the list posted in counter of Fisheries Department.

c. The fishermen who attained the age of 58 and above shall be given interim compensation at Rs.2,00,000/- per head.

d. The equipments, vessels that are using for the fishing purpose like boat, machineries, Fish net, etc., are to be replaced immediately from the compensation amount.

e. The persons who are doing or involving directly selling the sea foods at the sea shore are to be paid interim compensation amount at Rs.1,00,000/- per head.

f. The other persons who are indirectly depending or attaching with fishing business are to be paid Rs.1,00,000/- per head as interim compensation.

g. It is reported by the experts that the restoration of environment and seashore will take minimum three to five years if utmost care is taken. This shall be achieved with utmost care.”

4. Representation is said to have been acknowledged, on 12/5/2017. Contending inter alia that no action has been taken, on the representation, as well as the directions/observations issued by the National Green Tribunal (South Zone), instant writ petition has been filed for the relief stated supra.

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5. With the above averments, Mr.A.Kalaiselvan, learned counsel for the petitioner submitted that as on today, National Green Tribunal (South Zone) is not functioning. Writ jurisdiction is not ousted and therefore, mandamus would lie.

6. Taking notice on behalf of the respondents 2 to 5, Mr.E.Manoharan, learned Additional Government Pleader submitted that much water has flown, after 10/5/2017, the date on which representation is stated to have been made and considering the plight of the fisherfolk, National Green Tribunal (South Zone) has issued directions. He submitted that directions of the Tribunal have been considered and action is being taken.

7. Learned Additional Government Pleader, acknowledged the submission of the learned counsel for the petitioner that National Green Tribunal (South Zone) Bench, is not functioning and all the matters are taken up by the Principal Bench at Delhi.

8. He further submitted that about 1,12,051 applications have been received. Petitioner, submitted about 21,382 applications. Out of which, 18,416 applications were repetitive. Applications have been scrutinised.

9. Inviting the attention of this Court to a decision of the Hon'ble Division Bench, in W.A.No.537 of 2018, dated 13/3/2018,

<http://www.judis.nic.in> learned Additional Government Pleader submitted that Indian Ocean

Shipping Private Limited, Mumbai and Owners of BW MAPLE, appellant and fourth respondent, respectively, in W.A.No.537 of 2018, have entered into a compromise, dated 2/3/2018. Joint Memo of Compromise, dated 2/3/2018, reads as follows:-

"1. The U.K. P & I Club, on behalf of the Owners of LPGC BW Maple and the M.T.Dawn Kanchipuram, shall deposit a sum of Rs.141 Crores, strictly without prejudice, towards the various claims lodged by the fishermen and their Associations for a sum of Rs.240 Crores, preferred by the Government of Tamil Nadu, including the restoration claims of Rs.10 Crores, with such deposit being made within 14 days from the date on which an order is passed by this Hon'ble Court in this Memo.

2. To secure the remaining claims out of the total claim of Rs.240 Crores preferred by the Government of Tamil Nadu before the Hon'ble National Green Tribunal, Southern Zonal Bench and in addition to what is stated in paragraph 1 above, the U.K. P & I Club and the Steamship Mutual Underwriting Association Limited, shall, on behalf of the Owners of both the LPGC BW Maple and M.T.Dawn Kanchipuram, also arrange for the execution of a Bank Guarantee for a sum of Rs.84 Crores (Rs.99 Crores less Rs.15 Crores paid earlier by the Steamship Mutual Underwriting Association Limited) in favour of Government of Tamil Nadu represented by the Director of Fisheries within 21 days from the terms of such Bank Guarantee being mutually agreed.

3. The petitioner shall comply with the condition stipulated by the 1st respondent herein the Memo filed before this Hon'ble Court dated 13.02.2018. The petitioner shall furnish a Bank Guarantee of Rs.5.68 Crores towards the claim of the Department of Environment paid by Kamarajar Port Ltd., as stated in the said memo within 7 days from the date of receipt of the copy of the order of this Hon'ble Court passed on the memo filed herein and keep the said Bank Guarantee alive until the claim secured by the said guarantee is finally decided by a competent court or settled.

4. Upon compliance of clauses 1, 2 and 3 above, the Director General of Shipping shall return to the U.K. P & I Club the Bank Guarantee dated 31.08.2017 executed by Kotak Mahindra Bank Ltd., along with the covering letter confirming the return/discharge of the said Bank Guarantee at the earliest.

5. Upon compliance with clauses 1, 2 and 3 above, the Vessel Dawn Kanchipuram shall be permitted to immediately sail out from Kamarajar Port Ltd., Ennore, and the 2nd and 3rd respondents shall on demand provide their clearance and consent to the 1st respondent so as to enable the Dawn Kanchipuram to sail.

6. Since the Hon'ble National Green Tribunal, Southern Zonal Bench has directed, in Application Nos.14, 16, 38 and 40 of 2017, the Fisheries Department, Government of Tamil Nadu, to entertain, appraise and disburse the claims of the fishermen and their Associations, the Government of Tamil Nadu would do so upon the sum of Rs.141 Crores being deposited with them."

10. Learned Additional Government Pleader further submitted that interim deposit of Rs.15 crores was made. Pursuant to the order of the Hon'ble Division Bench, in W.A.No.537 of 2018, dated 13/3/2018, on 19/3/2018, a Committee with six members under the Chairmanship of Additional Director of Fisheries was formed to suggest suitable ways to calculate the compensation amount to be given to different categories of fisher folk affected by Oil spill, viz., fishing labourers, fisherwomen, engaged in fishing allied activities, fish vendors, fisheries allied activity labourer, mechanised fishing boat owner, motorized country craft owner and non motorized country craft owner.

11. Learned Additional Government Pleader further submitted that the said Committee has submitted a report. It is also his further submission that a Committee has been formed to prepare blank data format, which contains the details of Society number, ration card number, Bank Account number and Adhar number. De-duplication process is also under preparation. Fisheries Department, Government of Tamil Nadu is taking appropriate steps to disburse the amount of Rs.141 crores to the oil spill affected eligible claimants through their

Bank Account. He further submitted that considering the innumerable applications, reasonable time be granted for disbursement of compensation amount to the eligible category of persons.

12. Heard the learned counsel for the parties and perused the materials available on record.

13. Fact that National Green Tribunal (South Zone), Chennai, is not functioning, is admitted. Periodical interim orders passed by the National Green Tribunal (South Zone), Chennai, in Application Nos.14, 16, 38 and 40 of 2015, are extracted hereunder:-

Order dated 26/4/2017

“The learned counsel appearing for the applicant in Application No.14/2017 viz., Meenava Thanthai K.R.Selvarajkumar, Meenavar Nala Sangam would submit that in none of the meetings conducted either by the Department of Fisheries or by D.G.Shipping, the said Association was invited. According to him it is because of that reason office bearers of the Association which is registered under Tamil Nadu Societies

Registration Act, were unable to participate. It is true that the Department of Fisheries has arrived at a tentative figure of Rs.135.35 crores to be the compensation amount.

Mr.Manoharan, Additional Government Pleader would submit that this amount has been arrived at based on the records available with the State Government. We are of the view that in the light of stand taken by the applicant Association in O.A.No.14 of 2017 that they have not been offered to participated in the public hearing to explain their grievances, the Department of Fisheries shall permit the said Association also to putforth their claim. We make it clear that the said Society shall through the Authorised Representative, make it claim to the Department of Fisheries within a period of 2 weeks from today. After receipt of the said claim, the Department of Fisheries after making study, shall fix a date and make an enquiry so as to arrive at an appropriate quantum of compensation to be recovered from the ship owners. Needless to state such claims which may be made by the said Association or any other person shall be substantiated with records.

It is pertinent to note that the aforesaid amount of Rs.135.35 crores has been arrived at by the Department of Fisheries immediately after

the occurrence of the incident as it is seen in the letter of Principal Secretary, Animal Husbandry, Dairying & Fisheries Department to Government addressed to the Director General of Shipping, dated 7/2/2017. Therefore, it is incumbent on the part of the Department of Fisheries to arrive at a final amount of compensation to be paid after conducting proper enquiry and finalising the list of person who are affected. We make it clear that any person who is affected, shall make his/her application within two weeks from today and shall be finalised by the Fisheries Department so as to arrive at a proper conclusion.”

Order dated 12/9/2017

“We have heard the learned counsel appearing for the parties.

Mr.Manoharan, learned Additional Government Pleader submits that around 1,21,051 applications have been received and the process of categorisation and approving of the claims are pending. He also submits that by the next date of hearing the entire particulars relating to the list of persons affected etc., will be furnished before the Tribunal.

We make it clear that the Department of Fisheries shall nominate suitable officers for the

purpose of scrutinising and finalising the claims of the applicants and it has to be categorically stated in respect of each of the applicants viz., the nature of claim, amount received so far and other particulars relating to their identify etc., and such particulars shall be expedited and furnished in respect of all the claimants by the next date of hearing. If required, special cell may be created and officers from other Districts may be deputed for the purpose.

In so far as it relates to the investigation regarding the accident, we have already directed in our letter dated 26/4/2017 that the Government should take appropriate steps for the purpose of conducting investigation by property trained police officers. In our subsequent order dated 6/7/2017, we have also clarified that the Government should get the assistance from the experts specialised in the field and file a status report on the next date of hearing. The learned Additional Government Pleader would submit that the status report in this regard will be filed on the next date of hearing.”

Order dated 8/11/2017

“The learned counsel appearing for the applicant submits that as 10 months have already elapsed from the date of the incident, at least part of the compensation may be paid. When there is a

dispute with regard to the identity of the applicants and the details of the damages claimed, we cannot direct payments of interim compensation at this stage. At the same time, taking into consideration of the fact that the incident occurred 10 months earlier, necessary interim payment could be paid where there is no dispute with regard to the identity of the applicants as well as the quantum of damages sustained. The State Government is directed to consider this aspect and decide on the issue of payment of interim compensation, if interim compensation is not so far disbursed.”

Order dated 14/12/2017

“It is submitted by Mr.Kalaiselvan, learned counsel appearing for the applicant that by order, dated 26/4/2017 that a Committee has been constituted to conduct an enquiry about the cause of the accident and a FIR has already been registered and a report would be submitted to the D.G.Shipping and appropriate decision will be taken and report would be filed. A team consisting of properly trained officers were directed to inspect and nothing has been revealed about it before this Tribunal. Respondent No.2 is directed to furnish the stage

of the investigation and file the report before the next date of posting.

It is pointed out by Mr.Yogeshwaran, learned counsel appearing for the applicant that the National Oil Spill Disaster Contingencies Plan has to be reviewed by the D.G.Shipping and nothing is done thereafter.”

14. On 14/12/2017, Registry of the National Green Tribunal (South Zone), has been directed to place the matter on 30/1/2018. However, for the reasons stated supra, there was no hearing thereafter.

15. Section 26 of the National Green Tribunal Act, 2010, reads thus:-

सत्यमेव जयते

Penalty for failure to comply with orders of Tribunal.

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(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or

contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

16. Contention of the petitioner is that his representation, dated 10/5/2017 has not been considered and thus, left with no other alternate remedy, he has approached this Court, for the issuance of a writ of mandamus.

17. As rightly pointed out by the learned Additional Government Pleader, after 10/5/2017, National Green Tribunal (South Zone) has passed several orders.

18. Non-disbursement of compensation has been brought to the notice of this Court. Though Section 26 of the National Green Tribunal Act, 2010, envisages penal action, for non-compliance of the order or decision of the National Green Tribunal (South Zone), Rs.141 crores has now been deposited with the Government by the insurers of the ships involved and meant for disbursing the same to the above said category of persons. As on date, National Green Tribunal (South Zone) is not functioning. About 1,12,051 applications have been received. We cannot expect all the applicants to move the Principal Bench at Delhi, for suitable orders. Government have already constituted a Committee, which has submitted its report. Government is stated to be scrutinising the report of the committee. Blank data format has already been prepared for de-duplication. Taking note of the orders of the National Green Tribunal (South Zone), extracted supra and of the fact that responding to the directions, steps have been taken, though claim of the petitioner is in the nature of public interest, on the basis of the representation, dated 10/5/2017, mandamus cannot

be issued. However, having regard to the fact that large number of fishermen are affected, due to the collision of the ships and oil spillage, this Court, in exercise of the powers under Article 226 of the Constitution of India, entertains the suo motu Public Interest Litigation, based on the information.

19. It is submitted that the Director of Fisheries is the competent authority, to disburse the compensation to the eligible persons, and he is not a party. To enable disbursement by a competent authority, in exercise of powers under Article 226 of the Constitution of India, **we suo motu implead the Director of Fisheries, Chennai, as ninth respondent.**

20. Inasmuch as the report has already been submitted by the Secretary to the Department, Fisheries Department, second respondent, we direct scrutiny and approval be granted, as expeditiously as possible. Preparation of de-duplication process be completed as expeditiously as possible. Disbursement of due compensation to those eligible be done by the Director of Fisheries, Chennai, within four weeks from today.

21. With the above directions, **suo motu, public interest writ petition is disposed of.** No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K.,J) (V.B.S.,J)
12th April 2018

mvs.

Index : Yes

Internet : Yes

Note: Issue order copy on 13/4/2017



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To

1. The Secretary to Government
Union of India
Ministry of Shipping
Transport Bhavan
New Delhi 110 001.

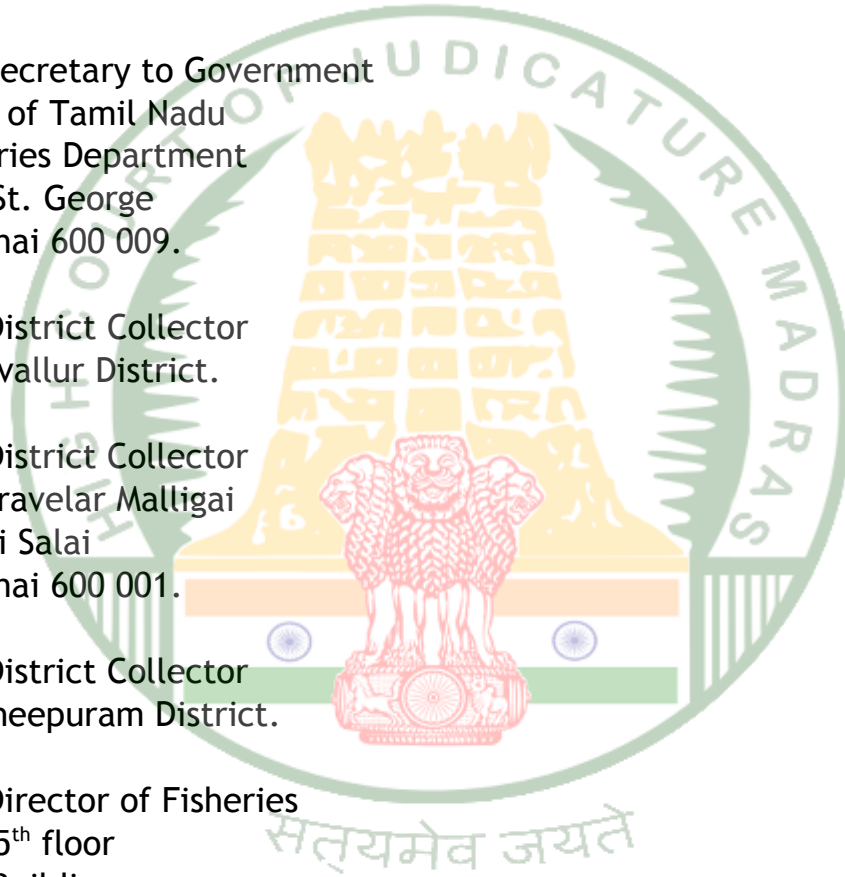
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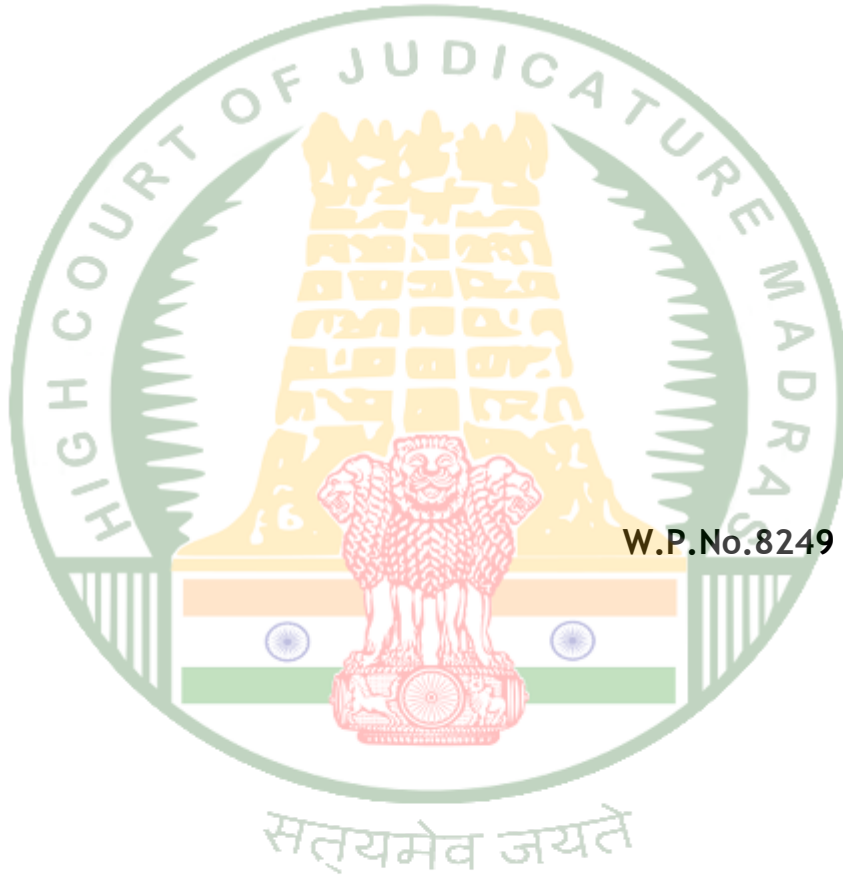
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