SUPREME COURT OF INDIA

Vikram Dhillon

Vs

State of Haryana and Others

(Y.K.Sabharwal,J., C.K.Thakker and R.V.Raveendran,JJ.)

10.01.2007

JUDGMENT

C.K.Thakker, J.

1. The present petition is filed by the petitioner for a writ of Mandamus and/or any other appropriate writ, order or direction commanding the State of Haryana and other respondent authorities to grant admission to the petitioner in Bachelor of Dental Surgery ('BDS' for short) in Open Category in Government Dental College, Rohtak respondent No. 8 for the academic year 2004-05 and also to grant other reliefs which this Court deems fit and proper in the facts and circumstances of the case.

2. The case of the petitioner is that he is a citizen of India and permanent resident of Faridabad. He is pursuing the BDS course in the first year in M.M. College of Dental Sciences & Research, Mullana - respondent No. 5 which is affiliated to Kurukshetra University, Kurukshetra.

3. It is the case of the petitioner that Maharshi Dayanand University, Rohtak ('MDU' for short), respondent No. 2 herein invited applications for "Common Entrance Examination, 2004" ('CEE' for short) for admission to MBBS/BDS in medical/dental colleges/institutes of the State of Haryana. Since the petitioner was eligible and was desirous of joining medical/dental course, he applied for the aforesaid examination in the prescribed form to respondent No. 2. He paid the requisite charges and supplied relevant details. The examination was held on June 21, 2004 in which the petitioner appeared vide Roll No. 109031. On June 28, 2004, respondent No. 2 notified the result of CEE, 2004 on Notice Board. Though the Prospectus provided that result of the Entrance Examination would be notified to the candidates individually by UPC Post, the petitioner was not intimated. He, however, found out from the internet that he had secured 128 marks out of 180 marks and was ranked at Sl. No. 418 in the Open Category. The Prospectus further provided that the date, time and place of Counseling would be intimated to the candidates by UPC Post calling the candidates for counseling. The petitioner was again not intimated about the date, time and place of counseling. Somehow, he came to know that the counseling was to be held at Rohtak on August 9, 2004. He attended the counseling and submitted all his certificates,

marks-sheets etc. He, however, found that he had been arbitrarily placed at rank No. 423 instead of 418. The petitioner initially opted for MBBS course in any of the medical colleges mentioned in the Prospectus. Alternatively, however, he opted for BDS course in Government Dental College, Rohtak. Since the petitioner was informed that there were no seats available in MBBS anywhere or in BDS course in Government Dental College, Rohtak, he was constrained to opt for BDS course in a private Dental College, i.e. M.M. College of Dental Science & Research, Mullana. It is the assertion of the petitioner that as per Rule 3 of the Rules of Admission, the petitioner preferred to be wait-listed for MBBS in any of the colleges in Haryana and if no vacancy is available in MBBS course, a seat in BDS in Government Dental College, Rohtak.

4. At the time of first counseling, the petitioner was asked to report for medical check-up and to pay tuition fee for admission in BDS open category in private Dental College at Mullana on August 18, 2004. The petitioner accordingly complied with the directions, paid the fee for medical check-up and upon being found fit filled in the form for admission by paying Rs.99, 000/- towards one year tuition fees and Rs. 10, 000/- towards part-payment of hostel fees of Rs.30, 000/- in private college at Mullana.

5. Upon seeing the result of the first counseling on the website of PGIMS, Rohtak, the petitioner was shown to be admitted at the private college at Serial No. 296 showing rank No. 423, while respondent No. 6 was shown at serial No. 300 at rank No. 442 as the last candidate in the BDS open category in respondent No. 5 college. According to the petitioner, he waited for intimation for the second counseling which he did not receive, but from his own sources, he came to know about the second counseling and attended it at PGIMS, Rohtak on August 28, 2004. The Counseling Board informed the petitioner that no seat was available in MBBS/BDS as per the choice of the petitioner. As such the petitioner had to retain his seat in BDS in Open Category at Mullana waiting for the next round of counseling. Since MBBS seats were reported to have been increased form 100 to 150 at Medical College, Mullana, the petitioner legitimately expected to get a seat in BDS Open Category in Government Dental College, Rohtak inasmuch as candidates of BDS course in Government Dental College, Rohtak were likely to vacate their BDS seats to get seats in MBBS course at Mullana.

6. According to the petitioner, the 'third' counseling was held on September 29, 2004. The petitioner was informed at that time that no seat was available in the course/institute of his choice. He, therefore, requested to accommodate him in BDS Open Category seat that may fall vacant due to non-reporting or non-payment of fee by any candidate at Government Dental College, Rohtak as the fee there was less than the fee at the private Dental College, Mullana.

7. The petitioner has stated that on October 17, 2004, he came to know that though Anusha Singh-respondent No. 6 had secured rank No. 442, she had been granted admission on provisional basis in BDS course in Government Dental College, Rohtak and the petitioner who ranked at Sl. No. 423 was denied admission. The petitioner, in the circumstances, made representation to the competent authority of PGIMS, Rohtak complaining about the injustice

being done to him. The petitioner was neither granted admission nor did he receive any reply which constrained him to approach this Court by filing a writ petition under Article 32 of the Constitution Of India, 1950 on November 16, 2004.

8.The petitioner has stated that he has directly approached this Court by invoking Article 32 of the Constitution Of India, 1950 since his fundamental right guaranteed under Article 14 had been violated. It is further stated that had he gone to a High Court, even if he had succeeded, the authorities would have approached this Court which would have further delayed the admission and the academic year would have been over.

9. The matter was placed for admission-hearing and notice was issued on December 6, 2004. An affidavit-in- reply was filed by Dr. (Major General) Virendra Singh, Director of Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak. The said affidavit was filed on behalf of respondent nos. 1, 2 and 8, i.e. State of Haryana, M.D. University & Government Dental College, Rohtak and the Director. On January 25, 2005, respondent No.5, Dental College, Mullana also filed counter-affidavit through its Chairman. Likewise, affidavit-in-reply was filed by respondent No.6, Anusha Singh on February 21, 2005 who was granted admission though she had secured rank No. 442 as against rank No. 423 secured by the petitioner. The petitioner filed rejoinder to the affidavit of respondent No. 2 on July 18, 2005. On July 22, 2005, this Court passed an order to list the petition for final disposal on a non-miscellaneous day after three weeks. The order dated November 16, 2005 shows that back door admission sacrificing merit was granted to Anusha Singh (respondent No.6) by the Director, Pt. B.D. Sharma, Postgraduate Institute of Medical Sciences, Rohtak. The Court observed;

> "Learned counsel appearing for respondent Nos. 1, 2 and 8 does not seriously dispute the allegation about the back door admission having been granted to respondent No. 6, as alleged by the petitioner. Learned counsel further states that, in fact, the said Director had granted other similar admissions as well and some enquiries are pending against him. This is also the stand of the petitioner."

10. The Court also observed that admission for academic year 2004 could not be granted to the petitioner at that stage. It was, however, made clear that the question of cancellation of admission of respondent No. 6 would be examined at the time of final hearing of the writ petition.

11. On February 16, 2006, interlocutory application seeking impleadment of Dr. (Maj Gen.) Virendra Singh, Ex-Director of Medical College, Rohtak as party- respondent in his individual capacity in view of allegations of mala fide levelled against him was granted.

12. It was submitted by the learned counsel for the petitioner that the petitioner deserved to be adequately compensated for having been denied admission though he was entitled to. The newly added respondent was asked to file affidavit in support of the claim of compensation made by the petitioner. No such affidavit was, however, filed within the stipulated period and time was sought which was granted on August 10, 2006 by the Court on payment of a sum of

Rs.5000/- to the petitioner. The affidavit was filed by respondent No. 9 on August 23, 2006 to which a rejoinder was filed by the petitioner on September 7, 2006.

13. We have heard the learned counsel for the parties.

14. The learned counsel for the petitioner vehemently contended that the impugned action taken by the respondent-authorities was totally illegal, unlawful and unconstitutional. Though the petitioner had obtained 128 marks out of 180 marks and he was ranked at Sl. NO. 418, he was arbitrarily placed at rank No. 423 which was improper. Even if it is assumed that the said action could not be said to be illegal and he would have continued at rank No. 423, there was no earthly reason for respondent authorities and particularly respondent No. 9 to grant admission on the last day, i.e. September 30, 2004 to respondent No. 6 who was admittedly placed below at rank No. 442. According to the petitioner, the action of respondent No. 9 was clearly malicious and mala fide and back door entry was given to respondent No. 6 on extraneous considerations. From the beginning the modus operandi of respondent No. 9 was apparent inasmuch as petitioner was never informed about the counseling which were to take place. It was only through his own sources that the petitioner came to know about the first, second and 'third' counseling and attended them. He also submitted that he had made it abundantly clear from the beginning that he wanted to get admission in MBBS course in any Government college/institute and if he is not in a position to be accommodated in MBBS course, his first choice would be Government Dental College, Rohtak. Respondent No. 9 was, therefore, aware of this fact and yet he granted illegal admission to respondent No. 6. The said action was totally illegal, arbitrary and malicious. The petitioner was, therefore, entitled to get admission in Government Medical College, Rohtak, when respondent No. 6 Anusha Singh was admitted. Since he was denied admission and his right was ignored, he is entitled to the difference in payment of fee at Mullana and Rohtak and also to adequate compensation. So far as the amount of compensation is concerned, the petitioner has filed additional affidavit on November 25, 2005 wherein the break-ups have been given in differential amount in tuition fee, hostel charges, etc. He has claimed Rs. 5 lacs towards loss of better exposure in terms of education and practical training in Government Dental College and better job prospects. Further amount of Rs. 5 lacs has been claimed towards acute mental and physical agony, frustration and feeling of injustice. Cost of Rs. 50, 000/- is also claimed. According to the petitioner, all these amounts are required to be paid at the interest of 10% from August 18, 2004, the initial date of payment of tuition fee and hostel charges by the petitioner to respondent No.8.

15. So far as respondent Nos. 1, 2 and 8 are concerned, initially an affidavit was filed on January 12, 2005 by Dr. (Major General) Virendra Singh, Director of Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak in the capacity of Director of the Institute. In that affidavit, the deponent stated that the petitioner had secured 128 marks and his rank was 418, but after breaking the tie of candidates who had secured 128 marks, his rank was changed from 418 to 423 which was proper and in accordance with rules. It was also stated that at the first counseling on August 9, 2004, the petitioner could not get admission in BDS course in Government Dental College, Rohtak and was admitted to M.M. Dental College, Mullana under General Category as per his merit and option. The second and

'third' counseling were held on August 28, and September 29, 2004 respectively for filling up the vacant seats in different medical/dental colleges. The petitioner attended second and 'third' counseling, but 'he neither opted for any change nor got himself wait-listed for any medical/dental college'. It was then stated that on September 30, 2004, a letter was received from the Principal, Government Dental College, Rohtak regarding vacancy of three seats in Government Dental College, Rohtak due to non-deposit of fees by three selected students. September 30 was the last date for admission for the Academic Session 2004 for all Dental Colleges as held by this Court in *Medical Council of India v. Madhu Singh & Ors*[1]. It was, therefore, not possible to conduct counseling at the last moment and the only course available to the authorities was to fill three seats which remained vacant by admitting "the next wait-listed candidates". The three candidates including Anusha Singh, respondent No. 6 were, therefore, admitted on that day.

16. The deponent denied the allegations made by the petitioner against the authorities. Drawing distinction between the case of respondent No. 6 and the petitioner, the Director stated that though the petitioner appeared at the 'third' counseling, he had not opted for any change and secondly there was no vacancy in the Government Dental College, Rohtak on that day. Regarding representation said to have been made by the petitioner, the deponent stated on oath that no representation from the petitioner was received by his office.

17. Respondent No. 5 in his affidavit stated that admission was granted to the petitioner and other students on the basis of Entrance Test. In rejoinder- affidavit to counter-affidavit of respondent No. 2 and 5, the petitioner reiterated what he had stated in the petition. He made grievance that respondent No. 2 had not placed before the Court the relevant material as to how the rank of the petitioner was changed from 418 to 423. He also repeated that he got himself wait-listed and respondent No. 2 had wrongly stated that though the petitioner attended second and 'third' counseling, he neither opted for any change nor got himself wait-listed for any other medical/dental college.

18. The petitioner thereafter stated that if the petitioner had not opted for any change nor had opted himself to be wait listed for any other medical/dental college, there was no reason for him to attend the second and 'third' counseling. From the respondent No. 2's admission that the petitioner had attended the second and 'third' counseling, it is clear that the petitioner wanted to change his college and had opted to be wait listed.

19. It was also stated that respondent No. 2 had not denied that the petitioner at the time of first counseling itself had intimated his preference for MBBS course in any of the Medical Colleges or BDS in Government Dental College, Rohtak and when he was informed that there was no seat available, he opted for BDS in MM College of Dental Science & Research, Mullana. He further said that he was allowed to attend all the counseling which also proved that the petitioner stood wait-listed and wanted to take admission in Government Dental College, Rohtak after the first counseling in which he got admission at Mullana. Regarding representation made by him to respondent No. 2, the Petitioner stated in the rejoinder-affidavit that the said representation was sent on October 19, 2004 by 'speed post' and the same was delivered to respondent No. 2. Alongwith the affidavit in rejoinder, he had

produced a copy of the original receipt dated October 19, 2004 issued by the Post Office in the nature of Confirmation Report of service upon the authority.

20. As already stated earlier, the main grievance of the petitioner was that it was the Director who had granted illegal admission by allowing back door entry to respondent No. 6 and the said action was illegal and contrary to law. In the circumstances, the petitioner filed Interim Application No. 4 of 2005 praying for impleadment of Dr. (Major General) Virendra Singh, Ex- Director of Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak which was granted and notice was issued to him directing him to file affidavit in reply. Respondent No. 9, pursuant to the above order filed additional affidavit at a belated stage on August 23, 2006 denying the allegations of mala fide levelled against him. In the said affidavit, he had stated that since he had left the institute, he 'was not aware as to what was happening in the matter'. He also stated that "the deponent alone has no role to play in the admission of the students in the college". He admitted about counseling which took place on August 9, August 28 and September 29, 2004. He also admitted that the last date for filling up of all the seats was September 30 and the admissions were completed. According to him, though the petitioner was at rank No. 418, he was placed at Sl. No. 423 considering the breaking up of tie. He then stated that the petitioner accepted the seat at BDS, Mullana in the first counseling, but did not request for any wait-listing in any particular college or at all. On September 29, 2004, the Counseling Committee after filling up all the available seats in all colleges, had ruled that all admissions should be completed by September 30, 2004. He then stated that in any case, the petitioner had appeared in the first counseling and got his college BDS, Maullana and did not ask for any waitlisting. He appeared in second counseling but did not seek change of the seat/college but asked for waitlisting. He appeared in the 'third' counseling also and did not seek any change and did not waitlist. There are many who took seats and wanted to waitlist and then did not change the seats.

21. According to the deponent, around 5.00 p.m. on September 30, 2004, a report was received from the Principal, Government Dental College, Rohtak that three candidates had not taken admission and thus three seats were available. Then immediately the names of the candidates as per the merit list who were in the 'waitlist' were called and that is how Anusha Singh, respondent No. 6 was granted admission. Other persons were not present. Since, the petitioner was not present and respondent No. 6 was present who was a wait-listed candidate, she was admitted. He also stated that the petitioner did not opt for change and got himself wait- listed clearly indicated that he was satisfied with the seat allotted to him. Even if he had wait-listed himself, he was required to remain present at the time of closing of the admission to take a chance that if some seats remained vacant and if candidates above him were not available, he could be admitted.

22. The Dental Council of India stated that the case of the petitioner should be decided by the authorities in accordance with law. But it was submitted that no admission in the BDS Course for the academic year 2004-05 after September 30, 2004 could be granted.

23. The learned counsel for the authorities submitted that the impugned action could not be said to be contrary to law. So far as respondent No. 9 is concerned, the counsel appearing for

him submitted that the said respondent acted in accordance with Admission Rules as also the law laid down by this Court. Since the petitioner neither 'waitlisted' himself nor was present on September 30, 2004, admission was granted to respondent No. 6. The petitioner cannot make grievance against such an act. Counsel for Medical Council of India submitted that the statutory time schedule for commencement of course and admission to medical/dental courses as laid down by this Court in *Mridul Dhar v. Union of India*[2], is required to be complied with and failure to adherence strictly to the said time schedule has created all these problems. He, therefore, submitted that this Court may again direct the authorities to adhere to the time- schedule in Mridul Dhar.

24. Having heard the learned counsel for the parties, we are of the view that in the light of what has been asserted by the petitioner and denied by respondent No. 9, and in view of order dated November 16, 2005, no admission could be granted to the petitioner in the Government Dental College, Rohtak. There is word against word so far as 'wait-listing' of the petitioner is concerned. According to the petitioner, he got himself wait-listed at the first counseling on August 9, 2004 when he was admitted to Dental College at Mullana. Prima facie, he is right in so submitting keeping in view his subsequent conduct. If he was satisfied with the admission in Dental College, Mullana and was not interested in getting himself admitted to Government Dental College, Rohtak or in changing the institute/college, it was not necessary for him to remain present at the second and 'third' counseling. It was because of the fact that though he was admitted to Private Dental College at Mullana, he was seeking admission in Government Dental College, Rohtak that he attended second and 'third' counseling.

25. So far as the factum of attendance at second and 'third' counseling is concerned, the fact has not been denied. On the contrary, it is admitted by respondent No. 9 in his affidavit. But, the petitioner has not expressly and unequivocally stated that he was present on September 30, 2004 when respondent No. 6 Anusha Singh was granted admission. According to respondent No. 9, the petitioner was not present. Up to September 29, 2004, no vacant seat was available at Government Dental College, Rohtak. It was only on September 30, 2004 that because of default in payment of fee by three candidates, three vacancies were to be filled in at Rohtak. According to respondent No. 9, the seats were filled by the candidates who were present on that day and admission was granted to those students who were eligible. Respondent No. 6, though she was at Sl. No. 442, got admission as she was present.

26. In our opinion , there is intrinsic evidence also which goes to show that probably the petitioner was not present on September 30, 2004. Admittedly, respondent No. 6 Anusha Singh was granted admission on September 30, 2006. It is the case of the petitioner from the beginning that on or about October 17, 2004, the petitioner came to know that admission was illegally granted to respondent No. 6 though her rank was 442 and rank of petitioner was 423. He, therefore, submitted a representation on October 19, 2004. Had the petitioner been present on September 30, 2004, he would have objected to the admission of respondent No. 6. Again he would have immediately come to know about her admission. In that case, he would have instantly approached the authorities putting forward his claim, but it was not done. In fact, a representation was made for the first time after about 18 days stating therein

that he came to know on October 17, 2004 that admission was given to respondent No. 6 ignoring his legitimate claim. In the circumstances, in our opinion, grant of admission to respondent No. 6 on September 30, 2004 cannot be cancelled at this stage.

27. It was then contended by the petitioner that it is clearly established from the facts on record that injustice has been done to him. Initially, the petitioner was at rank No. 418 which was arbitrarily and without there being rational basis placed at 423. Even though the petitioner had wait-listed himself at first counseling on August 9, 2004, and precisely for that reason, he attended the second and 'third' counseling, overlooking his legitimate claim and without affording an opportunity to get admission, respondent No. 6 who was at rank No. 442 had been admitted. This is, therefore, eminently a fit case, submitted the learned counsel, to direct payment of compensation over and above the difference in payment of tuition fee and hostel fee for Private Dental College as against Government Dental College.

28. In this connection, the learned counsel submitted that it is settled law that a remedy provided by Article 32 (as also by Article 226) of the Constitution Of India, 1950 is a 'public law' remedy. The lis in this case cannot be said to be a private dispute between two parties. Respondent No. 9 was acting as a 'public authority' and since he had acted arbitrarily, maliciously and deprived the petitioner of his legitimate and rightful claim and extended un-deserved benefit to respondent No. 6, an order of payment of compensation would serve the ends of justice.

29. The learned counsel for the petitioner in this connection, invited our attention to several cases. Particular reference was made to a leading case in *M.C. Mehta v. Union of India*[3]In M.C.Mehta, a writ petition was filed in this Court under Article 32 of the Constitution Of India, 1950 directing Shriram, a Public Limited Company to pay compensation to victims of escape of oleum gas. It was contended on behalf of the Company that the petition was not maintainable and the Company could not be held liable to pay compensation.

30. Negativing the contention and holding the Company liable to pay compensation, this Court, speaking through Bhagwati C.J. stated;

31. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law to be developed in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industralised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognize the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in *Rylands v. Fletcher*[4] as developed in England recognizes certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle

of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working the factory and residing in the surrounding areas owes an absolute and non- delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

32. Emphasizing underlying object of Article 32, the Court said;

> "If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases.
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> Reference was also made to another leading decision of this Court in Nilabati Behera vs. State of Orissa & Ors., Â . In that case, a young man of 22 years was taken to police custody for investigation of an offence. He was handcuffed, tied and severely beaten. On the next day, his dead body was found lying on railway track. Mother of the deceased addressed a letter to this Court alleging custodial death of his son and claimed compensation on the ground of violation of right to life guaranteed under Article 21 of the Constitution Of India, 1950. The letter was treated as writ petition and compensation was awarded.
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> Referring to earlier decisions, Verma J. (as His Lordship then was) spelt out the principle on which the liability of State arises in such cases. It was held that award of compensation in a proceeding under Article 32 or 226 of the Constitution Of India, 1950 is a remedy available in "public law" based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply. Agreeing with judgments in earlier cases, His Lordship stated;
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> We respectfully concur with the view that. the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be

necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf The contrary view would not merely render the court powerless and the constitutional guarantee a mirage but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have not, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

Anand, J. (as His Lordship then was) agreed with the observations of Verma J. and stated;

Adverting to the grant of relief to the heirs of a victim of custodial death for-the infraction or invasion of his rights guaranteed under Article 21 of the Constitution Of India, 1950 of India, it is not always enough to relegate him to .the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution Of India, 1950 cannot be told that for the established violation of the fundamental right to fife, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy" Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence...This is not the task for Parliament..... the courts must do this. Of all the great tasks that lie ahead this

is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country."

In *M. S. Grewal v. Deep Chand Sood*[5], Dalhousie public school organized a picnic of young students at the bank of River Beas. Due to negligence of teachers, 14 students lost their lives. Teachers were convicted for an offence under Section 304-A Indian Penal Code, 1860. In a petition under Article 226 of the Constitution Of India, 1950, the High Court awarded compensation of Rs. 5 lakhs to each of the parents with interest @ 12% p.a. When the matter came up before this Court at the instance of the School Authorities, dismissing the appeal, the Court quoted with approval the following observations from *D.K. Basu v. State of West Bengal*,[6]*;*

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

33. In *Chairman, Railway Board v. Chandrima Das*[7] , a poor lady was taken by railway employee to a railway guest house (Yatri Niwas) and was raped. Holding the Union of India vicariously liable, this Court held that for an act of Railway Authorities, a direction can be issued to the authorities to pay compensation to the victim and, accordingly, compensation was awarded.

34. It was also submitted by counsel that in appropriate cases of mis-finance in public office, a direction can also be issued to erring officer(s) to pay such amount of compensation/damages personally or an order can be passed directing the authorities to recover from such officer(s) who is (are) found responsible.

35. In Common Cause, a *Registered Society v. Union of India,* [8], the Petroleum Minister made allotment of petrol pumps arbitrarily in favour of his relatives, friends and 'kiths and kins'. When the matter came up before this Court, not only the allotment was cancelled, but the Court directed the Minister to pay Rs. 50 lakhs as exemplary damages to public exchequer and also Rs. 50, 000/- as costs. No doubt a Review Petition was filed against the above decision in Common Cause, a *Registered Society vs. Union of India*[8], , and the order passed earlier was recalled and direction for payment of Rs.50 lakhs was set aside.

36. The learned counsel for the petitioner submitted that the Court in a Review Petition was not right in setting aside the direction for payment of Rs. 50 lakhs personally from the Minister concerned, particularly when the Court had recorded a finding earlier that act was

illegal, improper and unconstitutional act on the part of the Minister concerned. It was also submitted that wrong test was applied by the Court in a Review by adopting analogy of criminal trial and referring to provisions of Section 405 and 409 of the Penal Code and by observing that in case of criminal breach of trust, entrustment of property was an essential ingredient, which was not proved.

37. Though we find considerable force in the submission of the learned counsel, in the facts and circumstances of the present case, we are not inclined to enter into larger question in view of the fact that it is not necessary to do so. Since, we are of the view and have held that on September 30, 2004, the petitioner in all probability was not present and admission was granted to respondent No. 6 Anusha Singh and the first complaint was made by him as late as on October 19, 2004 by stating that he had come to know about the illegality of admission in favour of respondent No. 6 on October 17, 2004, in exercise of extraordinary powers under Article 32 of the Constitution Of India, 1950, it would not be appropriate for this Court to award compensation to the petitioner either from the authorities or from the respondent No. 9 in his personal capacity. It is, however, open to the petitioner to take appropriate proceedings in accordance with law, if so advised. As and when such eventuality arises, the appropriate authority will pass an appropriate order in accordance with law without being inhibited or influenced by the observations made by us in this judgment.

38. Before closing the matter, we may observe one thing more. As already noted earlier, as early as on November 16, 2005, when the matter was heard by this Court, a grievance was made by the petitioner that though he was higher in rank, admission was illegally given to respondent No. 6 who was lower in rank. It was a back door admission, sacrificing merit and was granted by Dr. (Major General) Virendra Singh, Director of Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak. The learned counsel appearing for respondent Nos. 1, 2 and 8 did not 'seriously dispute the allegation about the back door admission having been granted to respondent No. 6 as alleged by the petitioner'. The Court further observed; "Learned counsel further states that, in fact, the said Director had granted other similar admissions as well and some enquiries are pending against him."

39. In the additional affidavit dated November 25, 2005, in para 4, it was stated by the petitioner that as a result of the grave allegation of misuse of public office by Dr. (Maj Gen.) Virendra Singh, he has been 'removed' from the post of Director of Pt. B.D. Sharma Postgraduate Institute of Medical Sciences, Rohtak and enquiry is pending against him. After Dr. (Maj Gen.) Virendra Singh was arrayed as respondent No. 9 and had filed affidavit after the above additional affidavit filed by the petitioner, it was only stated that para No. 4 was absolutely false, wrong and was denied. It is also clear that he was not holding the post of Director when he filed the said affidavit by admitting that he had left the office. It was also the case of the State as reflected in the order dated November 16, 2005 passed by this Court that illegal admission was granted by respondent No. 9. In the circumstances, it would have been appropriate if the State had filed an affidavit placing necessary facts before this Court. It is the duty of the State Government to see not only that the officers act in consonance with law, but also to ensure that no injustice has been done to meritorious students. Unfortunately however, the State Government has not properly assisted the Court by placing the relevant

facts as are expected to be placed by a public authority. But in the light of what has been stated earlier, since we are not in a position to grant relief to the petitioner, we leave the matter there.

40. For the foregoing reasons, the petitioner is not entitled to relief from this Court under Article 32 of the Constitution. The petition deserves to be dismissed and is accordingly dismissed, however without any order as to costs.

Judgment Referred.

[1]*(2002) 7 SCC 0258*
[2]*(2005) 2 SCC 0065*
[3]*(1987) 1 SCC 0395*
[4]*003 HL 0330*
[5]*(1993) 2 SCC 0746*
[6]*(2001) 8 SCC 0151*
[7]*(1997) 1 SCC 0416*
[8]*(1996) 6 SCC 0530*