

(2005) 09 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) No. 20048 of 2004

Shri Raj Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2005) 124 DLT 218

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : A.K.Gupta, for the Appellant; Ashwini Bhardwaj, for Respondent No.1., Richa Kapoor, for Respondent No.2/MCD, Dhiraj Mishra, for Sandeep Aggarwal, for Respondent No.3/Delhi Jal Board, Saleem Ahmad, for Respondent No.4. and Anusuya Salwan, for Respondent/DMRC, for the Respondent

Judgement

Vikramajit Sen, J.—The Petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution for grant of some monetary succour in connection with the untimely and tragic death of his son, namely, Shri Vikas Gupta. The undisputed facts of the case are that Vikas was driving a scooter bearing No. DL 6S K 5166 on which Shri Kirti was the pillion rider. At the junction of Mandir Marg and Punchkuian Road late Vikas and Kirti drove over a manhole which was three inches below the regular surface of the road. Vikas lost control of the scooter, was flung off, and violently struck against the side/divider railings. Vikas met with a gruesome death, the photographs of which are difficult to view. His face had been smashed to the extent that his teeth and parts of flesh had been severed from the body. The FIR records the statement of the pillion rider but as a practice of a Police Department, the statement casts the blame on the driver Vikas. This incident brings to the fore the common complaint of citizens that while recording FIRs the Police does not always narrate incidents in an impartial manner or even as per the statement of the informant. The lack of probity and independence is evident from the fact that within the short spa of 38 days of the death of Vikas, the Police closed the case ostensibly on the basis

that the persons responsible for the culpable negligence were "untraced".

2. There is a plethora of precedents on the powers of the Court to grant relief in such cases. It is now well settled that a claim for compensation can be passed by the Court even in the exercise of its extraordinary jurisdiction, as a remedy available in public law. Division Benches of this Court have awarded compensation in *Shyama Devi and Others Vs. National Capital Territory of Delhi and Others*, ; *Darshan and Others (Smt.) Vs. Union of India and Others*, and in *Poonam Sharma v. Union of India* 200 VI AD (Delhi) 373 which is both a comprehensive as well as perspicuous analysis of the precedents on the point. This proposition has also been acted upon by a Division Bench of the Patna High Court in *Somari Devi v. State of Bihar and Ors.* 2 1996 CCR 364; and by Justice H.K. Sema, as His Lordship then was, in *Smt. Geeta Sangma v. State of Nagaland and Ors.* VII 1993 (2) Crimes 805. These cases were predicated on pronouncements of the Hon'ble Supreme Court, inter alia, in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, in which it was observed as follows:

""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 tortuous 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 to at for the established violation of the fundamental right of 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 Court 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. While concluding his first Hamlyn Lecture in 1949 under the tile "Freedom under the law" Lord Denning in his own style warned:

""No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs re thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power if not. Just as the pick and shovel is no longer suitable for the winning of coal, so as so the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-do-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, the Court must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfares state; but abused they lead to a totalitarian state. None such must ever be allowed in

this country"".

Similar expositions of law are also available in P.A. Narayanan Vs. Union of India (UOI) and Others, Reliance has been placed in this regard also on the landmark judgment of the Apex Court in D.K. Basu Vs. State of West Bengal, . Further reference, giving more details, will make this judgment needlessly prolix, especially when the entire case law has been dealt with. Darshan's case, however, is directly on the point since death had occurred due to a fall caused by an uncovered manhole. The Division Bench was of the opinion that the case was ""one of res ipsa loquitor, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the record in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights."" Whether a manhole is uncovered or is below the surface of the road, results would be equally tragic as has been proved in this case. Civic Authorities are duty bound to ensure that roads are maintained in a manner as would not be cause loss of life and limb.

3. The Petitioner has impleaded the Municipal Corporation of Delhi (MCD), Delhi Jal Board (DJB), and thereafter the Delhi Metro Rail Corporation (DMRC). In the previous hearing the question that has arisen was which of these Civic Bodies was not responsible or liable for the death. So far as the DMRC is concerned, it takes over responsibility for maintenance of the roads as and when construction of the Metro commences in that particular segment otherwise the responsibility vests with the MCD.

4. Learned counsel for the MCD has filed photocopies of DMRC's letter dated p1 20.11.2002 stating inter alia that Punchkuian Road, Link Road, Pusa Road, Patel Road and Najafgarh Road would be involved so far as the construction of the MRTS is concerned. In the letter it is stated that the work is likely to be started in December, 2002 and accordingly as per requirement, the roads will be taken over for the work. Reliance has also been placed on the letter of the DMRC dated 28.11.2002 which states that the roads are likely to be taken over for a period of three years and that these roads may be handed over to the DMRC in stages on mutually agreed dates as the work is likely to start by January, 2003. It is the common case of the parties that undertakings were also filed by the DMRC assuming responsibility for the maintenance of the roads taken over by them. Learned counsel for the MCD has further relied on Minutes of Urgent Business No.165 which was apparently discussed at a Meeting held on 7.4.2003. There is a mechanical repetition of statements made earlier to the effect that the ""work

is likely to be started in December, 2002." It is "mechanical" because in April, 2003 the MCD should have been aware whether the work had commenced or not. Be that as it may, the Minutes of Urgent Business No.165 again record that "the entire stretch of the road is required to be handed over to the DMRC." The use of the future tense demolishes the case of the MCD that the roads had already been handed over to the DMRC. Photocopy of Urgent Business No.165 is taken on record. A perusal of the letter dated 21.2.2003 makes it evident that there was a reiteration of the DMRC's liability for maintenance of the roads once they were taken over. The letter of DMRC dated 28.3.2003 is further telling against the MCD since it categorically states to the Commissioner, MCD that his information that the road in question had been taken over by the DMRC is not correct. This letter records the position that the road would be taken over once the contract is executed and that contract appears to have been signed on 28.4.2003. DMRC letter dated 28.3.2003 leaves no manner of doubt that till that date maintenance of the road had not been taken over by DMRC because the anticipated execution of the contract had not occurred. The last sentence of the letter states that - "Link Road and Pusa Road are now expected to be taken over by April, end and Punchkuian Road and Patel Road will be taken over by May, 2003 end." It is master of regret that even though a tragic death has taken place of a citizen of India at the threshold of his life and career, at the age 20 years, it has only witnessed attempts of Governmental Departments to shift responsibility without even an offer to take taken reparation, regardless of who was responsible for the event. Thankfully, after notice was issued in this Writ Petition the Police has seen the wisdom, or rather the lack of it, in their hasty and irresponsible decision to close the case on "untraced" basis.

5. There is an independent opinion of the Police that the manhole was three inches below the surface of the road. Construction of a manhole is the responsibility of the Delhi Jal Board in terms of Delhi Water Board Act, 1998. Counsel for the Delhi Jal Board states that since the general maintenance of the road is with the MCD they ought to have informed the DJB of the irregularity in the construction of the manhole. Reliance has been placed on the Minutes of the Meeting chaired by the Principal Secretary, Ministry of Urban Development, taken in connection with reviewing the pre-monsoon situation. This does not advance the case of the DJB or exonerate it from its responsibility for ensuring that the construction of the manhole at the initial stage was as per Regulations. The fact that the manhole was covered would also not make any difference. The DJB can discover and detect an open manhole only if they take the trouble of general inspection is periodically carried out. In any event the construct was carried out by the DJB contrary to norms and by creating a potentially hazardous situation, just waiting to cause death of commuters. The principle of *res ipsa loquitur*, applied in Darshan case, is fully applicable to the present situation also.

6. In the tragic circumstances of the case the Petitioner who is the unfortunate father of the deceased Vikas, and who is stated to be 60 years old and suffering from cancer, on behalf of all the dependents of late Vikas, is entitled to

compensation fixed at Rs.6 lakhs. The MCD which has the overall responsibility of ensure the maintenance of roads is liable to payment of half this amount. The DJB, which firstly constructed manhole irresponsibly, being three inches below the surface of the road and who failed to carry out inspections of all its manholes, is liable for payment of the other one. Payment should be made within thirty days from today. DMRC, without prejudice to their contention that they are not responsible in any manner in the mis-happening, in order to manifest their sympathy for the tragic accident has voluntarily offered to pay a sum of Rs.20,000/- towards the costs of the Petition which should be paid to counsel for the Petitioner who states that the case was conducted by him pro boo.