
(2001) 07 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12641 of 2001

Bheemamma

APPELLANT

Vs

Station House Officer, Uppal, Hyd. and others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 5 ALD 335 : (2003) 2 ALT 466 : (2002) CriLJ 694 : (2002) 2 RCR(Criminal) 421

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Government Pleader, for Home, for the Appellant;

Judgement

V.V.S. Rao, J.—Smt. Bheemamma r/o. Krishnanagar locality in Hyderabad, addressed Hon"ble the Chief Justice of Andhra Pradesh High Court inter alia complaining that her husband was detained by respondents 2 and 3 on 19-11-1988 in connection with some undisclosed undetected cases, that he was earning an amount of Rs. 150/- to Rs. 200/- per day as Rickshaw Puller and looking after the family, that he was being produced before the Court of the Judicial First Class Magistrate, East and North, and that on 31-8-1999 she was informed about the death of her husband in the jail. She also alleged that when she was taken to Osmani"a General Hospital for the purpose of inquest, she and her mother-in- law, aged about 60 years, found marks of violence in the body of her husband late Thimmaiah and when this was brought to the notice of the police, the latter assured appropriate compensation after the completion of investigation. She also alleged that her husband was killed on the instructions of the Jail Superintendent in collusion with the police. The letter of said Bheemamma was treated as a writ petition for the purpose of considering the following prayers:

"To issue a writ in the nature of mandamus calling for the remarks and records from the respondents herein connected with: (i) Death of U.T. Prisoner No.6048,

by name "Thimmaiah" husband of the petitioner herein on 29-8-1999 in the Osmania General Hospital, Hyderabad who was arrested by the Uppal Police on 6-11-1998, and handed over to the Kulsumpura Police Station, Hyderabad in Crime No. 130 of 1998 and lodged in Central Prison, Hyderabad on judicial remand, as it is learnt that the husband of the petitioner was killed on the instruction of the Jail Superintendent in collusion with the police and to pass appropriate orders.

(ii) To punish the guilty in the matter;

(ii) To arrange for payment of appropriate compensation".

2. On 27-6-2001 while ordering "Rule Nisi" this Bench passed the following order:

"As admittedly on unnatural death has taken place, a report in this regard must have been submitted before the appropriate authority. The same shall be produced before this Court within one week.

Pendency of this writ petition, however, shall not come in the way of the Collector to consider and who is hereby directed to consider the matter relating to grant of compensation in terms of the instant Government Order".

3. On 5-7-2001 the learned Government Pleader for Home has placed before us a report of the Superintendent of Police addressed to the Station House Officer, Dabeerpura Police Station as well as a report of the Superintendent, Full Additional Charge, Central Prison, to the Secretary General of National Human Rights Commission, New Delhi. It is stated in both the reports that Thimmaiah, U.T. No. 6048 was admitted in the jail on 20-11-1998 in connection with FIR No. 417/97 of P.S. Uppal u/s 302 of IPC and FIR No. 82/97 of P.S. Ghatkesar and S.C.No. 333/99 (in PRC No. 8/99) of P.S. Kulsumpura, that he was admitted in the Jail Hospital on 25-8-1999 and when he was being taken to Osmania General Hospital on 29-8-1999 Thimmaiah expired on the way to hospital at 9-00 a.m.

4. Not satisfied with the reports, we requested the learned Government Pleader to produce before us all the records as regards the treatment given to late Thimmaiah in the hospital.

5. The post-mortem report dated 31-8-1999 has been placed before us. It is surprising to note that when admittedly late Thimmaiah breathed his last on 29-8-1999 the requisition was sent by the Station House Officer to the Medical Officer of Osmania Medical College for conducting post-mortem examination on 31-8-1999. The post-mortem was held on that date at 12-30 p.m., as requested by SHO of P.S. Dabeerpura. As per the post-mortem report, there are no injuries over the body of late Thimmaiah and the cause of death is said to be "due to disease of the heart". This clinchingly shows that late Thimmaiah was suffering from heart disease and he died of such heart disease. Further, in the information sent to National Human Rights Commission in regard to the custodial death it was reported that no Magisterial enquiry was held/ordered by the District Magistrate. The said report also shows that while Thimmaiah was in custody he

was examined for the last time only on 25-8-1999. This means that till he died while being taken to Osmania General Hospital on 29-9-1999, for a period of four (4) days i.e., from 25-8-1999 to 29-9-1999, Thimmaiah was not given any medical treatment. Thimmaiah was simply lodged in the Jail Hospital on 25-8-1999 without any proper medical assistance.

6. The Visitor's Register of U.T. inmates for the month of August, 1999 has also been produced before us. The same discloses that on 27-8-1999 Thimmaiah was visited by his uncle and aunty and the same does not disclose that there was any complaint of heart disease by Thimmaiah to the visitors. The In-patient Treatment Register of Central Prison, Chanchalguda is also placed before us. The same does not disclose that Thimmaiah has administered any medicines on 25-8-1999 on which date he is said to have been admitted to Jail Hospital. On 26th also he was not given any medicines. On 27th and 28th he was given some medicines and on 29th the doctor endorsed "referred to OGH at 8-00 a.m." Even if the In-patient Treatment Register" is taken to be true record, the duty doctor certainly advised to take Thimmaiah to Osmania General Hospital at 8-00 a.m. The report sent by Superintendent to National Human Rights Commission as well as Station House Officer, Dabeerpura show that he died at about 9-00 a.m., on the way to hospital.

7. It is now a well-known common place knowledge that a person who suffers a heart attack must be given proper medical care within few minutes of affliction or else it would be fatal.

8. To our mind, though there is an allegation that Thimmaiah was killed on the instructions of Jail Superintendent, the same is far from truth; we certainly hold that there is negligence on the part of the jail authorities in taking proper care. As already noticed, the Jail Superintendent himself informed the National Human Rights Commission that Thimmaiah was examined in custody on 25-8-1999 and after that there was no medical treatment nor medical care. Further, on the crucial day when he was advised to be taken to Osmania General Hospital at 8-00 a.m., there was delay in taking him to the hospital. The claim of the petitioner, who is the wife of deceased Thimmaiah, for appropriate compensation is therefore justified. In this context, we may refer to an order of the Government in G.O. Ms. No. 439, General Administration (HRC) Department, dated 17-10-1997 whereunder the Government ordered payment of ex-gratia of an amount of Rs. 20,000/- to poor persons whose relations died in custody, which reads thus:

"Exgratia relief is being sanctioned and paid to the next of the kin of the persons died while in police lockups/ custody irrespective of the cause of the death whether due to torture or natural or any other reasons as a measure" of solace. No uniform policy is existing for the payment of ex-gratia relief. The payment of ex-gratia is being considered based on the recommendations of the respective Collectors and District Magistrates and different amounts are being recommended in each case.

In order to have a uniform policy in payment of ex-gratia to the next of the kin of the persons died while in police lockups/custody, Government have decided that immediate relief of Rs. 20,000/- shall be provided to the next of the kin of the persons died while in police lockups/ custody, irrespective of the cause of death, provided that the death should be evidenced by a report of the police and also supported by a certificate from the concerned Medical Officer not below the rank of a Civil Assistant Surgeon.

All the Collectors and District Magistrates are hereby authorised to sanction the ex-gratia relief at Rs. 20,000/- (Rupees twenty thousand only) to the next of the kin of the persons died while in police, lockups/custody immediately, based on the reports from the Superintendents of Police, supported by a certificate from the concerned Medical Officer not below the rank of a Civil Assistant Surgeon. A copy of the proceedings sanctioning the ex-gratia relief should be furnished to Government.

The expenditure sanctioned shall be debited to 2235-Social Security and Welfare - 080 Other Social Security and Welfare Programmes - MH 200 other Schemes - SH (11) Other Ex-gratia relief 080 - Grants-in-aid 082- other grants-in-aid.

This order issues with the concurrence of Finance and Planning (FW) Department vide their UO No. 3331/Secy.Fin (H&E)/97, dated 1-10-1987."

We have recorded prima facie conclusions, which enable the petitioner to claim compensation in public law remedy apart from the remedy of suit for damages in the realm of tort. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and D.K. Basu Vs. State of West Bengal, , it was held that the remedy of claiming compensation for constitutional tort for violating fundamental right and liberty is in addition to the other private law remedies available.

9. In the representation made to the Hon'ble Chief Justice, the petitioner claimed that her husband was earning an amount of Rs. 150/- to Rs. 200/- per day and he was aged 34 years. She, her son and her mother-in-law are dependent on late Thimmaiah. The post-mortem report placed before us shows that the deceased was aged about 40 years. Taking these into consideration, we deem it proper in the interest of justice to direct Government to grant an amount of Rs. 20,000/- (Rupees twenty thousand only) as ex-gratia to the petitioner. We also direct the District Magistrate and Collector, Hyderabad to conduct magisterial enquiry, fix responsibility and take/recommend necessary action against erring officials in the Police as well as Prisons Department. We make it clear that an amount ordered to be paid by the Government-10th respondent herein is in addition to the amount that may be awarded by a civil Court in case the petitioner files a suit claiming damages for the death of her husband. The amount shall be paid within eight weeks.

10. A copy of this order shall be communicated by Registry to petitioner.

11. The writ petition is accordingly disposed of. No costs.