
(2009) 02 BOM CK 0123
In the Bombay High Court
Case No : Writ Petition No. 162 of 2003

George Dias and Mrs. Marceline Dias	Vs	APPELLANT
Don Bosco Boarding and Others		RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2009) 02 BOM CK 0123

Hon'ble Judges : P.B. Majmudar, J;N.A. Britto, J

Bench : Division Bench

Advocate : Manish D. Salkar, for the Appellant; M.S. Joshi, for Respondents No. 1 and 2 and A. Kamat, Additional Government Advocate for Respondents No. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Majmudar, J.—The petitioners are the unfortunate parents of the deceased Roy Dias who died due to drowning in the sea at Calangute. The petitioners' son was a boarder in respondent No. 1. The petitioners are residing at Mumbai. As per the averments made in the petition, respondent No. 1 is a trust, which also manages respondent No. 2 English Medium School. The deceased son of the petitioners was aged 17 years at the relevant time and as per the averments made in the petition, he was the only son of the petitioners. It is the case of the petitioners that on 9.9.2001, they received a telephonic message from the Boarding Authority that their son Master Roy Dias expired on account of an accident. On hearing the said news, petitioner No. 1 rushed to Goa from Mumbai. The dead body of the deceased Roy Dias was handed over to petitioner No. 1. Petitioner No. 1 was informed by the Boarding Authority that his son died on account of drowning in the sea between 12.00 noon 3.00 p.m. and his body was fished out of the sea water with the help of a helicopter. It is also the case of the petitioners that on inquiry, the petitioner came to know that his son and others had left the hostel without informing the hostel Superintendent and out of 7

students, 5 had gone for swimming and out of 5 students, 3 students including the son of the petitioners got drowned in the sea. The dead body of the deceased son of the petitioners was, there after, taken to Mumbai. The petitioners, thereafter, obtained death certificate of their son. According to the petitioners, their son died because of carelessness and negligence on the part of respondent No. 1 and notice was also sent by the petitioner through their Advocate asking respondents No. 1 and 2 to pay the compensation. The Boarding Authority denied the allegations in the notice through its reply. The petitioners, ultimately, approached this Court with a prayer that an independent commission may be appointed for investigating the incident in question. It is also prayed that respondents No. 1 and 2 maybe directed to pay Rs. 20,00,000/- by way of compensation to the petitioners which is claimed towards the loss of pecuniary benefits.

2. The petition has been resisted by the respondents. On an earlier occasion, the petitioners had filed a writ petition being Writ Petition No. 90/2002. The said writ petition was disposed off by a Division Bench of this Court vide its Order dated 2.4.2002. The Division Bench permitted the petitioners to withdraw the petition with a view to file appropriate proceedings in accordance with law, including filing of a complaint before the appropriate Authority. Subsequently, an inquiry was conducted by a Police Officer. Gist of the said inquiry proceedings was given to the Advocate of the petitioners at Mumbai. The same is finding place at pages 81 onwards of the paper book. Thereafter, a fresh inquiry was conducted by the Sub-Divisional Police Officer, Mapusa which revealed that there is no evidence on record to prove negligence on the part of the Boarding Management. In the said report, it is mentioned that one of the survivors of the tragedy in his statement has stated that there was a Life Guard present at the beach at the time of unfortunate incident and there was a caution board displayed at the beach. It was, therefore, found that the Calangute Panchayat cannot be said to be negligent in connection with the tragedy in question. The report further states that the drowning of the boys was an unfortunate incident and no one else was responsible for the tragedy.

3. The learned Counsel for the petitioners submitted that respondent No. 1 has framed various regulations framed and regulation 8, inter alia, provides that ? Boarders will not be permitted to go out for haircuts, shopping, chapel feasts, birthdays, attend a wedding of a relative etc.? Relying on the said regulations, it is submitted by the learned Counsel for the petitioners submitted that respondent No. 1 should not have permitted the students to go out of the premises. During the course of hearing, however, it is pointed out that the petitioners' son had taken permission for going out of the premises for the purpose of repairing his watch. However, the petitioners' son instead of going for repairing his watch, went to the beach along with other boys for the purpose of swimming. The petitioners' son was about 17 years of age at the time of incident. It cannot, therefore, be said that he was of very tender age and, in fact, he had taken permission for going out for the purpose of repairing his watch and he

instead of going for repairing his watch, he went to the beach for the purpose of swimming. Considering the said aspect, it cannot be said that simply because the Boarding Authority gave permission to the petitioners' son for going out of the premises for the purpose of repairing his watch, the Boarding Authority was negligent in connection with the incident which had occurred on the relevant day.

4. It is required to be noted that in a given case if there is a breach of regulations, that fact itself is not sufficient to hold that respondents No. 1 and 2 are negligent in connection with the incident which occurred. There is nothing on record to show that respondents No. 1 and 2 are negligent regarding the incident of drowning. It is required to be noted that respondents No. 1 and 2 cannot be said to be 'the State' within the meaning of Article 12 of the Constitution of India, as same is private institution and there is nothing on record to suggest that it is an aided institution. It is further required to be noted that an inquiry in connection with the incident was also handed over to S.D.P.O. who, after, recording statements of witnesses, which included the statement of one of the surviving students, submitted his report and in his report, he had stated that no one is negligent for the incident which took place on the relevant day. As stated earlier even, if, there is a breach on the part of the institution, that by itself cannot be a conclusive proof of negligence. At the most, it may be a breach or violation of any Circular or Regulation and in order to establish the negligence, something more is required to be proved.

4. Apart from the aforesaid aspect, in our view, the issue whether the Boarding Authority was negligent or not, cannot be decided by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India. It is required to be noted that there is a report of the Sub-Divisional Police Officer, Mapusa who, after recording statements of witnesses, including the statement of one of the surviving students, prepared a report stating that no one is negligent in the unfortunate incident which took place on the relevant date. Even if the contention of the learned Counsel for the petitioners is accepted that as per the Regulations framed by the Boarding Authority, the Boarders could not be allowed to go out of the boarding premises, in our view, that itself cannot be a conclusive fact for arriving at a conclusion that respondent No. 1 was negligent.

5. The learned Counsel for the petitioners has relied upon a decision of the Supreme Court in the case of *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, . So far as the facts of the said case before the Supreme Court are concerned, it was a case where 14 students studying in 4th, 5th and 6th standards were taken for a picnic on the bank of a river. Those students were of very tender age. In the said case, even inquiry was conducted and the teachers of the school were found to be negligent. In the said case, a picnic was organized on a bank of river and considering the above aspect of the matter, the teachers were found to be negligent. By vicarious liability, the School Authorities were also found to be negligent, as appropriate care which was required to be taken, was not taken. In paragraph 16, the Supreme Court has observed as under:

16. Duty of care varies from situation to situation -whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation there from can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular saying will not be sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults: Children need much stricter care.

In the said case, an inquiry was held and negligence was also proved. The students in the said case were of 4th, 5th and 6th standards. The learned Counsel for the respondents has submitted that when a student of about 17 years of age requests the Authority that he may be allowed to go out for some time to carry our repairs of his watch, it was not excepted of the respondents to doubt his statement and considering the report of the S.D.P.O. wherein he has found that no body was negligent for the incident in question, this Court, cannot grant any relief to the petitioners as prayed for in this petition. Whether in a given case, the authority was negligent or not, has to be decided on the basis of evidence that is made available on record. In the absence of positive evidence in this behalf, in a writ petition under Article 226 of the Constitution of India, this Court cannot give any direction about payment of compensation.

6. Considering the aforesaid aspects, no relief can be granted to the petitioners in this petition. It is also required to be noted that earlier the petitioners had also filed a writ petition before this Court which they had ultimately withdrawn with a view to follow appropriate remedy. In that view of the mater, on the similar prayer this writ petition which is filed, may not be maintainable. However, since we have examined the merits of the case, we are not inclined to dismiss the petition only on the ground that the earlier petition was withdrawn, and that this petition is not maintainable. We are satisfied that the prayers made by the petitioners cannot be granted by this Court for the reasons stated above.

7. The petition is, accordingly, dismissed. Rule discharged.