
(2006) 11 GAU CK 0010
In the Gauhati High Court

Bimal Debnath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 197
Customs Act, 1962 — Section 100, 101, 102, 103, 104

Citation : (2007) 3 GLT 438

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—This writ petition has been filed by one Bimal Debnath seeking a direction for return of certain goods allegedly seized by the Border Security Force personnel (BSF) and seeking a further direction for payment of compensation for infringement of the fundamental rights of the petitioner arising out of the seizure of the goods.

2. The petitioner in his writ petition claims that his father Digendra Kumar Debnath had a shop at Ekinpur Bazar in Belonia Sub-Division of South Tripura District and that his father was doing business in the aforesaid shop and was dealing with articles such as grocery, cloths, readymade garments etc. The further claim is that the father of the petitioner had a licence for doing the aforesaid business under the provisions of the Essential Commodities Act, 1955. A copy of the licence in the name of the petitioner's father is enclosed as Annexure-A to the writ petition.

3. In the writ petition it was stated that due to the old age of the petitioner's father, a deed was executed by the father appointing the writ petitioner as an attorney in respect of the business on 23.4.1988 and since then the petitioner has been doing the said business on the strength of the power of attorney given and is earning his livelihood.

4. The allegation made in the writ petition is that on 21.3.1997 at about 11 a.m. one K. Sashidharan, an Inspector of BSF of "C" Coy, 5 Bn. B.S.F. along with 9 or 10 other personnel of BSF came to the grocery and cloth shop of the petitioner's father and demanded Rs. 10,000/- as illegal gratification from the petitioner. On being refused, it is alleged that the respondent No. 4, K. Sashidharan threatened the petitioner, who was sitting in the shop at that point of time. An altercation arose and thereafter the respondent No. 3, the 2 VC, of 5 Bn. B.S.F. arrived at the scene with some other BSF personnel. In fear, the petitioner claimed to have fled away whereafter the respondent No. 3 entered the shop and took away all the commodities in the shop in presence of the elder brother of the writ petitioner, namely Shri Sunil Debnath.

When the writ petitioner returned to the shop at 3 p.m., he found that all the goods stocked in the shop have been taken away by the BSF personnels after preparing a seizure memo at the spot. According to the writ petitioner, the seizure memo did not include all the goods, which have been seized. It is further alleged that seizure witnesses were made to sign the prepared seizure memo under threat by the BSF personnels.

5. It has been generally alleged in the petition that the BSF personnels have been meeting out threats to people inhabiting in the border areas and there have been instances where public meetings were organized to protest the conduct of the BSF personnel, but there has been no improvement of the situation despite the protest.

6. Further claim of the writ petitioner is that on the day of the seizure, i.e. on 21.3.1997, the petitioner lodged a written complaint in the Puran Rajbari Police Station on the conduct of the respondents. The petitioner further claims that despite the complaint to the police, no action has been taken by the authorities in the matter. On the basis of the above factual scenario, the petitioner has claimed that in the instant case the BSF has exceeded the limits of its authority and jurisdiction by their aforesaid conduct and has infringed upon the rights of the petitioner guaranteed under Article 19(l)(g) read with Article 21 of the Constitution for which the officers responsible are liable to be punished in accordance with law and the petitioner is also entitled to exemplary compensation for the infringement of his constitutional rights.

7. The petitioner has further brought to the notice of the Court the fact that a CR case was instituted against the BSF personnels, arrayed herein as respondents No. 3 and 4 in the Court of Sub-Divisional Judicial Magistrate, Belonia and the said complaint case is being dealt with in accordance with the law. The development pertaining to the complaint case would be referred to a little later in this judgment.

8. I have heard Mr. B. Das, learned senior counsel, assisted by Mr. N. Majumder and Mr. D. Chakraborty, learned Counsel appearing for the writ petitioner. I have also heard Mr. P.K. Biswas, learned Assistant Solicitor General of India, who

appears on behalf of the BSF authorities along with Mr. P. Majumder, learned Counsel.

9. The first submission made by the learned senior counsel appearing for the petitioner is that the BSF authorities in the present case have no power or jurisdiction to raid the shop of the father of the petitioner and make a seizure of the goods in connection with activities coming within the purview of the Customs authorities and as such it is a fit case where appropriate action be taken against the BSF personnel involved in the case. The consequential submission is that since the said act of the BSF authorities have infringed upon the rights of the petitioner guaranteed under Article 19(l)(g) read with Article 21 of the Constitution, the petitioner deserves to be adequately compensated for the aforesaid act of the BSF authorities. In support of the submission on the point of compensation, Mr. Das referred to the decision of the Supreme Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and has also referred to another decision of this Court in Arun Ch. Bhowmik v. State of Tripura reported in 1997 (1) GLT 555.

10. Mr. Biswas, the learned Assistant Solicitor General of India appearing for the respondent authorities by responding to the first submission of Mr. Das, regarding the power of the BSF to conduct seizure of goods suspected to be used for smuggling purpose, has produced before the Court the notification dated 5.6.1986. This is a notification whereby the BSF personnel of certain ranks, mentioned in the said notification, are authorized to function as an officer of Customs within the local limits of their jurisdiction, wherever they are posted in respect of functions under the provisions of the Customs Act, 1962. An extract of the aforesaid notification is given hereinbelow for ready reference:

In exercise of the powers conferred by Section 6 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue & Insurance) No. 163-Customs, dated the 20th December, 1969, the Central Government hereby entrusts to the officers of the Border Security Force mentioned in column 2 of the Table below, wherever posted, the functions of an officer of Customs specified in the corresponding entry in column 3 of the said Table and directs that each such officer shall exercise the functions of an officer of customs within the local limits of his jurisdiction.

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Designation of Functions under the Officer provisions of the Customs Act, 1962		

1. All Commandants, (1) Functions under Deputy Commandants Sections 100 to 104 and Asstt. (both inclusive), Commandants 106, 107, 109 and 110 and (2) Functions under Sections 105 and 108 in places where no officer of customs of the rank of Superintendent of Customs & Central Excise or above is stationed.		
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2. All Subedar Majors, Functions under Sec- Subedars & Sub tions 100 to 104		
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(both Inspectors inclusive), 106, 107, 109 and 110.

3. All Head Constables Functions under Sec- & Naik tions 100 to 102, 106 and 110.

11. From the aforequoted notification dated 5.6.1986 it appears to this Court that while carrying out the raid and search in the shop premises of the father of the writ petitioner, the BSF personnel were acting in terms of the authorization given by virtue of the aforesaid notification. In the averments made in the counter-affidavit on behalf of the respondent authorities, the attention of this Court has been specifically drawn to paragraph 6 of the said counter-affidavit filed on behalf of the respondents. Mr. Biswas has submitted on the basis of the averments in the counter-affidavit that the BSF authorities had prior information about smuggling activities being carried out from the shop of the petitioner's father and that there was additional information that huge stock of commodities disproportionate to the requirement of the number of consumers living in the locality, have been kept stocked up in the said shop. On the basis of the said prior information raid was conducted as the information, led to a reasonable belief in the mind of the BSF authorities about carrying out of smuggling activities. When proper explanation could not be given for the huge quantity of stock, the seizure of the goods was made where the elder brother of the petitioner was present. After the seizures were made on 21.3.1997, all the seized goods were handed over to the Customs Authorities on 26.3.1997. It is further submitted by Mr. Biswas that after the seizure of the commodities, they were taken to the BSF Company Headquarters about one k.m. away from the market area where the shop was located and the seized goods were thereafter handed over on 26.3.1997 to the Customs Authorities, the office of which is located about 20 k.m. away from the BSF Company Headquarters.

12. Keeping in mind the aforesaid submissions made, this Court is of the view that the BSF authorities, on the strength of the notification dated 5.6.1986, had the necessary authorization to take action even for infringement of provisions of the Customs Act, 1962. This Court is also of the view that in view of the prior information available with the BSF authorities as has been noted in the counter-affidavit filed, this Court would be precluded from examining the adequacy of information/material for the BSF authorities for having the reason to believe that urgent intervention is necessary to prevent smuggling activities. The Court is refrained from entering into this arena as this Court is neither competent to examine the adequacy of materials for the BSF authorities to have a "reason to believe"" for what they believe, as the writ Court is not the appropriate Court for examination of such vexed question of facts.

13. Now to go into the ratio of the decisions cited by Mr. Das to persuade this Court for grant of compensation. It is seen that the reference to Nilabati Behera and Arun Ch. Bhowmik (supra) are decisions where the Apex Court as well as this Court ordered for payment of compensation for custodial death in the case of Nilabati (supra) and for custodial torture in the case of Arun Ch. Bhowmik

(supra). The decisions cited by Mr. Das are not authorities, which persuades this Court to also consider granting of compensation in a matter of the present nature where no custodial torture or custodial death is involved. For taking this view reliance can be placed in fact on the two other decisions cited by Mr. Das, the learned senior counsel appearing for the writ petitioner, namely the case of The Regional Manager and Another Vs. Pawan Kumar Dubey, and the decision in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, In the Madhav Rao Scindia's decision a passage from an earlier decision is extracted:

A decision is only an authority for what it actually decide. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this what Earl of Halsbury LC said in Quinn v. Leathern (1901) AC 495:

Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

14. Similar view has been expressed by the Apex Court in the Regional Manager v. Pawan Kumar Debey case. The aforesaid decisions of the Apex Court; would apply in the context of the factual background of those cases and one would have to stretch the ratio of the said two decisions a little too much to take a view that in a case of the present nature, which has nothing to do with custodial violence, this Court ought to award compensation by giving reference to decisions of cases of custodial death/torture, which have been cited on behalf of the petitioner.

15. Now, in so far as the complaint case filed by the present petitioner, Mr. Das has drawn attention of this Court to the decision of the Apex Court in Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another, which arose out of the proceeding initiated by the writ petitioner Bimal Debnath through CR case against the BSF officers for demanding a bribe of Rs. 10,000/- from the petitioner on 21.3.1997 in course of the raid carried out in the shop of the petitioner's father. The Apex Court in the aforesaid decision held that taking or demanding bribe can never be a conduct in performance of one's official duties. Consequently, the want of sanction u/s 197 of the Code of Criminal Procedure, before initiating the process against the BSF Officers, would not invalidate the

cognizance taken of the complaint and also the process issued thereafter. The Apex Court opined that the demand of bribe by the BSF personnel cannot be construed to be an act in discharge of official duties and as such the provisions of Section 197 Cr.P.C. are not attracted and accordingly, no immunity can be claimed on the ground of want of sanction. Accordingly, the Supreme Court declined to interfere on a challenge made to the legality of the cognizance taken and issuance of process, on the basis of complaint filed by the present writ petitioner Bimal Debnath against the BSF personnel for demanding a bribe of Rs. 10,000/-. The said proceeding in my view has no bearing in the present case as the complaint case is proceeding in accordance with law.

16. One more aspect to which the attention of this Court has been drawn by the learned Counsel appearing for the BSF authorities is that instead of the licensee Digendra Kumar Debnath, it is his son, who has approached this Court by filing this writ petition claiming compensation from this Court and accordingly, this Court ought not to entertain the said writ petition at the behest of the son, who was not the license holder of the shop. Mr. Das, learned senior counsel appearing for the writ petitioner has immediately drawn attention of the Court to the power of attorney dated 23.4.1988 given by the licensee Digendra Kumar Debnath to his son Bimal Debnath, the writ petitioner herein, to run the business of the shop and accordingly, submitted that the writ petitioner is very much entitled to file the present writ petition. As it is not denied that the writ petitioner was managing the business of his father, this Court is not prepared to reject the petition on the aforesaid plea taken on behalf of the respondents.

17. Now coming to the claim for compensation, as has already been noticed, the seized goods have been handed over to the Customs Authorities by the BSF personnel. It is also reasonably believable that the BSF personnel have conducted the raid and made the seizure of the goods in discharge of their official duties, on the basis of prior information available with them about smuggling activities carried out in the shop premises. The claim for compensation has also been examined in the light of the decisions relied upon by the petitioner's counsel, which pertains to compensation granted by Courts in matters of custodial death or injuries suffered while in custody. Therefore, this Court is of the view that no compensation is payable to the petitioner in terms of the claims raised in this petition.

18. In respect of the prayer for return of the goods seized, this Court is of the view that the petitioner has arrayed only the BSF authorities in the present writ proceedings and not the Customs Authorities. The seized goods, as has already been noted, were handed over to the Customs Authorities on 26.3.1997, soon after the seizures were made on 21.3.1997, Accordingly, the said prayer for return of the goods cannot be considered, as the appropriate parties are not represented before this Court.

19. Considered in light of the aforesaid, this Court is not inclined to allow the present writ petition and accordingly, the writ petition is dismissed. However,

there shall be no award of cost.