
(1996) 03 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1049 of 1995

Deep Chand Sood and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 04-03-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1997) ACJ 831 : (1996) 2 ShimLC 332

Hon'ble Judges : Bhawani Singh, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : K.D. Sood, H.S. Matewal, Ashish Handa and Deepika Handa, for the Appellant; M.L. Chauhan, Asstt. A.G., G.S. Grewal, Navdeep Singh and Anup Chitkara, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This writ petition has been preferred by the parents of students who drowned in river Beas on 28.5.1995 seeking relief of inquiry by Central Bureau of Investigation finding out the causes for the tragedy, responsibility therefor, punishment to the guilty ones and adequate compensation from the school authorities.

2. Dalhousie Public School, Bhadhani was established in the year 1970 with respondent No. 2 as its founder Chairman. It is located near village Bhadhani on Pathankot-Dalhousie Road. Currently, there are about 450 students in the school with turnover of Rs. 1,25,00,000/-. All the students were studying in V and VI Classes except Gurkirat Singh Grewal who was a student of IV Class and were staying in the hostel.

3. 28.5.1995, being the last Sunday of the month, was a parents meeting day, therefore, as per the rules of the school, the parents/guardians were allowed to take the children/wards from the school premises and bring them back before 6.00 p.m. on the same day (Annexure P-1). But, on this day 77 students of the

school including 18 girl students were taken for picnic by bus to Tanda Pattan, bank of river Beas in Himachal Pradesh. They were accompanied by two male and three female teachers. In addition, there were two European women and two mess-boys in this picnic party apart from the driver of the bus. The names of the staff accompanying the children were Surinder Pal Singh, D.P.E., Tejinder Kaur, D.P.E.'s wife, Shanmugham, Kalpana, Anita Sharma, Roshan Lal, supplier, Charan Singh, driver, Uttam Kumar, mess-boy, Pawan Kumar, mess-boy, Tara Chappal and Amande Grist (European women-GAP students).

4. The petitioners further submit that the bus started from the school at 10.30 a.m. and reached the site of Tanda Pattan at 12.00 noon. Lunch was served at 1345 hours. During this time, the male members of the staff were drinking beer and making merry with the ladies. Surinder Pal Singh, D.P.E., was in a state of intoxication. He took a ball and kicked it hard and high into the river and asked the children to go and retrieve it. When the children went to retrieve it, they were washed away by the strong current of the river. The staff and other members of the picnic party watched the happening helplessly from the bank of the river. No effort was made by any of them to go into the river and save the drowning children nor any help was sought from the residents of the village although it is located a few hundred paces from the site of occurrence. However, Man Singh, a resident of the area and owner of a nearby farm, was approached by crying children seeking help from him to rescue other children who had been caught in the current of the water and were drowning and this person along with others fished out five children from the river alive.

5. The children ought not to have been taken for picnic on this day since it was a day when the parents coming from far off places were to meet them. There was no prior information to the parents and on being asked, the school management told them that the site of the picnic could not be disclosed to them and they could meet the children who were expected to be back by 5.00 p.m. The information of this tragedy came to the knowledge of the school authorities between 3.30 and 3.45 p.m. but the parents were not informed of it and Amolak Singh, who waited till 6.00 p.m., was told by the school management that the picnic party was late, therefore, he could meet his children on some other day and the result was that Amolak Singh returned to Batala where he was informed on telephone at about 8.40 p.m. about the occurrence of the tragedy by the school management. Deep Chand Sood, father of Anshul Sood, kept waiting for the bus which reached at about 6.45 p.m. when he was informed by a student that his son had drowned in the river. So callous was the conduct of the management that the Chairman left for the site at about 4.00 p.m. without informing the parents of the occurrence and on site five of the children were still alive. He did not make any attempt to seek help of the villagers or the police nor extended medical aid to the children who were kept on the rocks in scorching heat with temperature of 43°C. The Chairman did not make any effort to transport the bodies of the dead children or those who were struggling for life and were alive at the site.

6. Kalyan Singh Chaudhry, a resident of Tndora was informed of the tragedy at about 3.00 p.m. by Roshan Lal, supplier. Since his own children were studying in the school, he reached the site at 3.30 p.m. and found his children safe. He collected his children and two more, serious children in the car and took them to Civil Hospital, Indora where the doctor was attending some kitty party. He located the doctor and brought him to the hospital but the doctor stated that since there was no arrangement of oxygen in the hospital, the children be shifted to Pathankot. Kalyan Singh hired a taxi to shift the children to the hospital and requested the doctor to go to the site of tragedy with ambulance but, according to the doctor, the ambulance was out of order. The doctor did not accompany Kalyan Singh to the site of accident stating that he was to remain in the hospital on emergency duty. Kalyan Singh again rushed back to the site of accident and found three children were still alive lying on the rocks of the river bed. Chairman of the school acted so carelessly and irresponsibly that he did not care to shift the children to the hospital by his car with the result that the children who were alive, died later on for lack of medical aid and immediate proper attention at the instance of school management.

7. The school authorities had chosen a place for picnic which had no vegetation in the vicinity within the radius of one kilometre and had temperature of 43°C during the day, there was no pucca road to the site, male teachers were under intoxication. The parents were not informed nor administration in the police was informed in time. The first information report was registered against Surinder Pal Singh, D.P.E., at about 8.05 p.m. (Annexure P-2). It does not include the Chairman and the management of the school as accused since they were culpably negligent and responsible for the tragedy.

8. The parents rushed to the school where they were told to go to Indora Police Station to identify the bodies of the children. On reaching Indora Police Station, they found that Deputy Commissioner, Kangra and Sub-Divisional Magistrate, Nurpur, respondent No. 4, were present. These officers did not help in extricating the bodies of the children nor extended any help to the petitioners in any manner and further act of fishing out the bodies from the river was postponed to the next day while the body of Arjun Mahajan, son of Vijay Mahajan, has not been located till date. The parents resorted to Dharna on Grand Trunk Road, Mirthal and jammed the traffic with the result that the Sub-Divisional Magistrate, Mukerian visited the site and deputed Tehsildar, Mukerian with the parents to Talwara Dam authorities. G.B. Gupta, Executive Engineer told them that he did not receive any message for stopping the flow of the water from any authority although this request had been made to respondent No. 4. The Executive Engineer stopped the flow of water with the result that some more bodies were found.

9. Sometime in the past, Fakrudin, Pardhan of the area, had cautioned the teachers of this school not to bring small children to this place because of the erratic level and uncertain flow of water of the river but his advice was ignored. The authorities ordered a Magisterial inquiry into the matter but the petitioners

say that it is neither sufficient nor will this authority be able to find out the causes for the tragedy and fix responsibility for the same. The petitioners also attribute bad faith in the act of the school management taking the children for picnic when it was a day for the parents to meet them. Further, Gurkirat Singh Grewal could not be taken for the picnic since he was studying in IV Class while the picnic party consisted of students of V & VI Classes only. The picnic site was dangerous, unapproachable and not fit for taking small children to such a place. The tragedy was not disclosed to the parents nor efforts were made to save them as pointed out hereinabove. Reference has been made to Apex Court order in Punjab and Haryana High Court Bar Association, Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others, where a similar inquiry was ordered to prove the disappearance of Kulwant Singh, his wife and two-year old son and the Apex Court had said that:

...The High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the region. For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least the High Court could have done in this case was to have directed an independent investigation/ inquiry into the mysterious and most tragic abduction and alleged murder of Kulwant Singh, Advocate and his family...Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instil confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI).

10. Petitioners made number of representations to the President of India, Prime Minister, Chief Ministers of Himachal Pradesh and Punjab besides other important dignitaries for ordering inquiry by Central Bureau of Investigation into this matter but except for ordering a Magisterial inquiry, nothing has been done, may be due to the pressure by the school management who are financially affluent and politically sound.

11. On the question of compensation, it has been pointed out that the loss caused to the petitioners cannot be measured in terms of money but the same would be a lesson to the school management and precedent for future in case it is awarded to the parents of the deceased children for the callous neglect shown by the school authorities. While admitting the students, the school authorities charged a sum of Rs. 35,000/- towards admission fee and collected crores of rupees over the year under the garb of providing education to the children. The nature of the case is such that inquiry by Central Bureau of Investigation is called for and for seeking the reliefs, there is no other efficacious alternative remedy available to the petitioners except through this writ petition under Article 226 of the Constitution of India.

12. Respondent Nos. 1 and 4 have stated in their reply that the matter was

reported to the police at Indora on 28.5.1995 at 4.45 p.m. by Surinder Pal Singh, D.P.E., of Dalhousie Public School, Bhadhani. It has been denied that no efforts were made by the police or civil administration to locate the bodies of the missing students till the next day. On receipt of information of the tragedy at 4.45 p.m., the police rescue party left for Tanda Pattan immediately and started rescue operations. Respondent No. 4 was informed about the tragedy through log message by Station House Officer, Indora, at about 5.00 p.m. and respondent No. 4 informed the district authorities through wireless message No. 30/RC/Steno, dated 28.5.1995 (Annexure R-4/1). In addition to this wireless message, respondent No. 4 briefed the Additional District Magistrate, Kangra on telephone. Respondent No. 4 immediately rushed to the spot located at about 45 km. from Nurpur and reached there at about 6.45 p.m. to supervise the rescue operations. Tehsildar, Indora with some Revenue staff and local people including Fakrudin, Pardhan of Gram Panchayat, Mand were already engaged in search operation for the missing students. The dead bodies of five students had already been recovered and were kept under the shade of bush on the river bank. One more dead body was brought from down stream after the arrival of respondent No. 4. However, in spite of best efforts, no more dead body was found on 28.5.1995 as it grew dark. Arrangements were made for sending the dead bodies to Police Station, Indora in a tractor-trolley. The Pardhan, Gram Panchayat and Tehsildar, Indora were directed to mobilise all able bodied swimmers from the adjoining villages for rescue/search operations for the dead bodies of the remaining missing students for early next morning. In the meantime, Deputy Commissioner, Kangra, Superintendent of Police, Kangra, Sub-Divisional Police Officer, Nurpur also reached the site of the tragedy and after spot inspection and giving necessary directions for organising rescue/search operations, the whole party came back to the Police Station, Indora at about 9.00 p.m.

13. After arrival at Police Station, Indora, a police Gypsy was immediately despatched to bring ice from the nearest ice factory at Kandrori and the dead bodies were taken out from the tractor-trolley and kept in the police station as there was no mortuary either in the police station or in the Primary Health Centre, Indora. The parents and guardians of the deceased children, who had gathered in large number at the Police Station, Indora, demanded that the dead bodies be handed over to them for conducting the last rites of the deceased immediately. When they were told by the respondent No. 4 and Sub-Divisional Police Officer, Nurpur that since a case u/s 304-A of the Indian Penal Code, 1860 had already been registered against the school staff, the post-mortem of the dead bodies was to be conducted, whereupon, these parents/ relatives became violent and demanded that the bodies be handed over to them without conducting any post-mortem immediately. Keeping in view their sentiments and the situation which had developed there, the District Magistrate and the Superintendent of Police, Kangra, present at the spot, decided to hand over the dead bodies to the parents and the guardians without post-mortem on recording written request but after completing codal formalities. Pursuant to this decision,

the dead bodies of five students, namely, Ujjal Gurprit, Gurinder Bir Singh, Avishekh, Ankur Mahajan and Kanav Mahajan were handed over to them while the dead body of Manprit Dhal was preserved and handed over to his father on 29.5.1995. In the meantime, rescue team from Regional Water Sports Centre, Pong Dam consisting of R.R. Thakur, Incharge, Chhotu Ram Chandel, Instructor and Uttam Chand, Boatman, arrived at Police Station, Indora at 10.45 p.m. with necessary equipment, left for the site of tragedy and started rescue operations for the remaining missing students. Non-stop operations were conducted that day and the next day.

14. So far as recording of the first information report is concerned, it is stated that on receiving the information at 4.45 p.m., SI Swarn Singh left for the site of tragedy immediately and after verification of facts, sent a report from Tanda Pattan to the Police Station, Indora through Rajinder Singh, Constable No. 503 at 6.50 p.m. for registration of the case u/s 304-A of the Indian Penal Code against Surinder Pal Singh, D.P.E. and other staff members of Dalhousie Public School, Bhadhani. Accordingly, the first information report No. 138 of 1995 dated 28.5.1995 was registered at 8.05 p.m. in the Police Station, Indora. The site of tragedy is located at about 9 km. from the police station with no means of communication available there. The allegation of inaction and non-cooperation from the side of the Deputy Commissioner, Sub-Divisional Magistrate and the police officials has been denied and it has been pointed out that all possible steps were taken for meeting with the tragedy in which fourteen young bright students lost their precious lives. Specifically, it has been submitted that the parents/relatives of the missing/deceased students gathered in large number soon after the arrival of Deputy Commissioner and Superintendent of Police, Kangra along with respondent No. 4 at the Police Station, Indora. It has been denied that respondent No. 4 shouted at them or acted in an unbecoming manner with any of them. The parents/relatives got infuriated when respondent No. 4 insisted for post-mortem examination and demanded the bodies without any post-mortem examination. It is also denied that respondent No. 4 refused to send the team of divers for rescue operations on the night of 28.5.1995. As a matter of fact the team of BBMB divers had reached Tanda Pattan on 29.5.1995 at 4.00 p.m. and no team of divers was available on 28.5.1995 as alleged. The team from Regional Water Sports Centre, Pong Dam had already left for the site of tragedy and started search/ rescue operations after seeking instructions from the Deputy Commissioner on 28.5.1995 itself while respondent No. 4 was at that time busy in completing the formalities of handing over the dead bodies to the parents and had no occasion to communicate with the above team before the departure from the Police Station. Subsequently, respondent No. 4 was informed by R.R. Thakur, Incharge of the team, that this team had flash torches and other equipment. It started the search operation non-stop during the night and the day of 29.5.1995 although the Deputy Commissioner, Kangra and the Superintendent of Police, Kangra had left Indora for Dharamshala at about 12.30 a.m. after giving instructions at the spot to respondent No. 4 and others. Respondent No. 4 and

others continued the rescue/search operations.

15. Certain parents/relatives of the missing students went to 9 FOD Kandrori and 21 Sub Area Pathankot to seek Army assistance for these operations, however, at both places the Commanding Officers said that no trained personnel were available at either of the two places for carrying out this kind of rescue operation. However, on the advice from Commanding Officer, 21 Sub Area, respondent No. 4 and Sub-Divisional Police Officer, Nurpur contacted the Commanding Officer, Mammoon Cantt., but, here also no divers were available and they were asked to contact Div. Headquarter at Udhampur. On the request of respondent No. 4, the Commanding Officer agreed to arrange one team of swimmers from 9 Engineers Regt., Mammoon Cantt and also to get in touch with Div. Headquarter, Udhampur for the divers. After making the above arrangements, respondent No. 4 and Sub-Divisional Police Officer, Nurpur reached back at Indora at 4.00 a.m. on 29.5.1995. The Army rescue team consisting of six personnel headed by Naib Subedar P.G. Pandiyan reported at Tanda Pattan on 29.5.1995 and joined the rescue operation. In the meantime, it was informed by Div. Headquarter at Udhampur that no divers were available there. A team comprising six divers headed by Bakshi from BBMB was requisitioned by the District Administration which reached Tanda Pattan at 4.00 p.m. on 29.5.1995 and started search/diving operations to fish out the dead bodies of the missing students. On receipt of information of the tragedy, a team of 30 police personnel including one Sub-Inspector of Police and three Assistant Sub-Inspectors of Police were deputed from Dharamshala and reached Police Station, Indora at 7.00 p.m. on 28.5.1995. Fifteen more police personnel reached Police Station, Indora on the morning of 29.5.1995. This force was immediately put on rescue/search operations under the overall command of Sub-Divisional Police Officer, Nurpur on 29.5.1995 along with some Home Guards personnel.

16. Besides the above rescue teams, one rescue party of the local villagers, mobilised by the Pardhan of the Gram Panchayat and Revenue staff, also joined the search operations in the morning of 29.5.1995 and searched the dead bodies of the missing students up to Naushehra Pattan (Punjab). The local villagers of Mand area, where this unfortunate tragedy took place, are very good swimmers. They not only helped the other rescue teams but also searched and combed the river and its bed from Tanda Pattan to Mirthal Bridge thoroughly from 29.5.1995 to 31.5.1995. Even the fishermen with their boats participated in the rescue/search operations for the bodies. The Deputy Commissioner, Gurdaspur had also reached Indora Police Station on the morning of 29.5.1995. He had sent two motor boats to Tanda Pattan at about 2.00 p.m. and these boats were also utilised in the search operations. Four bodies were recovered on 29.5.1995. On 30.5.1995, all the rescue teams again started the rescue/search operations early in the morning. The divers of the BBMB dived in the deep water at various places in search of the dead bodies but without any success.

17. The Sub-Divisional Magistrate, Mukerian and Tehsildar, Mukerian also

rendered help in this tragedy. Search operations were also conducted as per the desire of the parents/relatives of the missing students and it was in this process that dead body of Sanan was recovered near Naushehra Pattan by the Regional Water Sports Centre team. On this, the parents/ relatives of the missing children demanded that the water in the river Beas be got stopped from Pong Reservoir. They also threatened to block the traffic. Dam authorities were contacted at various places and requested for stopping the flow of water. Respondent No. 4 had also to attend to the injured persons involved in H.R.T.C. bus accident that took place on 31.5.1995, taking them to the hospital, providing them medical aid and shifting them to other places. During this time the rescue operations were going on ceaselessly. Some bodies were recovered on 3.6.1995 though the body of Arjun Mahajan could not be found despite best efforts put in by the Himachal Pradesh and Punjab Governments. Magisterial inquiry was ordered by the District Magistrate, Kangra which has since been stopped as the State Government has already ordered a judicial inquiry into the incident.

18. Respondent Nos. 2 and 3 have raised two preliminary objections, namely, that the writ petition is not competent against a private party and that neither question of law nor of fundamental right is involved. On merits, it has been submitted that Dalhousie Public School, Bhadhani was established in 1993. The strength of the school at the time of the accident was 407 students. Each student is charged Rs. 18,050/- per annum. It is admitted that 28.5.1995 was the last Sunday of the month and it was a parents visiting day. The school was opened on 14.5.1995 after a small holiday and was again closed for summer vacations on 11.6.1995. Therefore, many parents were not expected to come to the school and not more than 4/5 parents came on that day. Seventy-seven students went for picnic accompanied by five teachers, almost 15 students under the charge of each teacher. Two women Tara Chappal and Amande Grist were GAP students from England. They were on exchange programme for interaction between different countries and communities. They had come for a term of 4 1/2 months. There is GAP Organisation and is sending students on exchange basis. Besides the teachers and the students, there was bus staff, mess-boys and cook along with the school supplier with the party. It has been denied that some of the staff members were drinking beer etc. and were making merry with the lady teachers and European students. The site of the picnic was selected after proper investigation. In fact, a few days earlier, students of some other classes had gone for picnic at this place and they were satisfied about the experience. The river water at the site of selection was very shallow and ankle deep and at most of the places less than this. It was possible to cross the river by walking. The staff was strictly directed not to allow the children to go beyond the specified places where the boys had earlier gone for picnic. It has been admitted that there were not many trees in the region, however, tents were arranged to provide shadow to the students for enjoyment. There was no negligence on the part of any body. Almost all the teachers and staff members of the party tried to save the drowning children. The allegation that Swinder Pal Singh, D.P.E., was

intoxicated, kicked the ball into the river and asked the children to bring the same back, is denied. The parents of the children are giving exaggerated version of the incident intentionally in order to establish the fault of Surinder Pal Singh, D.P.E. However, the matter is under investigation by the Central Bureau of Investigation and the Sessions Judge, Kangra.

19. On the day of occurrence, five children could be recovered in the evening. Out of them, two were still alive and were sent to the hospital in the car of Kalyan Singh whose two grand-children were also students of this school and were in the picnic party, but, they were not involved in the accident. The site in question was also selected partly at the instance of Kalyan Singh whose village is located nearby and he had requested the administration that the children be sent to the open place near his farm and he would also be of some help in entertaining the students. Unfortunately, the sudden flow of water was such that partial success could be achieved. The children were retrieved by the staff members and not by Man Singh. The school management had not been rude to the parents as alleged. Rather, they were told that the children had been sent to picnic and would be returning by 5.00 p.m.

20. When respondent No. 2 learnt about the happening at 4.45 p.m., he immediately rushed to the spot. On the way, he met the children in the bus who were not involved in the accident and were returning to the school. The driver of the bus gave detailed account of the incident. On reaching the spot, he was told that seven children were recovered out of which two were alive and had been sent to the hospital in the car of Kalyan Singh. Respondent No. 2 returned to the school at about 7.15 p.m. after issuing necessary instructions for taking some steps at the spot. The parents were informed telephonically as soon as their addresses were ascertained from the record and it is wrong to say that five children were alive out of which three died due to the negligence of the members of the staff. Respondent No. 2 remained at the spot till the time it was necessary and returned to the school for making arrangements for informing the parents.

21. The news of the tragedy spread like a wild fire. Many people from nearby places came to the spot. The matter was reported to the police immediately. The bodies were in the police station which could not be subjected to post-mortem examination due to the resistance of their parents claiming them immediately. Surinder Pal Singh, D.P.E., was examined at the police station. He was not found to have taken liquor during the day. Respondent No. 4 and other police officials also visited the spot to supervise the rescue operations and completed the formalities. The dead bodies of the children were kept on ice to prevent decomposition. It has been denied that the male members of the staff were intoxicated. No bottle of liquor or beer was recovered from the spot. It has been denied that the first picnic party visiting this site on earlier occasion had been cautioned by Fakrudin, Pardhan of the area not to bring small children to this place because of erratic level and flow of the river water. Had anybody advised the management on these lines, such advice would have been agreed to. It is

also stated that Gurkirat Singh had failed in IV Class while his class-fellows had gone to the higher class. He requested the Headmaster that he may be permitted to join the picnic because his old class-fellows were going to join the picnic, therefore, he was allowed to go with the picnic party. Since this boy belonged to the village of the answering respondent, there was no malice in taking him in the picnic party. Claim for compensation has been denied and it is also submitted that this Court has no jurisdiction to grant compensation without holding regular trial.

22. Through the reply-affidavit dated 8.1.1996 of S.N. Verma, Commissioner-cum-Secretary (Home) to the Government of Himachal Pradesh it has been submitted that on receipt of information regarding the tragedy, the Government took rescue operations expeditiously as pointed out by respondent No. 4. Subsequently, a judicial probe was ordered under the Commission of Inquiry Act, 1952 vide order dated 6.7.1995 which is under progress. Besides, this Court ordered inquiry to be conducted by the Central Bureau of Investigation by order dated 2.8.1995. Thus, the judicial inquiry could not be completed. The petitioners have claimed adequate compensation from the school authorities and inquiry by the Central Bureau of Investigation. Since the inquiry by the Central Bureau of Investigation has been ordered by this Court, there is no subsisting claim against the State Government.

23. In the rejoinder, the petitioners have stated that the civil writ petition is maintainable since the institution is performing duties of public nature. The Apex Court has held that writ petition would be maintainable even against private parties which perform functions of public nature. Even otherwise, this writ petition deals with important question regarding the safety of children staying in boarding of the school outside the control of parents and liability of the management for lapses entailing injuries to the students and the parents. Further, this Court can appropriately deal with the matter and award adequate compensation to the aggrieved parents.

24. Although the school charges mentioned in the writ petition do not reflect exaggerated figure, however, even if the statement of the management is accepted, the turn-over in that case also is Rs. 75,00,000/- and parents are required to pay some more amounts during the course of study for miscellaneous and unforeseen expenses. In view of the circular dated 24.4.1995, it is wrong to contend that all the parents were not expected to meet the children on the parents day. It is also wrong to say that the picnic site was selected after proper investigation. In the report of the Sub-Divisional Magistrate dated 5.8.1995, it has been pointed out that the picnic spot was not a fit place for picnic as there was not even a single tree around the radius of one kilometre and tender children of the age group of 10-12 years were not to be exposed to the ferocity of the sun at mid-day in the month of May. It is also stated in this report that it was a dangerous place where rivers like Beas and Ravi are known for their notoriety of human incidents and that both the male teachers, namely,

Shanmugham and Surinder Pal Singh were responsible for gross negligence, unimaginative, cowardly and preposterous conduct which eventually bordered off to the culpable homicide. Further, the Central Bureau of Investigation conducted thorough investigation into the matter and found that the maximum depth of the river near the place was 5-6 feet and the breadth of the river was about 200 feet. Pardhan Fakrudin had warned the school authorities that the place was dangerous, not fit for organising picnic and not to bring children to this place for picnic in future. The negligence of the two male teachers has been established by the report of the Central Bureau of Investigation. It has been denied that there was sudden flow of water which resulted in the tragedy. This assertion is rejected by the report of the Central Bureau of Investigation which collected the data about the volume of water in the river from the Pong Dam authorities. H.G. Garg, Senior Design Engineer, Pong Dam, Talwara has pointed out that the level of water remains constant throughout the day. Allegations against the callous attitude of the management, negligence of the staff members, stated in the petition, have been reiterated and the explanation offered by respondent Nos. 2 and 3 has been denied. The Central Bureau of Investigation has established the negligence of the teachers of the school, therefore, the teachers and the school authorities are liable for this negligent act. The school has employed these teachers with control over their actions being the master. There is master and servant relationship between the two. Consequently, the school is vicariously liable for the act of its employees.

25. These are the material facts of the case.

26. On 2.8.1995, this Court passed the following order after hearing the learned Counsel for the parties:

Heard Mr. H.S. Matewal, Sr. Advocate, for the petitioners, Mr. Indar Singh, Advocate General, for respondent Nos. 1 and 4 and Mr. G.S. Grewal, Sr. Advocate, for respondent Nos. 2 and 3.

Though notice was served on respondent No. 5, none appears. The petition is proceeded ex pane against it.

Learned counsel for the petitioners have prayed for two interim directions, namely, an enquiry by the Central Bureau of Investigation and secondly, interim compensation.

Regarding interim compensation, it will be considered at the appropriate time.

Learned Advocate General has produced before us a Notification dated 6.7.1995 issued by the Government of Himachal Pradesh, Department of Home, appointing a Commission of Inquiry under the Commission of Inquiry Act, 1952, to be conducted by Mr. R.L. Khurana, District and Sessions Judge, Kangra at Dharamsala, and has urged that as this Commission has to enquire all the matters, at this stage, an enquiry by the Central Bureau of Investigation is premature. According to the learned Advocate General, if this Court desires, it

can be done at a subsequent date.

Learned counsel for respondent Nos. 2 and 3 has urged that as the matter has already been enquired into by the above Commission, it is not necessary to direct special investigation by Central Bureau of Investigation. According to the learned Counsel, the said Bureau will also not be able to complete the enquiry within a short time. Of course, learned Counsel has fairly stated that respondent Nos. 2 and 3 are very keen that the culprits should be found out as early as possible and the matter, therefore, requires to be investigated. Learned counsel has further stated that in spite of the fact that the above Notification of the Government of Himachal Pradesh dated 6.7.1995, has been issued, if this Court still feels that an investigation by the Central Bureau of Investigation is necessary, he has no objection.

There is no dispute that in respect of the tragic incident in which 14 young boys lost their lives and body of one boy is yet to be recovered, the first information report was lodged before the Police Station, Indora, on 28.5.1995. Even in spite of the fact that the above notification has been issued by the State Government on 6.7.1995, the investigation has to proceed as it is the bounden duty of the police to take action under the law. We are, *prima facie*, also of the opinion that in view of the various allegations made in the present petition including the alleged criminal negligence and alleged criminal offences, it is in the public interest that immediate steps should be taken at least to collect the evidence immediately so that the culprits, if any, can be brought to book. Though it has been urged that if an enquiry is ordered to be conducted by the Central Bureau of Investigation, it may amount to showing lack of confidence in the State police as the investigation has to be done by the State police under the Criminal Procedure Code. We have no hesitation to record that we have full faith in the State police but in the case in hand, two States are involved, namely, State of Himachal Pradesh and State of Punjab. Therefore, for proper investigation, we are of the opinion that the Central Bureau of Investigation is the appropriate authority to do so.

For the reasons stated above, we direct the Director of the Central Bureau of Investigation, New Delhi, to cause an investigation to be conducted in respect of the tragic incident that took place. This shall be done as early as possible and positively within a period of three months. The report shall be produced before this Court in a sealed cover.

It is needless to say that the Director of the Central Bureau of Investigation shall depute a responsible officer of an appropriate rank to conduct the investigation.

Let the matter come up for orders in the 3rd week of October, 1995. In the meantime, the parties may file reply, rejoinder and sub-rejoinder, if any.

27. Central Bureau of Investigation investigated the matter and filed the report. On 4.1.1996, we passed the following order:

The Central Bureau of Investigation has filed the report in sealed cover as directed by this Court. It is opened in the presence of the learned Counsel for the parties and each page of this report is initialled. Let the Registry supply the copy of this report to learned Counsel of the parties today. The respondent No. 1 may file reply to the writ petition through the Secretary (Home) to the Government of H.P. in place of the Secretary (Education) before the next date.

CMP. No. 4986/95

This application is disposed of since the report has been filed.

Post this matter for further consideration on 9.1.1996.

The parties did not object to the report of the Central Bureau of Investigation at any stage of the hearing of this case.

28. Mr. G.S. Grewal contended that this petition is not maintainable against a privately managed school; secondly, this Court may not award compensation to the petitioners and direct the parties to go to the civil court. In the event of both the contentions being rejected, the respondents represented by him are prepared to pay the compensation of Rs. 50,000/- to each student.

29. In support of the first contention, Mr. G.S. Grewal placed reliance on *Sheik Ghulam Qadir v. State of Jammu and Kashmir* and *Sudhanya Kumar Purkait v. State of West Bengal* 1979 Lab IC 76. Both these decisions cannot be utilized profitably since in the first case the question of jurisdiction was conceded by the opposite ; respom le writ side, while in the second case, the question involved is entirely different.

30. In *Miss. Mohini Jain Vs. State of Karnataka and others*, the Apex Court held that there is right to education available to the citizens flowing out of the conjoined reading of fundamental rights enshrined under Part III of the Constitution and the Directive Principles of State Policy which are fundamental in the governance of the country and have to be read into the fundamental rights. Both being supplementary to each other, State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Right to education becomes a reality if taken under Article 41 read with Article 21 of the Constitution.

31. In para 12 of the judgment the court held that:

(12) "Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from the right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

Further, in para 14, the court said that:

(14) The "Right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Increasing demand for medical education has led to the opening of a large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organisations. These institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. As far back as December 1980 the Indian Medical Association in its 56th All India Medical Conference held at Cuttack on 28-30.12.1980 passed the following resolutions:

The 56th All India Medical Conference views with great concern the attitude of State Governments particularly the State Government of Karnataka in permitting the opening of new medical colleges under various bodies and organisations in utter disregard to the recommendations of Medical Council of India and urges upon the authorities and the Government of Karnataka not to permit the opening of any new medical college by private bodies.

It further condemns the policy of admission on the basis of capitation fees. This commercialisation of medical education endangers the lowering of standards of medical education and encourages bad practice.

Then, in para 18 it has been held that:

(18) Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale...

32. In Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., the Apex Court has held among other things that State can lay down conditions for grant of recognition/affiliation in the case of private, unaided, recognised/affiliated educational institutions performing public duty by imparting education and these institutions have to act fairly and in accordance with the conditions laid down by the State in the matter of admission and charging of fee. Commercialisation of education is not permissible being opposed to public policy and Indian traditions. Such institutions supplement the function of State institutions, therefore, what applies to the main activity, equally applies to the supplemental activity as well.

33. Examining the question of maintainability of writ petition under Article 226 of the Constitution, the court has said in paras 78 and 79 that:

(78) *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, is an interesting case where a writ of mandamus was issued to a private college. In para 12 at page 697 it was held:

(12) The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the management of the college being a trust registered under the Bombay Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention, in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court: (a) *Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain* (1976) 2 SCC 58, (b) *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, In the first of the two cases, the respondent-institution was a Degree College managed by a registered cooperative society. A suit was filed against the college by the dismissed Principal for reinstatement. It was contended that the Executive Committee of the college which was registered under the Cooperative Societies Act and affiliated to the Agra University (and subsequently to Meerut University) was a statutory body. The importance of this contention lies in the fact that in such a case, reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body.

At paras 15 to 20 it was held:

(15) If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant-trust was managing the affiliated college to which public money was being paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not

purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

"(16) The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolve a simpler and more effective procedure". The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review, Lord Denning explains the scope of this "judicial review":

At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are-and who are not- public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.

"(17) There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. "Public authority" for them mean every body which is created by statute-and whose powers and duties are defined by statute. So government departments, local authorities, public authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ in the nature of mandamus. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose."

"(18) Article 226 reads:

Power of High Courts to issue certain writs.-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders and writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

"(19) The scope of this article has been explained by Subba Rao, J., in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*,

This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself.

"(20) The term "authority" used in Article 226, the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of the fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied".

(79) The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the

educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty.

34. Therefore, there is no difficulty in holding that privately managed educational institutions are not simple business houses. They are discharging public duty by imparting education, a function on behalf of the State. For their actions they are amenable to the writ jurisdiction of this Court.

35. In support of the question of entertaining this petition and granting appropriate relief to the petitioners, reference may be made to important decisions like: S.P. Gupta Vs. President of India and Others, ; Rudul Sah v. State of Bihar AIR 1983 SC 1086 ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, ; Sebastian M. Hongray v. Union of India AIR 1984 SC 1026; Bhim Singh, MLA v. State of J&K 1986 ACJ 867 ; M.C. Mehta v. Union of India 1987 ACJ 386 ; A.S. Mittal and Another Vs. State of U.P. and Others, ; Assam Sillimanite Ltd. and another Vs. Union of India and others, ; Smt. Kumari Vs. State of Tamil Nadu and others, Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, ; Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ; Supreme Court Legal Aid Committee Vs. State of Bihar and Others, Thressia v. Kerala State Electricity Board 1987 ACJ 880 ; Rabindra Nath Ghosal Vs. University of Calcutta and others, ; Padma Behari Lal Vs. Orissa State Electricity Board and Another, ; Sita Rani Gupta v. State of Assam 1989 ACJ 348 ; Lalitha v. Director-General of Police 1989 ACJ 655 ; A.K. Vasudeva v. State of Himachal Pradesh ILR (1981) 359; Jaram Singh v. State of Himachal Pradesh 1988 ACJ 1083 ; Kalawati v. State of Himachal Pradesh 1988 ACJ 780 ; Mohan Lal Vs. State of Himachal Pradesh and Another, Radha Singha v. Secretary (PWD) to the Govt. of Himachal Pradesh 1996 (1) SLC 1. In the last two decisions, this Court held that in case sufficient material is available before the court and there are no disputed questions of fact, court has competence to grant appropriate relief fully and finally instead of directing petitioner to approach civil court for full or part of the relief. This view of this Court has been confirmed by the Apex Court in Radha Singha's case. Learned counsel for the respondents did not point out any decision to the contrary nor could urge lack of adequate material for deciding the controversy.

36. As stated, the report from Central Bureau of Investigation was not objected to at any stage of hearing of the case, therefore, the question of payment of compensation has to be decided on the available material after dealing with the question of culpable negligence on the part of the respondents.

37. Central Bureau of Investigation investigated the matter on the direction of this Court. Large number of witnesses have been examined by it. In its report dated 28.12.1995 it is pointed out that the Dalhousie Public School, Bhadhani was established under the Dalhousie Public School Educational Society, registered under the Societies Registration Act, XXI of 1860, with Registrar of Co-operative Societies, Haryana. M.S. Grewal was appointed Chairman-cum-

Secretary of this school and Charanjit Kaur Dhillon as Vice-Chairman. P.S. Grewal, son of M.S. Grewal, Chairman, is the Manager of this school while R. Kennedy is the Headmaster. Extra curricular activities were being organized by the management of the school. Outings/picnics were organised by the management. The outings could be for a day and sometime over-night stay was also arranged, but in that event the school management took permission from the parents of the children. Short picnics, where over-night stay was not planned, permission was not taken from the parents.

38. M.S. Grewal, Chairman, exercised the final authority in respect of the administrative control and the functioning of the school. In respect of extra curricular activities/picnics, all related issues including the suitability of the site were discussed with him by the Headmaster and Manager of the school. The topography of the site, neighbourhood and related data relevant to determine the suitability of the chosen spot was discussed and evaluated before the Chairman gave his approval for outings. If for some reason the spot was not suitable, he was at liberty to refuse permission for organising an outing/picnic at the spot proposed. The staff selected to accompany the children on such picnics/ outings were selected on the basis of their past performance in respect of similar activities.

39. On 27.5.1995, the students of V and VI Classes were informed by the Headmaster that they would be taken for a picnic on 28.5.1995. They were briefed with respect to the articles to be taken by them. S.P. Singh, K. Shanmugham, Anita, Kalpana and Tejinder Kaur were directed to accompany the students. Although a few students were not interested in going for the picnic, yet the Headmaster decided that all the students, excepting the day-students, would go for the picnic. P.S. Grewal, Manager, gave detailed instructions verbally to the students and specifically directed them not to go into the deep waters of the river. R. Kennedy, Headmaster, explained to the teachers and the students the location of the site chosen for outing. S.P. Singh and K. Shanmugham were briefed about the site for the picnic by R. Kennedy. They were told that the site would be the same where picnic was held on 7.5.1995. Both these teachers were directed to inspect the water of the river before the children were asked to enter it.

40. With respect to the picnic site, it is stated that:

(10) The selected site is on the bank of river Beas which flows from the north to south direction. The breadth of the river is approximately 200 ft. Along the bank of the river there is a boat point which provides services to the residents of village Mand Miani. At the boat point steel girders have been dug deep into the river bed in order to moor the boat. These steel girders provide a permanent land mark in order to ascertain the position of the selected site and also the position of the students and the teachers on 28.5.1995. This permanent physical feature is not affected by floods or by shifting of the river bed. During investigation, it has been established that the point selected by the management

for the purpose of outing/ picnic was about 650 ft. towards the north direction from this boat point. On proceeding south from the boat point, in the direction in which the river is flowing there existed an inlet whereby back water zone was formed. The inlet to this back water zone was about 455 ft. due south of the boat point. The back water was almost parallel to the main river and was about 450 ft. in length and about 100 ft. in breadth. In between the back water and the main river there was a finger shaped high ground which jutted into the main river and separated the back waters from the main river. There existed a "Dibber" which was caused by the sudden depression in the river bed, near the finger tip of the high land mass jutting into the main river. The existence of this "Dibber" was known to the local residents of village Mand Miani but perhaps would not be known to an outsider who came to the site. There was no other such "Dibber" existing between the site chosen for the picnic by the management of the Dalhousie Public School and the finger tip of this high land mass jutting into the river. The river bed was even over a distance of about 1100 ft. from the site chosen by the management of the Dalhousie Public School and the tip of the high land mass jutting into the river. The breadth of this high land mass separating the back water zone and the main river, was varying between 75 to 100 ft. Towards the east the river flows along the high bank of village Mand Miani. There was no sandy river bed towards the eastern direction. However, towards the west the sandy river bed extended by about 500 ft. From the western edge of the river bed a road leads to village Mand Tanda and non-agricultural land borders the western bank of the river.

41. Investigation points out that these two teachers entered into the water of the river and inspected the depth. They earmarked the zone in which the children could play and water depth of the river varied from knee-deep to waist-deep. Shanmugham positioned himself at the north end of the selected zone while S.P. Singh remained towards the southern end of the zone. They did not permit any child to stray beyond the points fixed by them. The breadth of this zone was about 100 ft. from the point where the tent had been pitched by the students on arrival at the picnic site. During pre-lunch session, there was no untoward incident since both these teachers had taken due care to survey a safe zone for the students to play and they had positioned themselves at the outer limits of the zone with a view to keep the students within the earmarked zone.

42. After lunch some of the students expressed the desire to have a boat-ride. Roshan Lal, the supplier, arranged for the same. The boat-riders were taken in groups. The fourth group of the students disembarked at a point due south of the boat point. At this point of time, due care and caution was not adopted and these teachers totally lost sight of the fact that they had strayed far down from the safe point which had been selected by them for the students. They did not take the children back to the site inspected and selected by them. They lost control over the activities of the children who started playing over all the area. S.P. Singh took the children and entered into the back water zone area where the water was waist-deep to him. His conduct in asking the children to rescue him

from drowning and at times shouting "snake snake" indicated that he had become oblivious of his duties and unmindful of the fact that he was entrusted with the care of the students aged between 10 and 12 years.

43. The investigation further discloses that the water of the back water zone was muddy and was not liked by the students accompanying S.P. Singh. Consequently, S.P. Singh took the students, who were with him, to the fresh water of the main river at a point near the tip of the finger like high land mass jutting into the river and started playing in the waist-deep water at a distance of about 30 to 40 ft. from the bank of the river. K. Shanmugham was also playing with a small group of boys with him at a distance of about 50 to 60 feet up-stream. It was S.P. Singh who induced the students to catch him as he strayed further down stream into the water of the river. Thereafter, he instigated them to reach the bushes on the west-turn of the bank of the river, further down-stream. The students eagerly followed him to reach the bushes on the western bank. When S.P. Singh entered into the deep water of the "Dibber", he shouted and directed the students to return but it was too late to do so. The depth of the water in the "Dibber" was about 6 to 8 ft. and the average height of the students was in the range of 4 ft. Consequently, they drowned into the deep water of the "Dibber". By and large, with rare exceptions, the students did not know swimming and thus they were not in a position to swim out of the "Dibber" water. They were drowned and their bodies carried down-stream by the current of the river.

44. S.P. Singh did not know swimming. He did not dare to enter into the water of the river from where he had managed to extricate himself. He knew that the students did not know swimming, therefore, it was unbecoming on his part to have instigated the students to enter into the deep water without caring for their safety. K. Shanmugham had also not conducted survey of the site where the incident took place and he was also negligent in allowing the students to play with him about 1100 ft. down-stream from the selected site. There was no sudden increase in the volume of the water in the river as per data collected from Pong Dam record and statement of H.G. Garg, Senior Design Engineer, Pong Dam, Talwara that the discharge of the water in river Beas from Nehar Barrage was 2988 cusecs from 7.00 a.m. on 28.5.1995 to 7 a.m. on 29.5.1995.

45. Information regarding drowning of the students playing with S.P. Singh was first conveyed to K. Shanmugham who shouted for Babloo (the driver of the bus) and mess-boys. K. Shanmugham directed the students with him to come out of the water and proceed towards the selected site where the tent had been pitched. Thereafter, he along with Amarjit Singh Lamba proceeded towards the "Dibber" through the high land mass projecting into the main river. Shanmugham saw some children drowning and he remained a mute spectator although he was the best swimmer in the school, yet he did not enter into the river to rescue the drowning children. Charanjit Singh alias Babloo, driver and Roshan Lal, supplier, reached Shanmugham and jumped into the water. They

could rescue some of the drowning children from the water and were able to recover five children in an unconscious state. Roshan Lal felt necessity of bringing a doctor from Indora and to inform the management, therefore, he left for Indora while Charanjit Singh proceeded further down-stream in search of S.P. Singh who was located at a distance of 72 km. downstream and they spotted the body of Ujjal who was retrieved by Charanjit Singh.

46. Charanjit Singh, with the assistance of Roshan Lal and Gulzar Singh, was able to recover the bodies of Utsav, Varun Sharma, Abhishek, Ankur Mahajan, Manpreet Singh Dhall, Kanav Mahajan and Ujjal Gurpreet. These bodies were examined by Shanmugham and some of the students. It was found that Varun was conscious and restless. Bodies of Abhishek, Manpreet, Kanav and Ankur were found stiff, unconscious and froth coming from their mouths. Vikram Sharma, a student of VI Class, found Utsav grasping for breath and Varun Sharma was conscious. Kalpana found Abhishek unconscious and his jaws tightly closed. Utsav was found conscious but grasping for breath. Ankur Mahajan was unconscious and jaws tightly closed. According to Tejinder Kaur, Utsav and Varun Sharma were in a conscious state and were grasping for breath while Ankur and Abhishek were unconscious and had no movement. Ujjal, Kanav and Manpreet were also unconscious but their faces were covered with sand. The bodies of the students, recovered from downstream, were placed in the trolley of Gulzar Singh and were transported to the point 1 where the bodies of the other students were kept. Thereafter, all these bodies were placed in the shade of bushes. Roshan Lai informed Kalyan Singh Chaudhary whose grandson had also came for the picnic. Kalyan Singh reached at the site with his wife and examined the children in the trolley. He found two of the children having some sign of life and some movement in them. He took both these children in his car to Indora hospital and admitted them there. These children were Varun Sharma and Utsav Mehrotra. Due to timely action by him and the medical aid rendered by Dr. Vijay Mahajan at Pathankot, where they were shifted later on, the lives of both these students could be saved.

47. On receiving the said information through Nirmal Singh, M.S. Grewal, Chairman, proceeded towards the site and found that a crowd had gathered at the site. He was advised by Kalyan Singh Chaudhary to return to the school and inform the parents about the tragedy. Accordingly, M.S. Grewal left for the school and informed the parents who were available at the school at about 7.30 p.m. on the same day.

48. The school management deputed Roshan Lal, Lt. Col. (Retd.) Amaldev Singh, Dharam Singh and Karam Chand to the site and make search for the bodies of the remaining students and also to render all possible help and assistance which may be required. Searching efforts were made for a period of 18 days. For this purpose local divers were also engaged. Bodies of all the children, except that of Arjun Mahajan, were recovered. The parents were informed by the school management after ascertaining their locations. However, the parents did not

agree and complained that either they were not informed or complete details were not provided to them. M.S. Grewal, Chairman, stated that he met some of the parents. However, he was advised by the Deputy Commissioner, Gurdaspur, his relatives and friends that as the parents were very much agitated, they may cause harm to his body, therefore, he deputed senior boys of the school, Headmaster to render all possible help to the parents besides deputing some other persons and officials. Investigation reveals that the parents, police and the persons deputed by the school management, conducted search operations at the site.

49. The maximum depth of the river at the site where the tents were pitched, gradually increases from ankle-deep to 5 to 6 ft. towards the Mand Miani banks. The breadth of the river near the tent point was about 200 ft., at the boat point it varied from ankle-deep to 6 to 8 ft. and maximum 8 to 10 ft. The existence of the river has been established. It was 6 to 8 ft. deep. The management had organised a picnic on 7.5.1995 at the same site. It was of students from VII, VIII and IX Classes and was under the supervision of P.S. Grewal, Manager, Rupam, Welfare Officer, R. Kennedy, Headmaster, Rajesh, Andriya, Preeti, Roshan Lal, Nirmal Singh, Charanjit Singh and some mess-boys. The picnic was free of any tragic incident. There is no evidence of consumption of liquor by S.P. Singh or K. Shanmugham. It is denied by Varun Sharma and Vikram Verma and report of Forensic Science Laboratory, Shimla. The allegation of intentionally killing of the students by the management has not been established.

50. Now, it is necessary to quote some important conclusions of this report contained in paras 35, 39, 40 and 41:

(35) During the course of investigation it has been established that at the chosen site the water of the river was ankle deep. In respect of the picnic held at this site on 7.5.1995, when the students remained confined to the selected site, no untoward incident took place. In respect of picnic held on 28.5.1995 in the pre-lunch session, the teachers were vigilant and kept the students confined near about the selected site. No untoward incident took place at this time. In the post-lunch session K. Shanmugham and Surinder Pal Singh strayed down-stream by about 1100 ft. Both Shanmugham and Surinder Pal Singh allowed the children to play without examining the depth of the water. S.P. Singh instigated the children with him to reach the bushes on the western bank of the river and a race ensued. In this process the children along with S.P. Singh entered into deep waters of the "Dibber" which resulted in their drowning.

(39) In respect of the role played by the teachers who had accompanied the students for the picnic/outing, it is established on the basis of the statements of the students that S.P. Singh and Shanmugham were with the boys who had gone for the picnic at the site of the river, and the lady teachers were with the girls who had gone for the picnic. The girls remained confined to the spot which had been selected by the management for the picnic and no untoward incident took place at this spot. However, both S.P. Singh and K. Shanmugham, after lunch

strayed downstream along with the boys. S.P. Singh along with a group of boys strayed about 1100 ft. down-stream while Shanmugham was at a point about 1000 ft. down-stream from the selected site. The point to which they had strayed was unfortunately the point where the river bed suddenly dipped to form a "Dibber". S.P. Singh encouraged the boys to catch him and he proceeded into deeper waters. The boys followed him. The depth of the water had not been examined at this point by Shanmugham and S.P. Singh. Thereafter, S.P. Singh instigated the boys to traverse the river bed to a point on the western river bank where there were bushes. He thereby initiated a race to reach the bushes on the bank of the river. This act was negligent and careless especially in the light of the fact that the children were of 10 to 12 years of age. Suddenly, S.P. Singh followed by the students entered the "Dibber" where the water was about 6/8 ft. in depth. As none of the boys was knowing swimming, therefore, they drowned and their dead bodies were subsequently washed down stream. It is in evidence that S.P. Singh did not know swimming. Shanmugham who knew swimming, for inexplicable reasons did not make any attempt to rescue the children. Thus, primarily the failure to exercise proper care and caution rests with S.P. Singh and K. Shanmugham who had first strayed down-stream to a distance of 1100 ft. despite instructions of the school Headmaster Kennedy regarding the selected site. Thereafter S.P. Singh prompted at first the students to catch him and thereafter to race to the bushes on the western river bank and thereby he proceeded into deeper waters. Neither Shanmugham nor S.P. Singh had examined the depth of water at this site. At the same time Shanmugham could have also realised his responsibility and he could have advised S.P. Singh that they had strayed downstream from the selected site and, therefore, should return back. Thus, both S.P. Singh and K. Shanmugham without exercising due care and caution took the boy students into waters whose depth they did not know. Hence, they are both responsible for acting in a rash and negligent manner.

(40) In the light of the discussion above both S.P. Singh and K. Shanmugham are responsible for having strayed down from the selected site into uncharted waters. At the same time the conduct of S.P. Singh when he prompted the boys to catch him and to race to the bushes on the western river bank down-stream and in the process he proceeded ahead of the boys and entered into deep water is more grievous.

(41) To conclude investigations have established that the death of 14 students by drowning was caused by the rash and negligent acts of firstly allowing the students to stray down-stream by about 1100 ft. and enter into the uncharted waters and secondly, due to direct instigation by Surinder Pal Singh whereby the students in their efforts to catch him and thereafter to race to the bushes on the western river bank down stream, entered into the water of "Dibber" and were drowned as the depth of the river water exceeded their average height. The investigation has thus prima facie established the commission of offences u/s 304-A of Indian Penal Code by S.P. Singh, Director Physical Education, Dalhousie Public School and K. Shanmugham, teacher, Dalhousie Public School, Bhadhani.

51. The matter has been considered comprehensively and carefully. Dalhousie Public School, Bhadhani has been established by the Dalhousie Public School Educational Society registered under the Societies Registration Act, XXI of 1860. It is practically an institution started and managed by a family which has complete dominance over it. Number of students in this school is reasonably high, so are the expenses for receiving education. M.S. Grewal is the Chairman. He has complete administrative control over the functioning of the school. Extra curricula!" activities including picnics/outings are sanctioned by him. Contention that staff used to be selected for accompanying students to such picnics/outings on the basis of their past performance in respect of their similar activities and the places of such picnics/ outings settled after taking into consideration their topography, neighbourhood and other suitability factors, is patently wrong since the teachers who accompanied this picnic party had no past experience of such activities. They had not visited this site in the past. There is no evidence pointing out who selected this site for outings/ picnics for the students of this school. It may be true that these factors are relevant before sanctioning picnics/outings for students but they were not taken into consideration by the Chairman before the students were taken to this place for the picnic. Simply because picnic of 7.5.1995 succeeded without any tragedy that does not mean that the place was good for future as well. It may be pointed out that in the picnic of 7.5.1995 the students were of higher age groups since they belonged to VII, VIII and IX Classes and they were looked after by the Manager and Headmaster of the school themselves. Surinder Pal Singh and K. Shanmugham were not members of this picnic party, therefore, they did not know anything about this area. In these circumstances, the responsibility of the Chairman was greater since the staff accompanying the students were unknown to the place and the students were between the age group of 10 and 12 years with height in the range of 4 ft. Submission that the staff and the students were instructed about the place verbally, is hardly convincing. The students and the staff did not know anything about that place, therefore, telling them about it was of no consequence even if it is accepted that some oral instructions were imparted to the students and the staff before they were taken to the place for picnic.

52. As a matter of fact, this was not at all a fit site for taking students of tender age for picnic. It is an unknown place and was not visited by outsiders for picnics. Rather, facts point out that it is a strange place with little vegetation and forest for a big patch. Hardly a few bushes are growing at some distance. Therefore, taking the students to this place for picnic is the greatest blunder of the Chairman and the management. Beas river is known for its fury and damage to life and property. There is no reason why the statement of Fakrudin, Pardhan of the area that he had cautioned the teachers of the school not to bring small children to this place because of the erratic level and uncertain flow of the water of the river, is rejected since it is supported by surroundings of the place and the way the river is flowing at this site. The contention that the river water at the site selected for picnic was ankle-deep or lesser than that is totally wrong. Assuming

that it is so, but it could become dangerous at any time since Pong Dam authorities could release water without any notice. Further, deep waters started immediately after this site. There could be no guarantee that the students would not stray away from the selected site and get into the deep waters as happened in the present case. The Chairman as well as the teachers knew very well that the students did not know swimming. Asking them to play in the flowing river with shoes is something which no sane person would do.

53. Central Bureau of Investigation has clearly recorded that after lunch, Surinder Pal Singh and K. Shanmugham did not exercise proper control over the students who started playing over the whole area. They took the students outside the selected site quite far away from the safe zone and asked the students to follow them. The students were taken to deep waters with the result that they were drowned and were washed away by the swift current of the river water. Negligence of these teachers has been fixed by the C.B.I, in paras 35, 39, 40 and 41 quoted extensively in the preceding part of this judgment.

54. After having done the damage, the work of retrieving the bodies from the river was undertaken. Effort is there on the part of the management to demonstrate that most of the bodies were recovered at the instance of their officials, but this aspect of the matter is not very essential since it is noticeable, that many diving parties conducted rescue operations at this place. State of Himachal Pradesh took prompt action for dealing with this tragedy at various stages. The Deputy Commissioner, Gurdaspur and his officials also came forward to extend helping hand. Lives of some students could be saved with the help rendered by Kalyan Singh Chaudhary and the doctor at Pathankot. But, the conduct of M.S. Grewal, Chairman, has not been up to the mark. Although he has stated that he reached the spot on receiving the information and returned after giving appropriate instructions to the staff at the site to get in touch with the parents of the students, yet there is complete lack of initiative and courage on his part. Though he says that he returned on the advice of Deputy Commissioner, his relatives and friends since the parents were very much agitated and could cause harm to his body, but it is not supported by any other evidence and has to be rejected. As a matter of fact, he had no courage to face the situation which was his own creation in allowing the picnic at such a dangerous place on a day meant for the parents to meet their children. The tragedy could have been avoided had he (Chairman) followed the rules of the school providing for the meeting of the children by the parents/guardians on 28.5.1995 being the last Sunday of the month (Annexure P-I). Violation of this rule also makes the Chairman, management and the institution liable to pay compensation to the parents of the deceased children.

55. Consequently, taking into consideration the statements made on affidavits by the parties and the report by the Central Bureau of Investigation, we hold that the respondent Nos. 2 and 3 are responsible for the tragedy which could not have taken place but for the negligence displayed by them. Therefore, Dalhousie

Public School, Bhadhani; M.S. Grewal Chairman-cum-Secretary; Charanjit Kaur Dhillon, Vice-Chairman and P.S. Grewal, Manager, are responsible for their own negligence and for the acts of negligence of S.P. Singh and K. Shanmugham being their servants and acting in the course of employment, so they are liable to pay compensation to the parents of the deceased children.

56. On the quantum of compensation, Mr. H.S. Matewal, learned senior counsel for the petitioners contended that the Management be directed to pay compensation of Rs. 10,00,000/- to the parents of each student. For assessing the compensation, learned senior counsel urged that the students belonged to good families and had very high chances of taking up of good assignments after completing their studies. The school is highly reputed and its charges are quite high.

57. The opposite side contended that the offer of compensation made by it is quite reasonable and payment of this compensation should satisfy the petitioners. Reference was also made to *Bimla Devi v. National Insurance Co. Ltd.* 1988 ACJ 981 . This decision hardly deals with payment of compensation in a case of this nature. Perusal of this judgment further discloses that the approach of the courts in awarding compensation under Motor Vehicles Act has not been uniform with respect to death of children of tender age group. No precedent was brought to our notice by either side dealing with determination and payment of compensation in a case where claim for compensation is based on negligence. Therefore, precedents, even if available, may not satisfy the requirements of a fresh case. Learned counsel for the petitioners placed some material disclosing their sources of income, yearly expenditure on the children and the future assignments expected from them after completing the studies.

58. We have considered the rival submissions of the learned Counsel for the parties on this aspect. Of late, there has been unprecedented spurt in the opening of schools here and there with primary object of earning huge income with hardly any real emphasis on proper education. Under the gale of "public school" large amounts of fee are being charged by the managements of these schools from the helpless parents without being responsible to the parents for the lapses that may be committed by them without understanding that their position is that of loco parentis. It is high time that appropriate Governments) controls the mushroom growth of these institutions and makes them discharge their functions rightly and with responsibilities.

59. Question is what compensation should be awarded to the parents of the deceased children, although, the loss sustained by the parents due to the negligence of the school management, Chairman and the staff is of great magnitude and cannot be exactly compensated in terms of money, however, we feel that awarding of reasonable amount of compensation may set off their agony to some extent. Therefore, taking into consideration all the facts and circumstances of this case, submissions of respective parties, the Chairman and management of the school are directed to pay compensation of Rs. 5,00,000/- to

each parent of 14 students who died in this tragedy due to their sheer negligence and Rs. 30,000/- each to the parents of Varun Sharma and Utsav Mehrotra who could be saved but had to suffer tremendously. The amounts of compensation be paid within two months with interest at the rate of 12 per cent per annum from 28.5.1995 by depositing the same in the Registry of this Court.

60. No other point was urged by the learned Counsel for the parties.

61. The writ petition is, therefore, allowed in the terms aforesaid with cost of Rs. 2,000/- payable to each petitioner. The investigation and trial of the criminal cases registered by police, be completed within two months from today, if not already done and disposed of by the trial court