
(1998) 02 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12328 of 1997

Punjab Civil and Consumer Welfare Front (Regd.) and Another	APPELLANT
Vs	
Union Territory of Chandigarh and Others	RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Punjab Municipal Corporation Act, 1976 — Section 44

Citation : (1999) 1 ACC 636 : (2000) ACJ 1281 : AIR 1999 P&H 32 : (1999) 1 ILR (P&H) 206 : (1998) 120 PLR 92 : (1998) 3 RCR(Civil) 467

Hon'ble Judges : V.K. Bali, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Harbhajan Singh and A.S. Walia, for the Appellant; Deepali Puri, for Respondents 1 and 3 and Ashok Aggarwal and Subhash Goel, for R. No. 2, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Dereliction of duty which results in a precious life being taken away, rendering the guarantee under Article 21 of the Constitution of India as illusory as also violation of abandonment of common law duty of reasonable care guides us to compensate Shri Abhinandan Dass, father of a three years old female child who died by drowning in an uncovered manhole.

2. Punjab Civil and Consumer Welfare Front (Regd.) which is social, voluntary, nongovernmental, non-political, consumer organisation striving hard to protect the rights of citizens in general and consumers in particular along with Shri Abhinandan Dass has filed the present petition seeking issuance of writ in the nature of mandamus directing respondents to pay compensation of Rupees Two Lakhs to petitioner No. 2 on account of tragic death of a three year old female child of the said petitioner. It has inter alia been pleaded that the President of the petitioner-organisation happened to read a news item in a local daily published from Chandigarh on 7-7-1997 which reported the death of three years old

daughter of petitioner No. 2 by drowning in an uncovered manhole in village Palsora-U.T. Chandigarh. Petitioner-organisation then decided to approach petitioner No. 2 to console him for the mishap. When the President of the organisation met petitioner No. 2 on 12-7-1997, she was badly disturbed to see the plight of the mother of the child and the poverty of petitioner No. 2 who happened to be a migrant labour from U. P. and was not in a position to spend on the ailment of his wife what to talk of filing any litigation to claim compensation. It is in these circumstances that the petitioner-organisation on consent of petitioner No. 2 decided to file the present petition.

3. Petitioner No. 2 is a resident of village Palsora, U. T. Chandigarh for the last five years. He is residing there with his wife and two infant children. Petitioner No. 2 migrated from U. P. and would earn his livelihood by daily wages and had no financial back up whatsoever. Colony No. 2 where petitioner No. 2 has Jhuggi presents a sorry state of affair. Most of the roads and internal streets in the colony are badly damaged and insanitary conditions due to stinking drains and uncovered manholes have caused an alarming danger to the public life. Repeated complaints and representations by the residents to the concerned authorities had fallen on deaf ears. Number of manholes put on in the very middle of the internal streets do not have any boundary wall or any cover to avoid any mishap. Due to laxity on the part of respondents three years old daughter of the petitioner Abhinandan Dass, while returning to her Jhuggi after attending to call of nature at about 7.30 p.m. on the fateful evening fell into one uncovered manhole which became a death trap for her and she vanished within no time. Great hue and cry was raised and many persons tried to find her out. Police and the fire-brigade persons were called and a battery of social workers and neighbours of petitioner No. 2 started search operation, while the police stood a silent spectator and registered a daily Diary Report No. 34 dated 5-7-1997. Rescue operation continued the whole night and it was only at 6 A.M. on 6th July, 1997 that the dead body of the child was recovered amidst high-pitched cries of the mother and other relatives of the deceased. The police of Police Station Sector 39, Chandigarh took the dead body for post-mortem examination and after post-mortem examination was done in general hospital and dead body was handed over to petitioner No. 2 around 2 P.M. the same was cremated in Sector 25 Cremation Ground on the same day. On the next date all major newspapers widely covered the tragedy but the incident evoked a lukewarm response from the Chandigarh Administration, even though few workers of the Municipal Corporation, Chandigarh were seen hurriedly closing the said manhole where tragic incident had taken place. Respondent No. 2 then made a written representation to respondent No. 4 on 14-7-1997 demanding therein suitable compensation for the loss of life of his daughter but the said respondent did not even care to listen to petitioner No. 2 what to speak of awarding any compensation. It is the case of the petitioner-organisation that petitioner No. 2 who considered himself to be one of the blessed person with two daughters was engulfed in a sudden state of shock and he could not recover from this tragedy

even after lapse of many days of this" mis-happening. The grief stricken mother of the child could not take water or food for days together. The untimely and tragic death of daughter of petitioner No. 2 has caused irreparable loss to him. It is the case of the petitioner-organisation that respondents have miserably failed to maintain standard living conditions such as taking care and caution in protecting the life of its citizens. The emerging scenario is too depressing betraying a total lack of willingness on the part of the respondents to pay proper care to the lives of the citizens.

4. Pursuant to notice issued by this Court, written statement has been filed by respondent No. 1 through Under-Secretary, Engineering Department, Chandigarh Administration, Chandigarh. Far from sympathising with the miserable plight of petitioner No. 2 it has been pleaded by way of preliminary objections that petitioner No. 1 in filing the present petition is neither functioning in the territorial limit of Union Territory, Chandigarh nor is in any way related to subject-matter due to lack of cause of action in his favour. The said petitioner it is further pleaded has no legal right to file the Civil Writ Petition against the answering-respondents. It has then been pleaded that the child who was two to two and half years of age of petitioner No. 2 had fallen into the septic tank constructed within the premises of Lab. Block of village Palsore. This incident had occurred in the late evening which proves that the parents of the child did not take due care of the child and left her abandoned which resulted in her death. It is then pleaded that some bad elements are bent upon to remove the mild steel/cast iron manhole covers and it is not possible for the answering/respondents to guard each and every manhole located in the remote area of villages of Union Territory, Chandigarh. It is the moral duty of the inhabitants, like the petitioners, utilising the facilities provided by the Administration to inform the respondents regarding such theft through a complaint so that the same is immediately replaced but no such complaint has been made by the petitioners which may have remained unattended. While answering the charge on merits, preliminary objections have been reiterated. It has further been mentioned that the colony where petitioner No. 2 is residing has been created by its inhabitants by encroaching upon the public land and constructing Jhuggies on the Government land unauthorisedly and since the colony is illegally created and constructed, the residents of this unauthorised colony cannot claim facilities in accordance with the available funds, resources and manpower required for the same. No complaint was filed by the petitioner regarding uncovered manhole. There are 1778 manholes of the sewerage and 210 manholes for public toilets. The total manhole covers being maintained by the Engineering Department of Chandigarh Administration in various villages of Union Territory, Chandigarh are 1998 and whenever the officials of the answering-respondents receive any complaint regarding removal of manholes, the same are replaced immediately. As far as the cover of the manhole relating to this case is concerned, no complaint whatsoever was received by the officials of the answering-respondents that the same had been removed. It has further been denied that the manholes in the middle of the

streets do not have any boundary wall or covers. The manhole in question was duly covered and there was no complaint. We have heard the submissions made by the learned Counsel representing the parties and also carefully scanned the pleadings of the parties. The defence projected by the Administration that the colony had been created by its inhabitants by encroaching upon the public land and constructing Jhuggies on the Government land unauthorisedly cannot sustain for the reason that far from getting the Government land vacated of the so-called illegal occupation by inhabitants of the colony, the Administration has provided, water, electricity, roads and other essential amenities of life to the inhabitants of the colony. Having provided the basic amenities to the inhabitants of the colony, the Administration cannot now turn around to say that whatever be its attitude in continuing or maintaining with these facilities, no complaint can ever be raised for the reason that inhabitants of the colony have illegally occupied the Government land. On the other hand, it appears to the Court that the Administration has reconciled with the occupation of the Government land by the inhabitants. If that was not to be so, there was no question for Administration to have permitted continued use of the Government land to the inhabitants of the colony and also to provide all amenities. It is not the case of the Administration that the facilities provided to the inhabitants are without any service charges. Surely, therefore, the inhabitants of the colony are paying for everything like electricity, water etc. The first ground for opposing the claim of the petitioner for compensation as mentioned above, deserves to be rejected. The second and the last ground in opposing the claim of the petitioner has no legs to stand, inasmuch as theft of manholes of the sewerage had to be catered for by the Administration. It has been pleaded that there are 1778 manholes of the sewerage and 210 manholes for public toilets. The total number of manhole covers being maintained by the Engineering Department in various colonies of the Chandigarh Administration are 1988 and whenever the officials of the answering-respondents receive any complaint regarding the removal of the said manhole covers, the same are replaced immediately. So far as cover of the manhole relating to this case is concerned, no complaint was received by the officials of the answering-respondent that the same had been removed. From the aforesaid averments made in the written statement, it is absolutely clear that until such time a complaint is received, no action is taken in the matter whatsoever. If the inhabitants of the colony in a case of theft may not report the matter to the Administration or to the police, that alone would not absolve the Administration from inspecting the site at least periodically particularly when it is conscious of the fact that manholes are being removed by way of theft or otherwise. Once, it is the case of the Administration that thefts are taking place and manhole covers are being removed, it becomes all the more important for the administration to have periodical checks made and take remedial measures. Nothing at all has been pleaded to show that how many thefts had taken in past and what action was taken in the matter. But for stating that on receipt of a complaint, a new manhole covers were placed, nothing has been stated to show what measures were taken that thefts are not repeated. If thefts were actually

taking place the Administration should have provided locks to the manhole covers or done something of the type that it was not very easy to remove the manhole covers. In the facts and circumstances that have been fully detailed above, it cannot, thus, be said that the Administration has not been negligent in manning the manhole covers. There is a common law duty for taking reasonable care. In the facts and circumstances of this, as already observed by us, it cannot be said that the Administration was not negligent in performing its duty. A charge of not taking reasonable care is, in any case, proved in this case. The Administration had knowledge that thefts are taking place and yet proper remedial measures were not taken. No periodical checks were ever made nor any proper system was evolved by which the thefts could be avoided. Only when a report of theft was received, manhole cover was replaced. The Administration it appears was acting only on receipt of information by simply replacing the manhole cover. The Apex Court in *P.A. Narayanan Vs. Union of India (UOI) and Others*, held that there was common law duty of taking reasonable care. The facts of *P.A. Narayanan's* case (*supra*) reveal that wife of the appellant was travelling in train to go to Bandra by Harbour Line Local Train from Kings Circle. She was travelling on first class railway pass in the first class ladies compartment. Before she could reach her destination at Andheri, she was criminally assaulted and also robbed of her gold chain, three bangles and a wrist watch between Bandra and Andheri railway station when the train was in motion. She pulled the alarm chain but despite of the ringing of the alarm bell neither the guard nor the motorman stopped the train. She ultimately succumbed to the injuries in the compartment. It was a case of robbery in the running train and inasmuch even after alarm bell was given, train was not stopped, it was held that there has been a breach of duty and negligence on the part of railway staff was writ large. The dereliction of duty resulted in precious life being taken away, rendering the guarantee under Article 21 of the Constitution as illusory. In the present case, as mentioned above, no reasonable care was at all taken by the administration despite the fact that it had knowledge that thefts of manhole covers are taking place. As mentioned above, no system at all was devised so that thefts do not re-occur so often nor any periodical checks were ever made by the administration. Only on receipt of information with regard to removal or missing of manhole covers the same were being replaced. It may be true that the residents of locality could have or should have intimated the administration regarding missing of manhole covers but the administration also cannot be said to be reasonably careful in acting until when report was received. To illustrate, we may mention that if there is electricity failure for a long time, would the concerned authorities act only on an information to be given by an inhabitant or that it should come to know through its own set up and take remedial measures. In view of the discussion made above, we allow this petition. In totality of the facts and circumstances of this case, we are of the view that a compensation of Rupees One Lakh would meet the ends of justice. Let the assessed amount of compensation be made over to petitioner No. 2 i.e. unfortunate father of the deceased-female child within one month from the date certified copy of this order

is received by the Administration.