

(2004) 06 GAU CK 0043
In the Gauhati High Court
Case No : WP (Criminal) No. 5 of 2003

Baby Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 GLR 531

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : R. Das, for the Appellant; A. Hazarika, for the Respondent

Judgement

Amitava Roy, J.—This application for a writ of Habeas Corpus has been made by the wife of a missing person complaining against the inaction of the State Police Authorities in the matter of investigating into the first information report lodged with the Officer-in-Charge of the Basistha Police Station in this regard. The petitioner also seeks an appropriate, writ directing the respondents to handover the matter to the Central Bureau of Investigation.

2. We have heard Mr. R. Das, learned counsel for the petitioner and Mrs. A. Hazarika, learned Additional senior Government advocate, Assam.

None has appeared for the other respondents.

3. The abridged facts necessary to be noticed are that the petitioner's husband; Shri Ranjan Kumar Das was employed as a Lance Naik with the Assam State Electricity Board Security Force at the relevant time. According to the petitioner, he is missing from 6/8/1999 and his whereabouts are not known. As after frantic searches at the possible places, the petitioner's husband could not be located, her son Shri Rajat Das lodged an F.I.R. before the Officer-in-Charge on 8/8/99. The said FIR was recorded as G.D. Entry No. 315 dated 8/8/99 of the said Police Station and WT message was issued to the other Police Stations transmitting the information about the disappearance of the petitioner's husband for necessary

action. A representation was also made before the authorities of the Assam State Electricity Board (hereafter referred to as the Board) for taking necessary steps in this regard. The grievance of the petitioners is that though following the episode, the entire family has been thrown into disarray, neither the State Police nor the authorities of the Board have pursued the matter with due earnest and the entire family is in the state of shock and agony. To crown it all, the authorities of the Board, in view of absence from duty have decided to terminate the services of the petitioner's husband.

4. In the counter filed by the Officer-in-Charge of Basistha Police Station, Guwahati, while denying the allegation of inaction, it has been categorically asserted that after the receipt of the FIR a WT message was despatched to all Police Stations in Assam with a request to enquire about the petitioner's husband and to intimate the result of the enquiry, Witnesses including all the relatives of the missing person have been examined but no useful information could be collected. AWT message was also sent to the Officer-in-Charge, Patherkandi Police Station as the petitioner's husband hails from Bazarghat located within the territorial jurisdiction, thereof. Though no headway as yet could be made in the matter, the answering respondent has maintained that the investigation is continuing in all possible lines and proper action would definitely be taken as per law. The deponent has further indicated that a report of the investigation has in the meantime being submitted to the Superintendent of Police (City) as well as the Chief Security Officer of the Board.

5. The sole contention of Mr. Das, learned counsel for the petitioner is that the State Police authorities are totally indifferent with regard to the investigation of the case and tangible evidence could be collected with regard to the present whereabouts of the petitioner's husband after so many years, it is a fit case that the investigation be handed over to the Central Bureau of Investigation. The State authorities having failed to take effective steps to search out and restore the petitioner's husband without any justifiable reason. The same is violative of the petitioner's right to life under Article 21 of the Constitution of India and that the writ as prayed for ought to be issued in the interest of justice is argued.

6. Mrs. Hazarika, learned State counsel, has against this, submitted that it is apparent from the materials on record that the Police is duly investigating into the matter and that the allegation of indifference and apathy is factually unfounded. According to her, all possible steps have been taken and the investigation is continuing. In support of her Submissions Mrs. Hazarika has produced before us the related case diary.

7. We have carefully examined the contents of the writ petition and the counter referred to above. We have, also perused the case diary.

8. The case diary discloses that after the FIR was lodged, GD entry of the information was made in the Police Station and a WT message carrying the complaint was despatched to all the Police Stations in the State. Reports with

regard to the progress in the investigation have been submitted by the investigating officer before the Superintendent of Police (City) as well as the Chief Security Officer of the Board. It further transpires that the concerned authorities of the board as well have been pursuing the matter with the Police. Statements of witness including that of the petitioner have already been recorded. Though a lull is noticeable after initial thrust in investigation, it appears that the same has not been closed and is pending, the investigating officer being alive to the gravity of the issue. The stand taken by the Officer-in-Charge, Basistha Police Station, Guwahati, in his counter finds support from the case diary. We, therefore, cannot persuade ourselves to hold that necessary steps with regard to the investigation into the FIR lodged by the petitioner's son had not been taken by the State Police authorities. The attending facts and circumstances, according to us do not justify a direction to handover the investigation of the case to the Central Bureau of Investigation. The prayer to the said effect cannot be acceded to.

9. As the matter involves disappearance of a person, it is the solemn obligation of the State functionaries, more particularly, the State Police authorities, as guardians of the life and property of every citizen to take all effective steps to pursue the case to its logical end. The incident being of the year 1999, investigation needs to be completed early. In the circumstances we direct the State Respondents, more particularly, the Commissioner and Secretary to the Government of Assam, Home Department to ensure that the same is done and the investigation is completed as expeditiously as possible preferably within a period of three months herefrom.

10. The petition is closed with the above observation and directions. No cost.