

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2023

PRONOUNCED ON : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2191 of 2015

1.V.Shanmugam (Deceased)

2.S.Sharmila

3.Divya Bharathi

... Petitioners

Vs.

1.Union of India

Rep by the Secretary

Ministry of Youth Affairs and Sports

Room No.3, C-Wing, Shastri Bhawan

New Delhi – 110001.

2.State of Tamil Nadu

Rep by Secretary to Government

Higher Education Department

Secretariat

Chennai 600 009.

3.The District Collector

Kancheepuram District

Kancheepuram.

4.The Registrar
Anna University
Chennai 600 025.

5.The NSS Programme Coordinator
Anna University
Chennai 600 025.

6.Indian Maritime Foundation
(A registered Charitable Trust)
1/402 Gera Gardens
Koregaon Road
Pune 411 001.

7.Mr.B.Bose
Chairman
Pallavan Educational Trust
25, 1st Street,
Vedachalam Nagar
Kancheepuram 631 501.

8.The Principal
Pallavan College of Engineering
Thimmasamudram
Kancheepuram 631 502.

9.Prof.Jayaraman

10.Prof.Ilayakumar ... Respondents

[P2 & P3 substituted as LRs of the deceased sole petitioner vide order dated 10.02.2021 made in WMP.No.3370/2021 in WP.No.2191 of 2015]

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pay the petitioner a minimum compensation of Rupees Twenty Five Lakhs with interest at the rate of 12% per annum from the date of this writ petition till date of payment for the death of his son S.Madhanagopal, who was 3rd year B.E. (EEE) student in Pallavan College of Engineering, Thimmasamudram, Kancheepuram 631 502.

For Petitioners	: Mr.M.Radhakrishnan
For R1	: Mr.M.Arvind Kumar Senior Central Government Panel Counsel
For R2 & R3	: Mr.P.Kumaresan Additional Advocate General Assisted by Mr.T.Arun Kumar Additional Government Pleader
For R4 & R5	: Mr.V.Meenakshi Sundaram
For R6	: Mr.M.Arun Kumar For M/s.Sampath Kumar and Associates
For R7 & R8	: Mr.G.Saravanan
For R9 & R10	: No Appearance

ORDER

The Writ of Mandamus is filed to direct the respondents to pay the petitioner a minimum compensation of Rs.25,00,000/- (Rupees wenty Five Lakhs) with interest at the rate of 12% per annum from the date of the present writ petition till the date of payment for the death of the son of the writ petitioner S.Madhanagopal, who was a 3rd year B.E. (EEE) student in the Pallavan College of Engineering, Thimmasamudram, Kancheepuram.

2. The 1st petitioner states that he hails from a poor family and is running a tea stall at Pallikudathan Street, Kancheepuram. He had two children, a daughter and son. His son, S.Madhanagopal was studying in the 8th respondent / Pallavan College of Engineering. He was doing B.E. (EEE) 3rd year. Unfortunately, the son of the 1st petitioner died on 27.09.2014, while participating in the NSS Programme called “International Coastal Clean-up” organised by the respondents 4, 6 and 8 in the coastal area from Koovathur to Thenpattinam, Kancheepuram District. There were 54 students along with the son of the petitioner. His son left home at 6:00 a.m. on 27.09.2014 to participate in the said programme. At about 3:00 p.m on

27.09.2014, the family members of the petitioner were informed through residential phone by the 10th respondent that his son had died about 2:00 p.m. drowning in the sea. The respondents 7 to 10, who were responsible for the safety of my son, had not even cared to give a complaint to the Police about the death of the son of the petitioner.

3. A Police complaint was registered in E5 Koovathur Police Station, Kancheepuram District. A legal notice was issued by the father-in-law of the 1st petitioner on 04.10.2014 to the 8th respondent and other authorities. The 8th respondent sent a reply by stating that due care and diligence was taken by the faculty members and the son of the petitioner himself invited the fatal end and therefore, the College is not responsible. During the pendency of the writ petition, the 1st petitioner died on 20.04.2020. Subsequently, wife and daughter of 1st petitioner were substituted in the writ petition.

4. The learned counsel for the petitioners states that the National Service Scheme (NSS) falls under the 1st respondent / Union of India, who is responsible for the administration, policy planning, implementation and

evaluation of NSS Programmes. The State of Tamil Nadu has a public duty to explain the policies of 1st respondent regarding NSS Programme to the youth and to implement successfully all NSS Programmes. The Government of India extends financial assistance for establishing the State NSS Cell.

5. The 9th respondent is the NSS coordinator in the 8th respondent / College. The 5th respondent is the NSS coordinator at the University level and the 9th respondent is the NSS coordinator at the College level. They have conducted the programme called “International Coastal Clean-up”. The NSS Programmes are conducted by utilising the public funds. The 3rd respondent being the District Collector of Kancheepuram District ought to have taken adequate safety measures with the help of the Coast Guard Personnel to oversee the entire coastal clean-up in the said coastal area. When the two students viz., son of the 1st petitioner and one Lalith Kumar were drowning in the sea, a courageous student namely Michael Antony jumped into the sea and tried his best to save both of them, but unfortunately, Lalith Kumar alone could be saved. None from the Coastal Guard Department was available to save the lives of the students in the event of danger. No precautionary measures were taken by the Authorities

to ensure that adequate number of trained swimmers were deployed for the purpose of taking care of the students, who were engaged in the social service of coastal clean-up.

6. The learned counsel for the petitioners state that the 1st petitioner's son lost his life in the prime of life. He had a bright future ahead. He was a 3rd year student in B.E. He was a rank holder. He was the only son for the 1st petitioner. Under those circumstances, the authorities, who all are liable and responsible, are bound to pay compensation.

7. The learned counsel for the petitioner relied on the judgment of the Orissa High Court in the case of ***Prabir Kumar Das Vs. State of Odisha and Others*** in ***W.P.(C) No.12553 of 2012*** and the Orissa High Court held as follows:

“19. Negligence as a tort is defined by Winfield as "the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff." The existence of a duty-situation or a duty to take care is, therefore, essential before a person can be held liable in negligence. In the classical words of Lord Atkin:

“At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa", is no doubt based upon a general public sentiment of moral wrong doing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour, receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be-- persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

It is now an obsolete view that "the duty to be careful only exists where the wisdom of our ancestors has decreed that it shall exist". In Donoghue v. Stevenson itself the House of Lords recognized a new duty situation and a manufacturer was held to owe a duty of care not only to the wholesale dealer, but also to the ultimate consumer of his product. As stated by Lord Macmillan in that case:

"The conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed. [p.619]."

Then in [Hedley Bryne and Co. Ltd. V. Heller and Partners Ltd.](#) (1964) AC 465 (HL), again a new duty-situation was recognized. It was held that the law will imply a duty of care when a party seeking information from a party possessed of a special skill trusts him to exercise due care and that a negligent, though honest, misrepresentation in breach of this duty may give rise to an action for damages apart from contract or any fiduciary relationship. Lord Pearce in that case said:

"How wide the sphere of the duty of care in negligence is to be laid depends ultimately upon the

Courts' assessment of the demands of society for protection from the carelessness of others.[p.536].”

The principles governing the recognition of new duty-situations were more recently considered in the case of Home Office v. Dorset Yacht Co. Ltd. (1970) All ER 294 (HL). In that case, some Borstal trainees escaped due to the negligence of Borstal Officers and caused damages to a yacht. The owner of the yacht sued the Home Office for damages and a preliminary issue was raised whether on the facts pleaded, the Home Office or its servants owed any duty of care to the owner of the yacht. It was held that the causing of damage to the yacht by the Borstal trainees ought to have been foreseen by the Borstal Officers as likely to occur if they failed to exercise proper control or supervision and, therefore, the officers prima facie owed a duty of care to the owner of the yacht. It was argued in that case that there was virtually no authority for imposing a duty. This argument was rejected and in that connection, Lord Reid made the following pertinent observations:

“About the beginning of this century most eminent lawyers thought that there were a number of separate torts involving negligence each with its own rules, and they were most unwilling to add more. They were of course aware from a number of leading cases

that in the past the Courts had from time to time recognized new duties and new grounds of action. But the heroic age was over, it was time to cultivate certainty and security in the law; the categories of negligence were virtually closed. The learned Attorney-General invited us to return to those halcyon days, but, attractive though it may be, I cannot accede to his invitation. In later years there has been a steady trend towards regarding the law of negligence as depending on principle so that, when a new point emerges, one should ask not whether it is covered by authority but whether recognized principles apply to it. Donoghue v. Stevenson may be regarded as a statement of principle. It is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. But I think that the time has come when we can and should say that it ought to apply unless there is some justification or valid explanation for its exclusion.”

8. The Hon'ble Supreme Court of India in the case of ***Kaushal Kishor Vs. State of Uttar Pradesh and Others*** recently considered the issues and held as follows:

“ 34. The public law proceedings serve a different purpose than the private law proceedings.

The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the

fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

9. The learned counsel for the petitioners further relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Basheshar Nath Vs. Commissioner of Income Tax, New Delhi and Rajasthan and Another*** reported in ***AIR 1959 Supreme Court 149 (V46 C 22)***, the Apex Court ruled as follows:

"14. Such being the true intent and effect of Art. 14 the question arises, can a breach of the obligation imposed on the State be waived by any person? In the face of such an unequivocal admonition administered by the Constitution, which is the supreme law of the land, it is open to the State to disobey the Constitutional mandate merely because a person tells the State that it may do so? If the Constitution asks the State as to why the State did not carry out its behest,

will it be any answer for the State to make that “true, you directed me not to deny any person equality before the law, but this person said that I could do so, for he had no objection to my doing it.” I do not think the State will be in any better position than the position in which Adam found himself when God asked him as to why he had eaten the forbidden fruit and the State's above answer will be as futile as was that of Adam who pleaded that the woman had tempted him and so he ate the forbidden fruit. It seems to us absolutely clear, on the language of Art. 14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every Welfare State, such as India, is by her Constitution expected to do and no person can, by any act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this constitutional mandate directed to the State.”

10. In the case of ***Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum and Others***, the hon'ble Supreme Court has dealt elaborately regarding the principles in the matter of grant of compensation.

11. In the Kaushal Kishor case (cited *supra*), the Apex Court elaborately considered the issues. Relying on the above judgments, the learned counsel for the petitioners reiterated that the respondents are estopped from shirking their responsibility and thus, the petitioner is entitled for the compensation.

12. The learned Senior Central Government Panel Counsel appearing on behalf of the 1st respondent objected the said contention by stating that Coastal Clean-up Programme is a regular activity in NSS. The role of the Government of India has been stated in the counter affidavit filed by the 1st respondent as under:

“a)National Service Scheme is a Voluntary Youth Development Programme started in 1969, during the Birth Centenary year of Father of the Nation Mahatma Gandhi. The main objective of NSS is Personality Development of Students through Community Service. It

has been implemented in all the 29 States and 7 Union Territories of our country. The overall aim of NSS is to give an extension dimension to the Higher Education System and orient the Student Youth for Community Service while they study in Educational Institutions. It is necessary to arouse social conscience among students and to provide them an opportunity to work with the people in the villages and slums. It is felt that their interaction with the common villagers and slum dwellers will expose them to the realities of life and bring about a change in their social perception. NSS was started to establish a meaningful linkage between the campus and the community.

b) NSS activities have been divided into two major groups. They are NSS REGULAR ACTIVITIES and SPECIAL CAMPING PROGRAMMES. Under NSS Regular Activities, students undertake various programmes in the College/School Campuses, adopted village and urban slums during weekends or after college/school hours. Duration of these activities is 120 hours in a year. In the Special Camping Programmes, students will take part in a Seven Day Camping Programme on Community Development in an adopted village or urban slum with some specific projects by involving the local communities. One student will have to work as a Volunteer for 240 hours of Regular Activities

and one Special Camping Programmes of 7 day's duration during the volunteership of 2 years. It is purely voluntary in nature and there is no compulsion for the students to mandatorily join NSS.

c) The NSS Programme was funded by the Govt. of India and the State Governments in the ratio 7:5. The pro rata grant for the NSS Regular Activities is Rs. 2501- per Volunteer per annum. The pro rata grant for the Special Camping Programme is Rs. 4501- per Volunteer in 2 years.

d) Ministry of Youth Affairs & Sports, Govt. of India is the Nodal Ministry responsible for the implementation of NSS in the country. At the National Level, this Ministry has given the administrative responsibility for the policy making, planning, implementation and evaluation of the NSS Programmes. For the administrative convenience, the Ministry has set up 15 NSS Regional Directorates in the country for the implementation of NSS in the Universities/ Colleges and Directorates in liaison with the State Governments. There is a Nodal Department in the State Govt. for looking after NSS in the State. Under this Nodal Department, a State NSS Cell headed by State Coordinator/State Liaison Officer (SLO) is working at the State Level.

In addition to the NSS Regional Directorate and State NSS Cells, Empanelled Training Institutes (ETIs are

identified by the Ministry of Youth Affairs & Sports, Govt. of India for imparting training to the Programme Officer in NSS. Ultimately, NSS Programme is being implemented through Educational Institutions affiliated to various Universities and Directorates of Education in a State.

e) Coastal Clean up Programme as a NSS Regular Activity:

The Nodal Ministry, Ministry of Youth Affairs & Sports, Govt. of India did not identify Coastal Clean-up Programme as one of the mandatory Regular Activities for NSS. There are specific NSS Regular Activities to be implemented by the NSS Units of Educational Institutions. Apart from specific and mandatory Regular Activities the Universities and NSS units are free to choose viable programmes for the community development activities by involving NSS Volunteers for the regular activities.

f) The Ministry does not have MOU or any undertaking with the Indian Maritime Foundation (Reg. Charitable Trust), 1/402 Gera Gardens, Koregaon Road, Pune to organize Coastal Clean- up Programme in association with NSS in the country. The NSS Cell of Anna University, Chennai also is not responsible for a Coastal Clean-up Programme jointly organized by the Indian Maritime Foundation, Chennai Branch and the

NSS Unit of Pallavan College of Engg., Thimmasamudram. The programme was purely planned and executed by the NSS unit of the Institution and the Indian Maritime Foudnation, Chennai Branch on 27.09.2014.

Government of India Guidelines for the NSS Activities:

The NSS was started to establish a meaningful linkage between the campus and the community. The NSS Volunteer, who is a College/+2 level student is the main beneficiary of the programme by way of his/her perception about the community. The NSS Programme aims to make NSS student youth better citizens through “Development of their Personality through Community Service”.

1. Administration: Ministry of Youth Affairs and Sports is the administrative Ministry for Finance and for Policy matters.

(Page 37 of NSS Manual-Annexe-1)

2. Programme Adviser's Cell: For Programme Planning, Implementation and Evaluation of NSS Programme at National Level. (Page 38 of NSS Manual-Annex.I)

3. State Advisory Committee: is responsible for State Level Planning and Implementation of NSS Programme. (Page 59 of NSS Manual-Annex. I)

4. University Level Advisory Committee: University Level Planning and Implementation is to be taken care by this forum.(Page 61 of NSS Manual-Annex. III)

5. College Level Advisory Committee: College Level Planning and Implementation is taken care by them.(Page 64 of NSS Manual-Annex.IV)

Regular Activity: A student enrolled as NSS Volunteer will have to put in 120 hours of community work during an academic year for a period of 2 years. Under this, students undertake various programmes in the adopted villages, college/School Campuses and urban slums during weekends and after college hours. He/She is likely to participate in different programmes and projects under NSS as decided by University & College Level Advisory Committee. (Page 12 to 17 of NSS Manual-Annex.V).”

13. The learned Senior Central Government Panel Counsel appearing on behalf of the 1st respondent further states that with regard to the averments made in Para 5 to 7 of the affidavit by the petitioner, the 1st respondent has no comments, since the 1st respondent was not involved in the said activities. However, the Petitioner is put to the strict proof of the same.

14. The learned Senior Central Government Panel Counsel appearing on behalf of the 1st respondent also denied the averments and allegations made in Ground-(a) of the affidavit as false and put the Petitioner to the strict proof of the same. As per the guidelines, the Programmes/Activities to be undertaken during a year is discussed and planned in the University Level/Institutional Level Advisory Committee every year. Government of India formulates only the broad suggestive guidelines. (Page No.59 to 65 of NSS Manual-Annex.II to IV)

“NSS Activities have been divided into two major groups. These are Regular Activities and Special Camping Programme.

(a) Regular Activities: NSS Volunteers generally work with villages, sums and voluntary agencies to complete 120 hours of Regular Activities during an academic year for a period of 2 years. He/She is likely to participate in different programmes and projects under NSS.

(Part-II, Chapter-2 of NSS Manual, Page No. 12 to 17 - Annexure-V

(b) Special Camping Programme: Camps of 7 days duration are organized in adopted villages or urban slums during vacations with some special projects

involving local communities. Special camps are organized generally on various development issues of national importance.

(Part-III, Chapter-1 of NSS Manual, Page No. 18 to 22-Annexure-VI) ”

The specific programme, which will be for one day is under Regular Activities, planned by the College itself in collaboration with the Indian Maritime Foundation. So, Ministry may not be held responsible for this activity.

15. The 2nd respondent filed a counter affidavit by stating that the 8th respondent / Pallavan College of Engineering is a self financing Engineering College and affiliated to Anna University, Chennai. The event of NSS Programme had not been informed to the 4th and 5th respondents, viz Registrar, Anna University and the NSS Programme Coordinator, Anna University. It was only an one day event organised and coordinated by the Pallavan College of Engineering, Kancheepuram. The 4th and 5th respondents were not aware of the said programme / event. The Director of Technical Education in his letter No.28756/J2/2007 dated 25.09.2007 issued instructions that all Technical Institutions has to follow due safety

measures, while conducting functions / programmes / Educational Tours. Thus, the 2nd respondent is not responsible for the untoward incident happened.

16. The 4th respondent / Registrar, Anna University also filed a counter affidavit on the same line as that of the 2nd respondent by stating that the one day programme event was conducted by the 8th respondent / College on their own and it is not the NSS camp organised by other respondents and it was only an one day event organised and coordinated by the 8th respondent. Therefore, the University was not informed about such one day programme. It was neither organised nor coordinated by the 4th and 5th respondent and they were totally unaware of the programme conducted by the 8th respondent / College. Thus, they cannot be held as responsible.

17. The 3rd respondent / District Collector also reiterated that the “International Coastal Clean-up Programme” had conducted without any prior approval of the District Collector. If the Organisers of the programme had intimated the District Administration as to the schedules and activities planned under the programme, the District Administration would have

definitely arranged for appropriate safety measures to be put in place during the programme apart from deploying enough security personnel and life guards at the programme venue. Therefore, the District Collector cannot be held responsible, since the District Collector was unaware of the programme organised by the 8th respondent / College. More so, no approval was obtained.

18. The 8th respondent / College filed a counter stating that the deceased student S.Madhanagopal was aged about 21 years, when he was studying B.E. (EEE) 3rd year at their College during the academic year 2013-2014 had voluntarily participated in the NSS Programme, which was coordinated by the 5th respondent. It was not compulsory. The deceased student participated in the “International Coastal Clean-up Programme” on 27.09.2014. All the participating students were duly and strictly instructed not to venture into the seawater under the guise of bathing, playing, swimming but must focus only in cleaning-up the coastal area, which is the object of the event.

19. In spite of the clear-cut instructions given by the 8th respondent / College Authorities not to venture into the sea, unauthorisedly and unfortunately the deceased on his own volition entered into the seawater for bathing along with other fellow students and the deceased was captured between the tidal waves and despite the rescue efforts and the first aid given to him, he was unfortunately reported dead by the D.A.E Hospital at Kalpakkam. The incident was informed to the father of the deceased student, who logged a criminal complaint in Crime No.289 of 2014 on the file of E5, Koovathur Police Station on the same day.

20. The 8th respondent states that the student was aged 21 years, who had personal knowledge that the act of entering into the sea would cause harm or loss but in spite of that he jumped into the seawater and agreed to suffer the injury. Hence, the 8th respondent will not be liable for such an act and when the risk was well known to the deceased student.

21. The deceased student jumped into the seawater on his own volition, entered into the seawater in spite of having personal knowledge of

the risk involved and thus, voluntarily agreed to suffer the said risk. Thus, the College could not be held responsible and they cannot be blamed for the voluntary act of the deceased student.

22. The student has personally and freely decided on his own free will to enter into the sea water unauthorisedly without any sort of external or internal compulsion from the side of the 8th respondent / College against the specific instructions not to enter into the seawater and hence, the College cannot be held responsible.

23. Considering the arguments of the parties to the *lis* on hand, the fact remains that the coastal cleaning-up programme was conducted by the 8th respondent / Pallavan College of Engineering and 54 students participated in the said one day event. Admittedly, the Organisers of the College had not obtained any approval from the District Collector or from any other Competent Authority of the Anna University. The Anna University states that it is not a NSS Programme, it was an event arranged at the discretion of the College without informing about such programme to the University and therefore, none of the Authorities can be held liable. The

participation of any student in NSS Programme is voluntary in nature and not compulsory.

24. No doubt, the Organisers are bound to take adequate steps to protect the safety and security of the participants in the event. The 8th respondent / College Authorities state that they informed the students not to venture into the seawater for bathing, swimming etc. The Programme organised was concluded and thereafter, two students at their own volition jumped into the sea for bathing, which resulted in death of the son of the 1st petitioner. Thus, the deceased student jumped into the sea after the programme and without informing the Organisers and therefore, the College cannot be held responsible for the death of the student.

25. Admittedly, the deceased student was aged about 21 years and was pursuing 3rd year B.E. course. He was a major and capable of taking an independent decision for his conducts. The deceased student voluntarily jumped into the seawater for bathing without informing the Organisers, even the instructions were not followed by the deceased student and the other student, who was saved. As far as the instructions of the Organisers

are concerned, it should be construed as formal, since the students are majors and capable of deciding their conduct. In the present day scenario the College Authorities or the Organisers of the event cannot interfere with the rights of the major students, who are capable of taking decision. In the present case, the Organisers in advance informed the students not to venture into the seawater for bathing, swimming, etc. It is not the case that many students had jumped into the sea water. Out of 54 students, only two students jumped into the sea and one was saved and the son of the 1st petitioner alone was dead.

26. That being the factum established, question arises, whether the Central and State Authorities can be held liable for the drowning of the deceased student.

27. The petitioner as well as the 8th respondent / College Authorities could not establish that they have obtained due approval from the District Collector for providing safety measures including Life Guards. They have not even informed to the NSS Coordinators of Anna University. Thus, none of the authorities were aware of such coastal clean-up programme

conducted by the 8th respondent / College at their discretion. Anna University states that it is not even a NSS Programme, it was a cleaning programme arranged by the College without even informing the University. Thus, this Court has no hesitation in forming an opinion that the respondents 1 to 6 are not responsible for the event conducted by the 8th respondent or for the death of the student.

28. Let us now consider the responsibility of the 8th respondent / College.

29. It is not in dispute that that the 8th respondent / College organised the coastal clean-up programme and informed the students for their voluntary participation. No doubt, 54 students voluntarily participated in the coastal clean-up programme conducted on 27.09.2014. The Organisers of the programme were very much present, while conducting the programme. They have instructed the students not to venture into the seawater for bathing, swimming, etc. If the students, who have attained the age of majority and 21 years voluntarily, jumped into the sea for bathing without even informing the Organisers after completion of the programme, the

Organisers cannot be held responsible.

30. Since it was the voluntary act of two students for jumping into the sea, the principle of "*Volenti Non Fit Injuria*" squarely applies to the facts of this case. Therefore, none can be blamed for the voluntary act of the deceased student. The deceased student at the time of drowning was aged about 21 years and capable of taking independent decision. He had not followed the instructions given by the Organisers. Out of 54 students, two students alone jumped into the sea without even informing the Organisers. While so, the Organisers cannot be held responsible for the voluntary act of the deceased student.

31. Negligence in common parlance means and implies "Failure to exercise due care, expected of a reasonable prudent person". It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. In the present case, one cannot form an opinion that a 21 year old, 3rd year B.E. student was unaware of the consequences of

jumping into the deep sea for bathing. The risk element involved would have been considered by the student before jumping into the sea. Thus, he has accepted the consequences voluntarily. The voluntary acceptance of risk exonerates the Organisers from liability and responsibility.

32. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do. Though sometimes, the word “Inadvertence” stands and it used as a synonym to negligence, but in effect negligence represents a state of the mind which, is much more serious in nature than mere inadvertence. There is thus, an existing differentiation between the two expressions-whereas inadvertence is a milder form of negligence, “Negligence” by itself means and implies a state of mind, where there is no regard for duty or the supposed care and attention, which one ought to bestow.

33. Therefore, in the present case, the petitioners have failed to establish that no due care has been taken by the Organisers of the programme. Fact remains that the 8th respondent / College failed to get an

approval from the District Collector nor informed about the programme to the Anna University NSS Coordinators. The Coordinators of the College informed the students not to venture into the sea for bathing, swimming, etc. Thus, the instructions are given and when the 21 year old student after completion of programme voluntarily jumps into the sea having understood the risk element, the Court cannot arrive at a conclusion that the Organisers of the College is responsible and liable for the consequences. Even before the arrival of the Government machinery one student was saved by the other student but the son of the 1st petitioner died. The treatment given to him failed.

34. This being the factum, this Court is of the considered opinion that the negligence aspect against the Authorities has not been proved by the petitioners. Therefore, the negligence on the part of the 8th respondent / College is to be confined only to the extent of not obtaining approval from the District Collector and in the event of such approval, the District Collector would have arranged for safety measures including Police Security.

35. Though it seems to be an irregularity in organising such programmes, the College Authorities ought to have taken adequate measures in this regard so as to ensure that in the event of any untoward incident, the Government machinery is required in the place, where the programme is being organised. Therefore, to the extent of not obtaining prior approval from the District Collector and not informing the NSS Coordinator of Anna University, the 8th respondent / College undoubtedly committed an act of lapses and their lackadaisical approach resulted in loss of life of a student. To that extent, the College is responsible.

36. Every Educational Institution, while organising programmes, educational tours, events, etc. for students, are expected to take all precautionary measures for the safety and security of the students. Though the student in the present case was aged 21 years at the time of the incident, if the Life Guards and Government machinery were put in place, then his life would have been saved and to that extent the College Authorities failed in their duty to get approval from the District Collector and to inform the Anna University.

37. Thus, it is not a case of an absolute negligence on the part of the Authorities including the College and Organisers, but the College had failed to obtain necessary approval from the Competent Authorities. Hence, to that extent, they have committed an act of negligence, which is to be construed as “Milder form of Negligence”.

38. Thus, this Court is inclined to grant a fixed compensation instead of adopting multiplier method. Accordingly, the 8th respondent / Pallavan College of Engineering, Thimmasamudram, Kancheepuram is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakh Only) to the petitioners towards compensation within a period of four (4) weeks from the date of receipt of a copy of this order.

39. With the above direction, the Writ Petition stands allowed. No costs.

23.03.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Secretary
Union of India
Ministry of Youth Affairs and Sports
Room No.3, C-Wing, Shastri Bhawan
New Delhi – 110001.
- 2.The Secretary to Government
State of Tamil Nadu
Higher Education Department
Secretariat,
Chennai 600 009.
- 3.The District Collector
Kancheepuram District
Kancheepuram.
- 4.The Registrar
Anna University
Chennai 600 025.
- 5.The NSS Programme Coordinator
Anna University
Chennai 600 025.
- 6.Indian Maritime Foundation
(A registered Charitable Trust)
1/402 Gera Gardens
Koregaon Road, Pune 411 001.

7.The Chairman
Pallavan Educational Trust
25, 1st Street,
Vedachalam Nagar
Kancheepuram 631 501.

8.The Principal
Pallavan College of Engineering
Thimmasamudram
Kancheepuram 631 502.

S.M.SUBRAMANIAM, J.

Jeni

W.P.No.2191 of 2015

23.03.2023