

Singaraj, Vs. the State of Tamil Nadu, Rep. by Its Secretary to Government, Education, Science and Technology Department and ors.

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Court : Chennai

Decided On : Sep-17-2008

Reported in : (2009)1MLJ416

Judge : K. Chandru, J.

Acts : Tamil Nadu Recognised Private Schools (Regulation) Act, 1973; Indian Penal Code (IPC) - Sections 304A; [Constitution of India](#) - Articles 21, 21A and 226

Appeal No. : Writ Petition Nos. 8285, 8369, 8644 and 10476 of 2005

Appellant : Singaraj, ;karupiah, ;niraru and N. Balamurugan

Respondent : The State of Tamil Nadu, Rep. by Its Secretary to Government, Education, Science and Technology Depa

Advocate for Def. : V. Janakiramulu, Spl. Govt. Pleader for R. 1 to R. 4 and ;P. Jessi Jeevapriya, Adv. for R. 5 to R. 7

Advocate for Pet/Ap. : G. Marimuthu and ;M. Jothibas, Adv.

Disposition : Petition allowed

Judgement :

K. Chandru, J.

1. The petitioners in all these four writ petitions are unfortunate fathers of their respective minor children who were crushed to death while playing near the 5th respondent school gate on 29.04.2005 and in the case of minor Gopinath on 1.05.2005.

2. The W.P.8285 of 2005, the petitioner's minor son Ganapathy @ Chinnapar was eight years old at the time of the accident and he was studying IV std in the fifth respondent school. In W.P.8369 of 2005, the petitioner's minor son was Mariappan, who was also eight years old and was studying in the third respondent school. In W.P.8644 of 2005, the petitioner's son was minor Karupasamy and he was seven years old and was studying III standard in the fifth respondent school. In W.P.10476 of 2005, the petitioner's son was Gopinath and he was six years old and studying I Standard in the fifth respondent school.

3. The fifth respondent school is an elementary school at Seithur and it is an aided private school. Insofar as the salaries of teachers are concerned, cent percent grant is given by the State Government. They are also getting some maintenance grant from the Government. The School is also governed by the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973. By virtue of the provisions, the school committee headed by the 6th and 7th respondents has got complete control over the school and its properties.

4. It is alleged by the petitioners that a compound wall is constructed in front of the school along with an iron grill gate. It is stated that six months before the accident, a lorry which came with building materials to the school hit against the wall. From that time onwards, the compound wall was in a dilapidated shape and ready to collapse at any time. The school management, (sixth and seventh respondents) never took any steps to carry on repairs to the damaged wall.

5. On 29.04.2005, when the children were playing near the wall, the compound wall collapsed and some children were caught under its weight. While five children died, some other children got grievous injuries. In the case of minor Gopinath, after he was hospitalised, he died on 1.05.2005. This news was widely covered in

all the newspapers and a criminal case was registered against the respondents 5 to 7 by the Sethur police station in Crime No. 97 of 2005 under Section 304 A IPC. The post-mortem conducted on the five children (only four parents are before this Court) clearly showed the nature of injuries was due to crushing by the broken wall along with the gate.

6. Each of the parents in these writ petitions sent representations to all the governmental authorities and sought for compensation for the death of their children due to the negligent act of the School Management. In W.P.8644 of 2005, the minor Karuppasamy was the only male child for his parents. In W.P.10746 of 2004, Minor Gopinath was the only son for his parents. It was also stated that his mother had undergone family planning operation and therefore, there was no possibility of any child for them in the future.

7. Even after representations were sent by the petitioners to the various governmental authorities, proper relief was not given due to the death of the children of the petitioners. In view of the news published by the press, an ex gratia payment of Rs. 50,000/- was paid to the parents by the Government.

8. It was stated in the affidavit filed in support of the writ petitions that after the fire accident in a Kumbakonam School in which more than 100 children were charred to death, the State Government had appointed Justice Sampath Commission of Inquiry. Justice Sampath Commission after an elaborate enquiry submitted a report to the State Government and its recommendations were also accepted by the Government. One of the recommendations related to the safety aspect of school children, which were required to be monitored by the school authorities.

9. These writ petitions were admitted on various dates and notice was issued to the various respondents. Pursuant to the notice, counter affidavits dated 21.12.2005 were filed by the Chief Educational Officer, Virudhunagar (4th respondent herein).

10. In the counter affidavit, it is stated that on 29.05.2005 about 20 students after climbing onto the Iron Grill gate and were swinging it back and forth. It was stated that unable to bear their weight, the gate fell down on the students who were

clinging onto the gate and crushed them. It is rather ironical that the Chief Educational Officer has described the incident as an 'Act of God' and not due to any negligence or carelessness on the part of the management or teachers. It is stated that the ex gratia payment made by the Government for a sum of Rs. 50,000/- was accepted by the parents and damages can be claimed only by filing appropriate Civil suit.

11. Thereafter, going by the stand of the management, the Chief Educational Officer, relied upon the Stability Certificate produced by the school for the period 01.08.2004 to 31.07.2007. It is also stated that the Tahsildar, Rajapalayam has given the building licence from 07.01.2005 to 08.01.2008. By stating it was an 'Act of God', the Chief Educational Officer has concluded giving a clean chit to the respondents and stated that they are not liable to pay any damages to the petitioners.

12. Similarly, the 7th respondent had also filed counter affidavit dated nil (January, 2006). In that counter affidavit, the school management stated that the school is not an instrumentality of the State and hence no writ petition will lie. The accident did not take place during the school hours. In fact, on the last working day after 3.20 p.m., the accident had taken place. It was admitted that the Head Master was not in the school and had gone away to the town to collect the salaries of the Teachers and Staff. It was also admitted that there were no teachers or staff near the gate. While the Chief Educational Officer mentioned about 20 boys clinging onto the gate, the School Secretary has given the number as 15 boys. It was only because they were playing with the gate, the gate fell down along with the pillars on the children. They also relied upon the certificate regarding Stability and Building licence as well as Health and Fire Report to state that there was no deficiency in the building. It was also stated that the F.I.R. filed by the police is a false case. The incident that took place cannot be compared with the Kumbakonam incident.

13. A typed set of papers was also filed to show that the building licence obtained by the school as well as the Fire Certificate. But, however it is seen from the statement in Form B signed by the Structural Engineer, Rajapalayam dated

16.08.2004 shows that the building was constructed in 1987 and it is 17 years old. In the statement to accompany the opinion regarding the structural soundness dated 16.09.2004, shows that certificate was given only for 'School building-class rooms'. There is no mention about either the compound wall or the gate.

14. The Supreme Court in *Municipal Corporation of Delhi v. K. Subhagwanti* others reported in : [1966]3SCR649 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.

15. Even in the counter affidavits filed by the Chief Educational Officer and the School Management, there is no specific denial with reference to para 8 of the affidavit filed by the petitioners. A specific allegation has been made that the compound wall was hit by a lorry and the compound wall caved in six months before the incident and that it was never repaired by the management.

16. Though the management merely stated that the story of the accident was not a correct statement, nothing about the stability of the compound wall and the two pillars supporting the gate on the date of the accident was mentioned. It must be stated that the School Management did not mention about the 'Act of God' being the reason for the said incident. It only shows the close nexus between the education department authorities and the school management and the over loyalty of the Officers of the Management.

17. The learned Counsel for the School Management relied upon the following two judgments of the Supreme Court.

(a) Chairman, Grid Corporation of Orissa Ltd (GRIDCO) and Ors. v. Sukamani Das (Smt) and Anr. reported in : (1999)7SCC298 .

(b) S.D.O. Grid Corporation of Orissa Ltd and Ors. v. Timudu Oram reported in : AIR 2005 SC3971 .

18. In both the cases, it was held that in cases of disputed facts the remedy under Article 226 cannot be availed. In fact, in Timudu Oram case (cited supra), there was also an inordinate delay in approaching the High Court. In both the cases, the Supreme Court did not deal with the cases of minor children and an irresponsible school management.

19. However, Mr. Jessi Jeeva Priya learned Counsel for the School Management contended that the school has no funds for making any compensation. The accident had taken place after school hours. But in the counter affidavit, it has been fairly admitted that the Head Master of the School was not present at that time, as he had gone to the treasury for collecting the salaries to the teachers and staff. Further, no materials have been produced regarding the safety and stability of the grill gates put up by the management. Even for an argument sake, that 15 children, within the age group of 6 to 8 years, were found clinging onto the gate, their total weight may not exceed beyond 450 Kilos. Therefore, it is unthinkable that the gates can get collapsed unable to bear the weight of the tender children.

20. In any event, when the children of tender age are sent to a State supported School, it is the responsibility of the School and the State to take care of the safety of the children. No negligence can be attributed to the children of tender age. Further, it is for the School Management to prevent the children from playing near the gate, as the children may not know the inherent danger. All these had taken place since the school does not have a good play area as admitted by the counsel for the School.

21. Regarding the safety of children and liability of the school authorities in case of any accident the Supreme Court dealt with such an issue in M.S. Grewal and Anr. v. Deep chand Sood and Ors. reported in : AIR 2001 SC3660 . The following passages found in para 16 and 23 may be usefully extracted below:

16...As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults; Children need much stricter care....

23.. safety of the children obviously were of prime concern so far as the school authorities are concerned and till such time the children return to school, safe and secure after the picnic, the course of employment, in our view continues and thus resultantly, the liability of the school.

22. Per Contra, Mr. M. Jothibas, learned Counsel for the petitioners relied on the following judgments in support of his case:

(i) S. Paramasivam Achari v. The Head Master Govt. High School, Amur, Musiri Taluk, Trichy District and Ors. reported in 1999 W.L.R.525.

(ii) C. Chinnathambi and Ors. v. The state of Tamil Nadu rep. by its Secretary to Government Education, Science and Technology Department, Fort St. George Madras -600 009 and Ors. reported in 2001 W.L.R.174.

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

23. 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.

24. 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 para nos 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.'

25. 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.

26. 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 v. N.K. Gupta reported in : AIR 1994 SC787 , 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 subserve 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.

27. The Supreme Court vide its decision reported in *Nath Bros. Exim International Ltd v. Best Roadways Ltd.* reported : [2000]2SCR538 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 Article 226. It is

equally true that when disputed questions of fact arises and if there is clear denial of Tort liability, remedy under Article 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 Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

28. 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. In the present case, 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, while will punish parents if they do not send their children to Schools.

29. In the light of the above factual matrix and the legal precedents, can this Court deny compensation to the unfortunate parents of the four children whose lives were snatched away in their prime youth? Lights they would have lit up in their homes was blown out by their premature deaths. This Court cannot disappoint the parents (petitioners) by telling them the cause of the death of their children was an 'Act of God' as irresponsibly suggested by the Chief Educational Officer, Virudhunagar.

30. Will a responsible Government Officer ever tell the parents to face the death of their children in a light hearted fashion and describe the 'Beauty of Death' as told by Kahlil Gibran, in a famous poem, which goes like this:

Leave me then, friends-leave me and depart on mute feet,

As the silence walks in the deserted valley;
Leave me to God and disperse yourselves slowly, as the almond
And apple blossoms disperse under the vibration of Nisan's breeze.
Go back to the joy of your dwellings and you will find there
That which Death cannot remove from you and me.
Leave with place, for what you see here is far away in meaning
From the earthly world. Leave me.'

31. Therefore, in the above circumstances, the writ petitions are liable to succeed and the parents are entitled for compensation as sought for by them. Accordingly, the first and second respondents are directed to pay to each of the petitioners a sum of Rupees one Lakh as compensation. This will be in addition to the ex-gratia amount already paid by the State Government. The sixth and seventh respondents being the 'Educational Agency' of the Sri Rama Elementary School, Seihur are directed to pay Rs. 50,000/- to each of the petitioners. This exercise shall be carried out by the respective respondents within a period of four weeks from the date of receipt of a copy of this order. However, the parties are allowed to bear their own costs. These writ petitions are ordered accordingly.

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