

(2002) 01 MP CK 0023
In the Madhya Pradesh High Court
Case No : Writ Petition No. 662 of 2001

M.P. Human Rights Commission

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Protection of Human Rights Act, 1993 — Section 17(1)

Citation : AIR 2003 MP 17 : (2003) 1 MPLJ 410 : (2002) 4 MPLJ 321

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Anuradha Pandit, for the Appellant; Sanjay Yadav, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The M.P. Human Rights Commission (for short "the Commission") through its Registrar has visited this Court for issue of a writ of certiorari for quashment of the order dated 13-6-2000, Annexure P/9, and to command the respondent Nos. 1 and 2 to implement the recommendations of the Commission contained in Annexure P/7, and further to command the respondent Nos. 1 and 2 to ensure quality outcome in the "Eye-Camps" organised by the District Blindness Control Society (DBCS).

The facts as have been undraped are that under the National Programme for Control of Blindness, the State of M. P. has been organising eye camps with a view to provide comprehensive eye care to the community in the rural areas. The eye camps include surgical camps. The aims and objects of such camps are to provide medical and surgical treatment for the prevention and control of eye diseases including cataract operation and to educate people in methods of prevention of eye diseases and proper care of the eyes in order to ensure better and lasting eye sight. The programme further emphasises that quality outcome

should be of paramount importance. Caution must be exercised to ensure that quality is not sacrificed for quantity. Patient satisfaction and visual outcome will be the ultimate measure of success. Copy of the norms has been brought on record as Annexure P/1, On 13-11-1997 a news regarding negligence on the part of the officials in eye camp organised in Tahsil Sironj was published in local daily, namely, Choutha Sansar. A copy of the said newspaper has been brought on record as Annexure P/2. On 3-12-1997 certain journalists preferred a Joint representation to the Commission indicating that seven patients who had been operated in the eye camp organised on 21-11-1997, had lost their eye-sight.

It is set forth in the petition that the Commission took cognizance of the fact mentioned in the representation and registered the same as a complaint. The Commission proceeded in the matter in accordance with provisions engrafted u/s 17(1) of the Protection of Human Rights Act, 1993 (for the short "the Act") read with Regulation 8 of the State Human Rights Commission (Procedure) Regulations 1996 and called for comments from the competent authority of the State Government. After receiving a report the Commission arrived at the conclusion that the catastrophe occurred due to crass negligence on the part of the officials. It has been put forth in the petition that the respondent No. 1 vide its letter dated 10-8-1999 intimated the Commission that the patients had lost their eye sight due to non-sterilization of operation theatres, absence of supervisory control of operation room, inexperienced staff and inadequate post-operational care. The respondent No. 1 further mentioned that on the basis of the investigation report it has been decided by Council of Ministers to initiate disciplinary action against the concerned officials for the gross negligence on their part, copy of the letter dated 10-8-1999 has been brought on record as Annexure P/6. The Commission after receipt of the Annexure P/6, examined the matter in depth and after taking stock of the fact situation and the sufferings and agony of the patients recommended to the respondent No. 1 to pay a sum of Rs. 10,000/- as an interim compensation to each of the victims. According to the Commission in spite of the recommendation the amount has not been paid. Reminders sent by the Commission have become a Sisyphean endeavour. Ultimately, a communication was sent by the State Government on 13-6-2000, Annexure P/9 indicating that in this type of matters no compensation had been paid on earlier occasion and if compensation is awarded a precedent would be created. It has also been mentioned that the State Government has not been assisted by the Central Government

It is urged in the petition that refusal by the State Government is totally unwarrantable, more so, when it has been admitted that there was blatant negligence. It is also put forth that the State has the sacrosanct obligation to see that the rights of the citizens are protected with due care and meticulousness and it cannot, wriggle out of its responsibility and accountability by taking a spacious plea that it would be a precedent.

A return has been filed by the respondents No. 1 and 2 contending, inter alia,

that the scheme in question Cataract Blindness Control Programme is a world bank aided and funded programme of the Government of India and the responsibility of the execution whereof has been given to the State Government to incur expenditure as per the limits prescribed. It is also admitted that the State Government has formed a State Ophthalmology Cell in the Directorate of the Health Services to carry out and control the implementation of aforesaid programme in the entire State. The State Government has issued detailed guidelines covering all the aspects related to the object functioning of organisation of camps and the norms required to be followed during the course of treatment of the patients attending these camps. It has been put forth that a Surgeon who was Incharge of these patients had organised and issued proper directions but unfortunately 7 out of 12 patients developed complications due to infection, It is also admitted that, after the complication occurred the patients were examined by the experts but nothing much could be done. It is also put forth that the State Government took serious view of the matter and consequently each patient was paid Rs. 1000/- from the Collector's Fund and thereafter Rs. 10,000/- to each patient was paid from the Chief Minister's Relief Fund. It is also admitted that a Committee of experts was directed to carry out necessary investigation and enquiry into the matter and to submit a report. The Government has taken a decision to hold a departmental enquiry against the erring officers for their misconduct and accordingly, chargesheets have been issued to the concerned officers. Various facts have been ascertained to highlight that the State Government has kept itself alive to the cataclysm which has taken place. While so admitting it has been put forth that the Commission is not empowered to impose any damages and once the State Government has paid Rs. 11,000/- no further amount is payable.

It is apposite to state here that this matter was listed on many occasions and the learned Government Advocate took the stand that the amount as recommended has already been paid by the State Government. Thereafter, this Court desired that the competent authority of the Commission should file an affidavit whether the Commission had recommended for payment of Rs. 10,000/- as compensation to each of the patients being conscious of the fact that Rs. 11,000/- has already been paid by the State Government. Thereafter an affidavit was filed highlighting that the Commission had recommended for sanction of relief of Rs. 10,000/- per patient, as an interim measure, being aware that the Chief Minister had taken note of the tragedy into consideration and had awarded a sum of Rs. 10,000/- to each of the victims.

I have heard Miss Anuradha Pandit, learned counsel for the petitioner and Mr. Sanjay Yadav, learned Government Advocate for the respondents Nos. 1 and 2. It is apposite to state here that the respondents No. 3 to 9 are the patients who have suffered in the eye camp and, therefore, this Court did not issue notice to them.

It is submitted by Miss Pandit that the Commission has made recommendation as

an interim measure u/s 18(2) of the Act for grant of such interim relief and the said recommendation was given taking note of the correspondences that had taken place between the Commission and the competent authority of the State Government. The learned counsel has highlighted when the State Government admitted its fault, the Commission was under its lawful obligation to make a recommendation and it was absolutely aware that earlier each of the patients was granted Rs. 11,000/- from the relief fund, as is perceivable from the Annexure P/5 to the writ petition and, therefore, the State Government cannot come forward to say that the Commission was not aware of the aforesaid fact. It is also proposed by her that this Court should finally adjudicate the matter relating to quantum of compensation and not leave the agonised persons to sustain further torment and anguish.

Mr. Sanjay Yadav, learned Govt. Advocate for the State has submitted that the recommendation of the Commission has already been met with and, therefore, nothing survives to be done in the instant petition. It is also put forth by him that when prior to the recommendations of the Commission a positive step was taken by the State Government the Commission was not justified in recommending for grant of further compensation and that apart, the Commission was satisfied with regard to the steps taken by the State. It is also vehemently urged by him that the Commission has no locus standi to ask for further compensation on behalf of the victims.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to Section 17 of the Act. It deals with inquiry into complaints. Section 18 of the Act stipulates steps after inquiry. The said provisions read as under :

17. Inquiry into complaints.-

The Commission while inquiring into the complaints of violations of human rights may-

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it :

Provided that -

(a) if the information or report is not received within the time stipulated by the Commission, It may proceed to inquire into the complaint on its own;

(b) if on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly :

(ii) without prejudice to anything contained in Clause (i), if It considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Steps after inquiry.-

The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely :

- (1) Where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommended to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) subject to the provisions of Clause (5) provide a copy of the inquiry report to the petitioner or his representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may follow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission."

In the present case there is no grievance with regard to the inquiry conducted by the Commission inasmuch as the State itself has conceded to the negligence and callousness that took place in the eye camp. Only grievance is with regard to the quantum. The Commission after taking note of the relief granted by the State Government from the Chief Minister's relief fund recommended for grant of further amount of Rs. 10,000/- as an interim measure. The State speaks in oppugnation of the aforesaid stand.

I have perused the documents which have been brought on record. On a scrutiny of the record, it cannot be said that the Commission was not aware of the grant given by the State Government. The affidavit which has been brought on record speaks eloquently. That apart, Annexure P/5 is dated 17-12-1997. Its contents go a long way to show that the Commission was indubitably aware about the action taken by the State Government. In paragraph 3 of Annexure P/5 it has been mentioned that the Chief Minister of the State had seen the patients in the hospital and financial assistance to the tune of Rs. 10,000/- per patient was granted. Despite the aforesaid fact situation the Commission thought it apposite to recommend that a further sum of Rs. 10,000/-for each patient be granted as an interim measure. Hence, I am of the considered opinion, the Commission was

very much apprized by the relief granted by the Chief Minister, but it thought it apt to recommend for a further sum as the circumstances did so warrant.

At this juncture, I may proceed to state that Miss Anuradha Pandit, learned counsel for the petitioner submitted that Commission has approached this Court for determination of final compensation. A prayer has been made in that regard by filing an application. The learned counsel has commended me to the decision rendered in the case of D.K. Basu Vs. State of West Bengal, : D.K. Basu Vs. State of West Bengal,). The learned counsel has taken me through paragraphs 40 to 45. In the said case their Lordships referred to the decision rendered in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,). The aforesaid decision was rendered on the bedrock of Article 21 of the Constitution as there was custodial violence. In the present case there was no violence but negligence, if I allow myself to say so, colossal. A case of total laxness and indifference. It is urged by Mr. Yadav that Commission cannot ask for compensation on behalf of the patients and there cannot be determination of quantum by this Court in a proceeding of this nature.

The principal question that arises for consideration is whether this Court should determine compensation to be granted by the State to the respondents No. 3 to 7 at the instance of the Commission, and whether the State should be more careful while organising eye camps.

Mr. Yadav, learned counsel for the State has submitted that the petitioner does not have the locus standi to canvass the case of the respondents No. 3 to 7. The aforesaid objection is sans substance inasmuch the Human Rights Commission has been formed with a different purpose.

That apart, Section 12 of the Act deals with the functions of the Commission. It reads as under :

"12. Functions of the Commission.-

The Commission shall perform all or any of the following functions, namely :--

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of -

(i) violation of human rights or abetment thereof: or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution or any law for

the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instrument on human rights and make recommendation for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(3) such other functions as it may consider necessary for the promotion of human rights."

If the objects and reasons of the statute and the relevant provisions are kept in view, it cannot be said by any stretch of imagination that the Commission cannot canvass the cause of the persons who have lost their eye sight. The plea in regard to the locus standi of the petitioner by the learned counsel for the State is in the realm of hypertechnicality. Mr. Yadav, learned Government advocate for the State has urged with all the vehemence at his command that the Human Rights Commission cannot file a writ petition of this nature and the persons who are affected should fight out the litigation in appropriate legal forum to get compensation. In absence of disputed questions of fact and in view of the fact the Human Rights Commission has knocked at the doors of this Court to agitate the cause of the anguished persons, this Court cannot shut its eyes to the factual scenario that has emerged and ask the affected parties to file appropriate application before any other legal forum for obtainment of compensation. In my considered view, the law has marched like a pegasus to override this kind of technical letters. Quite apart from the above, M.P. Human Rights Commission is not a busy body. It has fought for the human cause and in my view rightly. Thus, I am not impressed by the submissions raised by the learned Government Advocate for the State. In fact, such a stance is too late in the day.

It is next contended by Mr. Yadav that quantum cannot be determined in a writ petition and the aggrieved persons should approach the appropriate legal forum.

17-A. Submission of Miss Pandit, learned counsel for the petitioner is that the respondents No. 3 to 7 belong to a different category altogether and they should not be sent to the Civil Court to seek compensation, more so, when the State has admitted the negligence on the part of its officials. In this context, I may profitably reproduce a passage from the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, (supra). It reads as under :

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

In the case of *D.K. Basu Vs. State of West Bengal*, (supra) the Apex Court in paragraphs 42 to 45 held as under :

"42. Article 9(5) of the International Covenant on Civil and political Rights, 1996 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation. Of course, the Government of India at the time of its ratification of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen, (see with advantage *Rudul Sah Vs. State of Bihar and Another*,) *Sebastiam M. Hongray v. Union of India* (AIR 1984 SC 1026); *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, *Saheli, a Women's Resources Centre v. Commr. of Police*. There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judiciously evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*,).

Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In *Nilabati Behera v. State* the decision of this Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*,) wherein the plea of sovereign immunity has been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus :

"In this context, it is sufficient to say that the decision of this Court in *Kasturilal*

upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Article 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of the Court in *Rudul Sah and others*, in that line relate to award of compensation for contravention of fundamental rights, the constitutional remedy under Article 32 and 226 of the Constitution. On the other hand, *Kasturilal* related to the value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights, *Kasturilal* is, therefore, inapplicable in this context and distinguishable."

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

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

I may proceed to state here that the Apex Court in catena of decisions has led

emphasis on the obligation on the part of State for making provisions and taking adequate measures for maintenance of health of the citizens. Number of industries dealing with hazardous substance have been directed to be closed down. The polluting industries have been either directed to be closed down or to take adequate measures so that pollution is eradicated. Emphasis has been laid on the proper maintenance of hospitals. Environment ecology has been given immense priority and the State and its instrumentalities are regarded as the trustees and the age old principle that a trustee cannot betray the trust and act in contravention of the principles of trust have been highlighted. The functionaries of the State cannot behave in such a manner that would frustrate collective goal and corrode the social fabric. It has been stated by the eminent ecologists that, if the present generation behaves in a manner that affects the ecology it lives on the borrowed time of the future generation. In this context I may profitably refer to the decision rendered in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, wherein the Apex Court expressed as under:

"The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the persons seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person indeed of such treatment results in violation of his right to life guaranteed under Article 21. In the instant case there was breach of the said right or a person injured in accident when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of injured person guaranteed under Article 21 was by officers of the State in hospitals run by the State the State cannot avoid its responsibility for such denial of the constitutional right. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the Court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution."

(Quoted from the placitum)

In this regard I may also refer to the decision rendered in the case of Spring Meadows Hospital and Another Vs. Harjol Ahluwalia through K.S. Ahluwalia and Another, wherein it has been ruled thus :

"10. Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of *res ipsa loquitur* can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly."

In this context I may also profitably refer to the decision rendered in the case of *State of Haryana v. V. Smt. Santra*, AIR 2000 SC 1888 wherein a two Judge Bench of the Apex Court laid down as under :

"..... "Negligence" is a tort. Every Doctor who enters into the medical profession has a duty to act with a reasonable degree of care and skill. This is what is known as "implied undertaking" by a member of the medical profession that he would use a fair, reasonable and competent degree or skill. Where a person is guilty of Negligence *per se*, no further proof if needed. The Medical Officers entrusted with the implementation of the Family Programme cannot, by their negligence acts in not performing the complete sterilisation operation, sabotage the scheme of national importance."

(Quoted from the placitum)

I may usefully refer to the decision rendered in the case of *State of Andhra Pradesh v. Challa Ramakrishna Reddy*, AIR 2000 SC 2083. Though delivered in a different context, the Apex Court directed payment of compensation to a prisoner killed in Jail as a result of bomb thrown by the outsiders. To quote their Lordships :

"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the Right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."

(Quoted from the placitum).

In the case of *Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh*, the Apex Court has held that the State is vicariously liable for negligence of its officers. From the aforesaid enunciation of law it is quite vivid that the law in this sphere has taken a marathon speed and marched ahead. In a democratic welfare set up a citizen has a right to lead a life as permitted within the constitutional framework and the State cannot do anything that would curtail or abridge the protected rights of a citizen. A citizen has a right to live with dignity. It has been emphasised time and again, right to live does not mean to live a life

which is sans substance. Thus, the substance of life has become the substratum of Article 21 of the Constitution. The State has obligation under law to take care of health of its citizens and cannot be allowed to do anything which would jeopardise the same.

Now to the quantum of compensation. It is submitted by Miss Pandit, learned counsel for the petitioner that each of the private respondents has already been paid Rs. 11,000/-. The question that arises for consideration, is it sufficient? Is it ideal? The affected persons belong to different age groups. Some of them are in early forties and fifties and some are septuagenarians. By loss of their eye-sight they have become invalid to a great extent. They are compelled to lead a life of dependant. They are to be guided at every stage and to be looked after and be compelled to face humiliation. A man who has lost his eye-sight, even in respect of one eye, faces ignominy. He develops a sense of constant fear. Phobia reigns. It has been said that fear corrodes the inner depth of the soul. Their family members may not be in a position to look after them. Possibly they might have been assisting other members of the family for some domestic activities but because of this unfortunate blow on them they have become a liability. No human being desires to become a liability on anyone. No person wants to be treated as an unperson.

A person in his individual capacity has the entitlement to be a protagonist in his own life, but the life appears to be not worth living when one has become half blind. There may be cases, when total vision is lost. But in the case at hand, nothing has been shown that they were totally without vision. The State organises the eye-camps to help people to recover from eye problems. The people go there with hope and aspiration that there would be successful operation of the cataract and they will get back the full vision. The hopes harboured in the bottom of the heart has been crucified by sheer negligence and crude callousness of the people who carried the operation. Norms have been indicated in Annexure P/6 but there has been no post-operational care and total slackness. It is not disputed that infection spread in the eye camp. Spreading of infection when operation is done is avoidable. Utmost care should have been taken. Non-sterilisation of the equipment, mishandling of bandage, inappropriate clothing of the persons who attend the patients after operation and such acts give rise to infection. There is no allegation that the patients were responsible for infection. Thus, in my considered opinion the entire blame has to be put on the State, because it has arranged the eye camp and the Government doctors carried out the operation. The State had undertaken the obligation to better the vision of the people who belong to the poorest strata of the society but instead of getting their vision, due to the negligence of the doctors and the assisting persons the patients lost the eye sight and became half blind. The State is squarely responsible for such a cataclysm. They really cannot be compensated in such a catastrophe in terms of money, for a half blind can only know what agony and anguish he faces; how much dependent he becomes on others on certain occasions; and if for some reason the other eye has already been affected; the

endan-germent is incomprehensible. The life becomes miserable; the human soul cries silently and the silent cry corrodes the quintessence of life. Though there cannot be real compensation but the law cannot maintain a sphinx like silence but has to rise and make the guilt suffer.

Considering the age factor, agony, languish, individual loss, suffering of humiliation, deprivation of advantage to enjoy life and future prospects and the inconceivable loss which has been sustained in the eye camp, I quantify the compensation for each individual at a sum of Rs. 100,000/- (One lakh) to be paid by the State. The amount which has been already paid, would be deducted from the amount. The amount shall be paid within 30 days from the date of the receipt of the order passed today and it shall be deposited in Fixed Deposits in a Nationalised Bank for a period of two years and the patients would be entitled to draw the interest thereon. It will be open to the State to recover the amount from the officers/officials who had been negligent in the eye camp. Negligence of callousness by no one can be tolerated and no one can play with the human life or the national wealth and health, and he who has not taken care of has to suffer.

The next aspect which requires to be dealt with whether eye camp of this nature should be properly controlled. On a perusal of the Annexure P/5 the State has explained about the proper care and caution that is to be taken, but on a perusal of the aforesaid letter it is plain as noon day, there was no adequate care when the incident took place. This Court hopes and trusts that adequate care shall be taken before the eye camps are organised. This Court is not in expert to formulate guidelines, but due devotion, proper dedication and post operational care should be taken. Avoidance of infection, proper sterilisation and such other aspects which are ancillary are to be taken care of. I may hasten to add, because of this command the State should not become a recluse to organise eye camps. Eye camps are to be organised but such care should be taken so that tragedies do not recur. The State must endeavour to see that, no one suffers for the fault of its officers. The State is not a person but it is run through persons and therefore, the accountability is on the collective. While so directing this Court also directs that the State shall do the needful so that erring officers/officials are booked.

The writ petition is allowed to the extent indicated hereinabove. However, there shall be no order as to costs.