

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.11.2025

PRONOUNCED ON : 16.12.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.17073 of 2022

Malarvizhi @ Kottaitthai
W/o.Late Ayyappan Marimuthu

... Petitioner

Vs.

- 1.The Secretary to Government of India,
Ministry of External Affairs,
Central Secretariat,
New Delhi – 110 001.
- 2.The Head of Chancery & S.S.(Cons),
High Commission of India,
Yaounde (Cameroon),
Door No.141, Street No.1813,
Mini Prix Bastos,
Yaounde, Cameroon.
- 3.The General Manager,
AFRICA First Matches Industry S.A,
PO Box No.535, Yaounde,
Cameroon.
- 4.The Secretary to Government
of Tamil Nadu,
Department of Minority Welfare
and Non Resident Tamil,
Fort St.George,
Chennai - 600 009.



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5.The Commissioner of Rehabilitation &
Welfare of Non Resident Tamils,
Ezhilagam, Annexure Buildings, 4th Floor,
Chepauk, Chennai – 600 005

6.The District Collector (P.A) General,
District Welfare Officer,
(Non Resident Tamil),
Virudhunagar Collectorate,
Virudhunagar – 626 002.

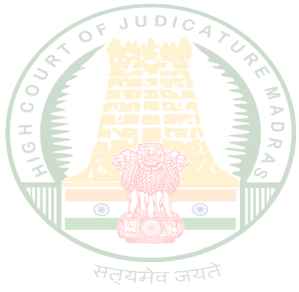
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to consider the representation of the petitioner dated 22.06.2022 and requesting the first respondent to release the compensation amount due to the petitioner.

For Petitioner : Mr.A.John Vincent

For Respondents : Mr.ARL.Sundaresan,
Additional Solicitor General of India,
assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India
for R1 to R3

Mr.K.S.Selvaganesan,
Additional Government Pleader
for R4 to R6

**ORDER**

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The writ petitioner's husband Ayyappan Marimuthu was employed in the Republic of Cameroon located in Central Africa. He passed away on 13.10.2021. His employer was AFRICA First Matches Industry, South Africa, Yaounde, Cameroon. Vide letter dated 19.10.2021, the company undertook to pay a certain sum as compensation for family support. However, the employer did not abide by the undertaking. Hence, the present writ petition came to be filed.

2.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and sought the intervention of this Court.

3.Per contra, the learned Additional Solicitor General of India appearing for the Government of India submitted that consular assistance to the extent possible had already been provided and that it was not possible to offer any further service. The Under Secretary to Government had also addressed a letter dated 13.07.2022 to the High Commission of India in Cameroon urging them to look into the issue of compensation to be paid to the writ petitioner. The stand of the learned Additional Solicitor General of India is that the company which



had employed the petitioner's husband is presently not functioning as the person-in-charge had passed away suddenly. He would add that one is not sure of the status of the said entity. According to him, funding a legal battle to be conducted abroad may prove to be an expensive proposition and that the resources of the Legal Services Authority cannot be deployed for the purpose. He further pointed out that the Legal Services Authorities Act, 1987 can be invoked only for obtaining legal assistance within the territory of India and not outside.

4.The District Collector, Virudhunagar has filed counter affidavit. I can only comment that he has washed his hands off.

5.I carefully considered the rival contentions and went through the materials on record.

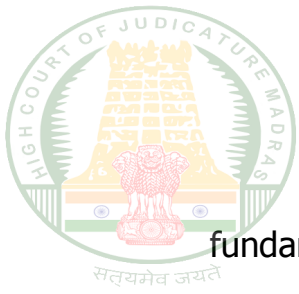
6.The petitioner is an Indian citizen. She is residing in Virudhunagar District. Her husband was also an Indian citizen. He passed away when he was employed abroad. One can safely assume that the petitioner's husband's employer is obliged to pay compensation to the petitioner. The question that calls for consideration is whether the Government of India has any constitutional duty to enforce this



obligation when the petitioner is not in a position to initiate any step in

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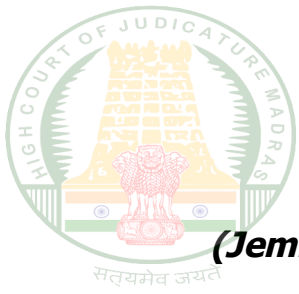
7. There can be only one answer to this question and that has to be in the affirmative. It is premised on the nature of the Indian State itself. We are a welfare State. Article 38(1) of the Constitution of India declares that the State shall strive to promote the welfare of the people. The Hon'ble Supreme Court in the decision reported in (**2015**) **2 SCC 130 Gaurav Kumar Bansal v. Union of India** held that a welfare State is the protector of life and liberty of its citizens not only within the country but also outside the country in certain situations. The concept of *parens patriae* recognises the State as protector of its citizens as parent, particularly, when citizens are not in a position to protect themselves. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the directive principles, Articles 38, 39 and 39-A enjoin the State to take up these responsibilities. It is the protective measure to which the social welfare State is committed. It is necessary for the State to ensure the



fundamental rights in conjunction with the directive principles of State policy to effectively discharge its obligation. (***Charan Lal Sahu v. Union of India [(1990) 1 SCC 613]***).

8.The Hon'ble Delhi High court in ***Anju Sharma vs. Union of India and Ors (W.P.(C) 3371/2021 vide order dated 12.05.2021)*** was confronted with a similar issue. The deceased therein was an Indian migrant working in Saudi Arabia. The prayers in the writ petition was to issue a mandamus directing the Government of India to do necessary formalities for exhuming the mortal remains of the late husband of the Petitioner, repatriate the same to India in an urgent and time bound basis, and a direction to the GOI to ensure payment of monetary benefits. The learned Single Judge had directed the concerned officials from MEA to seek cooperation from the Deputy Chief of Mission of the Royal Embassy of Saudi Arabia located in New Delhi. Pursuant to the nudging from the court, the Indian Consulate initiated legal proceedings and eventually, the petitioner therein received compensation.

9.A learned Judge of this Court (Hon'ble Mr. Justice B. Pugalendhi) in the decision reported in ***MANU/TN/7439/2023***



(Jemima Arumaithai and Ors. Vs. The Secretary to Government

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and Ors.) was also dealing with similar facts. In the said case, the petitioners' husbands died in a car accident while they were working in a Private Company at Nigeria. The widows were before the learned Judge seeking a mandamus as against the Government of India. Taking a compassionate view, the learned Judge held as follows:

“...these poor widows cannot pursue the litigations at Nigeria and therefore, **there is a responsibility cast upon the Ministry of External Affairs and the Ministry of Overseas Indian Affairs to take appropriate action through the Embassy to redress the grievance of these petitioners.** However, considering the fact that the petitioners have lost their husbands at a very young age and are fighting for the compensation, which they are legally entitled to from the Private Company at Nigeria, for the past 11 years and that the respondents 1 to 5 have also forwarded the petitioners' representations for necessary action, this writ petition is disposed of with a direction to the respondents 3 & 5 to pursue the claim of the petitioners with the Company, which employed the petitioners' husbands, to pay adequate compensation as per the Rules in Nigeria...”

10.A writ petition was filed before the Hon'ble Kerala High court in ***Lawyers Beyond Borders (LBB) India and Ors. Vs. Union of India and Ors [2020/KER/30574]*** with the following prayers:



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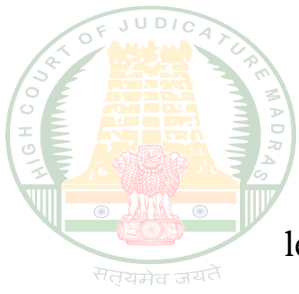
"i. Issue a Writ of Mandamus or any other appropriate writ, order, direction, declaring that the Indian citizens living abroad are entitled to Fundamental rights conferred upon all the Citizens of India by the Constitution of India and consequently, declare that the Indian citizens living abroad are entitled to Free legal aid which is an essential fundamental right available to citizens of India.

ii. Issue a Writ of Mandamus or any other appropriate writ, order, direction or command to the respondents, to provide free legal aid to the Indian citizens living abroad and those who were repatriated and lost their livelihood by invoking Section 12(e) of the provisions of the Legal Services Authorities Act, 1987."

The Central Government had filed a statement and submitted the following:

"A. There is already a mechanism for documenting and capturing all kinds of claims and grievances of repatriated Indian migrant workers for negotiating and availing legal remedy for their rights, including reduced/non-payment of wages. Mechanism for capturing claims/grievances of Indian migrant workers through concerned missions/embassies are also provided by the Central Government.

B. It is further contended that Indian Government has strengthened the Ecosystem that supports migrant workers in all stages of the migration cycle, towards ensuring a safe, orderly,



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legal and humane migration process as well as welfare and protective schemes for Indian workers in distress abroad. Government has also in place Agreements/MOUs with GCC countries, which include an institutional framework to discuss all ongoing issues related to labour and manpower.

C. Missions/Posts abroad have various mechanisms in place which Indian workers can use to lodge their grievances such as the dedicated email of the Community Welfare Wing, 24X7 helpline, MADAD portal ('MEA' in Aid of Diaspora in Distress), CPGRAM portal (Central Public Grievance Redress and Monitoring System), etc. All such grievances, received through these mechanisms, are taken up by the Missions/Posts with the employers concerned for an amicable settlement. Wherever necessary, Missions/Posts engage with government authorities. **The Missions/Posts also maintain a panel of lawyers for any legal assistance with regard to such grievances. These panel law firms provide free initial legal advice to Indian workers.** Subsequently, the Indian workers can engage these law firms, if required, by executing a Power of Attorney (POA) in their favour to represent them in a court of law in connection with their grievances. In case, the worker has exited the country without registering a labour case or before the court proceedings are over, he can give POA to any lawyer or the Mission/Post to pursue his or her case in the concerned court. If POA is given to the Mission/Post, then the case is followed through one of the empanelled lawyers. When the



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amount is received, it is deposited in the bank account of the worker(s).

F. It is further contended that there is Effective technique for documenting and capturing grievances of family of migrant workers who have died abroad during COVID-19 pandemic. Whenever death of an Indian national is notified to the Mission/Post, the family of the deceased is informed and as per their consent, the Mortal Remains are either transported to India or buried locally. The local sponsor of the deceased is asked to settle the outstanding legal dues. Although in many cases the legal dues are settled before the dead body is buried or sent to India, in many cases, there are delays on the part of the sponsor. In such cases, the Mission/Post is authorized to receive the dues on behalf of the legal heirs of the deceased.

G. Any grievances of the family of migrant workers who have died abroad during COVID-19 pandemic could also be registered on the online platforms like MADAD, e-Migrate etc. The Mission/Post on receiving any such grievance immediately contacts the employer/sponsor of the deceased Indian worker for the release of death compensation, end of service benefits and insurance etc, if any. The amount received from the employers is sent by the Mission following due procedure, to the concerned district authorities in India for disbursal to the legal heirs of the deceased. In fact there were some cases of this nature and our Missions have acted upon them to help the families concerned. The legal heir/family of the deceased



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worker can launch a complaint with Mission/Post which on receipt will be taken up with their respective employers for possible resolution to the issue. Applicants also have the alternate option to register their complaints by filing a grievance on the MADAD portal.”

The Central Government also brought to the attention of the Court the other welfare measures for assistance of Indian workers abroad including : -

a) Indian Community Welfare Fund (ICWF)

ICWF, set up in 2009, is aimed at assisting Overseas Indian nationals in times of distress and emergency in the most deserving cases on a means tested basis. The revision of ICWF guidelines w.e.f. September 1, 2017 have provided Indian Missions and Posts abroad greater flexibility in swiftly addressing requests for assistance by Indian nationals abroad. The guidelines cover three key areas:

- (i) assisting Overseas Indian nationals in distress situations
- (ii) support for community welfare activities and
- (iii) improvement in consular services. ICWF can also be utilized to provide legal assistance to deserving overseas Indian nationals who have committed minor crimes, offences or have been falsely implicated by their employer and put in jails.



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b)Pravasi Bhartiya Bima Yojana (PBBY)

PBBY is a mandatory insurance scheme for all Emigration Check Required (ECR) category workers going to ECR countries. The scheme provides an insurance cover of 10 Lakhs in case of accidental death or permanent disability and few other benefits at a nominal insurance premium of Rs. 275 and Rs. 375 for a period of two and three years respectively. The Scheme, initially launched in 2003, has been amended from time to time with the overarching objective of expanding the benefits for migrant workers. The scheme, comprehensively revamped w.e.f. August 1, 2017 in consultation with concerned stakeholders, had been made simpler and more beneficial for migrant workers and is aimed at expeditious settlement of claims.

c)Pravasi Bharatiya Sahayata Kendras (PBSKs) and other support Kshetriya Pravasi Sahayata Kendras have also been set up in Kochi, Hyderabad, Delhi, Chennai and Lucknow. Grievances by migrant workers can also be registered with the Pravasi Bharatiya Sahayata Kendra (PBSK) at New Delhi which provides assistance through multilingual 24X7 Helpline.”

Recording the stand of the central government, the writ petition was disposed of.



11.Unlike in the cases mentioned above, the Governments,

Central and State, have not taken any proactive stance before me. I am therefore constrained to look for a jurisprudential basis for casting liability on the Central Government. It is true that as of now there is no legislative framework governing the field. The question is whether on account of such absence, I must send away the petitioner empty handed.

12.When a writ petition was filed for enforcing the fundamental rights of the working women (***AIR 1997 SC 3011 (Vishaka and Ors. Vs. State of Rajasthan)***), the Hon'ble Supreme Court noted that though there is absence of a domestic law occupying the field to check the evil of sexual harrassment, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14 15 19(1)(g) and 21 of the Constitution and that the safeguards against sexual harassment are implicit. It was further held that any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. Reference was



made to Article 51(c) of the Constitution of India which provides that the State shall foster respect for international law and treaty obligations in the dealings of organized people with one another and Article 253 of the Constitution of India. The Hon'ble Supreme Court held as follows:

“The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”

13. Though India is not a signatory, it would be useful to refer Article 71 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' adopted by General Assembly of United Nations (Resolution 45/158 of 18 December 1990). It states that appropriate State parties shall provide assistance to the persons concerned in compensation matters relating to the death of a migrant worker or a member of his or her family, with a view to the prompt settlement of such matters.



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14. Article 51-A(f) mandates that it shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture. When principles and doctrines can be borrowed from other jurisdictions and international conventions and covenants, there cannot be any objection for invoking principles from our ancient jurisprudence. Of course, with one caveat. Nothing that runs counter to constitutional morality or statutory prescription can be relied upon. Now, let us see if any guidance can be found in our scriptures.

15. Justice M. Rama Jois has written on the Legal and Constitutional History of India. Volume I of the Book contains a chapter on the duties of a king (Rajadharma). Kautilya declares that in the happiness of his subjects lies the king's happiness ; in their welfare his welfare... whatever pleases his subjects, the king shall consider as good. Manu declares that the highest duty of a King is to protect his subjects. The King who receives the prescribed taxes (from his subjects) and protects them, alone acts according to Dharma. We need to substitute the expression "Government" for the word "king". An identical duty of the monarch to ensure the welfare of its people is also enshrined in Buddhist literature.



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16. There has been a migration of labour across the continents. Overseas employment is a reality. As a result, the Government is earning huge foreign exchange by way of inward remittances. The nation's exchequer is a direct beneficiary. When the Government is receiving such benefit from the migrant workers, it has a correlative and corresponding duty to rush to their rescue when issues arise out of such overseas employment. In Shanthi Parva of Mahabharatha, it is stated that the King who receives one-sixth of the income and still fails to protect the people becomes a sinner.

17. I wondered if it would be in order to cite such verses from Mahabharatha and Arthashastra. If latin maxims can be quoted and judgments can rest on them, one need not shy away from citing our own heritage and sources which can be in Sanskrit or Tamil or any Indian language. I wish someone undertakes the task of collecting such Swadeshi maxims. Maxims embody the distilled wisdom and experience of the society. They are expressed in precise, pithy language. They express a rule of conduct or truth of science or experience. Maxims in law are universal propositions, so perfect that they may not be impugned or disputed. They are foundations of the law, and conclusions of reason ; therefore, ought not to be impugned,



but always to be admitted (P.Ramanatha Aiyar's Advanced Law

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18. When it comes to maxims, we only fall back on Broom's book. Even Mahatma Gandhi ji in his Autobiography refers to Broom's. We attained independence in 1947 and it would be in the fitness of things if legal maxims more apposite to our clime and context could be compiled.

19. The Hon'ble Supreme Court in ***Charan Lal Sahu*** observed that the connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. It was further observed that the Indian concept of *parens patriae* doctrine recognised King as the protector of all citizens and as parent. In the constitutional scheme of things obtaining at present, it refers to the Government at all levels.

20. From the foregoing premises and judicial precedents, I infer that the Government of India has a constitutional duty in the matter. The absence of a legislative framework need not come in the way of arriving at such an inference. The constitutional provisions and



the Preamble construed in the light of the doctrine of Rajadharma postulate that the Government of India has a duty to provide legal aid to its citizens not only within the territory of India but also outside. I consciously refrain from delineating the details and the nuances. The Government of India is directed to come out with a comprehensive and feasible policy framework in this regard.

21.The petitioner is a poor widow. Her survival is at stake. She has to bring up her young child. It is, therefore, the duty of the Government of India to play a proactive role. It may have to take up the matter at the highest echelons of the Government of Cameroon. Pressure may have to be brought to bear on the persons who have stepped into the shoes of the erstwhile employer. Legal notices may have to be issued. Mediation efforts may be stepped up. If necessary, a formal legal battle may have to be waged. It is for the Government of India to explore every possible avenue to secure redress for the petitioner. This process must be expeditiously carried out.

22.This writ petition is disposed of. No costs.

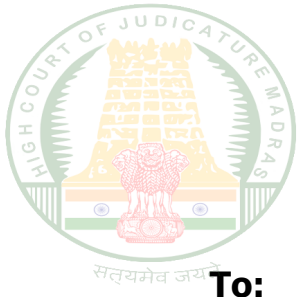
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Internet : Yes/ No

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