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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 244 OF 2024

**RICHARD D SOUZA,
THROUGH POA
COSMO JOSEPH CARDOZ**

... PETITIONER

Versus

**STATE OF GOA THROUGH ITS
CHIEF SECRETARY AND 5 ORS.**

... RESPONDENTS

Mr. Dhaval Damodar Zaveri, Advocate for the Petitioner.

Mr. Devidas Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1, 2, 4 and 6.

Mr. Devidas Pangam, Advocate General with Ms. Maria Correia, Additional Government Advocate for Respondent No. 3.

**CORAM:- M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATED :- 30th JULY, 2024.

ORAL ORDER:

1. Heard learned Counsel for the petitioner and learned Advocate General for the Respondents.

2. By the present petition, the petitioner prays for compensation. The deceased victim was the brother of the Petitioner. The victim, an intellectually disabled, expired under tragic circumstances due to the patent negligence of the

Respondent Authorities in failing to provide him safe premises free from hazards that could reasonably be foreseen under the Rights of Persons with Disabilities Act, 2016 (RPWD Act for short), amounting to violation of the rights under the Constitution of India as also the RPWD Act.

3. We do not propose to pass a detailed order in view of the amicable resolution of the dispute arrived between the Petitioner and the Respondent.

4. It is significant to reproduce the order dated 01/09/2023 of the State Commissioner Person with Disabilities which reads thus:

ORDER

The State Commissioner for Persons with Disabilities on 27/01/2023 had visited the Vocational center and Higher Secondary of Sanjay Centre for Special Education, facilitated at Old SCERT building near Education Department Porvorim and during the visit it was observed that the building is in dilapidated condition and may cause harm to the students with Special needs enrolled at the center.

Accordingly, taking Suo motu cognizance, Notice dated 01/02/2023 was issued to Member Secretary, Sanjay Centre for Special Education and Directorate of Education bringing it to the notice of the School and Directorate of Education about the hazardous condition of the building being unsafe to the students.

Further, State Commissioner for Persons with Disabilities vide its order dated 28/02/2023 had brought to the notice of the District Collector North, that the said Building in which

Sanjay School is facilitated is in complete dilapidated/ hazardous condition and accordingly, anticipating untoward incident with the students of the Sanjay School, it was strongly recommended to relocate the school temporarily to nearby Cyclone Shelter in Porvorim.

However, inspite of bringing the above dilapidated / hazardous condition of the building to the notice of the Collector, and recommending the temporary solution, there was no action initiated nor any precautionary measures were taken.

As observed by this Commission during its inspection held on 27/01/2023, that the said building being unsafe to occupy and despite of passing orders giving recommendation to shift the Vocational center and Higher Secondary of Sanjay Centre for Special Education, facilitated at Old SCERT building, as feared, the disastrous incident has occurred on 30/08/2023 wherein a student with intellectual disabilities fell off the railings from the Second Floor of the said building suffering serious and grave injuries.

In view of above and in order to avoid any other disastrous incidents with students, teaching and non teaching staff of Vocational center and Higher Secondary of Sanjay Centre for Special Education, facilitated at Old SCERT building and to the lives of the other occupants and visitors of the building, we hereby strongly recommend you to take urgent steps to vacate the said building as expeditiously as possible taking into consideration the seriousness of the situation and in view of the above unfortunate incident.

The grave injury suffered by the said student due to the hazardous condition of the building serves as a stark reminder of the consequence of not acting upon the earlier recommendation of this Commission.

It is further recommended to conduct an inquiry into the non-maintenance of the Government building by the concerned department which has to be into habitable condition, therefore causing risks to the lives of the people housed and people visiting the said building.

It is also recommended to look into the medical treatment of the said student who has suffered serious injury

undergoing major medical treatment at Goa Medical College and also look into compensatory relief required to be provided to the said student through his guardian for treatments, therapies, medicines, rehabilitation etc.

The immediate relocation of the Vocational center and Higher Secondary of Sanjay Centre for Special Education, facilitated at Old SCERT building to a safe and accessible building is imperative. The RPNT) Act 2016 underscores the importance of reasonable accommodation and accessibility, and the current situation clearly falls short of these requirements. Ensuring that the new building adheres to accessibility standards is not just a legal obligation but a moral duty towards the Persons with Disabilities.

Hence with the above recommendations it is enjoined upon you to act on the above jointly and severally and individually submit the compliance report to this commission within 7 days from today.

sd/-

(Guruprasad R. Pawaskar)

State Commissioner Persons with Disabilities

5. Learned Advocate General submitted that immediate steps were taken pursuant to the incident and the Chief Secretary had ordered Audit of all the Government buildings. Further more, the building in question, where the incident occurred, has been vacated and is no more in use.

6. Chapter 12 of the Rights of Persons with Disabilities Act, 2016, has provisions for the Chief Commissioner and State Commissioner for persons with disabilities. Section 80(b) provides that the State Commissioner shall inquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the

State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action. The provision for action by the appropriate authorities on recommendations of the Commissioner is under Section 81 of the Act.

7. Learned Advocate General submitted that necessary steps have been taken and in any case the appropriate authority will take action on the recommendations of the State Commissioner which forms part of the order dated 01/09/2023. Statement accepted.

8. So far as compensation is concerned, learned Advocate General submitted that the State is willing to compensate the Petitioner's family by paying compensation amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) as a full and final settlement of the claim made by the petitioner. The petitioner records his satisfaction and shall state that he shall have no further claim against the State Government through his advocate on instructions.

9. The statement made on behalf of the learned Advocate General and that by the learned Counsel for the Petitioner on instructions is accepted. The amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) to be paid to the Petitioner's family within Four months from today. The Petitioner shall furnish Bank account

details to the concerned Authority within a period of one week from today for effecting such transfer.

10. Though, this takes care of the civil liability, we cannot overlook the fact that regard being had to the seriousness of the matter, the State will have to inquire into the matter from the standpoint of fixing criminal liability for the negligence and take appropriate action. We expect the State to consider the recommendations in the order dated 01/09/2023 in the right earnest.

11. The Petition stands disposed of. No costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.