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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6396/2010

% *Judgment dated 30.08.2013*

PARMESHWAR

..... Petitioner

Through : Ms.Gayatri Verma and Ms.Neha Kapoor  
Khanna, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondents

Through : Ms.Zubeda Begum and Ms.Sana  
Ansari, Advs. for respondent no.1.  
Ms.Saroj Bidawat, Adv. for respondent  
no.2.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J (ORAL)**

1. Rule. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Present petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to the respondents to compensate him for the loss of life of his son, who was 12 years of age, at the time of his death and for the harassment suffered by him. The petitioner also seeks a direction to the respondents to be diligent in execution of their duties and responsibility and remove all stray/wild animals from the residential colony of Madanpur Khadar in order to ensure the safety of the residents.

The necessary facts, to be noticed for the disposal of this writ petition and .3  
as stated by the petitioner, are that on 20.4.2010 the petitioner's son,  
namely, Akash, was sitting on the stairs near his residence when two wild

undomesticated bulls appeared and began fighting. Seeing the bulls fighting, the son of the petitioner got up to move towards his house in order to be safe, however, he got entangled in the fight of the wild animals and was grievously hurt. The petitioner rushed his son to Jai Prakash Narayan Apex Trauma Centre, AIIMS, Raj Nagar, Delhi, where despite best efforts of the doctors Akash succumbed to the grievous nature of injuries, sustained by him, on 28.4.2010. In support of this averment, the petitioner has relied upon the autopsy report of Akash which states that the cause of death of Akash was “*cerebral (brain) injury and its complications caused less automateur blunt force and possible in case coming in contact to bull fight*”. A copy of autopsy report along with death certificate of the petitioner’s son has been annexed to the writ petition. The petitioner thereafter made a complaint to the Deputy Commissioner, Lajpat Nagar, MCD, on 31.7.2010, which was duly received by the concerned department on 2.8.2010. In the complaint it was stated that the petitioner had lost his son at the young age of 12 years due to the carelessness of the MCD and in case the MCD had carried out its duty of removing the stray animals from the residential areas, the petitioner’s son would have been alive. It was also stated in the complaint that close to the spot, where the unfortunate incident of the death of the petitioner’s son occurred, i.e. at a distance of 100 meters, a school is situated where young children study in the morning as well as in the evening sessions, making them easy targets for such incidents in future. Despite the complaint, no action has been taken by the concerned authorities till date and stray and dangerous animals, including wild bulls, roam around freely including in the residential areas. Since no response to the said complaint of the petitioner was received, the petitioner was forced to file the present writ petition.

4. Learned counsel for the petitioner submits that the respondents have been neglecting to perform their duties as presence of such animal is banned in the residential areas. Reliance is placed by counsel for the petitioner on the allotment letter dated 11.6.2001 issued by the DDA to the petitioner pertaining to the allotment of temporary plot to the petitioner in lieu of jhuggi of the petitioner. As per condition no.7 of the said allotment letter the allotted persons were not permitted to keep on the plot or nearby, animals like, cows, buffalos, pigs, etc., and, thus, the presence of such animals on the residential land allotted to the petitioner and other persons is unwarranted and if such animals are present it is the duty and the responsibility of the civil authorities to remove them in order to ensure safety of the residents of the locality. Counsel next contends that the cause of the death of the petitioner's son is the direct consequence of the carelessness of the respondents and had the respondents carried out their task of rounding up and removing stray animals from residential colonies diligently, the petitioner's son would not have lost his life. It is also submitted that Akash was the only child of the petitioner, who was pursuing academics, he would have had a bright future, he would have been the sole bread winner of his family and supported his parents in their old age had his life not been cut short due to the gross negligence displayed by the civic authorities.
5. Learned counsel for the petitioner has relied on *Nilabati Behera (Smt.) v. State of Orissa and Others*, reported at (1993) 2 SCC 746, wherein the Supreme Court has held that "*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 inalienable right guaranteed under Article 21 of the Constitution is a remedy available in public and is based on the strict liability for*

*contravention of the guaranteed basic and inalienable 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.....".*

It was observed that the Courts not only have the power and jurisdiction but also an obligation to grant relief in exercise of their jurisdiction under Articles 32 and 226 of the Constitution to the victim or his/her heir whose fundamental rights under Article 21 have been flagrantly infringed by the State.

6. Reliance has further been placed by counsel for the petitioner in the case of ***Shakuntala v. Govt of NCT and Anr.***, CWP No.13771/2006, wherein, as in the present case, the victim died by being entangled in a bull fight caused by the dereliction of duty of the MCD. In the said case the High Court considered all the facts and the law and directions were given to the MCD in a public interest litigation and thereafter granted relief of Rs.10.00 lakhs to the petitioner vide judgment dated 1.7.2009. In the appeal, being LPA No.348/2009, filed by the MCD against the judgment dated 1.7.2009, a Division Bench of this Court vide order dated 25.8.2009 applied the multiplier method and reduced the amount to Rs.6.50 lakhs.
7. Reliance has also been placed by learned counsel for the petitioner on ***Yogita v. Govt. of NCT of Delhi and Anr.***, CWP No.21139/2005, and ***Chob Singh v. Govt. of NCT of Delhi and Anr.***, CWP No.13310/2009, wherein the High Court had granted Rs.7,32,788/- and Rs.7,91,546.38 to the petitioners, respectively, who had lost a family member due to sheer neglect of the respondent authorities. In order to determine the amount of compensation payable, the High Court relied upon the two-tier system contained in the judgment rendered in the case of ***Kamla Devi v. Govt. Of NCT of Delhi and Anr.***, reported at 2004 (76), DRJ 739.
8. Learned counsel for the petitioner submits that in case the multiplier

method, as in the Motor Vehicle Act, is relied upon to calculate the compensation payable, the following amount would become due to the petitioner:

(a) 15,000 p.a. x 15 (multiplier as per Para 1 of the IIInd schedule)

Less 1/3<sup>rd</sup> as per Note = Rs.2,25,000/-  
- 75,000/-  
Rs.1,50,000/-

(b) Funeral expenses 2,000/-  
(c) Medical expenses 15,000/-  
(d) Exemplary damages as 5,00,000/-  
per *Nilabati Behera*  
(supra)

(a)+(b)+(c)+(d) **Rs,7,57,000/-**

9. Per contra, Ms.Bidawat, learned counsel for respondent no.2, has opposed the present petition on the ground that the petition raises disputed questions of fact which cannot be decided in these proceedings. Counsel further submits that there is nothing on record which would establish that the injury suffered by the son of the petitioner was on account of a bull fighting. In support of her submission, learned counsel for respondent no.2 has relied upon *Shri Dharampal v. Delhi Transport Corporation*, CWP No.1108/2001, in which case a child died on account of electrocution, however, the writ petition was dismissed. Counsel submits that while deciding the abovestated case the learned Single Judge has noticed various decisions including a decision rendered by the Apex Court.

10. I have heard learned counsel for the parties and considered their rival

submissions. The only ground on which the present petition is opposed by counsel for respondent no.2 is that the same raises disputed questions of facts. As per the petition on 20.4.2010 the petitioner's son was sitting on the stairs near his residence when two wild undomesticated bulls appeared and began fighting. On seeing the bulls fighting, the son of the petitioner got up to move towards his house, however, he got entangled in the fight of the wild animals and was grievously hurt. Akash was rushed to Jai Prakash Narayan Apex Trauma Centre, AIIMS, Raj Nagar, Delhi, where despite the best efforts of the doctors he succumbed to grievous nature of injuries, sustained by him, on 28.4.2010. The petitioner thereafter made a complaint to the Deputy Commissioner, Lajpat Nagar, MCD, on 31.7.2010, which was duly received by the concerned department on 2.8.2010. Despite the complaint, no action has been taken by the concerned authorities. The allegations made in the said complaint were not refuted.

11. In the case of *Shri Dharampal* (supra), which is sought to be relied upon by learned counsel for respondent no.2, the wife of the petitioner had died on account of electrocution. She had gone to the terrace of her house to dry the clothes on an iron wire which was tied to sewer pipes on the terrace floor. The iron wire was live and the wife of the petitioner got electrocuted and died. The case of the petitioner in the aforesaid matter was that since the electricity wires were old and in a dilapidated condition the short circuit occurred and despite requests the wires were not changed by the concerned authorities; and, thus, the civic authorities were negligent in performing their duties. The stand taken by The Delhi Vidyut Board, contesting respondent no.2, in the aforesaid writ petition, reads as under:

“5. Delhi Vidyut Board, respondent no.2 also contested the petition

on the ground that it raises disputed facts as to on account of whose negligence, the wife of the petitioner was electrocuted. The said respondent contended that a senior mistri had immediately reached there and had disconnected the electric line. It was also pleaded that on investigation by the police authorities no fault was found and no action was initiated against respondent no.2. The said respondent also refuted its liability on the ground that an electric inspector had also visited the site and as per his report, the death was due to the defect in the internal wiring of the flat and there was no fault on the part of Delhi Vidyut Board. Relying on the facts stated in the first information report it was pleaded that the allegations were made only against respondent no.1 and not against respondent no.2. It was also contended that to claim damages and compensation one has to prove the case in a suit and not to claim compensation under Article 226 of the Constitution of India.

6. The allegations of the respondents were refuted by the petitioner in his rejoinder. It was contended that the colony is very old as it was constructed in 1954 and the electric lines were damaged which are not replaced despite repeated reminders and request to the respondents. The petitioner pleaded that the liability of the respondents is joint and several and the averments made in the petition were reiterated.

12. The aforesaid decision, in my view, is not applicable to the facts of the present case for the reason that in this case it is clearly established that the petitioner's son has suffered injuries on account of a bull fight, which has resulted in his death.
13. A DD Entry No.35 was made by ASI Balraj Singh, recorded under Section 174 Cr.P.C., after visiting the site, wherein he clearly stated that on enquiry it was found that Akash son of Parmeshwar Prahlad got injured due to the fight of two bulls. DD No.35 reads as under:

“DD.No.35 Dated 28/4/2010 P.S. Jaitpur N.Delhi

A.S.I. Balraj Singh  
Information

Return and

Time registered is 3 PM that I ASI along with my colleague constable Harinder number 2079 S.E came back to the police station after doing inspection of case report number 16 B in daily diary. It is registered that I ASI after receiving DD No.33 A dated 20.4.2010 I ASI along with my colleague reached at trauma centre where MLC of injured Akash son of Parmeshwar Prahlad resident of A 2/1250 Madanpur Kahadar JJ. Colony was received in which doctor wrote on MLC unfit for statement. That I ASI along with my colleague came back to the place of incidence where enquiry was done and after doing the enquiry it was found that Akash son of Parmeshwar Prahlad got injured due to the fight of two bull. That the statement of his father and brother and other neighbours were obtained. Injured is getting treatment in trauma centre. That today on 28.4.2010 DD.No.10A was entered by me ASI. That I ASI after entering the DD.No.10 A dated 28.4.2010 reached trauma centre AIIMS where at mortuary the TIP post mortem of dead body of deceased Akash son of Parmeshwar Prahlad resident of A 2/1250 JJ colony Madanpur New Delhi was done. After that I ASI, has handed over the dead body of the deceased Akash son of Parmeshwar in the good condition after post mortem to his father Parmeshwar and his elder brother Yogesh and Dasharam son of Gyasi Ram resident of A 2/1532 JJ Colony Madanpur Khadar New Delhi and proceedings under Section 174 Cr.P.C. were initiated. Whole situation is stated to SHO and report is registered after giving information by ASI himself.”

14. I have also perused the copy of the post-mortem report, which has been placed on record. Relevant portion of the same reads as under:

*“Cerebral (brain) injury and its complications caused less automateur blunt force and possible in case coming in contact to bull fight.”*

15. I have also perused the short affidavit, which has been filed by the MCD, wherein no specific denial with regard to the incident has been made by the MCD. Along with the short affidavit the MCD has also filed an action taken report on removal of stray cattle and bulls from the area of JJ



Colony, Madanpur Khadar, and its surrounding. The short affidavit of the MCD reads as under:

“ I, Dr.C.B. Singh, Veterinary Officer, Central Zone, MCD, New Delhi, aged about 43 years, do hereby solemnly affirm and state as under:

1. That I am Veterinary Officer, Central Zone, in the Municipal Corporation of Delhi dealing with the aforesaid matter and well conversant with the facts and circumstances of the present case, and as such competent to depose the present affidavit.
2. That the answering respondent denies the facts as mentioned by the petitioner in the present petition. It is pertinent to mention here that the answering respondent is carrying its duties as entrusted to it.
3. That as per the records of the answering respondent 49 Stray Cattle / Bull Removal Actions have been undertaken with / without police force in the Central Zone. It is further submitted that 163 Stray Cattle including 25 Bulls have been caught / removed by the answering respondent with rigorous efforts from the JJ Colony Madanpur Khadar and its adjoining areas since 1.01.2010. It is pertinent to mention here that after each Stray Cattle / Bull Removal Action the local police is informed and requested to take strict surveillance on the same so that Stray Cattle may not harm the citizen.
4. That it is pertinent to mention here that during the action as mentioned hereinabove, some of the illegal dairy owners interfered / interrupted, looted the seized animals, pelted stones on the Stray Cattle catching Vehicles and subsequently FIRs have also been registered against them.
5. That the Stray Cattle / Bull Removal Action is an ongoing process, however, the Stray Cattle / Bull Removal Staff of Veterinary Services Department, Central Zone has been directed to remove all the Stray Cattle / Bull from JJ Colony Madanpur Khadar and its adjoining areas.
6. That the Stray Cattle / Bull Removal Action are being

continuously undertaken by the answering respondent and still working with the best possible effort to eradicate Stray Cattle / Bull from the area in question. It is pertinent to mention here that the Stray Cattle / Bull are sent to Gosadans after micro – chipping / tagging at Timarpur Cattle Pond.

7. That the answering respondent MCD has no policy of compensation in the cases such as the present case. Moreover answering respondent is already overburdened and not in a position to pay compensation in the present case.”

16. A careful reading of the short affidavit filed by the MCD would show that there is no factual denial of the incident, which took place in the colony on 20.4.2010.

17. I have also perused the status report, which has been filed by the Police. The status report reads as under:

“ I have the honour to submit that a DD No.33A dated 02/03/10 through Telephone from Trauma Centre AIIMS Hospital, was received at PS. Jaitpur which was entrusted to ASI Balraj Singh for enquiry. The content of DD entry was that one Akash S/o Prahlad R/o H. No.A-2/1250, Madanpur Khaddar, J.J. Colony age 12 years was got admitted in AIIMS Hospital by his father who suffered with injuries due to fallen down in front of his house. The IO went to the Hospital and collected MLC No.206361 of Akash and recorded the statement of his father Prahlad @ Parmeshwar. As per his statement, the two bulls were fighting in the Gali and the children of locality were seeing the bull’s fighting. All of a sudden the bulls started running after one another. Mr.Akash suffered the injuries due to bull’s hit. On 28/04/10 Akash succumb to injuries. The inquest u/s 174 Cr.P.C. was carried out by ASI Balraj Singh. Enquiry revealed that Akash sustained injuries due to bull’s hit. The plots of the said J.J. Colony were allotted by DDA. The matter of compensation belongs to civic agencies of Govt. of NCT of Delhi.”

18. A perusal of the short affidavit filed by the MCD, wherein only a vague denial has been made with regard to the incident; the status report filed by

Delhi Police; the observations made by the doctor in the post-mortem report; and the observations made by ASI Balraj Singh, leaves no room for doubt that the death of the petitioner's son was caused on account of a bull fight and, thus, the submission of the counsel for the respondent is without any force and is liable to be rejected.

19. Accordingly, present petition is allowed. Applying the multiplier method as per Motor Vehicle Act The petitioner shall be entitled for a sum of Rs.7.57 lakhs, in terms of above calculations, which shall be payable by respondent no.2 within three months of receipt of the order. In addition, respondent no.2 shall also pay costs of Rs.10,000/- to the petitioner.

**G.S.SISTANI, J**

**AUGUST 30, 2013**

msr