

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.8595 of 2007

Between:

Mulukutla Pochaiah, S/o Lingaiah,
Aged about 60 years, Occu: Agriculture,
r/o. Gudipeta Village, Mandal Dahegaon,
Via Rechini, District Adilabad and another.

.....Petitioners

And

The Union of India, rep.by the Project
Director, Sarvashiksha Abiyan for State of
Telangana, near Lal Bahadur Stadium,
Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 27.09.2016

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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Aged about 60 years, Occu: Agriculture,
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... Petitioners

Vs.

\$ The Union of India, rep.by the Project
Director, Sarvashiksha Abiyan for State of
Telangana, near Lal Bahadur Stadium,
Hyderabad and others.

.... Respondents

!Counsel for the petitioners : Sri S.Chandra Sekhar

Counsel for the Respondents : Government Pleader for
respondents 1, 3 & 4;
Sri G.Bhaskar, Standing Counsel
for respondent No.2;
Sri Bhupal Reddy, standing
counsel for respondent no.5;
Govt.Pleader for Home for
Respondent no.6

<Gist :

>Head Note:

? Cases referred:

1. 2016 (7) CPSC 4 WP (Civil) No. 68 of 2011, dt:5.7.2016 SC
2. (1993) 2 SCC 746
3. (2000) 2 Supreme Court Cases 465
4. 1992 Supp (2) Supreme Court Cases 27
5. (2000) 4 SCC 543
6. AIR 1994 MADRAS 306
7. (1983) 4 SCC 141
8. (1992) 2 SCC 223
9. (2013) 5 SCC 470
10. (2004) 3 SCC 553
11. AIR 1980 SC 1896
12. 2012 (2) ALT 576
13. 1996 (4) ALD 183
14. (2001) 8 SCC 151
15. (1993) 2 SCC 746
16. (1981) 1 SCC 627
17. (2001) 8 SCC 197

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.8595 OF 2007

ORDER:

Two children of the petitioners were enrolled as students of Kasturiba Residential School for Girls (Kasturiba Gandhi Balikala Gurukula Vidyalayam), Dahegaon, Adilabad District for the academic year 2006-2007. On the intervening night of 21/22.08.2006 they died as they were victims of snake bite. The report of the postmortem discloses that the death occurred due to the snake bite. The Special Officer of the School filed a complaint in the Dahegaon Police Station complaining about death of two children due to snake bite and the same was registered as Crime No. 53 of 2006. In the final report, police have shown the cause of death as snake bite. This Writ Petition is filed by the petitioners claiming compensation for the death of their children caused on account of negligence of the respondents.

2. Heard Sri S.Chandra Sekhar, learned counsel appearing for petitioners, Sri G.Bhaskar, learned Standing Counsel for Rajiv Vidya Mission (SSA), for second respondent, Sri Bhupal Reddy, learned Standing Counsel for 5th respondent and learned Government Pleader for Home (TG) for 6th respondent.

3.1. Counsel appearing for petitioners submits that the 5th respondent-School was located in the dilapidated house that was earlier used as godown by a contractor. Before it was converted into school, no repairs were undertaken. It did not have basic facilities to run the school. There were no windows, no doors and no electricity. Students were made to sleep on the floor. On the

intervening night, when students complained of something biting them, the Aya did not bother to respond. When they informed the ward in charge, she goaded them and threatened the children with dire consequences if they do not allow them to sleep. It appears that the students have also complained to the Special Officer and he also did not bother to take immediate steps to shift the students to the hospital. Later, having realized that there was a snake bite, the Special Officer created a story of snake bite to him also and he got himself admitted to hospital and thereafter, he filed the complaint reporting snake bite on the students. It is therefore, submitted that the incident occurred due to poor facilities provided in the school building and on account of carelessness of staff in providing immediate medical attention. It is a clear case of not providing proper amenities and not protecting the interest of the students in the school. On account of the negligence of the respondents, petitioners lost their children at a young age and they were made to suffer mental agony and humiliation.

3.2. He would submit that the children of the petitioners were earlier dropped out from school due to financial difficulties. However, village elders and representatives of Sarva Siksha Abiyan persuaded them to admit their children in this school with assurance of taking care of and to provide good education. With fond hope and by reposing confidence on the management the children were admitted.

3.3. According to learned counsel, there are no disputed questions of facts involved in this case. The medical evidence and the final report of the Police in Crime No. 53 would show that the

death was because of snake bite in the dormitory of the 5th respondent-School. Even the complaint of the Special Officer admits the cause of death. Thus, as basic facts are not disputed writ Court has no impediment to award compensation. He would submit that as the children studying in the 6th class died prematurely due to negligence of the respondents, monetary compensation would at least mitigate the hardship and sufferance of the petitioners.

3.4. Mr. Chandrasekhar would submit that the Writ Court has ample jurisdiction to award compensation and an aggrieved person need not avail the common law remedies. In support of said contention he placed reliance on following decisions: **Anil Kumar Gupta vs. Union of India and others**¹; **Nilabati Behera vs. State of Orissa**²; **Chairman, Railway Board and others vs. Chandrima Das (Mrs) and others**³; **Rajalakshmi (Mrs) vs. Union Territory of Pondicherry and another**⁴; **Tamil Nadu Electricity Board vs. Sumathi and others**⁵; **Xavier, petitioner vs. State of T.N and others**⁶; **Rudul Sah vs. State of Bihar and another**⁷ and **Kumari (Smt) vs. State of Tamil Nadu and others**⁸.

4.1. Learned Standing Counsel raised preliminary objection on maintainability of the Writ Petition on the ground that in exercise of writ jurisdiction this court cannot award compensation and the aggrieved parties have to avail civil law remedies.

¹ 2016 (7) CPSC 4 WP (Civil) No. 68 of 2011, dt:5.7.2016 SC

² (1993) 2 SCC 746

³ (2000) 2 Supreme Court Cases 465

⁴ 1992 Supp (2) Supreme Court Cases 27

⁵ (2000) 4 SCC 543

⁶ AIR 1994 MADRAS 306

⁷ (1983) 4 SCC 141

⁸ (1992) 2 SCC 223

4.2. He submitted that Sarva Shiksha Abiyan is launched by the Government of India all over the Country. Under the Scheme, the Kasturiba Residential Schools are established and each State has Project Director of Sarva Shiksha Abiyan who is responsible for Management and running of the Kusturiba Residential Schools. He further submitted that at the district level, the District Collector is the Chairman of Sarva Shiksha Biyan. Under this scheme several schools are established in far and remote places and have been catering the educational needs of girls from poor and down trodden families. Some of the schools, like the one in this case, are located in either to in accessible places to provide educational facilities.

4.3. Learned counsel also submitted that there is no dispute with regard to the legal preposition that this Court can award compensation in exercise of power of judicial review under Article 226 of the Constitution to award compensation. However, relief that can be granted depends on the facts of each case and in the instant case, it is not proved that due to negligence on the part of Special Officer or his subordinates death occurred; staff cannot be blamed for snake bite. The children were taken to hospital immediately when the staff came to know of snake bite but they could not be saved. Compensation can be awarded only if allegation of deliberate negligence by the staff is proved. He would, therefore, submit that petitioners are not entitled to compensation.

5. The point for consideration is, in exercise of power of judicial review under Article 226 of the Constitution of India, can the High Court award compensation to petitioners on the issue of death of

daughters of the petitioners due to snake bite in the 5th respondent school and if so what relief ?

6. The stark reality is education in rural India is very low and more so in girls. We are yet to reach the target of universal education even after 69 years of independence. This is impacting the progress of the country in all fields. It is also impacting the reach of various schemes launched by the governments to ameliorate the poor and down trodden. Even now enrolment of students in schools in rural areas is very low and drop out from school is regular phenomena. In rural India, girls are not admitted to school and even if admitted, they would be withdrawn from school by the time they reach 5th or 6th class. The rate of drop out is more pronounced in case of girl students. There may be variety of reasons for this phenomenon. Girls are married at a young age and/ or used for attending daily household chores or to involve in daily labour. The societal bias against girl child is more pronounced in rural India. There are social and economic bottlenecks that need to be addressed.

7. The Government of India was concerned with the fact that there existed gender disparities in rural areas and more particularly among disadvantaged communities. On analysing the enrolment trends, it was found that there was significant gap in the enrolment of girls at the elementary level as compared to boys, especially at the upper primary levels. With the objective of removing these disparities and to attract girls to the schools, the Kasturiba Gandhi Balika Vidhayalas (KGBV) were established at farthest/ remote/ either to inaccessible places. The scheme is

applicable in Educationally Backward Blocks (EBBs) where the rural female literacy is below the national average and gender gap in literacy is more than the national average. The Government of India intended to create fully functional educational institutions, where girls earlier dropped out from school can come back to studies and prosecute their studies.

8. The primary objective is to provide quality education to the girls of disadvantaged groups of society; to motivate the parents of the girl-child belonging to disadvantaged sections of the society to send the girl-child back to school and pursue formal education. The parents were assured that the girl child would be provided free education and accommodation and parents need not pay for anything, with assurance of quality education. At one stroke, the scheme intended to eliminate the low literacy in girls, to motivate the girls coming from disadvantaged groups of the society to educate and to achieve their dreams. The success of the scheme of this nature would have far reaching impact on overall development of the society.

9. Universal education is one of the primary objectives of our Constitution. Directive principles of State policy endow the State to ensure that we achieve this objective. Article 21-A now firmly puts the right to education as fundamental right. Every child in this country is entitled to free and compulsory education. It shall be the primary responsibility of the State to provide all the facilities to enable a child to prosecute education. Thus, every child, irrespective of caste, creed, social background has right to demand educational facilities to him/her.

10. To give effect to mandate of Article 21-A and to achieve the goal of universal education, Indian Parliament promulgated, 'The Right to Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009). One of the objectives to bring out this enactment was "to provide free elementary education of **satisfactory and equitable quality** in a formal school with **essential norms and standards**". The emphasis of Act, 2009 is to provide satisfactory and equitable quality with essential norms and standards.

11. In the year 2007, the Government of India launched Sarva Siksha Abiyan (SSA). After launch of SSA, the Kasturba Gandhi Balika Vidyalaya (KGBV) scheme was merged with the Sarvashiksha Abhiyan programme with effect from 1st April, 2007. With the RTE Act, 2009 coming into force with effect from 1st April 2010, the SSA Framework of Implementation was revised to correspond to the Right to Education Act. The KGBV component of SSA is also being implemented in the overall context of child rights and child entitlements and in harmony with the spirit and stipulations of the Act.

12. In all the States, State Society of SSA is established. The State Society is the implementing arm of SSA, including the KGBV in the concerned state. The Government of India and State Governments provide funds to the State Implementation Society. It is seen that sufficient financial allocation is made available to provide proper infrastructure and to ensure quality education. Financial norms evolved for establishing the institutions specifically earmark funds to provide basic needs.

13. As facts noted above, these two girls were dropped out from the formal education as the parents did not have the means to educate their daughters. The parents were goaded to admit the students in the school. Hoping that their children would study well and based on the assurance given by the local elders and school authorities that good education would be provided to their children without any financial burden on them and not realizing the ill fate that was starring at them, these parents have admitted the students into the 5th respondent school.

14. Having persuaded the parents to admit the students into the school, it is the primary responsibility of the school management to provide all the amenities, *'of satisfactory and equitable quality'*, *'with essential norms and standards'*, *'by creating congenial atmosphere'* for decent living and for education to show enthusiasm and to gain inclination to study. Material on record would disclose that the subject school was failing on all these parameters. Building was not meant to be a residential school; school was located in the building earlier used as godown; it lacked the basic infrastructure to function as school with residential accommodation; it appears that even window shutters and doors were not put up; the cleanliness of the premises was not maintained; children were not provided the cots and were made to sleep on the floor in a hall, having no protection; there was no electricity. It lacked basic requirements to ensure safety, security and well being of children admitted to school. It appears the authorities have not shown same amount of enthusiasm in maintaining the school premises as compared to starting a school and enrolling the students having regard to constitutional

mandate and the requirements of Act, 2009. The respondents failed in their primary responsibility to look after the welfare of children. What happened on the fateful night was bound to happen. The events unfolded on the fateful night could have happened on any other day or to anybody. It is a clear case of negligence of authorities which lead to untimely death of two children in the most bizarre manner. Their actions shock the conscious of this Court. It is better to shut down such schools than making the children to study under constant threat to their life. Stories of death of students due to snake bite are in abundance on the World Wide Web. Recently two students died in a tribal welfare school in Khammam district.

15. The events that followed are more bizarre and speak volume of carelessness of persons managing affairs of the school. It is highly disheartening to note that when students were trying to alert the Aya and the in-charge teacher about snake bite, they were treated in-humanly, ignored their plea and were goaded with threat of dire consequences if their sleep was disturbed. Even the Special Officer did not bother to respond to such plea. If only the voice of children was heard, medical attention could have been provided and their lives could have been saved. It is highly disturbing to note that when the Special Officer realized that there was snake bite, he creates a false story as if snake had also bitten him and got himself admitted into a hospital. As things emerged, it appears there was no snake bite on him.

16. The facts which are relevant for consideration are not in dispute. There is no controversy on the primary fact, death of two

girl students of 5th respondent school due to snake bite on the intervening night of 21/22.08.2006, while they were sleeping. The specific allegations on lack of bare facilities and not attending to the students after the incident are not denied. Admittedly, the golden period after snake bite was not utilized to provide treatment. The Standing Counsel would only submit that though there is no dispute regarding the cause of death but the school management was not responsible for cause of death and they were not careless. As per the report of the Police, there was no negligence on the part of the Special Officer or his staff. As the students were bitten by snake in their sleep, the staff as well as the Special Officer was not aware of snake bite immediately and as soon as they came to know, the girls were shifted to hospital and medical attention was provided to them. He would therefore submit that the liability cannot be fixed on them.

17. Right to education is now a facet of right to life. Right to life encompasses, right to decent living, living with dignity, self respect and living in decent environment. It is the obligation thrust on the State by the Constitution and the Indian Parliament to provide quality education in congenial atmosphere. In their anxiety to embrace right to education and realize their dreams, dreams of reaching the stars and moon and what not, their life was taken away due to negligence of respondent authorities.

18. In the above background, this court considers the point in issue.

19.1. Jurisdiction vested in High Court under Article 226 is an extraordinary jurisdiction and has no bounds. It is an

extraordinary relief available to any aggrieved person, who has serious grievance against the public authorities due to whose negligence, carelessness, inaction, arbitrary decisions, the rights of such persons or the family members were affected. On the issue of scope and jurisdiction of the writ Court under Article 226 of the Constitution, we are not in virgin territory. Precedent decisions throw light on the scope of jurisdiction under Article 226, self imposed restraint by the writ Courts and parameters, within which Writ Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution.

19.2. Suffice to note the observations of Supreme Court in **Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond & Gem Development Corporation Limited and another**⁹, Supreme Court held as under:

“21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

⁹ (2013) 5 SCC 470

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in *good faith*. Additionally, the applicant must make a demand which is clear, plain and unambiguous.”

19.3. In **ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others**¹⁰, Supreme Court considered earlier decisions on scope of maintainability of a writ petition where there are disputed questions of fact and held as under:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur (1970) 1 SCC 582*) this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

....
....

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

¹⁰ (2004) 3 SCC 553

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks* ((1998) 8 SCC 1) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

19.4. In ***Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha***¹¹, while dealing with the scope of power under Article 226, Supreme Court held as under:

“ 146. In the second chapter of our sum-up, the first thing we decide is that **Article 226, however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand.** What the tribunal may, in its discretion, do, the High Court too, under Article 226, can, if facts compel, do. (emphasis supplied)

¹¹ AIR 1980 SC 1896

20.1 The public law remedy is expanded to reach out to victims of negligence and carelessness due to actions/inactions of authorities functioning on behalf of the state or under the state, who have no respect for the values of the down trodden people. The case on hand is the epitome of such carelessness. The long arm of writ court is extended to award compensation to victims of neglect of duties by authorities acting under the state.

20.2. A brief parade of the precedents on the scope of awarding of compensation by the High Court in exercise of its jurisdiction under Article 226 is necessary to appreciate the contentions of counsel appearing for respective parties.

20.3. The long arm of writ Court was extended to reach out to the families of persons, who suffered such unfortunate death for no fault of them and due to negligence of public authorities. The cause of death was for various reasons; train accident (**Anil Kumar Gupta vs. Union of India and others**); custodial death (**Rajalakshmi (Mrs) vs. Union Territory of Pondicherry and another**); death of student because of beating by the students (**Banoth Bure Bai v. Secretary, A.P.Residential Educational Institutional Society and others**¹²); due to collapse of school building where under students were killed (**Kolli Yerukulamma v. Chairman, Visakhapatnam Port Trust**¹³); illegal detention (**Rudul Sah vs. State of Bihar and another**); death by drowning of 14 students in swirling water (**M.S.grewal and Another v. Deep Chand Sood and others**¹⁴); death on account of electrocution

¹² 2012 (2) ALT 576

¹³ 1996 (4) ALD 183

¹⁴ (2001) 8 SCC 151

(Tamil Nadu Electricity Board vs. Sumathi and others); death due to fall in sewerage tank **(Kumari (Smt) vs. State of Tamil Nadu and others)**.

20.4. Letter dated 14.09.1988 by Smt Nilabati Behera sent to Supreme Court was treated as writ petition under Article 32 of the Constitution [**Nilabati Bahera v. State of Orissa**¹⁵]. In the said letter, she claimed that her son died in Police custody and she should be awarded compensation for the same. The Supreme Court held that it was a case of custodial death. The question for consideration was to fix liability to compensate petitioner. Supreme Court observed as under:

“10. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings.”

“17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is ‘distinct from, and in addition to, the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no

¹⁵ (1993) 2 SCC 746

question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.”

“32. 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 tortious 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 that for the established violation of the fundamental right to 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 courts 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 title “*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 are 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 is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also 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-to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament ... the courts 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 welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.”

“33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.” (emphasis supplied)

20.5. A practicing Advocate of Calcutta High Court filed petition under Article 226 of the Constitution claiming compensation to the victim (a foreign national) who was allegedly gang raped in Yatri Niwas, belonging to Indian Railways (**Chairman, Railway Board v. Chandrima Das**). High Court awarded compensation of Rupees ten lakhs to the victim. On appeal, the plea raised on behalf of railways in the Supreme Court was that Railways cannot be mulcted for the offences committed by individual employees. It was further contended that in exercise of writ jurisdiction, High Court could not have awarded compensation, that too at the instance of third parties and to a foreigner. Supreme Court rejected the contention against maintainability of writ petition.

20.6. It is held that when there is negligence on the face of it and Article 21 is infringed, there is no bar to award compensation under Article 226 of the Constitution [**Tamil Nadu Electricity Board v. Sumathi and others**] and the writ Court should ‘forge new tools and devise new remedies’ (**Khadri and others vs. State of Bihar**¹⁶).

21. At this stage, I am also reminded of question posed by Sri **Justice P.N.Bhagwati** (as he then was) in **Khadri and others Vs. State of Bihar** and observations of Justice **J S Verma** (as he then was) in **Nilabati Behera Vs State of Orissa**. **Justice Bhagwati**

¹⁶ (1981) 1 SCC 627

posed this question: ***“Why should the Court not be prepared ‘to forge new tools and devise new remedies’ for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty”?. Justice Verma*** said, ***“The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve ‘new tools’ to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law.”***

22. Petitioners lost their children at a very young and prospective age while they were prosecuting 6th standard. If only the petitioner's children were allowed to study in a conducive atmosphere, they could have reached higher levels by dint of hard work and dedication. If there is encouragement and motivation sky is the limit. The aim of establishing these schools also is to encourage girls to study and to unearth hidden talent. As we have seen in recent past, girls with rural background and with least amount of scientific training have excelled in the field of sport at the world level, climbed Mount Everest, excelled in Para Olympics and so on. There are innumerable instances of people from rural background, including girl students coming up and reaching higher echelons of the society. Due to utter negligence and carelessness, the spark from the eyes of parents of those girls was taken away and buried. The amount of suffering and mental agony that may be undergone by parents cannot be described, but can be visualized, as enormous. They are made to live rest of their life with that pain and anguish. This writ petition is pending since the year 2007 and the ghastly accident took place in the

year 2006. We are now in the year 2016 i.e., after more than 10 years of the incident. At this stage subjecting the petitioners to the civil law remedy to claim compensation for the alleged wrong caused to them when the relevant facts are vividly displayed, as clear as crystal, is not just and equitable. Greater injustice would be caused if the relief is not granted in exercise of writ jurisdiction and relegating petitioners to civil law remedy. The precedent decisions referred to above points out, beyond pale of doubt, the scope of jurisdiction of writ Court in awarding compensation for the illegal acts of the State instrumentality. This is a fit case to extend the long arm of justice in exercise of extraordinary reserve power and be a friend in need to victims of injustice (**Gujarat Steel Tubes Ltd**).

23. It is next contended by the learned standing counsel that even assuming this Court is competent to award compensation in exercise of writ jurisdiction, the amount of compensation claimed by the petitioners is excessive and disproportionate. According to the learned standing counsel since petitioners were unable to provide education to their children, their children were admitted to the 5th respondent school and they were provided all the facilities free of cost. The petitioners are agriculture labour/small formers. Thus, at the most, petitioners are entitled to claim compensation of Rs.1,00,000/- each.

24. On the scope of quantification of compensation, it is always difficult to arrive at appropriate compensation on death of a child. In **Lata Wadhwa v. State of Bihar**¹⁷, while celebrating 150th birth

¹⁷ (2001) 8 SCC 197

anniversary of Sir Jamshedji Tata on 03.03.1989, devastating fire suddenly engulfed the Pandal and the area surrounded, killing several people including 26 children. The former Chief Justice of the Supreme Court suggested the quantum of compensation payable to the family members of the victims. Considering the recommendations of the former Chief Justice, the Supreme Court determined the compensation payable to the claimants of the deceased children at Rs.3,60,000/- with additional amount of Rs.50,000/- as conventional figure. This amount was arrived at by the Supreme Court on an incident of the year 1989. In the last several years that followed, the purchasing power of rupee got drastically reduced. The loss and suffering to parents is recurring and for a life time. Such a wound can never be healed. The loss and suffering of parents is emotional and psychological and cannot be measured in terms of money. It is only hoped that monetary component would mitigate their hardship to some extent and would give some kind of consolation to bereaved parents. I am also of the opinion that the awarding of compensation should act as a deterrent to the school managements. As noted above, even now children studying in Government schools are dying due to snake bite. There appears no serious thought, *“to provide free elementary education of satisfactory and equitable quality in a formal school with essential norms and standards”*, the primary object of Act, 2009. No serious endeavor is made to establish proper schools.

25. Having regard to the principle adopted by the Supreme Court in **Lata Wadhwa** and having regard to the fact that the incident in the instant writ petition occurred in the year 2006 and for the reasons assigned above, I am of the considered opinion

that a consolidated amount of Rs.8,00,000/- (Rupees eight lakhs only) to each of the petitioners would meet the ends of justice, mitigate the hardship undergone by the parents, and would at least give some kind of solace to the parents of the children whose lives were taken away even before they could blossom.

26. Writ Petition is allowed accordingly. The respondents are directed to open fixed deposit account in the name of mothers of the deceased children and deposit Rs.5,00,000/- (Rupees five lakhs only) in each of the accounts. The fixed deposit shall be in operation for a period of ten years. However, the mothers of the deceased children can encash the interest payable on the fixed deposit as and when accrued. The District Collector shall ensure that bank account should be opened in the names of the mothers of the deceased children. The remaining Rs.3,00,000/- (Rupees three lakhs only) should be deposited in a fixed deposit account in the name of a girl child in the case of 2nd petitioner and in the name of three girls in the case of 1st petitioner in the joint account of the girls. The interest proceeds of the fixed deposit amount also shall be added to the fixed deposit amount. The said amount can be utilized after a period of ten years by the girl/girls. The entire amount, as directed above, shall be deposited within a period of 12 weeks from the date of receipt of copy of this order. If there is any delay beyond 12 weeks from of time granted, respondents shall pay interest as applicable to fixed deposit account for the delayed period.

Miscellaneous petitions if any pending shall stand closed.

There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 27.09.2016

Ka/kkm



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.8595 OF 2007

Date: 27.09.2016

Ka/kkm