



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

WRIT PETITION NO.2542/2024

Anirudha s/o Sanjay Gadegavkar
...Versus...

State of Maharashtra, Through its Secretary, Mantralaya, Mumbai and others

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

Court's or Judge's orders

Mr. S.M. Bahirwar, Advocate for petitioner
Mr. D.V. Chauhan, Sr. Advocate/GP a/b Ujwal Phasate, AGP for respondent nos.1 & 3 to 6
Mr. J.B. Kasat, Advocate for respondent No.2

CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATE : 03/02/2025

1. The petition claims compensation of Rs.50,00,000/- for the untimely death of one Sanjay Gadegavkar, on 22/09/2023 in the night hours, by drowning in a pit dug at the entrance gate of the Government Medical College (GMC), Nagpur. An *ex gratia* payment of Rs.4,00,000/- has already been paid to the petitioner, who is one of the legal heirs of the deceased. A claim of Rs.50,00,000/- as compensation is being sought through this petition.

2. Mr. Bahirwar, learned counsel for the petitioner submits that the area where the pit was dug was not covered from the side, as a result of which on account of the rain it was filled with water, in which the father of the petitioner, who had gone to the GMC, Nagpur to visit a relative, fell inside and

drowned, which being on account of negligence of the respondents, compensation is due and payable.

3. Mr. Chauhan, learned Senior Counsel/Government Pleader for State submits that there was no negligence, inasmuch as the pit, which was dug for soil testing for the purpose of erection of a new gate, was covered by all sides by tin-sheets and JCB which had dug it. Not only this, placard was also placed cautioning everyone. He, therefore, submits that safety precautions have been taken by the respondents, on account of which, it cannot be said that there is a negligence on part of the respondents.

4. Learned counsel for the petitioner, at this stage, submits that there is a video-clip, taken by the petitioner himself of the site on the next day when he had gone there, which indicated absence of any precautions, as alleged. We, however, find that there is no such statement made by the petitioner in his statement to the police, neither there is any such statement in the petition, which has been filed before this Court. We, therefore, find that controversial issues which require evidence are being raised which cannot be gone into in writ jurisdiction.

5. Though learned counsel for the petitioner places reliance upon *The Municipal Commissioner Vs. A. Saraswathy and others [Petition for Special Leave to Appeal No.7793/2021, decided on 02/07/2021]*, we find that the facts in the said case

are totally different, inasmuch as there, the demise was caused due to collapse of a roof of a toilet to which the deceased had visited, and it was held that it was the obligation of the Municipal Corporation therein to ensure the structural stability of the construction made by it. In the instant case, the situation is totally different, on account of which the reliance placed upon *A. Saraswathy* (supra) by the learned counsel for the petitioner is clearly misplaced. In view of what has been held in para 6 of *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and others Vs. Sukamani Das (Smt) and another* (1999) 7 SCC 298, we find that this is case which requires evidence to be led by the parties regarding claim of negligence, which is being raised by the petitioner.

6. We, therefore, do not see this as a fit case to exercise jurisdiction under Article 226 of the Constitution. The writ petition is, therefore, dismissed. We, however, make it clear that the petitioner would be at liberty to approach the competent Civil Court with a suit, in case the same is otherwise permissible in law. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)