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I WP(MD)No.7134 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7134 of 2020

AND

W.M.P.(MD)No.6574 of 2020

Chockalinga Gounder Memorial Hr. Sec. School,
By its Correspondent / Secretary,
V.Kathirvel.

... Petitioner

Vs.

1. The District Collector,
Dindigul District.

2. M.Palanisamy Gounder

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent by his proceedings in Na.Ka.No. 31121/2019/Aa3 dated 24.02.2020 and quash the same.

For Petitioner : Mr.D.Venkatesh

For R-1 : Mr.T.Villavankothai,
Additional Government Pleader.

For R-2 : Mr.C.Gangai Amaran

* * *

**ORDER**

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The writ petitioner is a school with hostel facility. Venkidusamy, the son of the second respondent, was studying in 8th standard as a hosteler. On 09.03.2008, he went to take bath in a well situated near the institution along with his friends. He drowned and died. Crime No.84 of 2008 was registered on the file of Keeranur police station. The Correspondent and Headmaster of the school and the hostel warden were shown as accused. The second respondent petitioned the District Collector, Dindigul to take action against the institution. He also demanded payment of compensation. Since it was not considered, he filed W.P.(MD)No.9232 of 2009. The writ petition was disposed of on 24.10.2019 with a direction to the District Collector, Dindigul to pass order on his representation dated 15.04.2009. Pursuant thereto, the District Collector, Dindigul conducted enquiry and passed the impugned order dated 24.02.2020 directing the petitioner to pay a sum of Rs.5,00,000/- as compensation.

2.Challenging the same, this writ petition came to be filed. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief. Per contra, the learned Additional Government Pleader appearing for the first respondent as well as the



learned counsel appearing for the second respondent submitted that the impugned order does not warrant interference. They pressed for dismissal of the writ petition.

3.I carefully considered the rival contentions and went through the materials on record.

4.Two questions arise for consideration. The first one is whether the District Collector had the jurisdiction to pass the impugned order. It is an axiomatic proposition that the administrative authority does not have any inherent power unlike civil courts and constitutional courts. He can exercise only such power as has been specifically conferred. What has not been conferred should be deemed to be non-existent. Such conferral of power should be traced to Constitution or statute. No court can invest an executive authority with power which the authority does not otherwise possess. The order impugned in this case is anchored entirely on the direction given by this Court. The District Collector has no power to direct a person who is guilty of negligence to pay compensation to the victim or his family. My attention has not been drawn to any provision enabling the District Collector to award compensation in a case of this nature. The writ court while issuing writ of mandamus can only call upon the statutory authority to exercise his



statutory power and functions. If the statutory power is absent, the absence cannot be made good.

5.All that this Court directed vide order dated 24.10.2019 in WP(MD)No.9232 of 2009 was to require the first respondent herein to consider the representation of the second respondent herein on its own merits and in accordance with law. Such a direction cannot be construed as conferring power or jurisdiction that was otherwise not available. I, therefore, hold that the impugned order lacks jurisdiction. It is set aside.

6.Do I stop with this ?. Certainly not. The second respondent cannot be left high and dry. The occurrence took place way back on 09.03.2008. He submitted representations to the authorities. Since the authorities did not respond, he filed W.P.(MD)No.9232 of 2009. It took a decade for the writ petition to be finally disposed of. Since the second respondent had already come before this Court seeking redressal, I am of the view that the second respondent deserves to be granted relief as against the writ petitioner in this proceeding itself. I do not want to close this case with liberty to the second respondent herein to file a fresh writ petition seeking compensation against the school management.



7.Can I do so?. The answer is “YES”. When the question arose if the defendant in a suit can seek injunction against the plaintiff, the Kerala High Court in the decision reported in **AIR 1989 Ker 81 (Vincent and Others v. Aisumma)** answered in the affirmative. Order 41 Rule 33 of the Code of Civil Procedure 1908, empowers the appellate court to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. I am conscious that the Bombay High Court in the decision reported in **1993 SCC OnLine Bom 517 (S.K.Awasthy v. M.R.Bhope)** had held that Order 41 Rule 33 cannot be applied to a writ petition by analogy as the writ petition is not an appeal and that the jurisdiction and powers of writ court shall have to be ascertained independently of Order 41 Rule 33 of CPC. But in the very same judgment, it was noted that the Hon'ble Supreme Court in **Dwarkanath v. ITO (AIR 1966 SC 81)** had held that the powers of High Court under Article 226 of the Constitution were very wide and it could reach injustice wherever found. In fact, the Hon'ble Supreme Court as well as the various High Courts have invoked Order 41 Rule 33 CPC even in writ proceedings.

**8. Eastern Coalfields Ltd., v. Rabindra Kumar Bharti (2022)**

12 SCC 390 is a civil appeal that arose out of writ proceedings instituted by an employee. The Hon'ble Supreme Court observed that Order 41 Rule 33 which clothes the appellate court with an extraordinary power is a rare jurisdiction. It is to reach justice in the special facts of a case. It is not an ordinary rule to be applied across the board in all the appeals. In fact, the principle is that even if there is no appeal by any of the parties in the proceedings, an order can be passed in his favour in the appeal carried by the other side. An order which ought to have been passed can be passed.

9. I rely on an article written by Shri.V.Lakshminarayanan (As His Lordship Then Was) on the “**Power of the High Courts To Do Complete Justice**” [(2021) 6 SCC J-39]. The learned author wrote as follows :

“By the 1861 Act, the Colonial Parliament in England empowered the High Courts with all such powers and authority for and in relation to administration of justice. The relevant sections are Sections 9, 10, & 11 of the Indian High Courts Act, 1861. The sections are of the widest amplitude and was subject only to law or regulations that may be made by the Governor General-in-Council. The High Courts in India were exercising the power of the King's Court and court of equity were guided by the Principles of English Law. The initial



limitations being that it was confined to British subjects within the territorial limits of the respective courts. Post the Constitution, that limitation on exercise of power has also been removed. Apart from the Indian High Courts Act, the Code of Civil Procedure and the Criminal Procedure Code read together with the other legislations empowered the Courts to do complete justice or pass such orders in the interests of justice or to achieve ends of justice.

It should not be missed here that “natives” under the British Colonial rule did not have rights except what the colonial law permitted. There were no fundamental rights and the paramount duty was to obey the Crown and its servants. The Empire owed no duties to them. Even under those circumstances, the High Courts were permitted to pass orders in the “interests of justice” or “to achieve ends of justice”. The situation on and after 26-1-1950, is quite the reverse is the case. The citizens have rights and duties with corresponding powers and function on the State. Article 14 stands out as the most important duty. It would be a duty of the constitutional courts to ensure that to achieve that end, they have the powers to do “complete justice”.

As is applied to Article 142, the High Courts can resort to this power to supplement their jurisdiction. It could not act in derogation of the specific provisions in the statute. There was yet another manner in which the courts could pass orders to render complete justice. It was by resorting to “justice, equity



and good conscience” Here too, an identical limitation applied prior to its application

.... the Constitution recognised that the High Courts were rendering complete justice by giving directions or by passing orders towards “ends of justice” or where there was no positive law, by resorting to the principles of “Justice, Equity and Good conscience”.

....the argument that if it has not been specifically conferred, it should be deemed to have been denied. This principle applies to the executive and not to the judiciary. The immediate reference is that of Halsbury's Laws of England [Halsbury's Laws of England, 4th Edn., Vol. 10, para 713.] . The authors opined:

“Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court.”

This opinion was approved by a Supreme Court on more than one occasion [See Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1] .

To put it in perspective, the principle of rendering complete justice revolves around the idea of justice. The most recent reflection on it is by Michael J. Sandel. He says “where there is



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injustice, everyone as a human being has a responsibility to contribute to remedying injustice” ... Applying it to Courts, when it comes to the constitutional courts, the responsibility is higher.”

The learned author after asserting that unlike the Judges of the Kings Bench who were lions under the throne, the High Court Judges under the constitutional scheme are part of the throne itself would add that the judgements of the Supreme Court that limit the power to do complete justice require reconsideration. I will not go that far. A Judge exercising judicial power is bound by precedent and discipline. He does not have the freedom that an academic possesses. I, therefore, rely on the article only for the limited purpose of holding that a writ court does have the jurisdiction to grant relief in favour of a respondent against the writ petitioner to achieve the ends of justice if the facts demand such a course of action. Article 226 of the Constitution of India empowers the High Court to issue to any person or authority directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose. The power is couched in a wide language and it should be interpreted as to advance the cause of justice.

10.If I do not adopt such an approach, I would be in the unenviable position of a judge before whom there is a challenge to an



arbitral award which patently requires modification. I recently came across a case where the learned arbitrator after correctly approaching the factual and legal issues committed an arithmetical error leading to rejection of the claim. The claimant went before the High Court as well as Supreme Court but nothing could be done. This is because Section 34 of the Arbitration and Conciliation Act, 1996 does not permit modification of arbitral award by court (**NHAI v. M.Hakeem (2021) 9 SCC 1** followed in **(2023) SCC OnLine SC 982 (Larsen Air Conditioning and Refrigeration Company v. Union of India and Others)**). I will have to then rest content with setting aside the impugned order and driving the petitioner to go back to square one. The function of a Judge is to render justice as expeditiously as possible and not play the game of snakes and ladders.

11.The basic facts are beyond dispute. The child of the second respondent was a hosteler. The occurrence had taken place on a Sunday. The petitioner took the stand that the second respondent's child had already left the hostel on the previous day (Friday evening itself). If that be so, the burden was on the institution to produce the relevant movement register (In/Out Register). There is nothing on record to show that the child had left the institution on Friday evening. More than anything else, what clinches the issue against the petitioner is the



location of the water body. The well is situated at a distance of hardly 650 meters from the hostel. The occurrence had taken place in the forenoon on Sunday. The residence of the second respondent is in the neighbouring village. It is said to be at a distance of around 7 Kilometers. If the child had left the hostel on Friday evening, he would have come back only on Monday morning. But the occurrence took place in the Forenoon on Sunday. Section 114 of the Indian Evidence Act (corresponding to Section 119 of the to be notified "The Bharatiya Sakshya Adhiniyam, 2023) empowers the Court to presume the existence of any fact which it thinks likely to have happened having regard to common course of natural events and human conduct. I disbelieve the claim of the school management that the child left the institution on Friday evening.

12.The child was aged around 13 years. He was studying in 8th standard. The moment he was admitted as a hosteler, the petitioner assumed parental responsibility. Proper watch should have been kept on the movement of the children. The duty of the educational institution is to ensure physical safety of the children studying in it. The petitioner had failed to discharge the said duty. Hence, the petitioner has to compensate the second respondent.



13. Considering the age of the child and the irreparable loss suffered by the parents and other factors, I direct the petitioner to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) within a period of ten weeks from the date of receipt of a copy of this order. Interest would start running from the date of occurrence (09.03.2008) if the petitioner fails to pay a sum of Rs.5,00,000/- within the time limit stipulated above. The amount shall be paid to the mother of the child (wife of the second respondent). I take judicial notice of the fact that drinking habit is on the rise in Tamil Nadu. The second respondent may be a teetotaler. But I want to ensure that the compensation paid by the petitioner does not find its way to the coffers of TASMACH. The bank account details of the second respondent's wife will be furnished to the petitioner. The petitioner will deposit a sum of Rs.5,00,000/- in the said account within the time limit as mentioned above.

14. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No
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To

1.The District Collector, Dindigul District.



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G.R.SWAMINATHAN,J.

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