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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4075 OF 2015

Maruti Shrishailya Hale
and others ...Petitioners
vs.
The Commissioner, Sangli
Miraj Kupwad Corporation
and others ...Respondents

Mr.Manoj Shirsat I/b Mr.Padmanath D. Pise for the
Petitioners
Mr.Sudhir Prabhu for the respondent Nos.1 and 2
Mr.P.P.More, AGP for respondent Nos.3 to 5

CORAM : A.S.OKA, &
SANDEEP K. SHINDE,JJ.
DATE : DECEMBER 11, 2018

ORAL ORDER : (Per A.S.Oka, J.)

Heard the learned counsel for the petitioners, the learned counsel for the respondent Nos.1 and 2 and the learned AGP for respondent Nos.3 and 4. The facts of this case disclose sad and shocking state of affairs. The petitioners are young parents of a boy who was 5 years old. On 22nd December 2016, the petitioner No.1 along with his son Tejas went to see a cricket tournament within the limits of Sangli-Miraj-Kupwad Municipal Corporation (for short "the said Municipal Corporation") which is duly constituted under the Maharashtra Municipal Corporations Act,1949. While



returning home, the child was attacked by 5 to 6 stray dogs. The petitioner No.1 tried to help him but it was too late. As a result of large number of serious injuries sustained by the child due to dog bite, he succumbed to the injuries on the very day in Civil Hospital, Sangli. The copies of the inquest Panchnama and the P.M.Notes are annexed to the petition. As per Column No.17 of the P.M.Notes, the poor and unlucky child received as many as 19 injuries. Many of the injuries were caused due to the dog bite. The cause of Death certificate was issued by the Government Hospital on next day recording that the death was due to haemorrhagic shock in a case of animal bite.

2. The sum and substance of the grievance made in the petition is that there was a complete failure on the part of the said Municipal Corporation and the State Government to discharge their obligations towards the citizens. The contention is that there are sufficient powers vesting in all the concerned Authorities under the provisions of the Animal Birth Control (Dogs) Rules 2001 (for short "the said Rules of 2001") and section 44 of the Maharashtra Police Act, 1950. It is the contention of the petitioners that the death of the child is due to the negligence on the part of the Municipal Authorities and the State Government in preventing menace of street dogs. The contention is that the Municipal Corporation and the State Government have infringed the fundamental right of the said boy under Article

21 of the Constitution of India thereby causing enormous mental trauma to the petitioners who are the parents. The death of their only son has created emptiness in the life of the petitioners.

3. We may note that several issues were raised in this petition. However, by order dated 20th January 2017, the scope of this petition (which was originally filed as a Public Interest Litigation) has been restricted to the prayer for compensation of Rs.20,00,000/-.

4. There are affidavits filed on record. Shri Sunil Mohanrao Pawar, Deputy Commissioner, Sangli Miraj Kupwad City Corporation has filed an affidavit on behalf of the State Government denying the allegations regarding failure to abide by the said Rules of 2001. In the affidavit, it is stated that the Municipal Corporation has provided two dog vans. Copies of number of newspaper cuttings are also annexed to the petition. It is brought on record that the said Municipal Corporation does not have its own ambulance but the said Municipal Corporation is using the services of an ambulance owned by a private organization.

5. There is an affidavit filed by Shri Ravindra Khebudkar, the Commissioner of the said Corporation which relies upon the Government Resolution (for short "GR") dated 11th August 2016 by which a Committee headed by the Secretary of the



Urban Development Department was constituted for dealing with several issues including the human-dog conflict. There is an affidavit filed by Shri Sunil Ambole, the Health Officer of the said Municipal Corporation. Before dealing with the grievance regarding the failure of the State Government to abide by the said Rules of 2001, in paragraph 10 and 12, Shri Sunil Ambole has stated thus:

"10. With reference to paragraphs No.10A to 10H, I say that these paragraphs are the ground on which the petitioners challenging the validity of Rule 13 of the Animal Birth Control (Dogs) Rule 2001 and needs no comments by these Respondents at this stage.

11. I say that these respondents in compliance with the Rules of the Animal Birth Control (Dogs) Rule have constituted monitoring committee under Rule 4 and it is functional and performing its statutory duties since 2013. I say that these respondents have provided one shelter for dogs and who provided two dog vans bearing registration numbers MH-10-K-5090 and MH-10-K-1547 for capture and transport of street dogs and two drivers and six catchers are also appointed on those vans.

12. I say that these respondents are not having their own ambulance/clinical van, however private organization RAHAT FOUNDATION is having ambulance and that organization is providing the same without cost to these respondents whenever required by these respondents."

6. As stated earlier, Shri Sunil Mohanrao Pawar has filed an affidavit in reply on behalf of

the State Government. The perusal of the affidavits on record shows that the incident is not disputed by both the said Municipal Corporation and the State Government. The cause of death of the boy is not disputed. From the paragraphs 6 to 9 of the affidavit of Shri Sunil Pawar, even the liability to pay compensation is not disputed. In paragraph 6, an assurance was given that the issue involved in the petition will be placed before the Committee constituted under the G.R. dated 11th August 2016. Paragraphs 6 and 7 read thus:

"6. I say that the question of compensation involved in the Petition will be placed before the working Committee which is formed as per G.R. bearing No.Yachika-2016/prakra.275/navi-20 issued by Urban Development Department, Government of Maharashtra dated 11.8.2016.

7. I say that the Commissioner of Sangli-Miraj-Kupwad City Corporation sent a letter vide outward No. Corporation /Health /Sangli /3675 /2016-17, dt.10.11.2016 to the Principal Secretary, Urban Development Department, Mumbai-32 and asked directions about compensation. It is also stated that compensation amount is to be given by State Government after taking into consideration the gist of report mentioned in the letter. Hereto annexed and marked as Exhibit-R-2 is the copy of the letter/report vide outward No.Corporation/Health/ Sangli/ 3675/2016-17, dtd.10.11.2016."

7. Though the said affidavit is filed way back on 3rd March 2017, as of today, the said Committee has not looked into the claim of the petitioners for

grant of compensation. Thus, for a period of more than one and half years, the Committee has done nothing.

8. The learned counsel for the said Municipal Corporation relied upon the orders passed by the Apex Court in the case of Anupam Tripathi vs. Union of India¹ and in particular the order dated 5th April 2016. He submitted that as a Committee has been constituted by the State Government, the writ Court should not interfere and should allow the Committee take appropriate decision. The learned AGP reiterated what is stated in the affidavit of Shri Sunil Mohanrao Pawar.

9. The learned counsel for the petitioners relied upon the decision of the Apex Court in the case of **Sube Singh vs. State of Haryana and others**².

10. We have given careful consideration to the submissions. There is no dispute about the fact that the child was attacked by stray dogs and as a result of large number of injuries received all over his body due to the dog bite, the child lost his life. There is no dispute about the cause of death of the child.

11. The scope of Article 21 of the Constitution of India has been considerably expanded by the Apex Court over the years. The right guaranteed by

1 (2016) 13 SCC 505

2 (2006) 3 SCC 178

Article 21 is not merely a right to survive. The fundamental right guaranteed by Article 21 of the Constitution is a right to live a dignified life and a right to lead a meaningful life. There is a corresponding obligation in the State Government and its agencies to ensure that the rights of citizens under Article 21 of the Constitution are not violated.

12. It is crystal clear that there was a failure on the part of the said Municipal Corporation to perform its duty to take care of the citizens as it was the duty of the said Corporation to take all possible steps to curb the menace of street dogs. A submission is made by the learned AGP that the liability will be only of the said Municipal Corporation. The State Government has also abundant powers including a power to issue directions to the Municipal Corporation by exercising power under Section 450A of the Maharashtra Municipal Corporations Act, 1949. *Prima facie*, due to the failure of the concerned Authorities to take effective steps that the petitioners have lost their only son due to the attack by the street dogs. The attack by the stray dogs was in day light. It is not a case where the poor child did something which prompted the street dogs to attack him.

13. It is a well settled position that a Writ Court exercising power under Article 226 of the

Constitution of India can direct the respondents to pay compensation if violation of fundamental rights is established. The Apex Court held that this Court while exercising jurisdiction under Article 226 of the Constitution has a power to grant compensation.

14. In the case of **Smt.Nilabati Behera Alias @ Lalita Behera vs State Of Orissa And Others**³, the Apex Court in paragraphs 9 and 10 held thus:

"9. We may also refer to the report dated December 19, 1988 containing the findings in a joint inquiry conducted by the Executive Magistrate and the Circle Inspector of Police. This report is stated to have been made under Section 176 CrPC and was strongly relied on by the learned Additional Solicitor General as a statutory report relating to the cause of death. In the first place, an inquiry under Section 176 CrPC is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. The joint finding recorded is that Suman Behera escaped from police custody at about 3 a.m. on December 2, 1987 and died in a train accident as a result of injuries sustained therein. There was hand-cuff on the hands of the deceased when his body was found on the railway track with rope around it. It is significant that the report dated March 11, 1988 of the Regional Forensic Science Laboratory (Annexure 'R-8', at p. 108 of the paper-book) mentions that the two cut ends of the two pieces of rope which were sent for examination do not match with each other in respect of physical appearance. This finding about the rope negatives the respondents' suggestion that Suman Behera

³ 1993 (2) SCC 746

managed to escape from police custody by chewing off the rope with which he was tied. It is not necessary for us to refer to the other evidence including the oral evidence adduced during the inquiry, from which the learned District Judge reached the conclusion that it is a case of custodial death and Suman Behera died as a result of the injuries inflicted upon him voluntarily while he was in police custody at the Police Outpost Jeraikela. We have reached the same conclusion on a reappraisal of the evidence adduced at the inquiry taking into account the circumstances, which also support that conclusion. This was done in view of the vehemence with which the learned Additional Solicitor General urged that it is not a case of custodial death but of death of Suman Behera caused by injuries sustained by him in a train accident, after he had managed to escape from police custody by chewing off the rope with which he had been tied for being detained at the Police Outpost. On this conclusion, the question now is of the liability of the respondents for compensation to Suman Behera's mother, the petitioner, for Suman Behera's custodial death.

10. In view of the decisions of this Court in *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , *Sebastian M. Hongray v. Union of India* [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] , *Sebastian M. Hongray v. Union of India* [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] , *Bhim Singh v. State of J & K* [1984 Supp SCC 504 : 1985 SCC (Cri) 60] , *Bhim Singh v. State of J & K* [(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , *Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] and *State of Maharashtra v. Ravikant S. Patil* [(1991) 2



SCC 373 : 1991 SCC (Cri) 656] the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. 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. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle."

15. The Apex Court in the aforesaid case considered its earlier decisions in the case of **Rudul Sah vs State of Bihar and another**⁴. In paragraphs 12 and 13, the Apex Court in the case of **Smt. Nilabati Behera** proceeded to hold thus:

"12. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that "the

⁴ AIR 1983 SC 1086



petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was actually controversial" and "Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes". This observation may tend to raise a doubt that the remedy under Article 32 could be denied "if the claim to compensation was factually controversial" and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

13. Reference may also be made to the other decisions of this Court after *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] . In *Sebastian M. Hongray v. Union of India* [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)] it was indicated that in a petition for writ of *habeas corpus*, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In *Sebastian M. Hongray v. Union of India (II)* [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] in such a writ petition, exemplary costs were awarded on failure of the detaining authority to



produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in *Sebastian M. Hongray-(II)* [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] apparently following *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] , but without indicating anything more. In *Bhim Singh v. State of J & K*[(1985) 4 SCC 677 : 1986 SCC (Cri) 47] , illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and *Sebastian M. Hongray* [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)] . In *Saheli* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In *State of Maharashtra v. Ravikant S. Patil* [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the award of compensation by the High Court for violation of the fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld. However, in none of these cases, except *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] anything more was said. In *Saheli* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] reference was made to the State's liability for tortious acts of its



servants without any reference being made to the decision of this Court in *Kasturilal Ralia Ram Jain v. State of U.P.* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in *Saheli* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] is, therefore, more in accord with the principle indicated in *Rudul Sah* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508]."

16. The Apex Court held that awarding of compensation in a petition filed under Article 226 of the Constitution of India, is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principles of sovereign immunity do not apply.

17. The petitioners have prayed for compensation of Rs.20,00,000/-. The amount of compensation precisely payable will have to be decided at the time of final hearing of the Writ Petition. Moreover, in the affidavit of Shri Pawar, the State Government has come out with a case that a Committee has been constituted which will decide the issue of compensation. Though such assurance is given in the affidavit filed on 3rd March 2017, no such decision has been taken till today.

18. Therefore, in our considered view, this is a fit case where ad-hoc or interim compensation deserves to be granted to the petitioners.



19. Under the provisions of Motor Vehicles Act, 1988 and in particular section 140 which deals with compensation in case of fatal accidents on the basis of "No Fault Liability", compensation of Rs.50,000/- is made payable by the amendment of the year 1994 and the present petition has been filed on 1st April 2015. We may note that before filing the petition, it appears that there is no specific demand of compensation made by the petitioners to the respondents by addressing a letter. The order dated 20th April 2015 passed in the Writ Petition shows that a notice was issued to the respondent Nos.1 and 2. The office noting dated 28th July 2015 reveals that all the respondents were served with the notice. Therefore, it can be safely stated that at least on 28th July 2015, the said Municipal Corporation was fully made aware about the claim made in this petition for compensation. However, even *ex-gratia* compensation was not offered by the said Municipal Corporation to the petitioners.

20. It is stated in the petition that the second petitioner is the only bread earner of the family. It is claimed that the first petitioner has suffered an attack of paralysis.

21. If we fix the interim relief compensation at Rs.50,000/-, it will be to some extent, very conservative. However, we propose to direct interest to be paid on the compensation amount from



28th July 2015 at the rate of 8% per annum. Prima facie, it appears to us that the liability of the State Government and the Municipal Corporation will be joint and several. We may note here that only a part of the amount can be paid over to the petitioners and remaining part will have to be invested in a fixed deposit with liberty to the petitioners to withdraw interest accrued on the said amount.

22. Hence, we pass the following order:

- (I) Issue notice to the respondents for final disposal at admission stage returnable on 8th February 2019. To be listed high upon board. The learned counsel for the respondent Nos.1 and 2 waives service. The learned AGP waives service for respondent Nos.3 and 4;
- (II) On the prayer made by the petitioners, we grant permission to delete the names of the respondent Nos.6 and 7;
- (III) The learned AGP also waives service on behalf of the District Superintendent of Police;
- (IV) In terms of the statement made in paragraph 6 of the affidavit of Shri Sunil Mohanrao Pawar, we direct the State Government to



place the case of the petitioners before the Committee constituted under the GR dated 11th August 2016 as expeditiously as possible and in any event within a period of one week from the date on which this order is uploaded;

(V) The Committee shall take a final decision on the quantification of the amount of compensation, if any, payable to the petitioner. Such decision shall be taken as expeditiously as possible and in any event on or before 31st January 2019;

(VI) We direct the State Government and the Sangli Miraj Kupwad Municipal Corporation to jointly and severally pay to the petitioners interim compensation of Rs.50,000/- with simple interest accrued thereon at the rate of 8% per annum from 28th July 2015 till the date of deposit of the amount in this Court. The amount shall be deposited in this Court within a period of one month from the date on which this order is uploaded. We must make it clear that non compliance with this direction will be viewed very seriously;

(VII) As soon as the amount is deposited, the Registry will permit the petitioners to withdraw the amount of Rs.25,000/- out of



the said amount. Balance amount will be invested in any nationalised bank and quarterly interest on the said amount shall be permitted to be withdrawn by the petitioners;

(VIII) The final decision taken by the Committee appointed by the State Government will be placed before the Court on the next date;

(IX) We make it clear that if on or before the next date, final decision could not be taken, the Court will have to consider granting additional interim relief to the petitioners;

(X) All concerned to act upon an authenticated copy of this order.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)