
(2022) 08 OHC CK 0109
In the Orissa High Court
Case No : Writ Petition (Civil) No.7584 Of 2014

Madhav Soren

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 39(f), 45

Citation : (2022) 08 OHC CK 0109

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Prabir Kumar Das, Ishwar Mohanty

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ.

1. Aggrieved by the unfortunate death of a young girl who was crushed to death by the collapse of a kitchen side wall in the premises of Kolhabeda Ashram School, the father of the deceased has filed this writ petition seeking compensation for her death.

2. The facts are that the Petitioner's daughter, Raimati Soren, was a student of Class-I at Kolhabeda Ashram School under Ghasipura Block in the district of Keonjhar. She was staying in the hostel of the said school. On 3rd October, 2013 at about 6.45 am, while Raimati and some other students were brushing their teeth near a newly constructed kitchen shed, the side wall of the said kitchen collapsed. While other students managed to escape, Raimati was crushed under the falling wall. She was rushed to the Community Health Center (CHC) at Keshadurapal and she was declared brought dead by the doctor.

3. After being informed by the Head Sevak, the Petitioner arrived at the said CHC and took the body of his daughter to the Sub-Divisional Hospital, Anandapur where the post-mortem was conducted.

4. At the level of the Government, an inquiry was conducted into her death. At the level of the Panchayat Samiti Office, the preliminary report prepared by the Block Development Officer, Ghasipura, the GPTA In-Charge Radhikadeipur and the in-charge SEO of Ghasipura Block stated as under:

"GTPA of Radhikadeipur GP on that spot told cause of collapse due to without proper foundation and cementing of bricks through mud and heavy tile roof. In that school campus there are two good rooms are there lying vacant those could have been put to use for kitchen and there was no need to construct a new unsafe temporary structure whose construction started 6 days back only. Hence, Headmaster Sri Sanatan Naik and SMC must not take such kind of decision to construct this for which this tragedy occurred. Please take necessary action at your end to give financial assistance to the poor family and punishment to the culprits."

5. A recommendation was made by the Panchayat Samiti for providing financial assistance to the family of the victim girl from the side of the SC and ST Development Section in the Office of the Collector. A letter was addressed to the Director-cum-Additional Secretary to Government by the District Welfare Officer, Keonjhar that the family had been given monetary relief of Rs.10,000/- out of the 'Red Cross Fund'. This letter also noted "the construction collapsed due to improper foundation and joint of bricks by mud."

6. In response to the notice issued in the present petition by this Court on 24th April, 2014; a reply has been filed by the DWO, Keonjhar stating inter alia that the Petitioner had been provided with ex gratia sum of Rs.50,000/- apart from Rs.10,000/- paid out of the District Red Cross Society Fund. It is pointed out that the In-charge Head Sevak of the Ashram School was placed under suspension for negligence committed by constructing a kitchen shed without obtaining permission from the competent authority as well as without any technical support.

7. It is contended that the death of the child occurred due to "an accident" and that as many as 175 students were pursuing their studies at the School of which 110 students were boarders. It is claimed that the Government in SC and ST Department has taken note of such occurrence and issued a set of guidelines to prevent such an incident in future. Reference has been made to a letter dated 25th May, 2013 addressed by the Odisha Primary Education Programme Authority (OPEPA) to all the District Project Coordinators, in which, after referring to the judgment of this Court in *Prabir Kumar Das v. State of Odisha* 2013 (I) OLR 154, the following instructions have been issued:

"As per the subject under reference you are requested to check the structural safety and adequacy of all school buildings under your respective jurisdictions before the onset of monsoon positively. In case any building is found to be dilapidated, structurally unsafe which may create potential danger to the life of the students should be abandoned forthwith and immediate alternate

arrangement should be made for the students. The Headmasters should be instructed accordingly not to use those unsafe buildings for any purpose.

Further, steps should be taken to ensure the availability of safe drinking water to all the students of the schools and the dedicated source which is available in the school premises needs to be tested before and after the monsoon of every year."

8. This Court has heard the submissions of Mr. Prabir Kumar Das, learned counsel appearing for the Petitioner, and Mr. Ishwar Mohanty, learned Additional Standing Counsel for the State-Opposite Parties.

9. The death of an innocent school going child in the present case appears to be in the pattern of several similar instances in the Schools in Odisha. In the earlier decision referred to i.e. *Prabir Kumar Das v. State of Odisha* (supra), the Court was dealing with two writ petitions. In the first one, the factual context was the unfortunate death of seven children below five years due to the collapse of a wall of the Anganwadi Centre at Nelia Upper Primary Centre at Suansia under Ranpur Block in the district of Nayagarh on 9th July, 2012 at 11 am. The second writ petition was regarding the death of a four-year old pre-school going girl child who lost her life on 7th September, 2011 after falling into the main water channel in Sutahat area of Cuttack city when she was in the local pre-School centre. In those cases, apart from the immediate ex gratia amount of Rs.10,000/-, the Government had given a compensation of Rs.1,00,000/- to the families of each of the victims. This Court directed a sum of Rs.5,00,000/- to be paid to the parents of each deceased child.

10. In *Prabir Kumar Das v. State of Odisha* (supra), this Court discussed the decisions in *Consumer Education and Research Center v. Union of India* AIR 1995 SC 922, *Rudul Sah v. State of Bihar* AIR 1983 SC 1086 and *Kumari (Smt). v. State of Tamil Nadu* AIR 1992 SC 2069 and held that the parents of the deceased children were entitled to compensation due to the negligence on the part of the State functionaries and that State is liable to pay compensation. After noting the instructions issued by the State, this Court directed that those instructions should be implemented in letter and spirit and adequate safety measures ought to be taken "so that no child dies/suffers injuries in any incident like the present one." Further, the State was directed "to take proper action against its functionaries, who are responsible for the said shocking incident in accordance with law." The State was further directed to bear all the medical expenses of the injured children.

11. On 30th September, 2021 this Court delivered a judgment in W.P.(C) No.24882 of 2012 (*Jambeswar Naik v. State of Odisha*) in the context of the tragic death that occurred on 7th September, 2012 of two innocent young children, aged about 4 years, in an Anganwadi Center, as a result of falling into open water-logged pits that had been excavated in the premises of the school and left unguarded. This Court referred to a large number of decisions of the Supreme Court and this Court as well as the High Courts and directed that a sum

of Rs.10,00,000/- be paid to the Petitioners i.e. the fathers of the respective children, after finding that they had died due to the negligence of the authorities entrusted with the management of the school.

12. In *Jambeswar Naik v. State of Odisha* (supra), this Court referred to the order dated 11th February, 2010 of the Supreme Court of India in W.P.(C) No.36 of 2009 (*In Re : Measures for Prevention of Fatal Accidents of Small Children due to their falling into abandoned bore wells and tube wells v. Union of India*) in the context of children getting trapped in unguarded bore wells. This Court in its judgment in *Jambeswar Nayak* (supra) thereafter observed as under:

"17. As part of the right to education of young children, it is within the ambit of Article 45 of the Constitution, which requires the State to "endeavour to provide early childhood care and education for all children until they complete the age of six years", that a safe and secure environment is provided even to children attending AWCs. On a conjoint reading of Article 21, 39(f) and Article 45 of the Constitution read with Section 11 of the Right to Education Act it appears that the right to life and the right to education of children encompasses all elements that comprise the receiving of education in a healthy and safe environment. There is a corresponding duty and responsibility of the State on a collective reading of Articles 45 and 21 of the Constitution of India to make necessary arrangements for early childhood care and education for all children till they attain the age of six years and to prepare children above three years for elementary education.

18. The liability of the State to provide reparation for constitutional torts arising from acts of omission and commission of state entities has been recognised by the Supreme Court of India and the High Courts in a series of decisions beginning with *Rudul Sah v. State of Bihar* AIR 1983 SC 1086 followed by *Smt. Nilabati Behera @ Lalita Behera v. State of Orissa* AIR 1993 SC 1960; *Consumer Education and Research Centre v. Union of India* AIR 1995 SC 922 and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* AIR 1996 SC 2426."

13. After discussing the decisions in *Smt. Nilabati Behera v. State of Odisha* (supra), *Shyam Sundar v. State of Rajasthan* AIR 1974 SC 890 and *Darshan v. Union of India* 1999 (79) DLT 432 this Court in *Jambeswar Naik v. State of Odisha* (supra) held that a clear case has been made out for grant of compensation for violation of the constitutional right to life of the two children, resulting in their avoidable deaths at a very young age.

14. In the present case too, the negligence of the State authorities in using defective materials to construct a kitchen in the school premises has already been established during the enquiry. The death of the young child was totally unnecessary and avoidable. The responsibility for death definitely rests with the State. The death would not have occurred if all the safety measures, that were instructed to be put in place by the State, had been strictly followed.

15. In the circumstances, the Court directs the Opposite Party State to pay the

Petitioner a sum of Rs.10,00,000/- (Rupees Ten Lakhs) as compensation for the death of his seven-year old daughter at Kolhabeda Ashram School. The amount already paid to him by the State earlier may be deducted and the balance sum be paid to the Petitioner within a period of eight weeks from today. The aforesaid amount shall be directly deposited into the bank account of the Petitioner. If there is no such bank account, the Collector will assist the Petitioner in opening a Bank account with a nationalized Bank. The amount shall immediately be placed in a fixed deposit (FD) by the said Bank in the name of the Petitioner for a period of one year. The amount together with the accrued interest will be made available to the Petitioner subject to his wanting to keep the FD renewed for any further period as he may desire.

16. Compliance affidavit shall be filed in this Court by the Collector, Keonjhar not later than 10th October, 2022. If there is non-compliance with the above direction, the Registry will list this matter for appropriate orders. A copy of this judgment shall be delivered to the Collector, Keonjhar through the office of the District Judge, Keonjhar forthwith for compliance.

17. The Court additionally reiterates the directions issued already by the State, which have been noted in the judgment of this Court in *Prabir Kumar Das v. State of Odisha* (supra) and which have been reiterated in the letter dated 25th May, 2013 by the State Project Director, OPEPA to all the District Project Coordinators, RTE-SSA, Odisha. The Court also directs all the Collectors of the Districts in Odisha to ensure strict compliance of the directions of the Supreme Court (*In Re: Measures for Prevention of Fatal Accidents of Small Children due to their falling into abandoned bore wells and tube wells v. Union of India*) (supra). A copy of this judgment shall be circulated to all Collectors. For that purpose, a copy of this judgment be also delivered forthwith to the Principal Secretary to the Government, ST & SC Development Department.

18. The writ petition is disposed of in the above terms.

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