

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.30848 of 2012

K.Arumugam

.. Petitioner

vs.

1. The Secretary to Government
Differently Abled Welfare Department
Government of Tamil Nadu
Fort St. George, Chennai - 9
2. The State Commissioner for Differently Abled
State Resource-cum-Training Centre Campus
Jawaharlal Nehru Inner Ring Road
K.K.Nagar, Chennai-78
3. The Correspondent
C.S.I. Hr. Secondary School for the Deaf
Mylapore, Chennai-4
4. The Headmaster (I/C)
C.S.I. Hr. Secondary School for the Deaf
Mylapore, Chennai-4
5. The Additional Director
General of Police
C.B.C.I.D., Egmore, Chennai
(Impleaded as per the order of this Court
dated 9.9.2015 in M.P.No.1 of 2015
in W.P.No.30848 of 2012)

.. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents jointly and severally to pay compensation to the tune of Rs.20,00,000/- (Rupees Twenty Lakhs only) by way of compensation.

For petitioner	:	Mr.S.Nambi Arooran
For respondents	:	Mr.R.Ravichandran
		AGP for R1, R2 and R5
		Dr.FR.A.Xavier Arulraj
		for R3 and R4

O R D E R

Heard the learned counsels appearing for the parties concerned.

2. This writ petition has been filed praying that this Court may be pleased to issue a writ of Mandamus directing the respondents to pay compensation to the petitioner to the tune of Rs.20,00,000/-, for causing the death of the son of the petitioner.

3. The petitioner has stated that his son, namely, A.Vijay Anand, was studying at C.S.I. Higher Secondary School for the Deaf, Mylapore, Chennai. The school authorities had organised an excursion to Mysore, for the students studying in the XI standard, during the academic year 2011-2012. The trip had been undertaken by the school, on 16.9.2011. While at Mysore, on 18.9.2011, the petitioner had been informed that his son, A.Vijay Anand, had a bout of fits. Thereafter, the petitioner had been informed that his son, after having been admitted in the Intensive Care Unit of private Hospital, at Mysore, had died. The body of A.Vijay Anand had been brought back to Chennai, by the private Ambulance, in the morning hours of 19.9.2011. However, the school authorities had not informed the petitioner about the circumstances in which the son of the petitioner had died. Later, contradictory statements had been made by the school authorities, with regard to the circumstances leading to the death of the son of the petitioner, raising serious doubts in the mind of the petitioner about the negligent manner in which they had acted.

4. It has also been stated that the Crime Branch C.I.D., Chennai, which had conducted the enquiry into the circumstances leading to the untimely and suspicious death of the son of the petitioner, had submitted a report, dated 13.3.2012, stating that the school teachers, who had accompanied the student, had been negligent and it had been recommended that appropriate departmental action may be initiated against the school teachers. However, no action had been taken against the teachers, who had been negligent in carrying on their duties of protecting the children, who had been taken of an excursion to Mysore.

5. It had also been stated that the teachers, who had accompanied the students, including the son of the petitioner, had been given specific instructions about his physical conditions. The necessary medicines had also been sent along with the teachers to be given if the son of the petitioner suffers from fits.

6. The learned counsel appearing for the petitioner had submitted that it is learnt that, A.Vijay Anand, the son of the petitioner had been left in one of the buses in which the students had travelled to Mysore. When the other students had gone to visit the Zoo at Mysore, A.Vijay Anand had been left alone in the bus, along with the driver of the bus. None of the teachers had stayed back with A.Vijay Anand, even though he was unwell, after having suffered a bout of fits.

7. He had further stated that the driver of the bus had gone to sleep leaving A.Vijay Anand alone in the bus. Further, there are contradictory statements regarding the manner in which A.Vijay Anand had been taken to the Hospital. There had been a considerable delay in taking him to the Hospital, after he had fallen from the seat of the bus, on which he had been sleeping. The circumstances leading to the death of the son of the petitioner is highly suspicious in nature and it is clear from the report of the Crime Branch C.I.D., Chennai, that the teachers of the school of C.S.I. Higher Secondary School for the Deaf, Mylapore, Chennai, had been negligent in taking care of the son of the petitioner, after he had suffered a bout of fits. From the statements of the Doctor, who had treated him, it is clear that he had been brought dead to the Hospital. As such, the school authorities are responsible for the death of A.Vijay Anand, the son of the petitioner and therefore, they are liable to pay an amount of Rs.20,00,000/- as compensation, as claimed by the petitioner, in the present writ petition.

8. A counter affidavit has been filed on behalf of the fourth respondent denying the claims made by the petitioner in his affidavit filed in support of the writ petition.

9. In the counter affidavit filed on behalf of the fourth respondent, it has been stated that the third respondent school had arranged a study tour to Bangalore and Mysore. Before the tour had commenced, the office of the District Differently Abled Welfare Officer had been informed, orally. All the parents of the students, who had participated in the tour, had given their consent. The programme had been partly sponsored by the World Vision. Some of the parents had also contributed certain amounts for the tour.

10. It had been further stated that the students had been divided into small groups of about nearly ten students in each group, under the personal care of their class teachers. A.Vijay Anand, the son of the petitioner was under the personal care of the teacher W.Kumar. A.Vijay Anand was cheerful and active till he suffered a seizure and convulsion, at about 11 a.m., on 18.9.2011.

11. It had been further stated that the student had been asked to take the medicines given by his parents, as soon as he had suffered the convulsion. In a short time, he had become normal. Thereafter, he had travelled along with the other students to various places. However, after lunch, when the other students had gone to visit Sri Chamarajendra Zoological Garden, at Mysore, A.Vijay Anand wanted to stay back in the bus in order to take some rest. Two bus drivers and his own class teacher, namely, W.Kumar, had stayed back with him. When the student was sleeping on the seat of the bus, he had fallen down on the floor of the bus.

12. It had been further stated that at about 4.15 p.m., as the students and the staff of the school were on their way to the bus, Sahila Jansi, Headmistress (in-charge) had received a phone call from one of the bus drivers that A.Vijay Anand had suffered a seizure and convulsion. Within a few minutes, the teachers had rushed back to the bus, which was at the parking area and had taken the student to the Hospital, by using the same bus, in order to save time. The entire effort to reach the nearby J.S.S. Hospital could not have exceeded 10 minutes. There is no delay or negligence on the part of the teachers in taking the student to the Hospital, for giving him the medical assistance. In spite of the best efforts of the Doctors of the Hospital, the student had died. Thereafter, the parents of the student had been informed about the death of their son. Five teachers, including the Headmistress (in-charge) and the class teacher of the boy had accompanied the body. They left Mysore, at about 7.30 p.m., on 18.9.2011, and they had reached Chennai, at about 3.30 a.m., on 19.9.2011. The other students and staff had returned to Chennai, by train, as originally scheduled. Before the body of the student had been taken to Chennai, his partents had requested the doctors of the Hospital not to conduct a postmortem. Hence, no postmortem had been done to find out the cause of the death of the student.

13. It has been further stated that the respondent school is a charitable Institution, which has been in existence for more than 100 years. It has been taking care of the students very well, without any serious complaints from the parents of the students. However, a notice, dated 4.9.2012, had been received by the respondent school, after nearly one year after the death of A.Vijay Anand. As such, there was no negligence on the part of the teachers of the respondent school and they were in no way connected with the death of A.Vijay Anand. The actual reason for the death of the student could not be found out, as no postmortem had been done, based on the request of his parents. Thus, it is clear that there was no negligence on the part of the respondent school or its teachers and staff for the unfortunate incident. Therefore, the claim of the petitioner for

payment of compensation of Rs.20,00,000/- cannot be sustained.

14. The third respondent had filed a counter affidavit stating that the parents of A.Vijay Anand had allowed him to proceed to a distant place, by a bus, in spite of having the knowledge about his health condition. In the enquiry report prepared in connection with the reference made by the Chief Minister's Cell, it had been suggested that suitable action may be initiated against the Headmistress (in-charge) of C.S.I. Higher Secondary School for the Deaf, Mylapore, Chennai, and the other staff, who had accompanied the student on the trip to Bangalore and Mysore, for dereliction of duty. In the enquiry report conducted by the Crime Branch C.I.D., Chennai, the doctor, who had given the treatment to the student, had stated that his death may be due to repeated convulsions suffered by him on the day of his death. However, no autopsy could be conducted, as the parents had requested the doctors of Hospital, who had treated the student, not to conduct the same. It had also been observed that there is no external injury found on the body of the student.

15. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, the petitioner has not been in a position to substantiate his claim that the C.S.I. Higher Secondary School for the Deaf, Mylapore, Chennai, or its teachers and staff were negligent in giving the necessary treatment to the son of the petitioner, A.Vijay Anand.

16. From the statements made by the doctors, who had treated the student, it is seen that the student could have died, as he had suffered fits, while he was resting in the bus, at Mysore.

17. It is also seen that the student had been taken to the nearby Hospital, namely, J.S.S. Hospital, for immediate treatment, after the teachers had been informed that the boy had fallen down on the floor of the bus, while taking rest. The bus driver had immediately informed the teachers about the incident. Thereafter, the student had been taken to the Hospital, by bus, within a short span of time.

18. It is also noted that no autopsy had been performed on the body of the student and therefore, the real cause of his death is not known. The autopsy had not been performed at the request of the parents of the student.

19. It is also noted that the findings of the Crime Branch C.I.D., in its report, with regard to the negligence of the teachers and staff of the respondent school, are not based on any substantial evidence. Even though the death of the son of the petitioner is an unfortunate incident, this Court is of the considered view that the negligence on the part of the teachers and the staff of the respondent school cannot be presumed, without sufficient evidence being available. As such, the relief prayed for by the petitioner, in the present writ petition, cannot be granted. Hence, the writ petition stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

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Differently Abled Welfare Department
Government of Tamil Nadu
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+1 cc to Mr.S.NambiArooran Advocate sr.56093
+1 cc to Government Pleader sr.56828

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