
(1998) 10 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 365 of 1998

Abhilasha and Others

APPELLANT

Vs

H.P. State Forest Corporation

RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) ACJ 666

Hon'ble Judges : D. Raju, C.J; L.S. Panta, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; Neel Kamal Sood, for the Respondent

Final Decision : Allowed

Judgement

L.S. Panta, J.—Petitioners, namely, Abhilasha (widow), Sushil Kumar and Kuldip Kumar (minor sons) of deceased Hira Singh, have filed this writ petition claiming Rs. 10,00,000 as compensation with interest at the rate of 18 per cent on account of death of said Hira Singh, who died in the forest shed alleged to have been constructed by the respondent Corporation.

2. The relevant facts giving rise to the present case are as follows:

Hira Singh was a registered labour supply mate of the respondent Corporation. He had been undertaking works on behalf of the respondent Corporation for felling, conversion of timber, fuel wood, manual carriage, ropeway carriage besides extraction of resin. He submitted his tender for extraction of resin for 1997-98 season. His tender was accepted by the respondent Corporation and an agreement was entered into between the parties. On 27.7.1997, Hira Singh went to the Forest Depot in Forest Division, Nerwa, for weighing the resin. When he was sitting in the forest shed made of sleepers alleged to have been constructed by the respondent Corporation, the said shed fell down resulting in serious head injury to Hira Singh. However, Kirpa Ram, chowkidar, escaped unhurt. Hira Singh

was rushed to C.H.C., Nerwa, where he died. The petitioners have placed on record death certificate of Hira Singh marked as Annexure PA. Narain Singh, brother of late Hira Singh lodged a report in Police Chowki, Nerwa on 5.8.97 giving the complete details of the accident. The petitioners alleged that the police has not taken any action pursuant to the said report. The petitioners who are legal representatives of late Hira Singh have averred that the accident had taken place due to the negligence of the respondent Corporation, who has not taken necessary precautions while constructing the shed by piling sleepers. The petitioners further alleged that they were legitimately expecting that the respondent Corporation would pay compensation for its negligent act but no steps have been taken by the respondent Corporation. Further, it has been alleged that the responsibility of the death of late Hira Singh is traceable to acts of criminal omissions and commissions on the part of the authorities and the petitioners had suffered indescribable mental torment and physical and financial hardship. It has also been stated that the petitioners were solely dependent on the income of Hira Singh, who was an income tax payee and besides forest contractor, he was also working as a contractor for H.P. P.W.D. On the premise of these allegations, the petitioners have claimed a total sum of Rs. 10,00,000 as compensation on account of the death of Hira Singh with interest at the rate of 18 per cent and further that the respondent Corporation shall be directed to offer appointment to petitioner No. 1 on compassionate ground.

3. Reply on behalf of the respondent Corporation has been filed by Gurmit Singh, Managing Director. It is admitted by him in his reply that late Hira Singh was registered as a labour supply mate under Contract Labour (Regulation and Abolition) Act, 1970 and H.P. Contract Labour (Regulation and Abolition) Rules, 1974. It is also admitted that Hira Singh had been undertaking the works of felling, conversion and carriage of timber and resin extraction by taking part in tender operation/open auctions on his own and not on behalf of the respondent Corporation. Acceptance of tender of resin for the year 1997-98 submitted by late Hira Singh and execution of the agreement by the respondent Corporation with him have been admitted. However, it is alleged that 8 filled tins of resin had been received on 27.7.1997 in Resin Depot, Shikiyar, but it was denied that the labour supply mate had come for weighing of resin in the depot as the weighing is not done in Resin Depot, Shikiyar. It is further alleged that the tentative weight of the total number of tins supplied is calculated considering each resin filled tin 17 kg. including the weight of the tin and the actual weighing is done at the Resin and Tarpine Factory, Nahan, according to the report of which the final payment is made to the contractor. The resin filled tins from the forest to the depot are carried either by the mule or through the labour and the labour supply mate is not required to accompany the hired consignment. It was also alleged that the Resin Depot at Shikiyar is maintained in a permanent accommodation and Hira Singh was not injured in the hired accommodation of Resin Depot but in the Timber Depot which is away from the Resin Depot, where he was not required to go and sit in the shed constructed by the labourers of their own

temporarily, without permission of the Corporation officials. It was further alleged that there is no legal or moral binding on the respondent Corporation for paying compensation to kith and kin of deceased Hira Singh and the petitioners cannot claim compensation as Hira Singh was not injured due to any fault of the respondent Corporation and he died out of his lot and in the Timber Depot where he was not required to go and take rest. It was also alleged that the matter pertaining to the present writ petition is of civil nature and the civil court has the jurisdiction to try and determine the real dispute between the parties and further that the petitioner No. 1 is not legally entitled for appointment on compassionate ground since Hira Singh was not the employee of the respondent Corporation. In the last, it was also alleged that there was no negligence on the part of the respondent Corporation and it was an act of God and as such no damage can be awarded in favour of the petitioners in this writ petition.

From the pleadings of the parties, the question before us is whether the respondent Corporation is liable to pay compensation to the petitioners for the death of Hira Singh who suffered injuries while sitting in the wooden shed meant for taking rest by the labourers employed by him for doing the work for respondent Corporation. The respondent Corporation is contesting this proceeding on the footing that the said Hira Singh died due to an act of God and not because of the negligence of the respondent Corporation.

4. It was submitted by Mr. Neel Kamal Sood, learned counsel for the respondent Corporation that this court has to arrive at the finding that Hira Singh died while he was working with the respondent Corporation in a shed constructed by it before the question of payment of compensation is decided. According to the learned counsel this court should not embark upon the decision on that question of fact under Article 226 of the Constitution of India but on the other hand, direct the petitioners to work out their rights in a civil court by taking appropriate proceedings. However, the learned counsel drew our attention to three decisions of this court in *Hem Lata v. State of Himachal Pradesh* C.W.P. No. 535 of 1993; *Mabu Ram v. State of Himachal Pradesh* C.W.P. No. 1275 of 1993; and *Manoj Kumar v. State of Himachal Pradesh* C.W.P. No. 439 of 1992, to contend that since the disputed questions of fact and the positive proof of negligence have to be proved by leading evidence besides substantiating that the accident had occurred on account of negligence and reckless construction of the temporary shed by the respondent Corporation, such questions cannot be projected or vindicated in a proceedings under Article 226 of the Constitution of India.

5. We have given our thoughtful consideration to the facts and circumstances of those cases and the reasoning given by the learned Judges of the court while declining to grant relief to the petitioners in those cases for payment of compensation.

6. In Writ Petition Nos. 535 and 1275 of 1993, claim for compensation was based upon failure of sterilization operation due to the negligence of the doctors. The court found that no prima facie evidence was adduced on record to hold the

doctors negligent and, therefore, no relief could be granted to the petitioners in those cases. In C.W.P. No. 439 of 1992, filed by the father of one Vijay Kumar, who died in the hospital and complaining of negligence and reckless treatment of his son in applying and injecting glucose. The Division Bench in the peculiar facts and circumstances of the case held that the plea of alleged negligence or recklessness made in the treatment given to the son of the petitioner, which is disputed by the respondents, has got to be proved as a fact in the manner known to and in accordance with law before the claim of the petitioner could ever be countenanced leave alone the quantum thereof and such factual questions, particularly, which are seriously in dispute and which require strong supporting materials to prove such allegations cannot be properly or justifiably be undertaken in a proceeding under Article 226 of the Constitution of India. Hence, learned counsel for the respondent Corporation cannot derive any assistance from the said decisions, in peculiar circumstances of the case in hand.

7. Mr. Rajiv Sharma, learned counsel for the petitioners in support of the averments made in the writ petition has placed reliance upon a number of decisions of the Apex Court and the various High Courts including this court to contend that this writ petition is maintainable for claiming compensation if prima facie the negligence of the respondent Corporation is proved on record.

8. Before we deal with the factual position of the present case, we propose to deal with the legal position of law about the maintainability and awarding compensation in the writ petition. It is by now well settled position of law that in exercise of the jurisdiction under Article 226 of the Constitution of India by the High Court though discretionary, but the discretion must be considered on sound judicial principles. In Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, the Hon'ble Judges of the Apex Court said that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction, though discretionary the discretion must be exercised on sound judicial principles. Further when the petition raises complex question of fact which may require oral evidence to be taken and the High Court may decline to try a petition. In Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, it was further held that merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against the public body. The Supreme Court has on more than one occasion pointed out the distinction between the remedy available in public law and the enforcement of a right in private law. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, the court held that in the case of violation of fundamental rights the only practicable mode of enforcement is award of compensation under Article 32 or 226 of the Constitution of India. Reference was made to the decision of that court in Rudul Sah Vs. State of Bihar

and Another, It will be advantageous to extract paras 19 to 22 of the judgment of Mr. Justice Verma in that case, which read as follows:

(19) This view finds support from the decisions of this court in the Bhagalpur Blinding cases: Khatri and Others Vs. State of Bihar and Others, and Khatri and Others Vs. State of Bihar and Others, , wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure-suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., Misra, C.I. has stated that "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...there is no reason why we should hesitate to evolve such principle of liability...". To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal Gas case, with regard to the court's power to grant relief.

(20) We respectfully concur with the view that the court is not helpless and the wide powers given to this court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

(21) We may also refer to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966, which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9 (5)

reads as under:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

(22) The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah Vs. State of Bihar and Another*, and certain further observations therein adverted to earlier, which may tend to minimize the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this court in *Rudul Sah (supra)* and others in that line have to be distinguished from *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

9. In the concurrent judgment of Dr. Justice Anand, the following observations are found in paras 32 to 35:

(32) Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve "new tools" to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do. But, if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of *mandamus*, *certiorari*, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations,

injunctions and actions for negligence... This is not the task for Parliament.. .the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised, the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country.

(33) The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

(34) The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect their interests and also preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

(35) This court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law-through appropriate

proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other forum of appropriate redressal by the court in the facts and circumstances of the case is possible. The decision of this court in the line of cases starting with Rudul Sah Vs. State of Bihar and Another, granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so, the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 are concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this court in the cases referred to by brother Verma, J.

10. We may also at this stage refer to a recent decision of the Supreme Court in D.K. Basu Vs. State of West Bengal, In this case, the Apex Court has dealt with formulating modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. In paras 16 to 19 Hon"ble Dr. Justice Anand said as under:

(16) The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimized there to a very great extent.

(17) Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to life with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner

of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of Magistrate. Article 20 (3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41, Criminal Procedure Code confers power on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this section, no formality is necessary while arresting a person. u/s 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some other provisions also like sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in the custody of the police, Section 176 requires the Magistrate to hold an inquiry into the cause of death.

(18) However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanizing torture, assault, rape and death in custody of police or other Governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

(19) The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock-up deaths. It appreciated the demoralizing effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse the confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines...

The recommendations of the Police Commission (*supra*) reflect the constitutional concomitants of the Fundamental Rights to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

11. Further in paras 44, 45 and 46 of the judgment the Hon'ble Judge while dealing with the question of granting compensation for unconstitutional deprivation of fundamental right to life and liberty of the citizens observed as under:

(44) The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

(45) The old doctrine of only relegating the aggrieved to the remedies available

in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

In para 46 of the judgment, the court referred to its earlier ruling in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, and extracted a passage therefrom. It was pointed out that in case of infraction or invasion of rights guaranteed under Article 11 of the Constitution of India, it was not enough to relegate the aggrieved party to the ordinary remedy of a civil suit. It was also pointed out that the powers of the executive should be properly used to lead to the welfare State and not abused to lead to a totalitarian State and that it is the duty of the courts to enforce the same.

12. Several decisions wherein the test adjudging the principle for awarding the compensation under Article 226 of the Constitution of India were referred to us by Mr. Rajiv Sharma, learned counsel for the petitioners. The power of the Apex Court under Article 32 and this court under Article 226 of the Constitution is distinct and wide available to the aggrieved person in addition to other remedies have been explained by the Apex Court and various High Courts including this court. Those decisions may be referred to, namely, *Smt. Charanjit Kaur Vs. Union of India and others*, *Shakuntla Devi v, Delhi Electric Supply Undertaking* (1995) 2 SCC 369 ; *Naresh Dutt Tyagi Vs. State of U.P. and Others*, *Gudalure M.J. Cherian v. Union of India* *Harvinder Chaudhary Srivastava (Ms) Vs. Union of India (UOI) and Others*, *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, *Mohan Lal Vs. State of Himachal Pradesh and Another*, *Kumari Seemu alias Seema Vs. Himachal Pradesh State Electricity Board and Others*, *Jasbir Kaur and another Vs. State of Punjab and others*, ; *Ramesh Kumar Nayak Vs. Union of India (UOI) and Others*, ; *Rajani Dei Vs. Chairman, Orissa State Electricity Board and Others*, *Radha Singha v. Secretary (PWD) to the Govt, of H.P.* 1996 (1) Sim LC 1 ; *Deep Chand Sood and Others Vs. State of Himachal Pradesh and Others*, *Dano Bai and Others Vs. Punjab State and Another*, and *Dev Kala and Others Vs. State of Himachal Pradesh and Others*,

13. We have given our best consideration to the well-settled principles of law laid down in the above said decisions and we are of the opinion that this court can in exercise of writ jurisdiction grant appropriate relief to the aggrieved person instead of directing him to avail other remedies. In case adequate material is

available on record, full relief can competently be granted. However, the court may direct the petitioners to approach the civil court or any other forum if the material on record is not adequate. The contention of the learned counsel for the respondent Corporation that the writ petition is not maintainable for the grant of compensation is, therefore, not acceptable.

14. Now, the question of negligence may be examined in the present case. Precisely, the submission of the petitioners is that the respondent Corporation committed negligence in maintaining the Forest Depot where late Hira Singh had gone for weighing the resin. It has been admitted by the respondent Corporation that the Timber Depot which had fallen down was temporarily constructed by the labourers without the permission of the Corporation officials. If it was so it was the duty of the officials of the respondent Corporation not to have allowed putting up a temporary shed by stacking sleepers and made use of it as resting shelter. The respondent Corporation has submitted that Hira Singh died in the timber shed where he was not required to go and take rest. In fact, the case of the petitioners alleged in the writ petition is that Hira Singh who was a resin contractor of the respondent Corporation had gone to the Forest Depot shed for weighing the resin and the said shed fell down resulting in serious head injury to him culminating in his death. The said shed was constructed by piling sleepers without any proper and necessary precautions. In a case like this, the doctrine of *res ipsa loquitur* clearly applies. The officials of the respondent Corporation were *prima facie* negligent in not maintaining and upkeeping the shed in a proper condition and, therefore, the respondent Corporation is vicariously liable for negligence/fault of its employees. There can be no doubt whatever that the officials of the respondent Corporation were negligent and failed to perform their duties enjoined on them by law in properly maintaining the Forest Depot shed. The finding of negligence on the part of the officials of the respondent Corporation has been arrived at primarily on the allegations made in the writ petition which have not been controverted specifically in the reply by the respondent Corporation. The respondent Corporation has admitted that Hira Singh was its contractor and was extracting resin from the standing trees and thereafter resin filled tins were to be supplied to the respondent Corporation. The petitioners have specifically alleged that Narain Singh, brother of late Hira Singh lodged a report in Police Chowki, Nerwa on 5.8.97 giving the complete details of the accident but no action appears to have been taken by the police on the said report. In the totality of the facts and circumstances of the present case, we are of the view that the petitioners are entitled to maintain this writ petition for claiming compensation on account of the death of Hira Singh.

15. The question is now about the quantum of compensation. The petitioners have not placed on record adequate material for the grant of full relief in this writ petition. They have only stated that they were solely dependent upon the income of Hira Singh who was an Income Tax payee and besides forest contractor, he was working as H.P. P.W.D. contractor also. They have not placed on record any material as to what was the income of the late Hira Singh and how much amount

he was spending for maintaining his family members and further what was the pecuniary loss suffered by the petitioners due to the death of Hira Singh. In our view, an amount of Rs. 50,000 would be appropriate compensation as interim measure to be awarded to the petitioners in the present case.

16. Accordingly, we direct the respondent Corporation to pay a sum of Rs. 50,000 to the petitioners. The said amount shall be deposited in this court within four weeks from the date of decision of this case. On deposit, a sum of Rs. 20,000 shall be paid to Abhilasha, widow of Hira Singh and the balance amount of Rs. 30,000 shall be put in fixed deposit in a nationalised bank in the names of two minor sons, namely, Sushil Kumar and Kuldip Kumar in equal share till they attain majority. Abhilasha, mother and natural guardian of the minor sons, shall be entitled to get quarterly interest on the said amount and spend the same for their upkeep, maintenance and education, etc.

17. We make it clear that any observation made by us in justification of this order shall not have any bearing on any proceedings being initiated by the parties in any civil court or forum. We also add that the award of compensation in these proceedings should be taken into account for adjustment in the event of a suit being filed by the claimants/legal heirs of the deceased Hira Singh for compensation in a competent court of jurisdiction against the respondent Corporation or any other person and those proceedings shall be decided on merits by such court in accordance with law.

18. The second prayer of appointment on compassionate ground of petitioner No. 1 has been abandoned by learned counsel for the petitioners and representation to that effect was made by him at the Bar on 22.9.1998.

19. We, therefore, allow this writ petition to the extent indicated above. However, parties are directed to bear their own costs.