



WP No. 110352 of 2019

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH
DATED THIS THE 10TH DAY OF JUNE, 2022**



**BEFORE
THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ
WRIT PETITION NO. 110352 OF 2019 (GM-RES)**

BETWEEN:

SHRI. YUSUB

...PETITIONER

(BY SRI. SANTOSH PUJARI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
VIDHANA SOUDHA
BENGALURU-560001
2. THE CEO, ZILLA PANCHAYAT
COURT COMPUOND, BELAGAVI
PIN CODE: 590001.
3. THE DEPUTY COMMISSIONER
COURT COMPOUND
BELAGAVI-590001
4. THE PUBLIC DEVELOPMENT OFFICER
GRAM PANCHAYAT, BALEKUNDRI B.K.,
BELAGAVI-591103

... RESPONDENTS

(BY SRI.PRAVEEN K. UPPAR, HCGP FOR R1 AND R3;
SRI. V. SHIVARAJ HIREMATH, ADVOCATE FOR R2 AND R4)

Digitally signed
by POORNIMA
SHIVARAJA
Location: HIGH
COURT OF
KARNATAKA



WP No. 110352 of 2019

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER WRIT OR DIRECTIONS DIRECTING THE RESPONDENTS TO GRANT/SANCTION COMPENSATION OF RS.25,00,000/- (RUPEES TWENTY FIVE LAKHS ONLY) FOR THE LOSS SUFFERED BY THE PETITIONER DUE TO THE DEATH OF HIS SON MASTER ABBASALI YUSUB SANADI AND ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 19.4.2022, THIS DAY, THE COURT THROUGH VIDEO CONFERENCE PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a. *Issue a writ in the nature of mandamus or any other Writ or directions directing the respondents to grant/sanction compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only), for the loss suffered by the petitioner due to the death of his son Master Abbasali Yusub Sanadi.*
- b. *Issue a writ in the nature of mandamus or any other writ or directions directing the Respondents, to ensure that the laws, rules, regulations, circulars, notifications etc., that have been issued by the Central Government agencies and the state government agencies are implanted at the earliest to avoid any further event, such as death due to dog bite and protect the life and liberty of petitioner girl child aged around 7 Years.*
- c. *Pass such other order or orders as the Hon'ble Court may deem fit in the facts and circumstances of the case.*

2. The petitioner is engaged in masonry work. On 28.11.2018, the younger son of the petitioner,



WP No. 110352 of 2019

Master Abbasali Yusub Sanadi, who was aged about 22 months, was attacked by 4 to 5 street dogs while he was playing behind his house after attending nature's call and dragged him to a nearby agricultural field and mauled him, causing serious injuries to his face, head, thighs etc. Though he was immediately taken to K.L.E'S Dr.Prabhakar Kore Hospital, Belagavi, he could not be saved and he succumbed to the aforesaid injuries. The doctor had opined in the autopsy report that the death was caused due to shock and hemorrhage as a result of multiple injuries sustained.

3. When the fact of this attack and death was reported in newspapers, though the respondents had offered to help, no compensation was paid to the petitioner. The petitioner addressed various communications to the respondents but in vain. The petitioner aggrieved by the death of his minor son due to the attack of street dogs is before this Court claiming for



WP No. 110352 of 2019

the aforesaid reliefs more particularly compensation as detailed in the prayer.

4. Vide order dated 11.11.2020, this Court had directed for interim compensation of a sum of Rs.1,50,000/- with interest at the rate of 8% p.a from the date of death of petitioner's son till the date of deposit. A sum of Rs.77,458/- (Rs.50,000/- with interest) has been released and withdrawn by the petitioner on 25.06.2021. The remaining 1,00,000/- and interest accrued thereon has been deposited in a fixed deposit account in a nationalized bank.
5. Sri.Santosh Pujari, learned counsel for the petitioner would submit that:
 - 5.1. There is a duty cast on the respondents to ensure that the street and human habitation of the villages/cities etc., are free of dogs and that the humans inhabiting the areas are protected from any attack by such street dogs or



WP No. 110352 of 2019

otherwise. This duty has not been discharged by the respondents resulting in street dogs attacking the petitioner's minor son.

5.2. A statutory duty is vested with the respondents to control the population of the street dogs under the Animal Birth Control (Dogs) Rules, 2001 which has not been discharged.

5.3. The various directions issued by the Hon'ble Apex Court and this Court have not been complied with by the respondents making them liable for the death of the petitioner's son and consequently entitled for compensation.

5.4. The petitioner has a public law remedy for compensation and as such, Writ Petition is maintainable. The petitioner has lost his son and also incurred hospital expenses to an extent of about Rs.80,000/- for the treatment



WP No. 110352 of 2019

which is required to be reimbursed by the respondents.

5.5. He relies on the decision of the Hon'ble Chhattisgarh High Court in **SHOBHA RAM RAJWA RAM SAHU VS. STATE OF CHHATTISGARH** reported in **AIR ONLINE 2018 CHH 1051** more particularly Paras 23 and 24 thereof, which are reproduced herein for easy reference:

23. *In the matter of In Reference Court on its own motion (Regarding Death of Ku. Divya Verma, D/o Shri Ashok Verma due to Rabies) v State of Chhattisgarh & Another, W.P.No.PIL No.24 of 2017 (Reported in ILR 2017 Chh 1042) by order dated 22-8-2017 this Court, while entertaining the suo motu PIL, has allowed compensation of Rs.10,00,000/- to the mother of the deceased who died on account of attack by street dog. Prayer for modification of the said order subsequently rejected by order dated 12-9-2017.*

24. *In view of the above, I deem it appropriate to award compensation to the tune of Rs.10,00,000/- in favour of the petitioner minus (-) the amount already paid by the Government to the Hospital where the deceased obtained treatment. Petitioner would, thus, be entitled to a sum of Rs.8,50,000/- within a period of three months from the date of receipt of certified copy of this order.*



WP No. 110352 of 2019

- 5.6. He submits that in a similar case where a death was caused due to a dog bite in the City of Bengaluru, BBMP Council had granted compensation of Rs.10 lakhs as regards which he has produced the newspaper clippings. On this basis, he submits that the petition is required to be allowed.
6. Respondents No.1 and 3 have not filed objections despite several opportunities having been granted. Sri.Praveen Uppar, learned HCGP appearing for respondents No.1 and 3 submits that respondents No.1 and 3 have nothing to do with the matter since even if there is an obligation, it is of respondents No.2 and 4 and there is no obligation on the part of the respondents No.1 and 3.
7. Respondents No.2 and 4 have filed their objections denying all the contentions and allegations made by the petitioner and putting the petitioner to strict proof of expenses incurred as also of the incident



WP No. 110352 of 2019

having occurred on account of lack of any action or rather inaction on the part of the respondents No.2 and 4.

8. Sri.Shivaraj Hiremath, learned counsel for respondent Nos.2 and 4 would further submit that:

8.1. Respondents No.2 and 4 have taken adequate steps and measures to prevent the occurrence of such attacks despite which the attack has occurred.

8.2. There is no negligence as such on the part of the respondents No.2 and 4 and therefore, respondents No.2 and 4 cannot be made responsible and/or liable to make payment of compensation.

8.3. He submits that the child was left unattended which has resulted in the attack by the dogs. If some elders were near the child, no such attack would have occurred.



WP No. 110352 of 2019

8.4. Respondents No.2 and 4 cannot remove all the dogs from the area. The dogs also have a beneficial role to play in the society and therefore, the petitioner not having been careful and safeguarded the child, respondents No.2 and 4 are not liable to make payment of compensation.

9. Heard Sri.Santosh Pujari, learned counsel for the petitioner, Sri.Praveen Uppar, learned HCGP for respondents No.1 and 3 and Sri.Shivaraj Hiremath, learned counsel for respondents No.2 and 4 and perused the papers.

10. The points that would arise for determination are:

1. Whether there is a public duty and/or statutory duty vested with the municipal authorities to safeguard the citizens residing in the area from attack by street dogs?

2. In the present case, whether respondents No.2 and 4 would be liable to make payment of compensation? If so, to what extent?



3. What order?

11. I answer above points as under:-

12. **Answer to point No.1: Whether there is a public duty and/or statutory duty vested with the municipal authorities to safeguard the citizens residing in the area from attack by street dogs?**

12.1. This Court vide its order dated 11.11.2020 has already come to a prima facie conclusion that the respondents more particularly respondents No.1, 2 and 4 are liable to make payment of compensation and directed to make payment of interim compensation of Rs.1,50,000/- along with interest.

12.2. The aspect of whether the statutory authority or municipal authority is responsible or not has been dealt with in several cases.

12.3. The High Court of Bombay in **MARUTI SHRISHAILYA HALE AND OTHERS VS. THE COMMISSIONER, SANGLI MIRAJ KUPWAD**



WP No. 110352 of 2019

CORPORATION AND OTHERS in

W.P.NO.4075/2015 has categorically held that the right guaranteed by Article 21 of the Constitution of India is not merely a right to survive but extends to right to live a dignified and meaningful life and as such, there is a corresponding obligation on the State Government and its agencies to ensure that the said rights are not violated. In that case also a child was attacked by stray dogs as a result of which large number of injuries were caused resulting in the death of the child. The Hon'ble Bombay High Court held that there was a failure on the part of the municipal corporation to perform its duties by not taking all possible steps to curb the menace of stray dogs. The Bombay High Court by referring to the decision of the Hon'ble Apex Court in **SMT.NILABATI BEHERA @ LALITA BEHERA VS. STATE OF ORISSA AND OTHERS** reported in **1993 (2) SCC**



WP No. 110352 of 2019

746 has held that the awardal of compensation in a proceeding under Article 226 of the Constitution of India is a remedy available in public law based on strict liability for contravention of fundamental rights as regards which principle of sovereign immunity would not apply and the Bombay High Court granted interim compensation in the matter.

12.4. The High Court of Manipur in a suo moto proceedings in the case of ***IN RE EFFECTIVE IMPLEMENTATION OF PREVENTION OF CRUELTY TO ANIMAL ACT, 1960 AND RULES VS. STATE [PIL NO.41/2017]*** vide its order dated 25.07.2018 has held that it was the duty of the State Government to implement the provisions of the Prevention of Cruelty to Animals Act, 1960, the Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals)



WP No. 110352 of 2019

Rules, 2001, the Animal Birth Control (Dogs) Rules, 2001 as also the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 as also the orders of the Apex Court in ***ANIMAL WELFARE BOARD OF INDIA VS. A.NAGARAJ & ORS.***, reported in ***(2014) 7 SCC 547*** and ***INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION VS. UNION OF INDIA & ORS. reported in (1996) 5 SCC 281.***

12.5. The Hon'ble Kerala High Court in the case of ***THE ANIMAL WELFARE BOARD OF INDIA AND ANOTHER VS. THE OMBUDSMAN FOR LOCAL SELF IN WP NO.30611/2004*** came to a conclusion that the right to live as enshrined under Article 21 of the Constitution of India is a fundamental right which would take precedence over the Animal Birth Control (Dogs) Rules, 2001. Though the interest of the animals has to be protected, there cannot be an abdication



WP No. 110352 of 2019

of the interest of human lives and preservations thereof and as such, dismissed the petition filed by the petitioners therein. The petitioner having sought for directions to preserve stray dogs, the Court came to a conclusion that the stray dogs could cause fatal and dangerous injuries inasmuch as neither were they vaccinated nor taken care of and as such pose a great risk and danger to the human life.

12.6. This Court in **MASTER JISHNU AND OTHERS VS. BBMP AND OTHERS REPORTED IN 2013 ILR KAR 4015** while considering a similar matter issued the following directions:

- "(1) The Animal Welfare Organisations and the Monitoring Committee as contemplated under the ABC Rules, 2001 to ensure complete sterilization and vaccination of all healthy stray dogs, particularly, within the territorial jurisdiction of the BBMP as per Rules 7 and 8;*
- (2) It is advisable to entrust the responsibility of sterilization and vaccination to NGO'S or other agencies in a decentralized manner. A Report of their activities must be submitted to the BBMP on a regular basis for the latter's scrutiny and verification;*



WP No. 110352 of 2019

- (3) *Stray dogs which are incurably ill or mortally wounded as diagnosed by a qualified veterinarian to be euthanized in terms of Rule 9 of the said ABC Rules, 2001;*
- (4) *Furious or dumb rabid dogs to be dealt with in terms of the Rule 10 of the said Rules;*
- (5) *Dogs which do not come within the scope of Rule 9 or 10 but which are a menace or cause nuisance irrespective of whether there is evidence of such dogs having mauled or bitten children or adults could be exterminated in the manner specified in Rule 9 of the ABC Rules, 2001 under the orders of the Commissioner of the BBMP as per the provisions of KMC Act, 1976;*
- (6) *The BBMP must take serious note of complaints with regard to unruly stray dogs by setting up a complaint cell in various zonal offices of the B.B.M.P, and act in accordance with law and also having regard to the observations made herein above, particularly having regard to Section 11 of 1960 Act read with Rules 9 and 10 of the ABC Rules 2001 in the matter of culling of stray dogs;*
- (7) *Having regard to the interpretation given by us, to the Central as well as the State Laws, Rule 7 of ABC Rules 2001 does not require to be struck down. But sterilization and vaccination of stray dogs must be carried out on a regular basis and by holding additional camps for such purpose at the initiative of the B.B.M.P.;*
- (8) *The BBMP to ensure that the Rules for clearance of Municipal Solid Waste be enforced, so that garbage found in the city of Bangalore, is not a reason for stray dog menace;*
- (9) *The BBMP to frame guidelines for the grant of compensation to the victims of attacks by the stray dogs;*
- (10) *The owners of dogs to ensure that their pet dogs are not a menace or cause nuisance in public*



WP No. 110352 of 2019

places. It would be mandatory for the owners of the dogs to take out their dogs on public roads or public places along with a leash and not let their dogs loose on the streets, so as to avoid a confrontation with street dogs or other pet dogs;

- (11) *The citizens must also bear in mind that street dogs also have a right to live and therefore, must refrain from attacking these dogs by stone throwing or by beating etc. They must ensure that children do not go near the stray dogs either to play with them or to feed them."*

12.7. There being various petitions filed before the Hon'ble Apex Court, the Apex Court is seized of those matters in **SLP (C) No.691/2009** and other connected matters. Since the main matter arose out of an incident in Kerala, a committee was also appointed by the Apex Court to enquire into the matter and suggest a methodology to be followed in the case of dog bites and prevention thereof. The committee is headed by a retired High Court Judge of the Hon'ble Kerala High Court and is stated to have submitted its report. The Animal Welfare Board is also stated to have prepared a module dealing with such matters and the module has



WP No. 110352 of 2019

been made available to the various stakeholders for their comments which would be considered by the Apex Court. Suffice it to say that the larger issue is under consideration by the Hon'ble Apex Court and the Hon'ble Apex Court has issued various interim directions directing the authorities to provide sufficient number of dog pounds including animal kennels/shelters which are to be managed by Animal Welfare Organisations, to provide requisite number of dog vans with ramps for the capture and transportation of street dogs, to provide driver and trained dog catchers, to provide an ambulance cum clinical van as mobile center for sterilization and immunization; incinerators for disposal of carcasses and periodic repair of shelters etc. An obligation has also been imposed on the Animal Welfare Board to see to it that all the



WP No. 110352 of 2019

regulations are followed by the State, Municipal Corporations, Municipal Councils, District Boards and local bodies as per the Act and Rules aforementioned.

12.8. A perusal of all the aforesaid decisions leaves no doubt in my mind that there is a statutory obligation which has been imposed upon the local municipal authorities in this case being respondents No.2 and 4 to safeguard the human beings cohabitating the particular local area from the danger of any stray dogs and/or any attack by such stray dogs.

12.9. The Hon'ble Apex Court has also directed the municipal authorities to provide necessary infrastructure and funding for discharge of the aforesaid statutory obligations.



WP No. 110352 of 2019

12.10. As aforesaid, the Hon'ble Apex Court being seized of larger issue, this Court is not required to go into those matters.

12.11. In the present case, despite repeated enquiry as regards the action taken by respondents No.2 and 4 for discharge of the statutory obligations, Sri.Shivaraj Hiremath, learned counsel for respondents No.2 and 4 is unable to point out any such action except to submit that the State has not provided adequate funds. Such a submission cannot be accepted in light of the aforesaid decision. There is nothing placed on record to indicate whether respondents No.2 and 4 had sought for any funds from the State or not nor has the State placed any records to indicate the sanction of funds to respondents No.2 and 4 or any other municipal authorities. In this background, it is but required for the State and the municipal



WP No. 110352 of 2019

authorities to follow the directions which have been issued by the Hon'ble Apex Court in **SLP (C) No.691/2009** and other connected matters as also by this Court in **Master Jishnu's case** referred to above. The same are paraphrased once again as under:-

12.11.1.The Municipal authorities are directed to provide sufficient number of dog pounds within its jurisdiction;

12.11.2.The Municipal authorities are directed to provide sufficient number of animal kennels/shelters which can be managed by the animal welfare organisations operating within its jurisdiction. If no such animal welfare organisations is operating, it is the duty of the municipal authority to appoint a suitable person to manage such dog pounds/kennels/shelters.



WP No. 110352 of 2019

12.11.3. The Municipal authorities are directed to conduct a study to arrive at and determine the number of dog vans required for capture and transportation of street dogs and procure such vans.

12.11.4. The Municipal authorities are directed to appoint trained dog catchers as may be required.

12.11.5. The Municipal authorities are directed to provide ambulance cum clinical van as mobile centre/s for sterilisation and immunisation;

12.11.6. The Municipal authorities are directed to make available incinerators for disposal of carcasses and periodic repair of animal/dog shelter or pound.

12.11.7. The Municipal authorities are directed to provide for infrastructure both physical



WP No. 110352 of 2019

and human as required under the Prevention of Cruelty to Animals Act, 1960, the Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001, the Animal Birth Control (Dogs) Rules, 2001 as also the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017;

12.11.8. The Municipal authorities are directed to create a web page on its web site where all the aforesaid data as also the following are uploaded/web hosted on a daily basis;

12.11.9. A census of street dogs in its jurisdiction to be prepared and web hosted;



WP No. 110352 of 2019

12.11.10. The number of street dogs transported to the dog pounds/kennels to be uploaded/webhosted;

12.11.11. The number of dogs which are sterilized are to be web hosted.

12.11.12. The number of dogs which are immunized to be webhosted;

12.11.13. The number of carcasses which are incinerated to be webhosted;

12.11.14. The number of incidents of dog attacks/bites to be web hosted;

12.11.15. The number of deaths caused on account of dog attacks to be web hosted;

12.11.16. The amount of compensation disbursed to persons who are victims of such dog attacks to be webhosted.



WP No. 110352 of 2019

12.12. The decision of this Court in **Master Jishnu's case** though was relating to attack of dogs within the jurisdiction of BBMP and various directions were issued to the BBMP, I am of the considered view that the attack by dogs whether within BBMP jurisdiction and/or within the jurisdiction of respondents No.2 and 4 would not make any difference. The contention of Sri.Shivaraj Hiremath, learned counsel for respondent Nos.2 and 4 that the decision in **Master Jishnu's case** supra would not be applicable to the present case is therefore liable to be rejected, more so since the attack by street dogs in BBMP area cannot be different from an attack by street dogs in an area governed by the Zilla Panchayath, Taluk Panchayat or Village Panchayat. The obligations which have been imposed on the BBMP is also imposed on the Zilla Panchayath,



WP No. 110352 of 2019

Taluk Panchayat or Village Panchayat. It is only the nomenclature of the entity which is different. Hence, the directions issued by this Court in **Master Jishnu's case** supra are paraphrased to apply to Respondent No. 2 to 4 who are Zilla Panchayath, Taluk Panchayat or Village Panchayat as under:-

12.12.1. The Animal Welfare Organisations and the Monitoring Committee as contemplated under the ABC Rules, 2001 to ensure complete sterilization and vaccination of all healthy stray dogs, particularly, within the territorial jurisdiction of the Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be, as per Rules 7 and 8;

12.12.2. It is advisable to entrust the responsibility of sterilization and



WP No. 110352 of 2019

vaccination to NGO'S or other agencies in a decentralized manner. A Report of their activities must be submitted to the Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be, on a regular basis for the latter's scrutiny and verification;

12.12.3. Stray dogs which are incurably ill or mortally wounded as diagnosed by a qualified veterinarian to be euthanized in terms of Rule 9 of the said ABC Rules, 2001;

12.12.4. Furious or dumb rabid dogs to be dealt with in terms of the Rule 10 of the said Rules;

12.12.5. Dogs which do not come within the scope of Rule 9 or 10 but which are a menace or cause nuisance irrespective



WP No. 110352 of 2019

of whether there is evidence of such dogs having mauled or bitten children or adults could be exterminated in the manner specified in Rule 9 of the ABC Rules, 2001 under the orders of the Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be;

12.12.6. Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be, must take serious note of complaints with regard to unruly stray dogs by setting up a complaint cell and act in accordance with law and also having regard to the observations made herein above, particularly having regard to Section 11 of 1960 Act read with Rules 9 and 10 of the ABC Rules 2001 in the matter of culling of stray dogs;



WP No. 110352 of 2019

12.12.7. Sterilization and vaccination of stray dogs must be carried out on a regular basis and by holding additional camps for such purpose at the initiative of the Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be;

12.12.8. The Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be, to ensure that the Rules for clearance of Solid Waste be enforced, so that garbage found in the surroundings of people inhabited area, is not a reason for stray dog menace;

12.12.9. The Zilla Panchayath, Taluk Panchayat or Village Panchayat as the case may be, to frame guidelines for the grant of compensation to the victims of attacks by the stray dogs;



WP No. 110352 of 2019

12.12.10. The owners of dogs to ensure that their pet dogs are not a menace or cause nuisance in public places. It would be mandatory for the owners of the dogs to take out their dogs on public roads or public places along with a leash and not let their dogs loose on the streets, so as to avoid a confrontation with street dogs or other pet dogs;

12.12.11. The citizens must also bear in mind that street dogs also have a right to live and therefore, must refrain from attacking these dogs by stone throwing or by beating etc. They must ensure that children do not go near the stray dogs either to play with them or to feed them.



WP No. 110352 of 2019

12.13. In view of the above, I answer Point No.1 that there is a public duty and/or statutory duty vested with the municipal authorities to safeguard the citizens residing in the area from attack of street dogs and that the municipal authorities are responsible and as such are required to follow the above directions. A compliance report to be filed within a period of three months from the date on which this Order is webhosted.

13. Answer to Point No.2: In the present case, whether respondents No.2 and 4 would be liable to make payment of compensation? If so, to what extent?

13.1. The compensation which has been sought for is a public law remedy under Article 226 of the Constitution of India and as such, the principles of Section 72 and 73 of the Indian Contract Act would not be strictly applicable, since the liability imposed is on account of default in implementation of the statutory duties on the



WP No. 110352 of 2019

basis of strict liability. The same having been considered by the Apex Court in ***D.K. Basu v. State of W.B.***, reported in **(1997) 1 SCC 416** at paras 44 which is reproduced hereunder for easy reference:

44. *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.*

13.2. The above principles have also been reiterated in ***Smt. Nilabati Behera's*** case *supra* at Para 11



WP No. 110352 of 2019

and 12 which have been reproduced hereunder
for easy reference:

11. *In Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, C.J., dealing with this aspect, stated as under: (SCC pp. 147-48, paras 9 and 10)*

"It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases

... The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-



WP No. 110352 of 2019

service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers." (emphasis supplied) (SCR pp. 513-14)

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 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*



WP No. 110352 of 2019

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.

13.3. There can be no value which can be attributed to a human life. Money cannot make good the loss of minor child as caused to the petitioner. The compensation which is required to be awarded in such cases would have to be determined on a case-to-case basis. There being no guidelines as such which are in place for application in the present matter.

13.4. The petitioner has sought for a sum of Rs.25 lakhs on account of death and further reimbursement of medical expenses incurred. As regards the reimbursement of medical expenses incurred, there are no documents produced by the petitioner to establish any such expenses having been incurred. However, it also cannot



WP No. 110352 of 2019

be denied that the petitioner might have incurred certain expenses more so when the incident is established, child having taken to the hospital, autopsy having been conducted in relation thereto is also established and admitted. The medical report as also photographs which have been produced along with the petition leave no doubt in my mind that certain amounts of expenses would have been incurred.

13.5. As regards payment of the compensation caused due to the death of a child, considering that a minor child has died who would have been a support for the petitioner during his old age as also considering the loss of love and affection the mental agony caused to the petitioner and his family due to the untimely death of the minor child in such a bizarre and cruel manner I deem it fit to award a sum of Rs.10 lakhs as



WP No. 110352 of 2019

compensation payable by respondent No.2 to the petitioner. The said amount shall also bear interest @ 6% p.a. calculating from the date of death of the minor child till the disbursement of the amount. While doing so, deduction for the already deducted amount of Rs.1,50,000/- shall be given. The amount in deposit of Rs.1,00,000/- is directed to be released to the petitioner.

13.6. In the event of the petitioner producing medical bills with proof of payment, respondent No.2 is directed to consider the same and disburse the said amount within a period of four weeks from the date of production of said bills.

14. **Answer to Point No.3:** What order?

The Writ Petition is required to be allowed.

Hence, I pass the following:



WP No. 110352 of 2019

ORDER

- i. The Writ Petition is allowed;
- ii. Municipal authorities like Respondent No.2 to 4 are held to be liable under public law for any injury and/or death caused to any citizen on account of attack by street dogs within the jurisdiction of the said municipal authority;
- iii. Respondent No.2 is directed to comply with the directions issued at in the present order within a period of 4 months from today and file an affidavit of compliance, Respondent No.1 shall make necessary arrangements and provide the requisite funds for the Respondent No.2 to comply with the above directions;
- iv. Respondent No.2 is directed to make payment of Rs.10 lakhs as compensation to the petitioner along with interest @ 6% p.a. calculated from 29.11.2018 being the date of



WP No. 110352 of 2019

death of the minor son within a period of four weeks from the date of receipt of a copy of this order. While making payment of the said amount, due deduction for the already paid amount of Rs.1,50,000/- shall be given. The Counsel for the Petitioner is permitted to serve a copy of this order on the respondents.

- v. The petitioner is at liberty to produce the medical bills with proof of payment to respondent No.2 which shall be considered and payment made within a period of four weeks from the date of receipt of such bills and proof of payment;
- vi. Respondent No.2 is also directed to make payment of Rs.20,000/- being the cost of the present proceedings within a period of four weeks from the date of receipt of copy of this order.



WP No. 110352 of 2019

- vii. Though this Writ Petition is disposed of, re-list on 07.11.2022 for reporting compliance.

**Sd/-
JUDGE**

Prs*

Not An Official Copy