
(2008) 07 GAU CK 0047
In the Gauhati High Court

Bijoy Daimary and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 22(1), 226
Penal Code, 1860 (IPC) — Section 147, 148, 149, 379, 436

Citation : (2009) 5 GLR 513 : (2008) GLT 579 Supp

Hon'ble Judges : Jasti Chelameswar, C.J; Anima Hazarika, J

Bench : Division Bench

Judgement

Anima Hazarika, J.—Heard Ms. P. Bhattacharya, learned Counsel, appearing for the petitioners. Also heard Ms. B. Goel for the respondent Nos. 1, 2, 3 and 4 and Mr. C. Baruah, learned Central Government Counsel appearing for respondent Nos. 5 and 6.

2. When the innocent villagers are deprived of their fundamental rights guaranteed under Article 21 of the Constitution of India and the fingers of accusation for such illegal acts are pointed towards the protectors of the citizen, i.e., the Army or the police personnel, it really pricks the conscience of the court. What relief, if any, can be extended to such victims while such matters are brought to the notice of the court by way of filing writ petition under Article 226 of the Constitution of India? This is, precisely, the question to be answered by this Court in the instant case. In fact, the Apex Court as well as this Court has dealt with such question in a number of cases and by now the law, has been settled on the point. It has been held by the Apex Court that rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. D.K. Basu Vs. State of West Bengal, may be referred, to in this regard.

3. Three petitioners, namely, Sri Bijoy Daimary, Sri Prabin Daimary and Sri

Bhaben Musahary have filed this writ petition on their behalf as well as on behalf of 230 villagers of No. 3 Panimudijhar (Dwimajuli) village under Panery Police Station in the District of Darrang, Assam.

4. Alleging Army atrocities it has been averred in the writ petition that on 12.1.2002 at about 7:30 p.m. a group of Army personnel (about 15 to 20) entered into No. 3 Panimudijhar (Dwimajuli) village and started torturing the innocent villagers. They assaulted the villagers, footed money and misbehaved women of the village. Even the children were not spared from such torture and many houses of the villagers were set on fire. After subjecting the villagers to such inhuman atrocities, the Army-personnel left the village at about 9:00 p.m. In the process, about 15 villagers, including old aged persons got seriously injured and had to be admitted in Udalguri Civil Hospital. Apart from that 28 other villagers including minor and elderly persons sustained minor injuries due to the torture meted out by the Army Personnel. It has been stated in the writ petition that the next day, i.e., on 13.1.2002, one Commanding Officer, viz. Mr. Nayar of 21 Mountain Division came to the village, visited the affected families and apologized for the occurrence took place on 12.1.2002. On the same day, the Deputy Inspector of Police, Assam, Additional Deputy Commissioner, Darrang also visited the place of occurrence to whom written complaint was submitted by the villagers on the spot. The villagers also sent written complaint to the Paneri Police Station, National Human Rights Commission, Chief Minister of Assam and the Governor of Assam. But the same evoked no response from the concerned authorities. Hence this writ petition has been filed praying for issuing appropriate writ, directing the respondents to institute an inquiry into the alleged occurrence of 12.1.2002, to book the real culprits and to give proper and adequate compensation to the victims, including medical treatment and also to take legal action against the erring Army-personnel who were responsible for the occurrence of 12.1.2002 in the said village.

5. An affidavit-in-opposition has been filed on behalf of respondent No. 2, i.e., the Deputy Commissioner, Darrang, Mangaldoi contending, inter alia, therein that Paneri Police Station Case No. 3 of 2002 under Sections 147/148/149/451/379/436, IPC was registered by police in connection with the alleged occurrence and the investigation was on. It has further been stated that the injured persons were sent to Udalguri Public Health Centre for medical treatment and according to the medical reports injuries were simple, caused by blunt weapon. While denying the allegations of inaction on the part of the District Administration, it has been stated by the respondent No. 2 that in the interest of public service, a Magisterial enquiry has also been caused which is yet to be completed at the time of filing the affidavit-in-opposition. Apart from these, various essential articles, viz., rice, dal, mustard oil, salt, etc., were provided to the affected persons of the village as relief measure. A separate affidavit-in-opposition has also been filed on behalf of the Superintendent of Police, Darrang (respondent No. 3) who has virtually reproduced the contents of affidavit-in-opposition filed by the respondent No. 2. From both the affidavits-in-opposition

of respondent Nos. 2 and 3 it has become clear that there is no denial at all to the alleged occurrence having taken place.

6. A separate affidavit-in-opposition has been filed on behalf of respondent Nos. 5 and 6 contending therein that the village in question falls under the area of responsibility of 169 Fd. Regiment (OP Hill). The said unit carries out regular patrolling in this area of responsibility to keep it free from militant related violence and curb the influence and movements of the militants. While denying the Army operation as alleged by petitioners, it has been stated that on 12.1.2002 no operation was carried out by the 169 Fd. Regiment (OP Hills) in and around the village as alleged. However, it has been admitted in the said affidavit-in-opposition that on the next morning i.e., on 13.1.2002, the Commanding Officer, 169 Fd. Regiment (OP Hill) visited the affected village to enquire into the incident and to ascertain the facts situation, as the village in question falls under the operational jurisdiction of the unit.

7. The report of the Magisterial enquiry which has been referred to hereinabove has been brought on record by filing an additional affidavit by respondent No. 2. The findings recorded by the enquiry officer who is the Sub-Divisional Magistrate, Udalguri are as follows:

In view of the observations described above it appears that the Army-men of the 169 Filed Regiment under whose operational area the village falls, was involved in the incident like of 10th, 11th and 12th January, 2002 in cause of their regular patrolling raids and perpetrated into the actions as observed above.

8. An objection has been filed vide Misc. Case No. 1760/02 in the instant case on behalf of the respondent Nos. 5 and 6 to the Magisterial Enquiry Report on the ground that the enquiry in question was conducted behind the back of 169 Fd. Regiment (OP Hill). By Annexures-1 and 2 to the said Misc. Case it has been shown that the unit in question was carrying on operation on 12.1.2002 at different places excluding the village in question.

9. We have considered the arguments advanced on behalf of the rival parties, also perused the materials on record including the Magisterial Enquiry Report dated 28.7.2002 vide Annexure-1 to the additional affidavit filed by the respondent No. 2. We have also perused the objection there to filed on behalf of the respondent Nos. 5 and 6. From the factual matrix of the case as narrated hereinabove, it is crystal clear that the innocent villagers of No. 3 Panimudijhar (Dunujuli) village became victim of atrocities caused by unidentified armed personnel. It is by now a settled law that for established breach of fundamental rights compensation to the citizen can be granted under public law by the High Court. However, on perusal of the enquiry report (Annexure-1 to the additional affidavit), we find that no proper notice was served on the 169 Fd. Regiment (OP Hill) or its Commandant in respect of holding and/or conducting the Magisterial Enquiry by the Enquiry Officer. Therefore, this Court cannot act upon the said report in spite of clear findings recorded by the Enquiry Officer in respect of

involvement of 169 Fd. Regiment in the alleged atrocities caused to the villagers. That being the position, we refrain from awarding any compensation to the victims on individual basis. However, we hold that there has been established infringement of violation of the fundamental rights of the villagers guaranteed under Article 21 of the Constitution of India. It is the duty of the State to protect its citizen against infringement of fundamental rights guaranteed under Article 21 of the Constitution of India. This is where the state has miserably failed to discharges its duty. During the course of hearing of the case this Court directed the learned Government Advocate, Assam to obtain instruction from the Government of Assam as to whether instead of awarding individual compensation, some Community Welfare relief can be extended to the villagers by way of compensation for the sufferings inflicted on them. In response thereto the Deputy, Commissioner, Udalguri has filed an additional affidavit on 27.5.2008 intimating this Court that on 10.5.2008 a section of the public met the Deputy Commissioner, Udalguri and submitted a joint representation on that day itself with a proposal for the benefit of the public which includes implementation of some schemes, viz., construction of Public Community Hall at No. 3 Panimudijhar, viz., "Dwimujule"; development of the road to the No. 3 Nimudijhar's proposed Public Community Hall from the Amjuli Road to Ambagan and construction of a public fishery on a land measuring 3 bighas in the village. On the above proposals it has been fairly stated by the Deputy Commissioner, Udalguri that in the event the Government accepts the proposals made by the public in their representation dated 10.5.2008, the suffering of the villagers as a whole may be mitigated. On a query made by this Court as to the State Government's acceptance of the proposal submitted by the section of public, Mr. A.K. Phookan, learned Advocate General, State of Assam, in his usual magnanimity, has submitted that, the State Government is always keen to uplift the living standard of the people of Assam, more particularly the villagers in the remote areas, as in the present case. He further submitted that the State Government with all its sincerity would implement the proposed scheme which has been referred by the Deputy Commissioner, Udalguri to the Government within a period as the court may think fit and proper.

10. Keeping in mind in its entirety and the grievances made thereto, this Court seems it fit to direct the respondent Nos. 1 and 2 to expedite the implementation of the schemes submitted by the public of No. 3 Panimudijhar (Dunujuli) village vide their representation dated 10.5.2008 (Annexure-1) preferably within a period of 6(six) months from today.

11. The writ petition is disposed of with the direction as indicated herein above. No costs.