

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.20443 Of 2012  
(Through hybrid mode)**

***Sanjay Kumar Mohanty and  
another*** .... ***Petitioners***

Mr. J.R. Dash, Advocate

*-versus-*

***State of Odisha and others*** .... ***Opposite Parties***

Mr. R.N. Acharya, Standing Counsel  
(S&M Education Deptt.)

Mr. A.K. Sharma, AGA

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER**  
**10.05.2022**

**Order**  
**No.**

**07.**

1. Mr. Dash, learned advocate appears on behalf of petitioners, unfortunate parents of their son, who died on 28<sup>th</sup> September, 2011. He submits, the son, attended government school. After midday meal, the son and his friend wanted to answer call of nature. They were permitted by the teacher to go outside the school premises. While doing their business, they fell in a drain. The son died. The friend survived.

2. He relies on **order dated 30<sup>th</sup> September, 2021** made by the first Division Bench of this Court in **W.P.(C) no.24882 of 2012 (Jambeswar Naik and another v. State of Odisha and others)** to submit, two little girls died on 7<sup>th</sup> September, 2012, having fallen into

a pit dug out in the Anganwadi Centre (AWC). Compensation of Rs.10,00,000/- to each set of parents was directed by the order.

3. Mr. Acharya, learned advocate, Standing Counsel appears on behalf of the Department and draws attention to annexures in the counter and particularly disclosure at page-13 to submit, ex-gratia grant of Rs.2,00,000/- is the policy applicable, inter alia, on accident occurred during any school related activity.

4. First annexure in the counter is communication dated 7<sup>th</sup> August, 2012 issued by Special Secretary to Government on scale of ex-gratia assistance to next of kin of the deceased. There are four entries namely, Heat Wave; Lightning; Boat Accident (normal time); and Tornado and Whirlwind (normal time). Death of the boy was not caused by any of the situations mentioned by the entries. The second annexure is communication dated 25<sup>th</sup> August, 2012. This communication was in revision of the earlier one.

5. Third annexure in the counter is notification dated 25<sup>th</sup> March, 2015 published by authority in the Odisha Gazette Extraordinary. It provides for a scheme whereby, inter alia, accident occurred during any school related activity would have ex-gratia grant of Rs.2,00,000/- . The application form in respect of this provision in the notification is at page-13, relied upon by Mr. Acharya.

6. In **Jambeswar Naik** (supra) the Division Bench was of the view inter alia, that there should have been barricades and warning signs near the dugout pits, to prevent accident. Absence of barricades and warnings signs led the Bench to find that death of the two little children was entirely avoidable. A clear case was made out for grant of compensation for violation of constitutional right to life of the two young children. Keeping in view all of that the Bench directed sum of Rs.10,00,000/- to be paid to each of the deceased's parents.

7. In this case there is an enquiry report dated 29<sup>th</sup> September, 2011 of the District Inspector of School. It appears from the report that though toilet facility was available in the school, the students were not disciplined to use them. No steps had been taken by the headmistress to enforce discipline of using toilet in the premises. The students coming from rural background were used to defecate in the open. In spite of toilet being available in the school premises, the teacher allowed the students to go outside the school premises, to relieve themselves. As such, contributory negligence in preventing the death is the inference. The case therefore is squarely covered by **Jambeswar Naik** (supra).

8. State, through its appropriate functionary, will pay compensation of Rs.10,00,000/- (rupees ten lakhs) to petitioners. Petitioners will approach opposite party no.3 with copy of this order

and compliance must be within four weeks thereafter.

9. The writ petition is disposed of.

*(Arindam Sinha)*  
*Judge*

*Sks*

