

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1856 of 2018**

1. Shobha Ram S/o Rajwa Ram Sahu Aged About 56 Years R/o Village-Khuteri (Rang), Post And Police Station, Gunderdehi, District- Balod, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through-The Collector, Balod, District Balod, Chhattisgarh.
2. Tahsildar Tahsil Gunderdehi, District-Balod, Chhattisgarh.
3. Chief Executive Officer Janpad Panchayat Gunderdehi, District-Balod, Chhattisgarh.
4. Sarpanch Gram Panchayat Khuteri (Rang), Post And Police Station Gunderdehi, District-Balod, Chhattisgarh.
5. Secretary Gram Panchayat Khuteri (Rang), Post And Police Station Gunderdehi, District-Balod, Chhattisgarh.

---- Respondent

For Petitioners

Shri Govind Ram Miri, Advocate

For Respondent/State

Shri Anand Dadariya, Govt. Advocate

Order On Board**By****Prashant Kumar Mishra, J.****10/10/2018**

1. The issue to be considered in this petition is –

Whether the State Government would be vicariously liable to compensate the petitioner whose wife namely; Smt. Om Bai died on 10-6-2017 due to bite by a stray dog/rabid dog on 22-4-2017 ?

2. From the facts made available to this Court in the pleadings made by the parties, it is manifest that the petitioner's wife namely; Smt. Om Bai (since deceased) was bitten by a rabid dog when she was on her way to home on 22-4-2017. The deceased was taken to the Government Hospital, Gunderdehi for treatment and thereafter to Sparsh Hospital, Bhilai for better/advance treatment. When the health condition of the deceased did not improve she was further admitted to Chandulal Chandrakar Memorial Hospital, Bhilai, from where she was discharged on 9-6-2017, as there was no chance of any improvement in her health condition. She eventually died on 10-6-2017. The fact that the petitioner's wife was bitten by a stray dog/rabid dog has been substantiated by a certificate signed by the Sarpanch, Kotwar & Panch of the concerned village, which is available at page 30 of the petition.
3. Petitioner's representation to the Collector seeking compensation was not processed on account of a memo issued by the Tahsildar, Gunderdehi vide Annexure – P/3 informing the Collector that there is no provision under the Revenue Book Circular (henceforth 'the RBC') for awarding compensation on account of stray dog bite.

4. The fact that the petitioner is a Labourer is substantiated by the identity card issued to the beneficiaries of the Chhattisgarh Building and other Construction Workers Welfare Board vide Annexure – P/6. In this identity card itself name of the deceased Om Bai is mentioned as a family member and successor of the petitioner.
5. The Collector, Balod, has filed affidavit stating that a sum of Rs.1,50,000/- has been paid to the Chandulal Chandrakar Memorial Hospital, Bhilai, towards the medical expenses incurred by the petitioner in respect of treatment of his wife Smt. Om Bai. Further an amount of Rs.40,000/- has been paid to the petitioner under the *Mukhya Mantri Swechcha Anudan* on 13-7-2017. It is also stated in the affidavit that the petitioner's application for providing compensation under the Pradhan Mantri Suraksha Bima Yojna (for short 'the PMSBY') has been repudiated by the United India Insurance Co. Ltd. for the reason that for payment of compensation copy of the First Information Report (FIR) and postmortem report are mandatory whereas those documents were not made available by the petitioner.
6. Annexure – 'F' is the circular issued by the Department of Revenue and Disaster Management, Government of Chhattisgarh contained in Part 6 S.No.4 of the RBC as

amended up to 9-6-2015. Clause Five Schedule One of the RBC provides for financial assistance to the immediate successor of the deceased, who has suffered loss of life on account of natural calamity, natural disaster or for natural reasons like falling in pit, snake bite, scorpion bite, *guhera* (wild reptile), bee bite, drowning in river, tank, dam, well, canal, nala, boat accident, blast of cooking gas cylinder, capsizing of mines, sunstroke, etc. If the death occurs for these reasons a sum of Rs.4,00,000/- is to be awarded to the successor of the deceased. It also says that on receiving information of such death the Sub Divisional Officer (Revenue), Tahsildar or Naib Tahsildar shall visit the spot to ascertain the reasons for death and wherever possible the deceased shall be examined by Physician. When the death is found to have taken place on the happening of above mentioned calamities the Collector shall sanction the amount of financial assistance. It further says that death due to accidental burning and on account of thunder shall also include in natural calamity. Thus, the RBC does not provide for sanction of financial assistance of Rs.4,00,000/- on account of death due to stray dog bite.

7. To consider whether the petitioner is entitled for compensation due to death of his wife for rabid dog bite, I

shall refer to few decisions on the issue which may assist in decision making.

8. In **Anupam Tripathi v Union of India and Others**¹ and other connected matters the Supreme Court was considering conflicting issues brought before it by way of several petitions. On the one hand petitions have been filed for direction to the concerned State to control stray dogs, the other raised the issue of indiscriminating killing of stray dogs amounting to cruelty to animals. The Supreme Court referred to the provisions of the Prevention of Cruelty to Animals, Act, 1960 (for short ‘the PCA Act’) and Animal Birth Control (Dogs) Rules, 2001 (for short ‘the Rules, 2001’). The Supreme Court eventually constituted a committee to maintain complaints regarding injuries sustained by the persons in the dog bite, the nature and gravity of the injury, availability of medicines and the treatment administered to them, the failure of treatment and its cure and in case of unfortunate death, the particulars of the deceased and the reasons behind the same. The Supreme Court observed that on the basis of the report of the committee, subject to adjudication of the responsibility of the State, it would be in a position to think of granting of compensation.

¹ (2016) 13 SCC 492

9. In **Shakuntala v Govt of NCT of Delhi & Anr.**² the High Court of Delhi was considering death of a roadside Redi/Thela (hand-cart) operator, a fruit vendor, as he was mauled by two fighting bulls. After referring to the provisions contained in Section 298 of the Delhi Municipal Corporation Act, 1957 and Section 202 of the New Delhi Municipal Council Act, 1994 and various decisions of the Supreme Court and other High Courts, it was held by the High Court of Delhi that the respondents are liable to compensate the petitioner in that case as the respondents were either negligent or indifferent towards their statutory duties. The High Court of Delhi awarded a sum of Rs.10.00 lacs towards compensation.
10. In **Sanjay Phophaliya v State of Rajasthan and Ors.**³ relying on **L.K. Koolwal v State of Rajasthan and Ors.**⁴ it was observed thus :

"it is primary, mandatory and obligatory duly (*sic* duty) of Municipality to keep city clean and to remove insanitation, nuisance etc. The Municipality cannot take plea whether funds or staff is available or not."

It was further observed that-

"9. It is a serious matter when the dogs and other animals suffering from rabies bite animals and persons. The duty becomes more onerous on the respondents with regard to the dogs and

² WP (C) No.13771 of 2006 decided on 1-7-2009

³ AIR 1998 Raj 96

⁴ AIR 1988 Raj 2

such animals. The staff cannot say that its duty is complete if action is taken only on complaints. They must not sit in the office but should continuously take round of the city. If any inaction is found on the part of the staff, the respondents are bound to take disciplinary action against such staff. If still any accident happens, then the injured person or relative of the deceased person would be competent to invoke the provisions of Section 188 of IPC against such a negligent staff. It is expected that the roads of Jodhpur be cleaned from these stray animals within a period of four months from today. The respondents would be free to get work through contractors."

11. In **Milkmen Colony Vikas Samiti v State of Rajasthan & Ors.**⁵ the Supreme Court directed the Municipal Corporation of Jodhpur to remove unattended stray animals, such as, stray cattle, bulls, dogs, pigs etc. from the city of Jodhpur.
12. In **Col. Dharamvir Kataria v Union of India and Others**⁶ the High Court of Delhi awarded compensation when the petitioner's wife died due to fall in a pit of a lift installed by M/s. Bharat Bijlee Limited under the supervision of CPWD.
13. In **D.K. Basu v State of W.B.**⁷ it has been laid down by the Supreme Court that grant of compensation in proceedings under Article 32 & 226 of the Constitution of India for the established violation of fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law

5 AIR 2007 SC 1046

6 AIR 1999 Delhi 291

7 (1997) 1 SCC 416

jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian 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. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

14. In **Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v State of Orissa and Others**⁸, it was held that the primary source of

8 (1993) 2 SCC 746

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.

15. In **Nilabati Behera** (supra) the Supreme Court quoted the first Hamlyn Lecture in 1949 under the title '*Freedom under the Law*' where Lord Denning had said as under :

“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.”

16. In the case at hand, the dog bite has occurred in a village under the control of the Gram Panchayat, Khuteri (Rang), Gunderdehi, District Balod, whose affairs are regulated under

the provisions of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993').

17. Section 49 of the Adhiniyam, 1993 dealing with the functions of Gram Panchayat provides that it shall be the duty of a Gram Panchayat in so far as the Gram Panchayat funds allows to perform within its areas the following functions:--(1) sanitation, conservancy and prevention and abatement of nuisance. Similarly, Section 54 provides for powers of Gram Panchayat as to public health facilities and safety stating that subject to the rules as the State Government may make in this behalf, the Gram Panchayat shall have power:--(iii) to maintain the sanitation, conservancy, drainage, water works, sources of water supply; and (vii) to ensure environmental control.
18. In exercise of powers under these provisions the State Government has framed the rules known as the Chhattisgarh Gram Panchayat (Sanitation, Conservancy and Prevention and Abatement of Nuisance) Rules, 1999 (henceforth 'the Rules, 1999'). Rule 2 (d) of the Rules, 1999 defines the word 'nuisance', which reads as under :

2. **Definitions.**--In these rules, unless the context otherwise requires.--

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(d) "*Nuisance*" includes any act, omission, place or thing which causes or likely to cause injury, danger, annoyance or offences to the sense of sight, smell or hearing or disturbance to rest or sleep of community or *which may be dangerous to life* or *injurious to the health* or property or offends against the public morality;

19. Rule 29 of the Rules, 1999 provides for control of Gram Panchayat over **Dogs**. The said provision is reproduced hereunder for ready reference :

29. Control of Gram Panchayat. - (1) The Gram Panchayat may, by public notice, require that every **dog** while in streets and not being led by some person shall be muzzled in such way so as to allow the **dog** freely to breath and drink, while actually preventing him from biting.

(2) The Gram Panchayat may take possession of any **dog** found wandering unmuzzled in any public place and may either detain such **dog** until its owner has claimed it and provided a proper muzzle for it and has paid all the expenses of its detention or cause it to be destroyed.

(3) A **dog** which has been detained under aforesaid sub-rule is wearing a collar with owner's name and address thereon, such **dog** shall not be destroyed until a letter stating the fact that it has been so detained has been sent to the said address and the **dog** has remained unclaimed for three clear days provided that any **dog** which is found to be rabid may be destroyed at any time.

(4) Any unclaimed **dog** and a **dog**, the owner of which refuses to pay all the expenses of its detention, may be sold or destroyed, after having detained for the said period of three clear days.

(5) All expenses incurred by the Gram Panchayat under this rule may be recovered from the owner of the **dog** which has been taken possession of or detained, in the manner provided for the recovery of taxes under the Act.

20. The Rules, 1999 thus obligates the Gram Panchayat to detain an unclaimed dog and destroy the said dog after three clear days. The Gram Panchayat has failed to perform its duty under Rule 29 of the Rules, 1999, therefore, for failure of the Gram Panchayat to perform its statutory function, the said Gram Panchayat jointly with the State Government would be liable to compensate the petitioner.
21. The petitioner has claimed the compensation without quantifying the same. The petitioner is also claiming reimbursement of Rs.3,00,000/-, which he has spent on the treatment of his deceased wife.
22. The affidavit filed by the Collector, Balod states that a sum of Rs.1,50,000/- has already been paid to Chandulal Chandrakar Memorial Hospital, Bhilai, towards the cost of treatment.
23. In the matter of **In Reference Court on its own motion (Regarding Death of Ku. Divya Verma, D/o Shri Ashok Verma due to Rabies) v State of Chhattisgarh & Another**⁹ by order dated 22-8-2017 this Court, while entertaining the *suo motu* PIL, has allowed compensation of Rs.10,00,000/- to

the mother of the deceased who died on account of attack by street dog. Prayer for modification of the said order subsequently rejected by order dated 12-9-2017.

24. In view of the above, I deem it appropriate to award compensation to the tune of Rs.10,00,000/- in favour of the petitioner minus (-) the amount already paid by the Government to the Hospital where the deceased obtained treatment. Petitioner would, thus, be entitled to a sum of Rs.8,50,000/- within a period of three months from the date of receipt of certified copy of this order.
25. As an upshot, the writ petition is allowed.

Sd/-

Judge
Prashant Kumar Mishra

Gowri