

Kerala High Court

P.V.Antony vs State Of Kerala on 7 April, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

OP No. 1621 of 2001(R)

1. P.V.ANTONY

... Petitioner

Vs

1. STATE OF KERALA

... Respondent

For Petitioner :SRI.ABRAHAM VAKKANAL

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice THOTTATHIL B.RADHAKRISHNAN

Dated :07/04/2008

O R D E R

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.1621 of 2001-R

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Dated this the 7th day of April, 2008.

JUDGMENT

"CR"

1.On 6-7-2000, in the last lap of the Asian and Pacific Decade of Disabled Persons 1993-2002 the dead body of Ibin Antony, a 20 year old student of the Government Vocational Higher Secondary School for Hearing Impaired, Jagathy, Thiruvananthapuram, was subjected to postmortem by the Police Surgeon and Lecturer in the Department of Forensic Medicine, Medical College, Thiruvananthapuram to conclude that the said person with disabilities of being deaf and dumb died

due to extradural bleeding. He was the student of the 2nd Year Vocational Higher Secondary Course.

OP.1621/2001 -: 2 :-

2.The statement filed by the second respondent Commissioner of Police states that on 6-7-2000 at 11.30 a.m., One Ramachandran Nair, the Matron of that school reached the station and informed that Ibin Antony was found in an unconscious condition in his bed in the hostel room and was taken to the General Hospital, Thiruvananthapuram where he was declared dead at 7.55 hours. Following the registration of that occurrence under Section 174 of the Code of Criminal Procedure, investigation proceeded, disclosing that on 5-7-2000, Ibin had a fall on the terrace of the hostel at about 6 p.m.; his friends carried him to his bed in a conscious state; he refused to have dinner though his friends persuaded him; the Matron was not informed of the matter at that stage; Ibin was found unconscious in the bed the next morning and the students informed the matter to the Matron; neither the Principal nor the Matron was aware of the incident till 7 a.m. on 6-7-2000 and Ibin was taken to the hospital by the Matron with the help OP.1621/2001 -: 3 :- of two other students; Ibin was declared dead at 7.55 a.m. at the Government Hospital on 6-7-2000; continued investigation revealed no foul play or negligence and therefore, on 10-11-2000, a report was submitted before the Sub Divisional Magistrate regarding the unnatural death and the matter was closed as undetected.

3.This writ petition is filed by Ibin's father seeking a direction to convert the occurrence report recorded by the police as a case of unnatural death to be one for an offence punishable under Section 304A IPC and to direct that the investigation be entrusted with the Crime Branch; to direct payment of an amount of Rs.5 lakhs by way of compensation as an interim measure without prejudice to adequate compensation being sought for in further appropriate proceedings.

4.The first respondent, State of Kerala has filed a OP.1621/2001 -: 4 :- counter affidavit admitting the occurrence and stating that the deceased succumbed to the injuries sustained in a fall, however that enquiries conducted by the third respondent Director of Public Instruction after placing the Male Matron under suspension revealed that there was no supervisory lapse in relation to the incident and that the Male Matron was reinstated in service after the enquiry; that the then Principal Smt.Padmakumari was transferred to bring in a more efficient person in her place with strict instruction that he should compulsorily reside within the campus and that neither the school authorities nor the departmental authorities are in any way responsible for the death of Ibin and the question of granting compensation does not arise. It is further stated that since the Government have taken all precautions to avert all such untoward incidents in future and since Government cannot be held directly responsible for the OP.1621/2001 -: 5 :- mishap, the writ petition may be dismissed.

5.Before further proceeding with the matter, I may notice that a public interest litigation was filed before this Court as O.P.No.32927/2000 by Sri.M.Moideen, General Secretary, All Kerala Parents' Association of Hearing Impaired, a registered one, following the incident. That PIL was closed by the Division Bench on 2nd November, 2005, noticing that in the additional affidavit filed on 5-10-2005 on behalf of the first respondent State, it has been categorically mentioned that several

steps - curative and preventive - have been taken by the authorities in the matter and taking the view that in the light of such steps and those proposed to be taken by the first respondent State in the matter, it is not necessary to issue any further direction in the matter.

6.Ext.P7 is the decision of the Commissioner for OP.1621/2001 -: 6 :- Persons with Disabilities requiring the Home Department to instruct the police to investigate the case thoroughly so that such incidents may not be repeated in the hostels of disabled persons in the future. The power to make such a report to the Home Department cannot but be conceded in terms of Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the "Act".

7.Commissioner appointed by the State under Section 60(1) of the Act has, by virtue of Section 61, the power and is bound to coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities; monitor the utilisation of funds disbursed by the State Government; take steps to safeguard the rights and facilities made available to persons with disabilities and submit reports to the State Government on the OP.1621/2001 -: 7 :- implementation of the Act. Section 62 empowers the Commissioner, without prejudice to the provisions of Section 61, to act of his own motion or on the application of any aggrieved person or otherwise and thereby look into complaints with respect to matters relating to deprivation of rights of persons with disabilities; non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities; and take up the matter with the appropriate authorities. Section 63(2) of the Act provides that every proceedings before among others, Commissioner, shall be a judicial proceeding and the Commissioner shall be deemed to be a civil court for the purposes mentioned therein. Sub-section 1 of Section 63 enjoins on, among others, the Commissioner, for the purpose of discharging the functions under the Act, the OP.1621/2001 -: 8 :- same powers as are vested in a court under the Code of Civil Procedure, while trying a suit, in respect of summoning and enforcing the attendance of witnesses; requiring the discovery and production of any document; requisitioning any public record or copy thereof from any court or office; receiving evidence on affidavits; and issuing commissions for examination of witnesses or documents. The sweep of such authority and power gives not only the statutory support to the findings of the Commissioner, but the requirement that the authorities ought to act on the same.

8.Considering Ext.P7, in the backdrop of what is stated above, it can be seen that the Commissioner, after examining the materials had come to the conclusion which is as follows:

"Master Ibin Antony, a second year student of Govt.V.H.S.S. for Hearing Impaired expired at the hostel on 6-7- 2000. He had a fall on the terrace of OP.1621/2001 -: 9 :- the hostel at about 4.30 PM on 5-7- 2000. He slipped down when he went to the terrace to wash his clothes. His friends carried him to his bed in the hostel room. There was no staff member of the school or the hostel present in the hostel during the occurrence of this accident. Sri.Ramachandran Nair, Matron of the hostel was on duty on that day. But he left the hostel at 3.30 PM for some official purpose without

making any alternate arrangement. The Principal of the school and the Warden of the hostel Smt.S.Padmakumari or the Matrons of the School were not aware of this accident till the next morning by which time the boy expired without getting any medical aid.

5. The Principal is provided with a Govt. Quarters in the school compound.

She is not staying there. Had she stayed there, she could have understood the difficulties and problems of the inmates in time. The Warden and the Matron were not present in the hostel when the accident took place. They OP.1621/2001 -: 10 :- could not get any information regarding the accident till next day morning.

This clearly shows the way of functioning of the institution. There is lack of responsibility on the part of the Principal and other staff members. The disabled children are not looked after properly.

6. It is proved that there was negligence from the part of the Matron Sri.Ramachandran Nair. After the death of the boy, he tried to tamper the evidences with the help of certain inmates of the hostel.

7. The Principal, first denied the allegations. When it was proved from the postmortem report that the death was due to extradural bleeding, she came out with a story of "a brain surgery" on the child in his childhood. She managed to get a letter from the father of the child stating that she may not be victimised by a transfer for this incident. This shows she is aware that she is not innocent in this case.

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8. As it is proved beyond doubt that Master Ibin Antony died in the hostel without getting any medical attention in time, there was negligence of duty on the part of the Matron Sri.K.Ramachandran Nair.

The General Education Department is directed to conduct a detailed enquiry in this regard after keeping Sri.Ramachandran Nair away from the institution to prevent tampering of evidences; and to initiate disciplinary proceedings against him.

There is supervisory lapse from the part of the Principal, Smt.S.Padmakumari. She is to stay in the Govt. Quarters provided to her. The General Education Department is directed to instruct her to occupy the Quarters and reside there immediately. If she is not willing for the same, another principal who is willing to stay in the Quarters may be posted in the Govt.V.H.S.S., Thiruvananthapuram forthwith. That department is also directed to initiate disciplinary OP.1621/2001 -: 12 :- proceedings against Smt.S.Padmakumari too.

The Home Department is directed to instruct the Police to investigate the case thoroughly so that such incidents may not be repeated in the hostels of the Disabled persons in future."

9. In Ext.P8, the Government considered the question as to whether their decision to transfer out the Principal Smt.Padmakumari from the school requires to be re-considered. In that process, the Government noticed that in the report of the Director of Public Instruction given on 2-9-2000, it was stated that the Principal failed in properly managing the school and the staff. That enquiry report, going by Ext.P8, reveals that the Principal was not staying in the school hostel even though she was expected to do so, as per rules. The Government also took on record the report of the DPI that the condition of the hostel is very pathetic and there is no OP.1621/2001 -: 13 :- discipline in the school. It is accordingly concluded by the Government that for the smooth functioning of the school and hostel, it is absolutely necessary to post an able Principal in the school who can manage the school and hostel. It was accordingly that the request of Smt.S.Padmakumari to be retained as the Principal of the school in question was held to be without merit and was accordingly rejected by the Government.

10. Proclamation on the Full Participation and Equality of People with Disabilities in Asia and the Pacific Region, to which India is a signatory, aims, among other things, to provide for spelling out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities; creating barrier free environment for persons with disabilities; OP.1621/2001 -: 14 :- removing any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons; counteracting any situation of the abuse and the exploitation of persons with disabilities; laying down strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities and making special provision for the integration of persons with disabilities into the social mainstream. The Act was enacted to implement the said proclamation. Hearing impairment is a "disability" within the meaning of that term in the Act. The Act envisages institutions for persons with disabilities, meaning thereby, institutions for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities. The Act enjoins rehabilitation aimed at enabling persons with disabilities to reach and maintain their optimal, physical, sensory, intellectual, OP.1621/2001 -: 15 :- psychiatric and social functional levels. The provisions in Chapter V of the Act oblige the Governments and the local authorities, among other things, to endeavour to equip the special schools for children with disabilities, with vocational training facilities. Those provisions envisage development of trained manpower for schools for children with disabilities. The Governments and local authorities are obliged under Section 66 of the Act to undertake or cause to be undertaken, within the limits of their economic capacity and development, rehabilitation of all persons with disabilities. Though the enactment of the legislation in hand was triggered by the afore-referred proclamation on the full participation and equality of people with disabilities, the provisions thereof would easily flow out of the concept of socialism, a seminal principle of Our Constitution as explicitly stated in its Preamble and embedded as a pearl of wisdom in the concept of a Sovereign OP.1621/2001 -: 16 :- Democratic Republic. The social security measures given effect to in terms of the Act, fall continuously under the gaze of Articles 21, 14, 38, 39 and 41 of the Constitution in the

matter of their enforcement, having regard to the field occupied.

11. Much before the international convention and proclamation and the resultant Act in hand, the Government of Kerala had issued different orders relating to education of the handicapped persons in the State. G.O.(P)412/69/Edn. dated 3-11-1969 contains four appendices. Appendices II and IV contain the rules regulating the award of Government grants; for the grant of educational concessions and grant of full fee concession etc. Appendix I contains the rules for recognition of the schools. Among other things, it provides for hostel accommodation prescribing that there must be separate dormitory arrangements, latrines and sick rooms for boys and girls and that there must OP.1621/2001 -: 17 :- be accommodation for resident warden and resident matron. A reading of Rule III in Appendix II would also show that provision for boarding has to be there. I say so because, that rule deals with Government grants for boarding.

12. On the materials in this case, it is the admitted situation that the Matron and the Principal are required to reside in the campus. One of the reasons for the Government for transferring out the Principal Smt. Padmakumari, as is discernible from Ext.P8, was that she did not occupy the residence available for the Principal in the campus. Sri. Ramachandran Nair, the Matron also was not available in the campus during night times. This means that the male students of the school, including adolescents, who are physically challenged, were left to care for themselves, at least, for 12 hours a day. Due care and caution was not only just absent, but a clear case of administrative negligence and OP.1621/2001 -: 18 :- neglect is abundantly established. Ibin is stated to have suffered the injuries at about 6 p.m. by a fall in the terrace, going by the statement filed on behalf of the Commissioner of Police. The Matron knows about the incident only at 7 a.m. on the next day. Who supervises whether the boarders have had a proper supper? Who supervises their presence in the boarding during the night time? Who ensures their safety while asleep? What was the arrangement to take care of any emergency in the school where physically challenged students reside? Are the unfortunate deaf and dumb (I may call them so with a bit of pain and anguish) expected to take care of themselves in the event of any contingency in the hostel where their parents have left them in the protective cover of a Government institution? Is it to be presumed that the Principal, the Matron and others having higher supervisory control could slumber deep, assured that no miscreants; no anti-social elements; no animals; no reptiles; OP.1621/2001 -: 19 :- would enter the school hostel and that the Principal, Matron and other staff have no duty of care and protection to discharge, after the sun sets? The unfortunate incident was in 2000. Recollecting different reported incidents of sexual and otherwise invasion on the person of adolescents and children, as also the statistics of lurking house trespass, theft, burglary etc., I shudder to even dream that any progeny of independent India is a boarder in such a school.

13. In the aforesaid context, even a handful of salt would not aid me to swallow the stand of the Government that "neither the school authorities nor the departmental authorities are in any way responsible for the death of the petitioner's son and the question of granting any compensation to the petitioner does not arise", even if I were to receive with all fervent hope the further statement of the first respondent that "the Government have taken all precautions to avert OP.1621/2001 -: 20 :- all such untoward incidents in future".

14. The death of Ibin, in terms of Ext.P2 postmortem certificate; Ext.P8 decision of the Commissioner under the Act and going by the affidavit of the State Government, is nothing but the direct consequence of the injuries suffered by him on 5-7-2000. The fact that he did not get any medical help till he was declared dead on the morning of 6-7-2000 stands. The officials, including the Principal and the Matron cannot shoulder any responsibility on the other adolescent students of the school, to have informed them of Ibin's plight. A clear case of neglect and negligence in the discharge of official duties is abundantly established. In a school of such nature, the role of a Principal and the Matron is much more important than in other schools. The content of trusteeship inbuilt in the office of a principal and a matron is comparably higher in such an institution than of those schools where the OP.1621/2001 -: 21 :- blessed others study. Ibin's case is manifest expression of the failure of the State machinery. If I may call that boy a challenged person; one with disabilities; he was disabled more, and challenged by the very establishment which is entrusted with his care by the Republic Nation of which he was a citizen. The Government have failed to discharge their constitutional obligation in ensuring that Ibin's guaranteed fundamental right to life is not breached. It has been ruthlessly deprived, by not ensuring proper care and caution by those holding the mantle of guidance and by those who are expected to act as trustees to attain the goal envisaged by the Act, the Proclamation and the Constitution.

15. The State Government and the officials of the Education Department, including the Principal, the Matron are involved in the matter of running the school. The said institution falls within the sweep of the different constitutional provisions OP.1621/2001 -: 22 :- on which Ibin could cling on to the guarantees extended to him by his mother land. He was entitled to the social cover of protection which ought to have trickled to him as a public duty from the authorities.

16. All that Ibin did not have till the fateful day was the physical power to speak and hear, but he had his loving parents, friends and the society to rely on. His parents have lost him who, in spite of his physical challenges, was undergoing a vocational course, had reached his youth, was otherwise able bodied and would have contributed to the family by his earnings. The parents brought him up holding within them the sorrow of not being able to hear him speak. Nor could he hear them. But they have been deprived of their prized possession, the child, which to every parent, is dearer than oneself. The parents have been deprived of his love. Ibin, from the evening of 5-7-2007, after his fall, would have had his OP.1621/2001 -: 23 :- share of pain and sufferings, overnight. The situation calls for an order of compensation in exercise of jurisdiction under Article 226 of the Constitution, the case being one of gross violation of fundamental rights guaranteed under Article 21 of the Constitution. For support, by way of precedent, I may refer to M.S.Grewal v. Deep Chand Sood [(2001) 8 SCC 151]. State is vicariously liable for the acts of commissions and omissions of the Principal and the Matron and others involved in the administration and maintenance of the school in question. In support, is Chairman, Railway Board v. Chandrima Das [(2000) 2 SCC 465]. Having regard to the age of the deceased at the time of his death and other relevant factors, the claim for Rs.5 lakhs is sustainable as a just and fair compensation towards the estate of his late son Sri.Ibin Antony, including any amount that could have been claimed towards pain and suffering of the deceased, loss of love and affection to the OP.1621/2001 -: 24 :- parents and other attendant counts. Such amount, if paid with interest, would also exclude from litigation.

17.I have perused the papers of Crime No.196/2000 of Museum Police Station. The police having taken the case as an incident where no offence is made out, I do not deem it necessary to issue any such orders at this point of time, though the Government have to take into consideration the recommendations of the Commissioner under the Act in relation to various aspects and take up appropriate decision and action, if necessary, in accordance with law.

18.In the result, this writ petition is allowed directing the first respondent to pay the petitioner an amount of Rs.5 lakhs as compensation with interest thereon at the rate of six percent, from 6-7-2000. The petitioner will be entitled to an amount of Rs.3,000/- as costs OP.1621/2001 -: 25 :- of this writ petition, payable by the first respondent. All such amounts shall be paid to the petitioner within an outer limit of two months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN, JUDGE.

Sha/020408 OP.1621/2001 -: 26 :- THOTTATHIL B. RADHAKRISHNAN,J.

===== O.P.No.1621 of 2001 ===== JUDGMENT
Dated: 7th April, 2008.