BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 20.01.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.16862 of 2019

1.Sankareswari
2.Selvam ... Petitioners

v.

1.The District Collector,
Virudhunagar District.

2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Superintendent of Police,
Virudhunagar District.

4.The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.

5.The Proprietor, Maharaja Fire Works,
Meenampatti, Sivakasi Taluk,
Virudhunagar District.

6.The Proprietor, Rajasekar Match Factory,
Meenampatti, Sivakasi Taluk,
Virudhunagar District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to grant the relief to the petitioner as compensation for fire accident due to illegal waste management of fire waste and match factory waste dumped by the fifth

and sixth respondents at Karuthoorani Kanmoi situated at Meenampatti to Naranapuram Road, Meenampatti and to take appropriate steps as against the fifth and sixth respondents by considering the petitioner's representation dated 04.08.2018.

For Petitioner : Mr.S.Muniyandi
For Respondents : Mr.M.Lingadurai,
Special Government Pleader for R1&R2
Mr.B.Thanga Aravindh,
Government Advocate (crl.side)
for R3 & R4
Mr.N.Sathish Babu for R5 and R6

ORDER

Heard the learned counsel on either side.

2.Arunkumar and Prathiban hail from Sivakasi. They were studying in 10th Std. On 08.07.2018, at around 05.10 P.M, they went near a water body known as Karuthoorani to answer nature's call. Like any boys of their age, they were playing by throwing stones. Suddenly, there was an explosion and both of them suffered severe burn injuries. Crime No.748 of 2018 was registered on the file of Sivakasi East Police Station. The parents sent representation dated 04.08.2018 demanding action to be taken against the persons of responsible for dumping hazardous waste. They also sought

payment of compensation. Since their request did not elicit favourable response, the present writ petition came to be filed. The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for.

3.The learned Special Government Pleader appearing for the official respondents submitted that what happened was a pure accident. According to him, while the gravity of the tragedy has to be acknowledged, the State cannot be fastened with any liability. He took me through the counter affidavit filed by the jurisdictional police. After investigation, the FIR had been closed as action dropped. The final report was duly recorded in RCS No.16 of 2019 on the file of the Judicial Magistrate No.2, Sivakasi.

4.The learned counsel appearing for the private respondents submitted that they are not responsible for dumping of hazardous waste which caused the occurrence. They pressed for dismissal of the writ petition as far as they are concerned.

5.Sivakasi is a well known hub of fire industries. They obviously generate hazardous waste. Rule 3 (17) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 defines "hazardous

waste" as any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances. Applying the said definition, the wastes or substances generated from fire industries would qualify as "hazardous waste".

6.It is beyond dispute that hazardous waste was dumped near the water body in question. The children were obviously unaware of the real character or potential of the dumped material. Being school going boys, they were conducting themselves in a natural manner. Throwing of stones by children in the aforesaid surroundings and in the aforesaid manner can by no stretch of imagination be characterized as voluntarily courting danger. They could hardly be imputed with knowledge that the garbage dump would contain hazardous waste.

7.The children had suffered serious physical and psychological damage. The first question that arises for consideration is whether liability can be fastened on the respondents. I must straightaway hold that there is no material to make the private respondents liable. No doubt, the fire industries were run by the private respondents in the vicinity. But from this circumstance, one cannot infer that they had dumped the waste in question.

The fourth respondent ought to have conducted proper investigation and found out who had dumped the waste. The fourth respondent miserably failed to do so. The fourth respondent had completely misdirected himself. He proceeded on the footing that his job was to enquire as to how the occurrence took place. Of course, the occurrence took place because the boys had thrown stones at the garbage dump. From this, the investigation officer concluded that the occurrence was a pure accident and there was nothing further to probe. In my view, the approach of the jurisdictional police reeks of laziness and indifference. The jurisdictional magistrate also ought to have rejected the final report and called upon the police to find out who was responsible for dumping. In any event, there is no point in reopening the investigation. It is not going to yield any result. I however expect the authorities concerned to caution the investigation officers not to close matters when the issue calls for undertaking appropriate investigation.

8.Sivakasi Municipality is under a statutory obligation under Section 222 of the Tamil Nadu District Municipalities Act, 1920 to take precautions against fire. The said provision reads as follows :

> "***222.Precautions against fire*** .— *(1) The 1 [Executive Authority] may, by notice, require the owner of any structure, booth or tent partly or entirely composed of, or having any*

external roof, verandah, pandal or wall partly or entirely composed of cloth, grass, leaves, mats, or other highly inflammable materials to remove or alter such tent, booth, structure, roof, verandah, pandal or wall, or may grant him permission to retain the same on such conditions as the [Executive Authority] may think necessary to prevent danger from fire.

(2)The [Executive Authority] may, by notice, require any person using any place for the storage for private use of timber, firewood, or other combustible things to take special steps to guard against danger from fire.

(3)Where the [Executive Authority] is of opinion that the means of egress from any building are insufficient to allow of safe exit in the event of fire, he may, with the sanction of the Council, by notice, require the owner or occupier of the building to alter or re-construct any staircase in such manner or to provide such additional or emergency staircases as he may direct ; and when any building, booth or tent is used for purposes of public entertainment he may require, subject to such sanction as aforesaid, that it shall be provided with an adequate number of clearly indicated exits so placed and maintained as readily to afford the audience ample means of safe egress, that the seating be so arranged as not to interfere with free access to the exits and that gangways, passages, and staircases leading to the exits shall, during the presence of the public, be kept clear of obstructions."

From a reading of the statutory scheme underlying any legislation pertaining to local bodies, one can easily come to the conclusion that the local bodies are tasked with the statutory duty to take care of public health and safety. If there is anything noxious or toxic or capable of causing nuisance or danger, the local body is obliged to cause its removal. The site where garbage was dumped belonged to the local body. It had the statutory duty to monitor the proper disposal of hazardous wastes. To borrow the language of an American Judge, ***the emerging public policy of respect for the environment and regard for human health is embodied in State as well as Union legislations. Placing any hazardous substance in an unauthorized site stands prohibited. Though seemingly this prohibition is directed only at the active wrong-doer, the duty to ensure that such placement does not occur lies on the State authorities.***

9.However, the duty is not confined to the local body alone. It basically vests with the government. Article 21 of the Constitution of India guarantees the right to life and liberty. The Government is under a constitutional obligation to ensure the general safety of the citizens. Rule 16 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 is as follows :

"**16.Treatment, storage and disposal facility for hazardous and other wastes.- (**1) The State Government, occupier, operator of a facility or any association of occupiers shall individually or jointly or severally be responsible for identification of sites for establishing the facility for treatment, storage and disposal of the hazardous and other waste in the State.

(2)The operator of common facility or occupier of a captive facility, shall design and set up the treatment, storage and disposal facility as per technical guidelines issued by the Central Pollution Control Board in this regard from time to time and shall obtain approval from the State Pollution Control Board for design and layout in this regard.

(3) The State Pollution Control Board shall monitor the setting up and operation of the common or captive treatment, storage and disposal facility, regularly.

(4) The operator of common facility or occupier of a captive facility shall be responsible for safe and environmentally sound operation of the facility and its closure and post closure phase, as per guidelines or standard operating procedures issued by the Central Pollution Control Board from time to time.

(5) The operator of common facility or occupier of a captive facility shall maintain records of hazardous and other wastes handled by him in Form 3.

(6) The operator of common facility or occupier of a captive facility shall file an annual return in Form 4 to the State Pollution Control Board on or before the 30th day of June following the financial year to which that return relates."

The aforesaid Rules have been framed under the relevant provisions of the Environment (Protection) Act, 1986. Section 8 of the Act is as follows :

"8.PERSONS HANDLING HAZARDOUS SUBSTANCES TO COMPLY WITH PROCEDURAL SAFEGUARDS.- No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed."

From the aforesaid provisions, one can easily conclude that the State is under a statutory obligation to ensure that hazardous substances are handled in such a manner that the general safety of the public is not endangered. This would include the duty to ensure that hazardous wastes are dealt with in a manner as prescribed by the Rules. In the case on hand, these Rules have been brazenly breached. While the private persons are obviously the violators, the duty to ensure that there is no breach of the Rules is on the State. These are matters in which the principle of absolute liability has to be

applied. The authorities have miserably failed to monitor the manner of disposal. The negligence on the part of the authorities is responsible for the occurrence.

10.Justice M.Rama Jois in Legal and Constitutional History of India (Volume 1) has catalogued the duties of a king enumerated in our ancient laws (Page 608-609). Manu declares that the highest duty of a king is to protect his subjects. Mahabharata states that the king who receives 1/6th of income and still fails to protect the people becomes the sinner. Sukra Neethi also states that the highest dharma of a king is the protection and welfare of subjects. Kautilya in his Arthashastra has also written on the same lines. In Thirukural also this duty to protect subjects has been emphasized (Kural 388 – Chapter 39). The modern democratic republic also has to discharge the duty of protecting the citizens and ensuring their safety. In the instant case, there has been a gross and flagrant failure in discharging the said duty.

11.In ***M.C.Metha v. UOI (1987) 4 SCC 463***, the Hon'ble Supreme Court held that if the authorities who are charged with the duty to prevent public nuisance or other wrongful act affecting the public are not taking adequate steps, the Court can issue appropriate directions. This is because, for every breach of right, there should be a remedy.

12.In ***M.C.Metha v. Kamal Nath (2000) 6 SCC 213***, the polluter-pays principle was evolved. Of course, it is only the polluter who must be made to pay. But where the polluter cannot be identified, the victim cannot go remedy less. The duty to compensate in such cases will fall on the State.

13.In ***M.C.Mehta v. UOI (1987) 1 SCC 395***, the Hon'ble Supreme Court dealt with the principle of absolute liability in cases involving hazardous or inherently dangerous industries. Para 31 of the said order reads as follows :

> ***"31.*** *We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] apply or is there any other principle on which the liability can be determined. The rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his*

peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury's Laws of England, Vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability

consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has

arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the

enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1] ."

This principle can be invoked not only against industries that act in breach of the provisions relating to environmental laws and human safety but also

against the State authorities when they fail to ensure adherence to safety standards.

14.Having come to the conclusion that the State is liable, the next question that arises is the measure of compensation. The damage and injury suffered by the children can very well be imagined. They have suffered disfiguration. They lost friendship and company. Their studies suffered. Their marital prospects have become a serious question mark. No amount of compensation can give back what they lost. Taking into account the overall facts and circumstances, the first respondent is directed to pay a sum of Rs. 10.00 lakhs each to the victims. A fixed deposit shall be created in their names in a nationalised bank for a period of five years. This shall be done within a period of eight weeks from the date of receipt of copy of this order. They can withdraw the accrued interest once in six months. The victims can withdraw the deposited amount at the end of the five years. I called upon the petitioners' counsel to inform the court if the victims are ready to undergo plastic surgery. It is stated that it is not possible at this point of time. Be that as it may, any specialised treatment if required by the victims at any point of time in future will be provided in any of the hospitals run by the State on a preferential basis.

15.The writ petition is allowed accordingly. No costs.

20.01.2023

Index : Yes / No
Internet : Yes/ No
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To

1.The District Collector,
Virudhunagar District.

2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Superintendent of Police,
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G.R.SWAMINATHAN, J.

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