
(2011) 11 MAD CK 0054

In the Madras High Court

Case No : Writ Petition (MD) No. 2846 of 2006

T. Angayarkanni

APPELLANT

Vs

The District Collector, Madurai District and Others

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 21A, 226

Citation : (2011) 11 MAD CK 0054

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Rajini, for the Appellant; K. Mahesh Raja, GA for RR1 to 4, Mr. P.T.S. Narendravasan for R-5 and R-6 dismissed for default, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present writ petition seeking for a direction to the respondents 3 and 4 for taking appropriate steps against respondents 5 and 6 in terms of the proceedings of the second respondent dated 31.12.2004 and for a further direction to respondents 1 and 2 to take appropriate steps against respondents 5 and 6 to provide adequate compensation to the petitioner.

2. The writ petition was admitted on 27.3.2006 and a private notice was also permitted. As against sixth respondent, the writ petition was dismissed. The other respondents have been served. For respondents 1 to 4, the learned Government Advocate appeared. For fifth respondent, Mr. P.T.S. Narendravasan, learned counsel appeared, but no counter affidavit has been filed.

3. The case of the petitioner was that she had two daughters by name Pothumponnu and Mahalakshmi. The eldest was Pothumponnu, who was 6 years old studying in II standard. Mahalakshmi was about 5 years old and was studying I standard. Both daughters were studying in the fifth respondent School. Her place is far away from the school and both daughters will have to take a bus to

reach the school. Since it was difficult to travel in the bus, she had put them in the hostel run by the fifth respondent school. It was looking after by the warden appointed by the school. It was always complained by her daughters that the hostel and kitchen were never kept clean and tidy and that the quality of food served was also poor. She also complained to the fifth respondent about the pitiable and unhealthy condition of the hostel.

4. On 12.10.2004, her daughter along with 7 other students took noon meals and there was food poisoning. The children were suffering giddiness and started vomiting. The fifth respondent did not inform the parents nor took care of the children. The children were admitted to the Government Rajaji Hospital by their parents. The petitioner's daughter Pothumponnu was admitted to Ragavendra Hospital. Since her condition became worse, she was asked to take to the Government Rajaji Hospital. But even before she reached the hospital, the said Pothumponnu died. She had not informed about these developments. Finally her daughter Pothumponnu was buried at Managiri burial ground on 18.10.2004. Only after this incident, she came to know along with her daughter, several other children were also ill. She gave a complaint to the police and to the first respondent District Collector, Madurai on 20.10.2004 and asked for exhumation of the body of her daughter and to send it for re-postmortem. She sent a representation, dated 01.11.2004 reminding her earlier request. The Village Administrative Officer had served a notice dated 17.11.2004 sent by the second respondent, i.e., R.D.O., Madurai. An enquiry was conducted on the death of her daughter on 18.11.2004. But no direction was given to exhume the body. By proceedings, dated 31.12.2004, the second respondent had recommended criminal action against 5th and 6th respondents. It is in that view of the matter, the petitioner has filed the present writ petition.

5. The Revenue Divisional Officer, Madurai gave a written instructions, dated 19.7.2006, stating that the fifth respondent school is an aided private school. There were 669 students studying, of which 56 students were orphans, who were staying in the school hostel. They were given food including mid day meal. On 15.10.2004, 19 students were found affected by vomiting due to consumption of food prepared on the previous night. They were initially given treatment at a primary health centre at Thirupparankundram and they were discharged from the hospital. A medical team was deputed to the school to take preventive steps. But however the petitioner's daughter Pothumponnu who was affected among 19 others was taken by the petitioner on 17.10.2004 along with one Meena and Mahalakshmi to the Ragavendra clinic at Andalpuram, Madurai. They were treated in the hospital on 18.10.2004. While Meena and Mahalakshmi, the second daughter of the petitioner were discharged, Pothumponnu was directed to be taken to the Government Hospital for further treatment. She died enroute to the hospital. The medical analysis report given by the Doctor showed that it was due to acute Gastro Enteritities, she died. The enquiry conducted by the then RDO showed that while other two girls were discharged, only Pothumponnu alone died and without claiming any enquiry, the body was buried. The action of

claiming compensation after 1-1/2 years is an afterthought.

6. But, however, it is admitted that the RDO in his report had recommended institution of a criminal action against the warden of the hostel. But the same was not done in the backdrop of the report of the Deputy Director of Health Services, Madurai, vide letter dated 10.2.2005 in which he has mentioned that all affected students were given treatment at Primary Health Centre, Thiruparanundram and were discharged. A medical team was also sent to prevent further spread of disease. It may be due to some personal health problem Pothumponnu might have died.

7. In the present case, it is rather unfortunate that the none of the respondents have filed any counter affidavit, thereby leading to the conclusion that the averments made by the petitioner remained uncontroverted. Whether the petitioner had buried the body without seeking for re-postmortem is agreed or not, is not an issue that need to be gone into in the writ petition. It is admitted that at the relevant time, all children were affected due to food poisoning. The petitioner's first daughter alone died, for which the responsibility lies with the fifth respondent school. The fifth respondent school has to take care of the children who are not only day scholar, but they must show more responsibility for children who are residing in the hostel. Therefore, if any incident happens in respect of the minor children, it is the school management alone which is responsible for the same and they cannot feign ignorance. In this context, it is necessary to refer to certain judgments of the Supreme Court and this court.

8. The Supreme Court in *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, dealt with the case of potential danger of structures near the Highways and the legal responsibility of the owner. The following passage found in para:5 of the judgment is usefully extracted below:-

5.... The legal position is that there is a special obligation on the owner of adjoining premises for the safety of the structures which he keeps besides highway. If these structures fall into disrepair so as to be of potential danger to the passers-by or to be a nuisance, the owner is liable to anyone using the highway who is injured by reason of the disrepair. In such a case it is no defence for the owner to prove that he neither knew nor ought to have known of the danger. In other words, the owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect.

9. The learned counsel for the petitioner relied on the following judgments in support of his case:-

(i) *S. Paramasivam Achari Vs. The Head Master Govt. High School, Amur, Musiri Taluk, Trichy District and others* reported in 1999 Writ L.R.525.

(ii) *C. Chinnathambi Vs. The State of Tamil Nadu and Others*,

(iii) *D. Masta Gandhi V. Tamil Nadu Slum Clearance Board rep. by its Chairman, Madras* reported in (2000) 2 M.L.J. 830.

10. S. Paramasivam Achari's case, (cited supra) the petitioner son had gone to the urinal attached to the school within the campus. The boy died due to the sudden collapse of the wall. It was held that the accident could have been averted, if the school had taken proper care. Therefore, a compensation of Rupees Two Lakhs was directed to be paid by the Government.

11. C. Chinnathambi's case, (cited supra) a water tank constructed by the School during 1983-1984, due to faulty construction collapsed on 12.10.1992. In that accident two school children were died. Because of the lack of care by the School management, the School was directed to pay compensation. In that case, V.S.SIRPURKAR.J. (as he then was) in paragraphs 5 and 6, observed as follows:

5. Right of life enunciated in Article 21 has time and again been recognised by the Supreme Court and in its various ramifications. This was a case where the two innocent children had gone to the school and the accident actually took place during school hours. Even if it is considered that the said tank was constructed by the Parent Teachers Association it was undoubtedly the responsibility of the School authorities to see that the tank was properly constructed and erected and that it should not have been hazardous to the lives of the children. There can be no dispute that in this case school authorities have not been careful enough to see that the construction was proper and in keeping with the rules. It beats one's understanding as to how a tank which was constructed early in 1983-84 would collapse all of a sudden within eight years of its construction. i.e.12.10.1992. The things do speak for themselves. There can be least doubt that the school authorities were not vigilant in their duties and that this being the Government School the Government would have a liability. There is no dispute that two young lives have perished predominantly because of the lack of care on the part of the school authorities. In my opinion compensation of Rs.5,000/-by way of ex gratia payment would be a cruel joke. The petitioners have claimed the compensation of Rs.1,50,000/- each in their writ petitions.

6. Considering the age of the children, the social background that they come from the fact that these children were bona fide students and could have had a bright future, the compensation of Rs.1,50,000/-shall be on the lower side. I, therefore, allow both the writ petitions and direct the Government to make a payment of Rs.1,50,000/-to each of the petitioners within two months from today. If the payment is not so made, it shall carry interest at the rate of 12% p.a. till the actual payment is made."

12. In D. Masta Gandhi's case (cited supra) P. Sathasivam, J. (as he then was) ordered compensation against the Tamil Nadu Slum Clearance Board for keeping the floors slippery and due to that a minor girl slipped down and died.

13. With reference to the contention that such compensation cannot be ordered even in cases of negligence (either constructive or otherwise) by the State or Public authorities, it is necessary to refer to the judgment of the Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, , and extract the following

passage found in the judgment:

State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. Public authorities who are entrusted with statutory function cannot act negligently. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provision oppressively are accountable for their behaviour before authorities created under the statute like the commission or the Courts entrusted with responsibility of maintaining the rule of law. The authority empowered to function under the statute with exercising power discharges public duty. It has to act sub serve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer cannot more claim to be under protective cover. In modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power then it has a statutory obligation to award the same if proved.

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authority is founded on the principle that an award of exemplary damage can serve a useful purpose in indicating the strength of law. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He is responsible for it; must suffer for it; compensation or damages may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil.

14. The Supreme Court vide its decision reported in *Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd.*, no doubt, has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Art.226. It is equally true that when disputed questions of fact arises and if there is clear denial of Tort liability, remedy under Art.226 of the Constitution may not be proper. However, in the very same judgment, the Supreme Court, in paragraph 10 had observed as follows:

....However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the fact of its and infringement of Art.21 is there it cannot be said that there will be any bar to proceed under Art.226 of the Constitution.

15. Therefore, the liability of the management to compensate the parents of the unfortunate child victims is a certainty. But the State also cannot wriggle out its responsibility in compensating the parents. Under Article 21-A of the Constitution, the State is bound to provide free and compulsory education for every child upto the age of 14 years. The State is fulfilling its obligations by running Government Schools as well as providing grant-in-aid to private schools. When such schools impart education, they also participate in fulfilling its constitutional obligations imposed on the State. Law on the subject is well settled right from Mohini Jain's case, Unni Krishnan's case as confirmed by T.M.A. Pai's Foundation's case. Further, in this State there is also the Tamil Nadu Compulsory Education Act, which will punish parents if they do not send their children to Schools.

16. Since the sixth respondent is the Warden, who is an employee of the fifth respondent school, it is unnecessary that he should be made as a party in the writ petition. In the light of the above, the fifth respondent school is hereby directed to pay Rs.1,00,000/-(Rupees one lakh only) to the petitioner towards causing death of the petitioner's daughter Pothumponnu due to their negligence. The said payment shall be made within a period of twelve weeks from the date of receipt of copy of this order. The writ petition will stand allowed to the extent indicated above. No costs.