



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 27TH DAY OF SEPTEMBER 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 103849 OF 2023 (LB-RES)

BETWEEN:

SRI. KARAN SINGH S. RAJPUROHITH

... PETITIONER

(BY SMT. V. VIDYA IYER, ADVOCATE)

AND:

1. THE CITY MUNICIPAL COUNCIL,
HOSAPETE-583 201,
R/BY ITS COMMISSIONER.
2. THE DEPUTY COMMISSIONER,
BALLARI DISTRICT, BALLARI-583101.
3. THE DEPUTY COMMISSIONER,
VIJAYANAGAR DISTRICT,
VIJAYANAGAR DISTRICT-583102.
4. THE TAHSILDAR,
HOSAPETE TALUK,
VIJAYANAGAR DISTRICT-583201.

... RESPONDENTS

(BY SRI. SHIVARAJ S. BALLOLI, ADVOCATE FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2-R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO WHEREFORE, IT IS MOST RESPECTFULLY PRAYED THAT THIS HON'BLE COURT BE PLEASED TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DIRECTING THE



RESPONDENTS TO COMPLY WITH THE ORDER PASSED BY THIS HONBLE COURT IN W.P. NO. 113542/2019 (LB-RES) DATED. 04.10.2021 FOUND AT ANNEXURE-A AND AWARD THE COMPENSATION TO THE PETITIONER AS SOUGHT FOR IN THE REPRESENTATION DATED. 01.11.2021 SUBMITTED BY THE PETITIONER TO THE RESPONDENTS FOUND ANNEXURE-B AND ALLOW THIS WRIT PETITION WITH COSTS AD GRANT SUCH OTHER RELIEFS AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus directing the respondents to comply with the order dated 04.10.2021 passed by this Court and award compensation under the Disaster Management Act, 2005 ('Act' for short).

2. Heard the learned counsel Smt. V. Vidya Iyer appearing for the petitioner, Sri. Shivaraj S Ballolli, learned counsel appearing for respondent No.1 and the learned High Court Government Pleader representing the respondent Nos.2 to 4.

3. Facts adumbrated are as follows:



The petitioner is a resident of Hosapete Town, Bellary District. The allegation is that the roads in the town were in pathetic condition and the drainage system was totally inappropriate. The drains were not covered as was required in law which would mean that they were open drains, manholes among other things. On 15-07-2013 heavy rains lashed out at Hosapete resulting in complete flooding of the roads and putting the lives of the citizens to great risk and jeopardy. On the fateful day, the son of the petitioner who was 6 years old falls into the drain which was not covered, the water that was in the drain washes away the child resulting in the death of the child. The death of the child was due to negligence of the respondents. The respondents would mean, the City Municipal Council, Hospete. After about 3 months of the incident, the petitioner/father stakes a claim for compensation on account of the death of his son on sheer negligence of the City Municipal Council, Hospete. The moment the claim is made, a criminal case is registered against the petitioner himself by the Officers of Hosapete alleging offence punishable under Section 176 of the IPC. The said registration of a crime was called in question by the petitioner before this Court in CrI.P.100048 of 2018



which comes to be allowed and the registration of the crime and C.C.1145 of 2013 comes to be quashed.

4. The petitioner, by then, had submitted representations seeking compensation. When all had gone unheeded, he knocks at the doors of this Court in W.P.84466 of 2013 seeking compensation of a sum of Rs.30 lakhs for the death of his son. This Court permitted him to withdraw the petition, reserving liberty to the petitioner to submit a detailed representation. Representation was submitted, it again goes unheeded. The petitioner reaches this Court yet again, in W.P.113542 of 2019. This Court, in terms of its order dated 04-10-2021 disposes the writ petition with a direction to take necessary steps to grant adequate compensation. The petitioner again represents. The representation again did not yield any result, he is again before this Court, for the third time, in the subject petition.

5. Learned counsel appearing for the petitioner would vehemently contend that the death of his son is due to negligence on the part of the Municipal Authorities who left the drain open and the son of the petitioner gets washed away by falling into the open drain. It is the case that the petitioner is



entitled to compensation under the Act with particular reference to Section 39 of the Act. She would contend that it is sheer callousness on the part of the State in not granting any compensation despite passage of 10 years of the petitioner wanting to get compensation, on the death of his son.

6. Per-contra, all the respondents in unison would submit in one voice that the entitlement of the petitioner has to be assessed under the Act and what is maximum payable would be paid if reasonable time is granted, the representation of the petitioner would be considered and appropriate orders would be passed in accordance with law.

7. During the course of hearing of the petition, the aforesaid submission of the respondents which was in unison was rejected and a direction to comply was issued pending consideration of the case. The respondents within two weeks from such direction grants compensation of Rs.5 lakhs and places compliance before the Court. The compensation is said to be the maximum payable under the Act.



8. The learned counsel for the petitioner accepted the compensation amount, on which the respondents sought closure of the present proceedings. The Court declined to accept closure of the proceedings, as the negligence, callousness and apathy were all culpable on the part of the respondents. It is therefore the petition, notwithstanding the payment, is entertained and continued for issuance of suitable directions for payment of interest and costs of litigation for having made the petitioner roam from pillar to post, knock at the doors of this Court, not once, twice, but thrice.

9. It is a matter of record that the son of the petitioner dies on 15-07-2013. A deliberate crime was registered against the petitioner under Section 176 of the IPC which could not even be made and that comes to be quashed, representations galore before the Authorities, for grant of compensation on the death of his son which was due to the negligence on the part of the Municipal Authorities. He had initially approached this Court in 2013 itself in WP 84466 of 2013 which he withdrew with all confidence that the respondents would grant him compensation. Years passed by,



no compensation is granted. The petitioner again reaches the doors of this Court in WP 113542 of 2019, this Court passes the following order:

"4. Under these circumstances and the submissions made at the bar, petition is disposed of directing the 1st respondent-CMC as well as respondent Nos.2 to 4 to take necessary steps to ensure that adequate just and fair compensation is paid to the petitioner towards the death of his minor son – Ritesh Singh aged about six years within a period of three months from the date of receipt of a copy of this order.

Subject to the aforesaid direction, petition stand disposed off."

This Court directed the 1st respondent-City Municipal Council as well as other respondents to take necessary steps to ensure that adequate, just and fair compensation is paid towards the death of the minor son of the petitioner within 3 months from the date of receipt of a copy of the order. A representation is given on 01-11-2021, representation is received along with the order of this Court, and even then no order is passed. Therefore, it was a clear case of contumacious contempt on the part of the respondents to have ignored the order passed by this Court, which had clear directions that just and adequate compensation be granted to the petitioner. The petitioner now had to again knock at the doors of this Court.



10. The State sought to wriggle out of the issue by singing the same swan song, that they would consider the representation and pass appropriate orders, in accordance in law. This would have generated yet another round of litigation, as the State known for its wont, would not have yielded any result, but for a direction. Therefore, holding the petition, time was granted for compliance, it is complied within two weeks from the date of said direction. Therefore, it is not that the order was not compliable, but it is the display of callousness and recalcitrance, to the orders passed by this Court, such act of the State is *sans* countenance.

11. It cannot be forgotten that sudden loss of a son or a daughter is a terrible blow to the parents. One of the most painful moments of one's life is to be the pall bearer of a deceased child. Emotional vaccum left by the sudden departure of a child cannot be filled by monetary compensation but still to ameliorate the emotional vaccum left by the child, monetary compensation is paid to the parents.

12. Therefore, it is necessary for the State to upkeep and safe keep the interest of the citizens from the grass root to



the metropolis so that such incidents do not repeat. It is germane to notice Section 39 of the Act, it reads as follows:

"39. Responsibilities of departments of the State Government.—It shall be the responsibility of every department of the Government of a State to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity-building in accordance with the guidelines laid down by the National Authority and the State Authority;

(b) integrate into its development plans and projects, the measures for prevention of disaster and mitigation;

(c) allocate funds for prevention of disaster, mitigation, capacity-building and preparedness;

(d) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the State Plan, and in accordance with the guidelines or directions of the National Executive Committee and the State Executive Committee;

(e) review the enactments administered by it, its policies, rules and regulations with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;

(f) provide assistance, as required, by the National Executive Committee, the State Executive Committee and District Authorities, for—

(i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;

(ii) assessing the damage from any disaster;

(iii) carrying out rehabilitation and reconstruction;

(g) make provision for resources in consultation with the State Authority for the



implementation of the District Plan by its authorities at the district level;

(h) make available its resources to the National Executive Committee or the State Executive Committee or the District Authorities for the purposes of responding promptly and effectively to any disaster in the State, including measures for—

(i) providing emergency communication with a vulnerable or affected area;

(ii) transporting personnel and relief goods to and from the affected area;

(iii) providing evacuation, rescue, temporary shelter or other immediate relief;

(iv) carrying out evacuation of persons or live-stock from an area of any threatening disaster situation or disaster;

(v) setting up temporary bridges, jetties and landing places;

(vi) providing drinking water, essential provisions, healthcare and services in an affected area;

(i) such other actions as may be necessary for disaster management.”

In terms of Section 39 of the Act, it is necessary for every Municipal Authority or the Authority in which the land would come to safe keep and bear in mind the interests of the citizens. This appears to have been given a complete go-bye in the case at hand. It is not just **“one life”** it is **“even one life”**. A precious life is lost due to the negligent act of the Authorities.



It is negligence and culpable negligence on the part of the 1st respondent.

12. Therefore, though the compensation to the maximum under the Act is paid to the father of the deceased child, I deem it appropriate to grant interest on such delayed payment, and cost of litigation for having driven the petitioner to this Court, not once, twice, but thrice. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed with cost of Rs.1,00,000/- to be paid to the petitioner.
- (ii) The petitioner shall also be entitled to interest at 6% per annum from the date of completion of 3 months, from the date of death of the child i.e., 15-07-2013. Therefore, interest at 6% on the said Rs.5,00,000/- shall be paid from 15-10-2013 till the date it reaches the petitioner and it shall reach the petitioner within 6 weeks from the date of receipt of the copy of this order.



- (iii) In the event it would not reach the doors of the petitioner within 6 weeks, he would become entitled to interest at 12% from the date on which it became payable till it is paid and the cost of Rs.1,00,000/- would be increased by Rs.50,000/- month on month till it reaches the petitioner.
- (iv) It is open to the State to fix accountability on such callous ignorance of the claim of the petitioner throughout and recover the interest and cost from the erring personnel in a manner known to law.

Sd/-
JUDGE