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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 5th November, 2024

+ **W.P.(CRL) 2252/2021**

SMT. REENA DEVIPetitioner

Through: Mr. N. S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachana Dalal and Mr. Kunal Narwal, Advocates. (M: 9999397199)

versus

THE COMMISSIONER OF POLICE & ORS.Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) for the State with Ms. Priyam Agarwal & Mr. Abhinav Kumar Arya, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J (Oral)

1. This hearing has been done through hybrid mode.

W.P.(CRL) 2252/2021 with CRL.M.A. 30264/2024

2. The present petition has been filed by the Petitioner - Smt. Reena Devi under Article 226 of the Constitution of India read with Section 482 of CrPC seeking issuance of a writ in the nature of *habeas corpus* for the production of her husband – Sh. Ramdin @ Ram, who is stated to have been last seen on 12th April, 2021.

3. It is the case of the Petitioner that her husband had gone to work on 12th April, 2021, however, he did not return home on the said date. Accordingly, on 13th April, 2024, the Petitioner is stated to have filed a missing person complaint at P.S. Kashmeri Gate. It is stated that few days after lodging of the said complaint the cousin brother of the Petitioner



received a call from a Sub-Inspector who informed that an unknown person, found in an unconscious condition, was admitted to the Acharyashree Bhikshu Govt. Hospital (hereinafter “*ABG Hospital*”) on 13th April, 2024. The said unknown person was not carrying any identity card, however, the said Sub-Inspector, had found a mobile number in the purse within the pocket of the said unknown person. Thereafter, the said Sub-Inspector made the call as aforesaid. It is also stated that, upon inquiries being made by the Petitioner with the authorities of ABG Hospital, she was informed that the said unknown person was suffering from Covid-19, and therefore, on 13th April, 2021, he was shifted from ABG Hospital to LNJP Hospital through an ambulance of Centralised Accident & Trauma Services (hereinafter “*CATS ambulance*”).

4. A complaint was filed by the Petitioner with the Delhi Women Commission on 5th August, 2021, in respect of the whereabouts of her missing husband and the admission of the unknown person at AGB Hospital. In the letter dated 18th September, 2021, the Medical Superintendent of AGB Hospital, in response to the said complaint of the Petitioner, confirmed that on 13th April, 2021 an unknown male patient of about 45 years of age was admitted in AGB Hospital and thereafter transferred *via* the CATS ambulance to the Higher Centre due to being positive for Covid-19. The Petitioner, not being able to trace the whereabouts of her husband, filed the present writ petition.

5. The prayer in the present writ petition is that the husband of the Petitioner ought to be produced and that a committee ought to be constituted to enquire into the conduct of the instrumentalities of the State including the LNJP Hospital in respect of the admission of her husband in the said hospital and his disappearance thereafter. The third prayer is for award of Rs. 50 lakhs



as compensation. The prayers sought in the writ petition are set out below:

“(i) Issue a writ of habeas corpus thereby directing the Respondent Nos.1 to 3 to produce Shri Ramdin @ Ram, son of Shri Ram pal, husband of the Petitioner, in person or in body;

(ii) Direct constitution of a committee as to which of the Instrumentality of the State is responsible for disappearance, production and nonproduction of Mr. Ramdin before the LNJP Hospital;

(iii) Direct the State to award appropriate compensation of Rs.50.00 Lacs for violation of fundamental right of Shri Ramdin and that of the Petitioner and her minor child and other family members on account of the acts and omission of the State Instrumentalities;

(iv) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case, in favour of the Petitioner and against the Respondents”

6. The petition was taken up on various dates and on 31st January, 2024 a detailed order was passed considering the aforesaid facts and circumstances, as also the repeated status reports filed before this Court. As recorded in order dated 31st January, 2024, the initial status report revealed that once the missing report was lodged all the necessary steps, including issuance of flash messages, ZIPNet, hue and cry notices etc. were undertaken by the Police to trace the husband of the Petitioner. The said status report also revealed that the concerned officer, initially SI Ravi Narwal, and thereafter, ASI Nadir Khan, had also communicated the requisite information to the family of the Petitioner. The status report also revealed that the LNJP Hospital itself had admitted more than 3045 persons during the relevant period from 13th April, 2021 to 30th April, 2021 and attempts were made to identify the Petitioner's



husband, however, he could not be identified. Further, approximately 648 dead bodies were found and the information about the same was given to the concerned next of kins but the identity of Mr. Ramdhin, husband of the Petitioner, still could not be established. After taking all these circumstances into consideration, the Predecessor Bench of this Court *vide* order dated 31st January, 2024 had directed as under: -

“9. On 25.01.2022, ASI Nadir Khan also obtained a list of 81 pages of the patients who were admitted in LNJP Hospital from 13.04.2021 to 30.04.2021. As per list, total 3045 persons were admitted in LNJP Hospital during the relevant period, in which only one male person was ‘unknown’ against SI No. 2815. The same was verified and he was not the missing person in question. Apart from him, two other unknown dead bodies were also verified in the LNJP Mortuary which were brought for postmortem vide (1) DD No. 82, dated 13.04.2021, PS Dariyaganj, Delhi, (2) DD No. 50A, dated 18.04.2021, PS Dariyaganj, Delhi. The same also verified and these were found to be of different persons.

10. That, in compliance of the directions of this Court, Shamshan Ghats, Mortuaries and Hospitals have been visited and enquiry has been conducted. During the course of enquiry, staff of Shamshan Ghats and Mortuaries were asked about the photographs of dead bodies but they stated that they never took any photographs of dead bodies. Information qua 648 dead bodies was downloaded from ZIPNET and sent to the next of kins of missing Ramdin but identity of missing could not be established.

11. Learned Standing Counsel has also shown us



statement of Sunil, who was the driver of the ambulance who took said unknown person to the LNJP hospital from Acharya Bhikshu Hospital for further treatment where the doctors and staff of LNJP hospital were met and they informed that there were already several patients of COVID-19 and there was no place inside as the stretchers were even lying outside. Initially, they refused to admit him but then said person was, as advised, left in LNJP Hospital on a stretcher because he had to attend another call.

12. It is admitted fact that the purse of the unknown person was returned by SI Ravi Narwal to the petitioner as the petitioner had identified that the said purse was of her husband.

13. The present petition is a habeas corpus and despite all efforts made by the investigating agency/State, the person continues to be untraceable. Therefore, in the interest of justice and on humanitarian ground, we deem it appropriate to grant some relief to the petitioner.

14. It is not in dispute that there was a purse in the pocket of said person who was admitted in Acharya Bhikshu Hospital and on the basis of the information derived from such contents, the police had made call to one relative of the petitioner. It goes on to show that the police was also able to establish that such missing person was husband of the petitioner. Moreover, such purse was also duly identified by the petitioner later on and it was duly returned to her, even.

15. Thus from the chain of events, it becomes very clear that the unknown person who was admitted in Acharya Bhikshu Hospital was Ramdin (husband of



the petitioner). It is also clear that he was found Covid-19 positive. It is also clear from the MLC prepared at Acharya Bhikshu Hospital that he was referred to LNJP Hospital as he was Covid-19 positive. It is also very much clear that he was shifted to LNJP Hospital through CATS ambulance. It is also admitted position that the said unknown person was dropped by the staff of CATS ambulance at LNJP Hospital.

16. Despite best efforts made by the police, the whereabouts of said person are still unknown, though it seems quite obvious that such unknown person was husband of the petitioner. Thus, the State becomes answerable as the said person had gone missing through the aforesaid Government hospital.

17. During the course of previous hearings, we had asked the respondent to take up the issue with Health and Family Welfare Department, GNCTD and to apprise whether there was any policy or scheme for providing compensation to the persons who were infected with Covid-19 but went missing during Covid-19 times. It was informed by the concerned Special Secretary that there was no such scheme. Admittedly, there is a provision for compensation in terms of Mukhyamantri Covid-19 Pariwar Arthik Sahayata Yojna scheme but it does not take into consideration the instance like the present one. We are told that the petitioner is an illiterate lady who is suffering from cancer and has one son aged 14 years.

18. It is true that it would be premature to presume that said unknown person is dead but keeping in mind the extraordinary facts placed before us and the fact that the said unknown person, who seems



husband of the petitioner, has gone missing from Government hospital, it will be in the fitness of things if State takes immediate steps to provide her with a suitable employment while giving requisite relaxation with respect to her age and educational qualifications.

19. The Chief Secretary, GNCTD is, accordingly, directed to pass appropriate orders in this regard within one week from today and the compliance report be filed by the next date of hearing. We expect that once she gets an employment, she would be automatically covered under the prevalent health scheme meant for govt. employees. Be that as it may, the State would also ensure that she gets free treatment from Delhi State Cancer Institute, which is a super speciality hospital of Delhi Government.”

7. As can be seen from the above, the final directions which were given are as under: -

- (i) that the Petitioner would be given suitable employment with requisite relaxation in respect of her age and education qualifications. The employment ought to cover her under the health scheme meant for government employees; and
- (ii) that the Petitioner would be given free treatment for Cancer in Delhi State Cancer Institute, which is a super speciality hospital of the Delhi Government.

8. The State challenged the said order of 31st January, 2024 before the Supreme Court in *SLP (Crl.) No. 5662-5663/2024* titled as *Secretary (Health) Govt. of NCT of Delhi v. Reena Devi & Ors.*, wherein *vide* order dated 29th April, 2024 the Supreme Court disposed of the said petition with the following directions:



“We have heard Ld. Additional Solicitor General, however, considering the totality of the facts, circumstances and exigencies of this case we grant liberty to the petitioner to file an application before the High Court for recalling the directions for grant of employment to the respondent is concerned. Upon filing such an application, the High Court shall decide the same uninfluenced by any view ascribed in this order. Till then, the directions with respect to employment shall not be given effect to.”

9. Pursuant to the abovesaid directions, an application, being **CRL.M.A. 30264/2024**, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of Respondent No. 4 – Secretary (health) GNCTD, seeking recall of the order dated 31st January, 2024.

10. Mr. N.S. Dalal has made submissions on behalf of the Petitioner. Mr. Sanjay Lao Ld. Standing Counsel (Crl) has argued on behalf of the State in support of the application.

11. The Court has heard the parties and perused the relevant records. Insofar as the direction in order dated 31st January, 2024, for free treatment is concerned, it is not in dispute that the Petitioner has been referred to AIIMS, Delhi and she is currently receiving free treatment there.

12. Further, in respect of the employment related direction, it is also not in dispute that the Respondent-GNCTD had offered contractual employment to the Petitioner through a private contractor with the Government, as is recorded in the order dated 13th August, 2024. However, the Petitioner was not willing to accept the same. The said order is extracted herein below: -

“2. Vide order dated 30th July, 2024, the Court directed Mr. Lao, ld. Standing Counsel (Crl.) to seek instructions if the Petitioner or his son could be given



contractual employment or not. Today, on behalf of the Respondent, the email dated 12th August, 2024, from Legal Branch, Health & Family Welfare, Govt. of NCT of Delhi, Delhi Secretariat has been placed before the Court as per which it has been decided that the Petitioner can be considered for a security/sanitation worker through an outsource agency. The said email has been taken on record and has been referred to the Petitioner.

3. Mr. Dalal submits that the Petitioner is not willing to accept the same due to the situation she is currently in.”

13. Mr. Dalal on behalf of the Petitioner insists upon regular employment with the GNCTD. The Petitioner’s son is now 18 years of age, and today, during the course of the proceedings again, it has been put to the Petitioner as to whether the Petitioner or her son would be willing to accept contractual employment through a contractor with the GNCTD. However, Mr. Dalal is clear that his client does not wish to avail of contractual employment.

14. Insofar as the direction in paragraph 18 of the order dated 31st January, 2024 is concerned, the Court is of the view that the terminology ‘*suitable employment*’ used therein, cannot be interpreted to mean only regular employment with the Government. The fact that the Government has already offered contractual employment to the Petitioner, in fact, satisfies the direction given in paragraph 18 of the said order.

15. Moreover, this Court has also perused the record as also the statement of the driver of CATS ambulance - Mr. Sunil. He has given a detailed statement as to what had transpired in the two hospitals during the shifting of the unknown person from ABG Hospital to LNJP Hospital on 13th April, 2021.



16. After perusing the entire record, this Court notes that the period during which the incident appears to have occurred was the height of the second wave of the Covid-19 pandemic. The LNJP hospital was the main hospital where patients in Delhi were given medical treatment. LNJP as also other Government hospitals were facing massive shortage of staff, ambulances, drivers, doctors etc. during the said period. In fact, the Police have done as much as they could, to trace the husband of the Petitioner. Despite the prevalent crisis situation that the system was facing, police had called the relatives and informed about the admission of the unknown person to the ABG Hospital. It is unfortunate that the records maintained during the said Covid-19 period do not reveal the identity of the person who was transferred and admitted to the LNJP Hospital. It is a matter of fact that as a policy those patients who had succumbed to Covid-19, during the relevant period, had been immediately cremated in PPE kits, as per the prevailing rules and policies. In these circumstances, the resources of the State, which has the responsibility to take care of life and liberty of its citizens, were pushed to an extreme and the State's capabilities were severely tested during the second wave of Covid-19. Thus, considering the aforesaid, negligence cannot be attributed to the State in the present case, which would entitle the Petitioner to any compensation, especially, in light of the fact that contractual employment offered by the Government has already been refused by the Petitioner.

17. Under these circumstances and in view of the reasoning recorded in the order dated 31st January, 2024, this Court is of the opinion that the interest of justice would be served by directing payment of *ex-gratia* compensation of Rs. 5 lakhs to the Petitioner. The said payment shall not be in any manner



construed as a liability or admission of negligent conduct on behalf of the GNCTD. The same is only directed under humanitarian and compassionate considerations. The said payment shall be released within 4 weeks to the Petitioner in her bank account, details of which are set out hereinbelow: -

Account holder's name: Reena Devi
Bank Name: Punjab National Bank
IFSC: PUNB0657700
Account No.: 6577001700021172

18. In the extraordinary facts and circumstances of this case, it is recorded that though the identity of the Petitioner's husband remained in doubt after he was admitted in the LNJP Hospital, the Petitioner and her son shall be treated as the legal heirs of the missing person, who shall now be presumed to be dead. The present order shall not be treated as a precedent.

19. The petition is disposed of along with ***CRL.M.A. 30264/2024***.

20. Pending applications, if any, are also disposed of.

21. List for compliance on 21st January, 2025.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

NOVEMBER 05, 2024/bsr/ms