

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.580 OF 2016

[Shaikh Irshad Shaikh Babbu .vs. The State of Maharashtra and one]

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.D. Patil, counsel for the petitioner,
 Mrs. K.R. Deshpande, AGP for respondent no.1,
 Shri T.M. Zaheer, counsel for respondent no.2.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : APRIL 22, 2016.

By this writ petition, the petitioner, the father of the deceased, who was studying in the primary school, has sought a direction to the respondents to pay compensation of Rs.5,00,000/- to the petitioner and his family members. The petitioner also seeks a further direction to absorb the petitioner in the services of the Nagpur Municipal Corporation.

It is the case of the petitioner that the son of the petitioner, who was 10 years old and was studying in a primary school at Kapil Nagar, had met with an accident due to the fall of the old school wall. It is stated that after the death of the son of the petitioner, a news was published in the local newspaper that the Mayor had promised that the petitioner would be paid compensation of Rs.5,00,000/- and employment would be given to the petitioner, due to the death of his son. It is stated that despite the promise by the Mayor to pay compensation and grant employment to the petitioner, the same is not granted. It is stated that the wall, that had fallen in the school on 17.12.2014, was an old and dilapidated wall and the accident was caused due to the negligence on the part of the respondent no.2 in

maintaining the school.

The respondent no.2 has filed an affidavit-in-reply. It is stated in the affidavit-in-reply that the allegations, specially the allegations in respect of negligence on the part of the respondent no.2 are not true. It is submitted that the petitioner's son had died due to falling of the Inauguration Ceremonial Foundation (Shilanayas) wall of "Sarva Shiksha Abhiyan". It is stated that the wall was not in a dilapidated condition and there was no negligence on the part of the respondent no.2. It is denied that the respondents had, at any point of time, declared to grant compensation to the petitioner and provide him a job. It is stated that under the "Rajiv Gandhi Shaleya Vidyarthi Apghat Vima Yogna" a sum of Rs.75,000/- is payable in case of accidental death and the said amount is sanctioned for the petitioner, under the said scheme. It is stated that though the respondent no.2 has sympathy for the petitioner, the respondent no.2 would not be in a position to pay an amount in excess of Rs.75,000/-. It is stated that in the absence of any negligence on the part of the respondent no.2, the relief sought by the petitioner may not be granted. It is further stated that when similar accidents have occurred and students have died, compensation of Rs.75,000/- is paid to their parents and grant of higher compensation to the petitioner, in this background, would result in discrimination. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction. There is a dispute in regard to the condition of the wall under which the petitioner's son expired. It is the case of the petitioner that the wall was very old and dilapidated, whereas it is the case of the respondents that the wall of "Sarva Shiksha Abhiyaan" was not very old or

dilapidated. The fact that the Mayor had promised the petitioner a job in the Nagpur Municipal Corporation and also a sum of Rs.5,00,000/- is seriously disputed by the respondent no.2. Even if it was so promised orally, it would be difficult for this court to grant the relief to the petitioner in exercise of the writ jurisdiction. It would be necessary in such cases, for the claimant to prove the negligence on the part of the respondents and also the loss caused to the parents due to the death of the child. The judgment reported in 2004 (2) ALL MR 721 (Smt. Vandana Narayanrao Chitnavis .vs. State of Maharashtra and others), 2004 (2) ALL MR 737 (Gaurang V. Merchant and others .vs. Madhliso and Co. Pvt. Ltd. and others), 2005 (4) Mh.L.J. 559 (Seema Ganesh Uikey .vs. State of Maharashtra and others) and relied on by the learned counsel for the petitioner cannot be made applicable to the facts of this case. It is observed by the Hon'ble Supreme Court in the judgment reported in (2005) 6 SCC 156 (SDO, Grid Corporation of Orissa Limited and others .vs. Timudu Oram) that actions in tort and negligence are required to be established, initially by the claimants. It was held in the reported judgment in the case of Chairman, Grid Corporation of Orissa Limited (GRIDCO) .vs. Sukamani Das reported in [1999] 7 SCC 298, that the mere fact that the wires of electric transmission lines belonging to Grid Corporation had snapped and the deceased came in contact therewith and died was not sufficient for awarding compensation.

In our considered view, the disputed questions of fact that are involved in this writ petition, cannot be decided in exercise of the writ jurisdiction. It would be open for the petitioner to file appropriate proceedings, if so advised.

Hence, we dispose of the writ petition by accepting the statement made on behalf of the respondent no.2 that it is ready to pay a sum of Rs.75,000/- to the petitioner towards

compensation under the scheme of “Rajiv Gandhi Shaleya Vidyarthi Apghat Vima Yogna”, with no order as to costs. The points raised in the petition are however kept open.

JUDGE

JUDGE

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