

ODISHA HUMAN RIGHTS COMMISSION

**TOSHALI BHWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-751007**

O.H.R.C. CASE NO.5414 OF 2015

Shri Shyamasundar Jena

...The petitioner

ORDER

19th May , 2017

Perused the reports received from the District Magistrate & Collector, Bhadrak dated 7.1.16 as well as the Sub Collector, Bhadrak dated 28.12.15 on the complaint of the petitioner Shri Shyamasundar Jena about the negligence and carelessness on the part of the authorities of Jawahar Navoday Vidyalaya, Chandimal, Basudevpur in Bhadrak district in taking prompt action in providing necessary treatment to his daughter named Priyanka Priyadarshini Jena, a student of the said School, for which she lost complete vision of her left eye which was seriously injured during her stay in the School Hostel.

It is revealed from the report of the Sub Collector, Bhadrak that on 24.11.15 after Priyanka Priyadarshini Jena, the daughter of the petitioner received serious injury in her left eye of being hit by a GI wire inside the Hostel campus, she along with one Bijayalaxmi Dalei complained to the Caretaker of the Hostel namely; Lipi Puspa Nayak. Although one Miss Suman Saroj Minz, TGT Science Teacher was in-charge of the Hostel for that day in the absence of both House Mistress (Mrs. S.Leha) and Assistant House Mistress (Mrs. S.Parmar), no information with regard to the occurrence of such an incident was reported to her between 6 PM to 7.50 PM. However, after she came to know about the matter at 8 PM, she telephonically intimated the parents of the injured student and on the next day her mother and brother took her from the Hostel for necessary treatment. Although the matter was

immediately reported to the Caretaker, she did not take any action herself nor informed Miss Minz, the House Mistress in-charge. The duty and responsibility of Miss Minz were just limited to telephonically informing the parents of the Priyank P Jena and thereby both the Caretaker and in-charge House Mistress have shown negligence in providing the preliminary treatment to her, for which the vision of her left eye was permanently impaired. Apart from this, no timely information was given to her parents which stood in the way of her immediate treatment. It is a pity that even though the girl was crying with pain nobody came forward to help her. The Principal of the School took the plea that she was informed of the matter only on 25.11.15 . The Sub Collector, Bhadrak in its report observed that the attempt to cover up the incident on the plea that Priyanka P Jena was playing “**Jhir Jhir**” is something serious. It is suggested in the report to take serious action against the Caretaker of the Hostel Lipi Puspa Nayak as she failed to inform the House Mistress for providing timely first aid treatment to Priyanka P Jena. At the same time, the Principal of the School should be advised to improve the administration of the Hostel and also pay due attention to the problems of the School students without any delay.

The Collector, Bhadrak in its report also held the view that neither Lipi Puspa Nayak, the Hostel Caretaker nor Miss Minz in-charge House Mistress took any step to provide first aid treatment to the injured student and did not refer her to any Hospital for necessary treatment. The guardians of the injured student took upon themselves the responsibility of the treatment of their child after taking her from the Hostel on 25.11.15, but it was then too late as she lost the vision of her left eye for good and all.

Perused the detailed report of the Principal, Jawahar Navodaya Vidyalaya (JNV), Chandimal dated 20.2.16 which was forwarded by the Regional Officer, Central Board of Secondary Education, Bhubaneswar in its letter dated 4/5.3.16. It is seen that contrary to the observation of the Sub Collector, Bhadrak, the Principal of the JNV in his report has mentioned that

the concerned girl student sustained injury in her left eye not actually being hit by the GI wire but being hit by "Jhir Jhir" wire while she was playing. Though the views of both the aforesaid authorities are divergent from each other on this issue, the fact remains that nothing was done by the Hostel authorities, or for that matter, the School authorities in providing any immediate treatment to the injured girl student till her guardians came from Bhubaneswar and took her with them for her treatment. The observation of the Principal, JNV in its report that the House Mistress in-charge Mrs.S.S.Minz could not find out any seriousness of the injury is not only unfortunate but also his further observation that Mrs. Minz could not give any first aid at Vidyalaya level and reported the matter to the parents of the injured girl at about 8.30 PM of 24.11.15 is highly deplorable. In the opinion of the Commission, these two facts as mentioned in the report of the Principal, JNV smack of lack of sense of responsibility and a deliberate negligence on the part of the concerned House Mistress in-charge.

Also perused the report of the OIC, Kasia Marine Police Station in Kasia Marine PS Case No.55 dated 10.12.15 which has been forwarded by the S.P., Bhadrak in its letter dated 11.7.16. According to the said report, on 24.11.15 after taking lunch, while Priyank P. Jena were standing near the balcony of the Hostel along with her friends, she picked up an old fire-cracker wire of 13 Cm length from the roof and started playing with it and before she could know anything, her left eye was hit by the said wire and consequently she received injuries. The OIC, Kasia Marine PS has categorically stated in its report that School authorities did not take any step for her medical treatment and rather reported the incident to her parents, who ultimately took up the entire responsibility of treatment of their daughter. However, after completion of investigation, the case has been returned as mistake of fact under Sections 337 and 338 of the IPC vide Final Form No.05 dated 31.1.16.

Also perused the response of the petitioner to the report of the OIC, Kasia Marine Police Station as well as the observation of the S.P. Bhadrak

thereon in Kasia Marine PS Case No.55 dated 10.12.15. The petitioner while terming the report of the OIC, Kasia Marine PS totally false has stated that the concerned OIC was influenced to submit such a report based on a fabricated story. The petitioner assailed the report of the OIC, Kasia Marine PS on the ground that the Hostel building being itself a two-storied one and according to the report of the OIC, his daughter who was standing near the balcony of the Hostel, and not on the roof top of the Hostel building, how it could be possible for her to pick up the fire cracker from the roof, and from this very fact, it leaves no doubt that the OIC, Kasia Marine PS in order to suppress the truth has fabricated such an imaginary story. Further, there being no boarders in the Hostel during the Kali Puja and Diwali, there is remote possibility of availability of a fire-cracker wire in the balcony of the Hostel. It is crystal clear from the report that the School authorities neglected in their duties in providing treatment to his daughter which is nothing but a criminal negligence on the part of the School authorities. The petitioner prayed that the report of the OIC, Kasia Marine PS as forwarded by the S.P., Bhadrak should not be relied upon as its contents are far from truth and moreover, it has been prepared with an intention to shield the School authorities.

Also perused the responses of both Smt. Lipi Puspa Nayak, Matron and Mrs. Suman Saroj Minz, TGT (Sc.) and House Mistress in-charge, JNV, Chandimal.

Lipsipuspa Nayak, Matron appeared before the Commission on 15.12.16 and submitted that during the prayer hour, i.e., at 6.30 PM of 24.11.15 Priyana P. Jena came to her to say about the injury sustained by her in her left eye and at that point of time the House Mistress was also present. After she advised her to wash her affected eye with some water, she and the House Mistress both went to their respective places and on the phone call made by the House Mistress to the parents of Priyanka P. Jena, they came on the next day and took her away from the Hostel for her treatment. She further submits that following this incident, she has been removed from the job by the

Principal of the School and she has been finding it extremely difficult to maintain her livelihood as she is a widow and having a 8-year-old son to support.

Pursuant to the direction of the Commission Suman Saroj Minz, TGT (Science), JNV, Chandimal also appeared before the Commission on 15.12.16 and submitted that Mrs. S. Leha, Librarian of the School was the House Mistress of the Junior Girls' House till 24.11.15, i.e., the day on which Priyanka P. Jena received injury on her left eye, and she had in fact signed in the Staff Attendance Register both in the morning and afternoon section. Therefore, she submitted that the Principal has not issued any order keeping any teacher including herself as in-charge of Junior Girls' House on 24.11.15 and the Principal had also himself was out of the School on 24.11.15 from 2.35 PM to 6.00 PM on official work. She further submitted that as Smt. S. Leha, House Mistress of Junior Girls' House was very much on duty on 24.11.15, no sick report of Priyanka was brought to her notice either by the Duty Master or by students or by the Matron. She further submitted that even though the the House Mistress of Junior Girls' House Smt. S. Leha had signed in the Staff Attendance Register, she was not available in the campus to render any help to the injured girl. However, after the matter came to her notice, she intimated the fact to the victim girl's parents over phone at 8.30 PM. She pleaded that in the fact situation, it is not justified to hold her responsible in this case.

On a careful analysis of the whole issue, the Commission is convinced of the fact that the School authorities have miserably failed in providing any treatment to the injured daughter of the petitioner till her parents swung into action on the next day. This is, no doubt a serious lapse on the part of the School authorities. Therefore, the Principal of the School being the head of the institution is held responsible for not taking any step for the treatment of the injured student, and unfortunately those who were also present or should have remained. Present in the premises of the School Hostel on some plea or

other had shirked their responsibility by shifting the blame to a low paid widow employee, who was appointed as a Matron on contractual basis.

Section 2 (d) of the Protection of Human Rights Act, 1993 envisages that “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Section 12 of the Protection of Human Rights Act, 1993 Act deals with the functions of the National Human Rights Commission (NHRC).

Needless to mention here that under Section 29 of the Protection of Human Rights Act, 1993 (herein referred to Act, 1993) says that provisions of Section 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission except clause (f) of Section 12. Thus, Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 are also applicable to a State Human Rights Commission mutatis and mutandis.

Human Rights Commission has been constituted to enquire into a case of violation, protection, promotion of human rights. The power is an extensive one and in the opinion of the Apex Court, it should not be narrowly viewed.

The Hon’ble Apex Court of the country in the case of Ramdeo Chauhan alias Rajnath Chauhan v. Bani Kant Das & Others, (AIR 2011, Supreme Court 615) have held that **“It must be jurisprudentially accepted that human right is a broad concept and cannot be straitjacketed within narrow confines. Any attempt to do so would truncate its all-embracing scope and reach, and denude it of its vigour and vitality. That is why, in seeking to define human rights, the Legislature has used such a wide expression in Section 2(d) of the Act. It is also significant to note that while defining the powers and functions of NHRC under Section 12 of the Act, the said broad vision has been envisioned in the residuary clause in Section 12 (j).”**

In the words of Justice V.R. Krishna Iyer in his Tagore Law Lecture (The Dialectics and Dynamics of Human Rights in India) **“Human rights are writ on a large canvas, as large as the sky. The law makers, lawyers and particularly, the**

Judges, must make the printed text vibrant with human values, not be scared of consequences on the status quo order. The militant challenges of today need a mobilization of revolutionary consciousness sans which civilized systems cease to exist. Remember, we are all active navigators, not idle passengers, on spaceship earth as it ascends to celestial levels of the glorious human future.”

In the words of Alexander Hamilton, the great constitutional expert and political philosopher **“The sacred rights of mankind are not be rummaged for, among old parchments or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power.”**

Keeping these broad principles in view, their Lordships of the Apex Court in Ramdeo Chauhan case (supra) held that the jurisdiction of NHRC stands enlarged by Section 12 (j) of the 1993 Act, to take necessary action for protection of human rights. Such action would include enquiry into cases where a party has been denied the protection of any law to which he is entitled, whether by a private party, a public institution, the government or even the Courts of law. Their Lordships were of the firm opinion that if a person is entitled to benefit under particular law, and benefits under that law have been denied to him, it will amount to a violation of his human rights. Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. Constitution and Legislations of civilized country recognize them since they are so quintessentially part of every human being. That is why, democratic country committed to rule of law put into force mechanisms for their enforcement and protection.

In view of the theory propounded by the Hon’ble Apex Court in Ramdeo Chauhan case, the inescapable conclusion is that in the JNV at Chandimal under Basudevpur Police Station limits in Bhadrak district which is located in the geographical territory of the State of Odisha and is being run by the

Department of Secondary & Higher Education, Ministry of Human Resource Development Department, Govt. of India, where the alleged unfortunate incident took place and there has violation of the human rights of an innocent girl student of the said Vidyalaya. This Commission has jurisdiction to enquire into the case as the said Vidyalaya is a public institution. Since it is an established fact that the concerned girl student was not provided any timely treatment for the injury sustained by her in her left eye till her parents came from all the way from Bhubaneswar to Bhadrak on the next morning and made arrangements for her treatment initially at Bhadrak and thereafter at Bhubaneswar. Despite the best medical treatment, the poor girl ultimately lost the vision of her left eye for ever. More so, when her eyeball was removed at a budding stage, it spelt a huge disaster for her. Considering the fact that when the poor girl student lost her eye sight permanently, no amount of financial assistance would make good such loss. Besides that, the injured student had undergone tremendous pain, suffering and trauma which is very difficult to be assessed in terms of monetary compensation. Nevertheless, her case deserves monetary assistance as she suffered a permanent disability which would act as a main deterrent throughout her life.

The Commission having gone through the report of the S.P., Bhadrak is of the view that submission of Final Form in Kasia Marine P.S. Case No.55 dated 10.12.2015 cannot be a ground to deny payment of monetary assistance to the victim student irrespective of the fact that how she sustained the injury. But it is an undeniable fact that after the girl student sustained the injury in her left eye no timely action was taken to provide her the necessary medical assistance despite her approach to the School authorities then present in the School premises.

Taking into consideration the gravity of the matter, the Commission in its considered view recommends that the authorities of JNV should extend financial assistance to the tune of Rs.5 lakhs (Rupees five lakhs) only to Priyanka Priyadarshni Jena, the daughter of the petitioner, who even after this

unfortunate incident is continuing her studies in the said Vidyalaya for the loss of vision of her left eye within 60 days hence and furnish necessary compliance report to the Commission for record.

The compensation which has been recommended to be paid to the victim girl student is to be first complied with by the Union government and the Union government may consider to recover the same from the Principal of the Jawahar Navodaya Vidyalaya, Chandimal, Basudevapur, Bhadrak district, Odisha, and the Superintendent of the Hostel and House Master/House Mistress.

Let a copy of this order be sent to the Secretary, Ministry of Human Resource Development Department, Department of Secondary and Higher Education, Govt. of India, New Delhi, Deputy Secretary (Legal), Central Board of Secondary Education, "Shiksha Kendra" 2, Community Centre, Preet Vihar, Delhi-110301, Deputy Commissioner, Navodaya Vidyalaya Sanghathan, Regional Office, Bhopal, Madhya Pradesh, Regional Officer, Central Board of Secondary Education, 6th Floor, Alok Bharati Building, Saheed Nagar, Bhubaneswar and Assistant Secretary, Central Board of Secondary Education Regional Office, Saheed Nagar, Bhubaneswar for compliance of the aforesaid recommendation of the Commission within 60 days hence and their compliance reports should reach this Commission on or before 4.8.2017.

Put up on 4.8.2017 awaiting the receipt of the compliance report.

**JUSTICE B. K. MISRA
ACTING CHAIRPERSON**

19th May, 2017