

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.23133 of 2008

M.Mehala

...Petitioner

Vs

- 1.State of Tamil Nadu,
Represented by The Secretary
to Government,
Education Department,
Fort St.George,
Chennai-9.
- 2.The District Collector,
Thiruvallur District,
Thiruvallur.
- 3.The Correspondent,
Vellaiyan Chettiar Higher Secondary School,
Thiruvottiyur,
Chennai-19.
- 4.The Headmaster,
Vellaiyan Chettiar Higher Secondary School,
Thiruvottiyur,
Chennai-19.
- 5.Shri Sridhar,
Class Teacher
IX Standard H Section,
Vellaiyan Chettiar Higher Secondary School,
Thiruvottiyur,
Chennai-19.

...Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 5 more particularly the respondents 3 to 5 to pay compensation of a sum of Rs.5 lakhs towards the death of the petitioner's son M.Sundaravadivelu, studying in IX Standard 'H' Section at Vellaiyan Chettiar Higher Secondary School, who died due to the negligence conduct of the respondents 3 to 5.

For Petitioner : M/s.S.Jothivani

For Respondents : Mr. Thangavadhana Balakrishnan
Additional Govt. Pleader for R1 & R2

: Mr.Thangasivan for R3 to R5

ORDER

The Writ Petition has been filed seeking for a Writ of Mandamus directing the respondents 1 to 5 more particularly the respondents 3 to 5 to pay compensation of a sum of Rs.5 lakhs towards the death of the petitioner's son M.Sundaravadivelu, studying in IX Standard 'H' Section at Vellaiyan Chettiar Higher Secondary School, who died due to the negligence conduct of the respondents 3 to 5.

2. It is the case of the petitioner that her son M.Sundaravadivel, aged about 16 years, was studying in the 3rd respondent school in IX Standard 'H' Section, English Medium. The timing of the school is from morning 9.00 a.m to 4.30 p.m in the evening, with a lunch break from 12.30 p.m to 13.00 p.m. During the period of lunch time, the students are not permitted to go out of the school and the parents or visitors are not allowed to enter the school during the school hours.

3. The learned counsel appearing for the petitioner would contend that after the summer vacation, the school reopened on 02.06.2008. When the petitioner's son was studying in IX Standard in the academic year 2007-2008, he failed in one subject and after re-examination in that particular subject, he was allowed to rejoin but since the re-examination result was not published, the school authorities made him to stay in the same class. The petitioner's son has paid the school fees on 14.06.2008 for IX standard and without any break he was attending the school.

4. On the fateful day of 18.06.2008, the petitioner's son as usual left home for attending the class. The petitioner received a phone call from the Inspector of Police, Thiruvottiyur Police Station who had informed the death of her son. Later on an enquiry, the petitioner came to know that her son was drowned in the sea at about 12.15 hours while taking bath in the Bay of Bengal. The petitioner's son was only a minor, aged about 15 years. Since, her son's death was a mysterious one, the petitioner has asked the attendance register, in which the petitioner's son has been marked as present in the school on 18.06.2008 on morning session. Since normally the children are not allowed to come out of the school without permission, the petitioner has leveling allegation

against the school authorities. The petitioner would content that FIR has been lodged by a co-student of her son, who was studying in the same school, while they were playing in the sea around 12.15 p.m, the deceased has drowned in the water. But on an enquiry, it was found that her son died at around 11.15 p.m, and the school authorities have suppressed the facts and forced a student of the institution to lodge a complaint of different type as if the accident was happened at around 12.15 p.m so as to escape from the clutches of law and avoiding their responsibility. The petitioner immediately has made a representation to the officials/respondents dated 21.07.2008. Since, she has not received any reply the petitioner has approached this Court under Article 226 of the Constitution of India.

5. The respondents 3 to 5 namely the Correspondent, Head Master and Class Teacher filed a counter stating that the school is a non-profit making Educational institution, run by AMM foundation, a Charitable Trust, for poor and down-trodden society for charity, who have been charging a minimum fee for studying in their school and the said school has not received any money as capitation or donation from the students. The said school has got high reputation in view of the service rendered to the poorer section of the society in North Chennai.

6. The school management would further submit that on 18.06.2008, the petitioner's son was present in the morning session and had absent himself in the afternoon session. Normally, the school session starts from 9.15 a.m in the morning and the lunch interval is between 12.15 p.m to 1.00 p.m and everyday, during the lunch period, the children are free to move away from the class room within the campus. During such time, the students of all the classes will disperse and no teacher will be available in the class room. Thereafter the class teacher will resume the class in the afternoon by taking attendance to verify the students present in the class once again. However on 18.06.2008, the petitioner's son was found absent in the afternoon session. Hence in the attendance register, his absence was marked in the afternoon.

7. The learned Additional Government Pleader appearing for the first and second respondents would contend that some of the children will be permitted to come go home in the afternoon for taking lunch in their home, which is nearby.

8. On the ground that about 1.00 p.m in the afternoon, the school authorities were informed by the police authorities that one of their school students was drowned in the Bay of Bengal, behind Masthan Temple at Tiruvottriyur and on immediate verification, it has come to the knowledge of the management that the deceased was Sundaravadivelu and the informant was

Vijay both studying in the same class, both stealthily left the school premises by jumping over the backside of the compound wall of the school for playing in the sea shore and taking bath in the sea, which caused the death of the petitioner's son. They would also contend that while taking bath in the Bay of Bengal along with two unknown persons, the petitioner's son has drowned and the said Vijay had sought help from the fishermen nearby, while rescuing him they declared the petitioner's son dead.

9. The school management responses through the affidavit filed by the respondent where they have denied any role of negligence on the part of the school management by stating that they have taken all possible care and attention for the safety and security of the students inside the school campus. They would also submit that the act of the petitioner's son swimming in the sea and getting drowned is too remote and such loss to the petitioner could never be attributed towards any negligence on the part of the management as alleged by the petitioner. The management attributes no negligence on their part, since the school is protected by about five feet height compound wall with barbed wire and in all the four gates, watchmen are posted during working hours and they will not allow any students without permission from the Head Master or from the Assistant Head Master.

10. For the purpose of records, the attendance register was also directed to be produced before this Court and as such the copy of the attendance register has been filed for the Court's perusal.

11. The learned counsel appearing for the petitioner would vehemently contended that the death of the petitioner's son during the school hours was attributable only on the management of the school because if they had their own proper security arrangement and if the school had taken care of the welfare of the students, even assuming that the petitioner's son has jumped over the compound wall and went to the sea for taking bath, he could have been prevented by the school authorities, if they have taken proper care of the students studying in the school and thus the negligence of the school management alone is the attributable cause for the death of the petitioner's son. She would also submit that the school authorities will not permit any children to go out of the school from morning till evening . The school authorities are the persons who had to take care of the children studying in the school and ought to have vigilant and the loss to the mother cannot be equated by any other thing.

12. Per contra, the learned counsel appearing on behalf of the school management would argue that the school management has taken adequate care and vigil, however inspite of the same,

the petitioner's son during lunch hours stealthily has jumped out of the school compound wall and went to the Bay of Bengal to take bath and got himself drowned in the sea thereby, no negligence can be attributable to the school authorities. Since, this incident was occurred during lunch hours and not during class hours and they would submit that the respondent management cannot be blamed for any negligence and there was no violation of any rule or regulation on the part of the respondent management. The respondent management is no way responsible for the death of the petitioner's son outside the school campus.

13. That apart, the learned counsel for the respondents would also argue as to the maintainability of the Writ Petition seeking compensation as there is a disputed question of fact wherein which the High Court has no power under Article 226 of the Constitution of India to decide the compensation in support of this claim. In support of the said contention, the learned counsel for the respondents would also place reliance on the case reported in S.D.O Grid Corporation of Orissa Limited and others Vs. Timudu Oram 2005 (5) CTC 695 and the case relates to seeking compensation after a delay of 10 years. The Hon'ble Supreme Court has held that the Writ Petition filed after a lapse of 10 years, and no reason has been given for such an inordinate delay. The High Court erred in entertaining the Writ Petition after a lapse of 10 years and in such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution of India cannot be permitted.

14. Heard, the learned counsel for the petitioner and the learned counsel for the respondents and perused the available materials on records.

15. It is unfortunate that the petitioner's son, who had been sent to the school for getting educated, returned home as mortal remains losing his precious life drowning himself in Bay of Bengal. It was not disputed by either parties that the petitioner's son was present in the school on the fateful day of 18.06.2008 which is evident from the copy of the attendance register produced by the school management wherein as against the deceased Sundaravadivelu, the attendance was marked as '/a', and the same to fellow student Vijay. Hence, it is clear from the above attendance register that the petitioner's son has attended the school in the morning session, however he was absent during the afternoon session, post lunch hours.

16. The school management placing reliance on the attendance register cannot absolve themselves from the responsibility of taking care of the students studying in the school. It is pertinent to refer the counter filed by the respondents:-

"(d) I further state that on 18.06.2008, the classes started from 09.15 a.m and the petitioner's son was present in the morning session. The lunch interval is between 12.15 p.m to 1.00 p.m, everyday and during such time, students are free to move outside the classroom and within the campus. During such time, the students of all the classes will disperse and no teacher will be available in the class room. Thereafter the classes will resume and in the afternoon attendance would be once again verified. At that time, the petitioner's son was found absent. Hence in the attendance register, his absence was marked.

(e) I further state that at about 1.00 P.M, we were informed by the police authorities that one of our school students drowned in Bay of Bengal, behind Masthan Temple at Tiruvottiyur. Immediately after the incident, I personally approached the police authorities and inquired about case. I was informed by the police authorities the facts pertaining to the F.I.R lodged by one Vijay a fellow student of IX standard (H Section).

(f) I further state that from the F.I.R, we came to know that the petitioner's son and the informant Vijay had both stealthily left the school premises by jumping over the backside of the compound wall of the school for playing in the sea shore and taking bath in the sea. Thereafter the petitioner's son was taking bath in Bay of Bengal with two unknown persons and that the petitioner's son had drowned and that the said Vijay had sought the help of the fishermen nearby and when the fishermen brought petitioner's son to the shore, the petitioner's son was found dead."

17. From the above narration in the counter, it could be seen that the respondent/management version is that the school starts from 9.15 a.m and the lunch hours is between 12.15 p.m to 1.15 p.m everyday. The petitioner's son is the one who has allegedly left the school premises by jumping over the backside of the compound wall of the school for playing in the sea shore and taking bath in the sea during lunch hour.

18. The cogent reading of the FIR reveals that, the FIR was registered at 12.30 p.m on 18.06.2008, based on the information given by one Vijay, co-student studying along with the deceased student that around 12.30 p.m they came out of the school and went in to the water for playing and at around 12.30 P.M, the deceased got drowned himself in the water and the nearby fishermen came and lifted the deceased boy and all the incidents took place around 12.30 p.m. From the FIR, it is clear that the FIR was also registered at around 12.30 p.m. The timing

of the school break for lunch is around 12.15 p.m. The entire episode of the drowning of the deceased boy happened around 12.30 p.m. As per the FIR, something is not appreciable, as from the lunch break time around 12.15 p.m and the death of the deceased student at 12.30 p.m, cannot be comprehended as the school is situated minimum 1 to 1.5 km away from the sea. Even otherwise once a student enters the school compound, it is ordinarily believed and trusted by the parents that the school is taking care of the students till the closing hours of the school which is around 4.30 p.m. The school authorities cannot absolve themselves from the responsibility till the school hours are completed, wherein the school authorities have to ensure that every students of the school leaves the compound in an appropriate time unless the school wants to send the student out of school for the reason that the student is not being well due to some sickness or some discomfort and only then the student can be sent out of the school with prior intimation to the parents or otherwise the school authorities have to take necessary steps to send the children back to their home by some staff accompanying with the student to ensure that the student reaches the home safely.

19. However, in the present case the school authorities have come forward with an argument that the deceased student along with another student had stealthily left the school premises by jumping over the backside of the compound wall of the school for playing in the sea shore. The school management is not expected to wash away their hands by alleging the student that he has jumped stealthily and left the school premises by jumping over the backside of the school compound wall, when the management is well aware that the school is situated in a very proximal length from the sea, the school management has to necessarily safeguard the interest of the student by preventing any student going out of the school during the class hours or the lunch hours. The authorities have stated that the school compound wall is five feet height and barbed wires are fixed on top of it and one can imagine the difficulty in climbing / jumping the said wall by a student of the IX Standard, who can jump over it and leave the school without even noticed by a fellow student or the watchmen appointed.

20. It is clear from the facts and the materials submitted by the counsel on either side that the school management has failed in their duty to protect the interest of the students studying in their school, who had been negligent in allowing the student to jump over the school campus or leave the campus during the school hours.

21. However the school is expected to run the institution to educate the children as well as safeguard the children's interest, when they are at school during the school

hours and failure to take adequate measures in safeguarding the interest of the school children, the school is only responsible for such negligence, even if it is attributable to the act of the students during the school hours.

22. In the counter it has been stated that the lunch interval is between 12.15 p.m to 1.00 p.m everyday and in the attendance register, in the afternoon session, the deceased boy was marked as 'a' and the teacher was not bothered to inform the school authorities regarding his absence and when they stated in the counter that at 1.00 p.m they were informed by the police that a school boy was drowned and if the teacher has taken attendance after 1.00 p.m, it would have been naturally brought to the notice of the teacher and hence, she would have come to the knowledge of the said incident and she might not put absent and marked as 'a'. Therefore, only after taking attendance they were informed about the incident, but the said accident was not taken seriously by the school management.

23. Regarding the citation relied upon by the learned counsel for the respondents, it could be seen that, in that case there was a delay of 10 years in filing the Writ Petition and awarding compensation. The said citation is not applicable to the present case on hand. The petitioner has immediately approached this Court in the month of September 2008 itself, when the incident was occurred on 18.06.2008 by way of Writ Petition.

24. Under these circumstances, this Court is of the view that the drowning of the petitioner's son is due to the negligence and inaction on the part of the school management, who has not taken adequate safety measures to protect the students studying in their school. Hence the prayer sought by the petitioner has to be allowed, thereby issuing the writ of mandamus as against the respondents 3 to 5 to pay a sum of Rs.5,00,000/- as compensation as prayed for by the petitioner with interest at 6% per annum from the date of filing of the Writ Petition till the date of realisation for the death of the petitioner's son who has drowned in the sea due to the negligent act of the authorities, who has not taken sufficient steps to prevent the said accident.

25. Accordingly, the Writ Petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

1.State of Tamil Nadu,
Represented by The Secretary
to Government,
Education Department,
Fort St.George,
Chennai-9.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The Correspondent,
Vellaiyan Chettiar Higher Secondary School,
Thiruvottiyur,
Chennai-19.

4.The Headmaster,
Vellaiyan Chettiar Higher Secondary School,
Thiruvpttiyur,
Chennai-19.

5.Shri Sridhar,
Class Teacher
IX Standard H Section,
Vellaiyan Chettiar Higher Secondary School,
Thiruvpttiyur,
Chennai-19.

+1cc to Mr.S.S.Jhothivani, Advocate, S.R.No.76553

+2ccs to the Government Pleader, S.R.No.76747 & 76442

W.P.No.23133 of 2008

CA(CO)

rrs 27/03/2019

सत्यमेव जयते

WEB COPY