

(1996) 12 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 324 of 1993

Chandabai Yadav (Smt.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1997) 1 JLJ 287

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : A.M. Mathur and V. Sharan, for the Appellant; Shekhar Bhargava, A.A.G. for State, for the Respondent

Judgement

N.K. Jain, J.—Petitioner, Smt. Chandabai Yadav has filed this Misc. Petition No. Article 226 of the Constitution seeking undernoted reliefs:

- (a) To direct the Respondents to submit a copy of Magistrial enquiry conducted by Shri Prakash Gupta in the matter.
- (b) To direct prosecution of the persons found guilty in the said enquiry:
- (c) To award adequate and reasonable compensation to the Petitioner for the loss of her beloved father;
- (d) To grant any other relief, which this Hon. Court deems fit in the facts and circumstances of the case; and
- (e) To allow this petition with costs.

2. It is not disputed that father of the Petitioner, namely Lalloosingh Yadav, aged about 55 years, an employee of Hukumchand Mills Limited, Indore, was arrested by the police on 6.1.92 at Indore, along with many other Mill-workers in connection with "Jail Bharo Andolan"" organised in protest against the closure of the said Mills. After arrest, Lalloosingh Yadav and other arrested Mill-workers were lodged in Central Jail, Indore. On 7.1.92 in the morning, riot broke out

inside the Jail during which Lalloosingh sustained injuries. He was shifted to T. Choithram Hospital, Indore, where he succumbed to his injuries on 24.1.92.

3. A Magistrial enquiry was ordered by the Distt. Magistrate, Indore. The enquiry was conducted by Shri B.L. Kosam, Addl. Distt. Magistrate, Indore, who submitted his report on 17.1.92. A copy of the report is placed on record and marked as annexure R-1.

4. According to the Petitioner, her late father was beaten up by the police and other security guards of the Jail causing injuries which ultimately resulted into his death.

As against it, the Respondents have averred that the agitating mill-workers who were lodged in Jail had turned riotous on 7.1.92, and that they tried to assault Jail authorities and other detenus in the Jail which led to stampede. The convicts and other under trial prisoners lodged in the Jail had in retaliation attacked the mill-workers causing injuries to the deceased amongst others and which ultimately resulted into his death.

5. The moot question is: "Whether it is a case of custodial death as alleged by the Petitioner"?

6. I have heard Shri A.M. Mathur, learned Sr. Counsel appearing with Shri V. Sharan for the Petitioner and Shri Shekhar Bhargava, learned Addl. Advocate General for the Respondents.

7. It is not disputed that death of Lalloosingh Yadav was caused by multiple injuries sustained by him while he was still in Jail custody. As per post-mortem report the nature of death was homicidal. So, irrespective of the fact as to whether injuries were inflicted by the security guards of the Jail or by the detenus lodged in the Jail, the obvious and logical inference would be that it was a case of custodial death, for which the Respondents are responsible and liable. The learned Magistrate who conducted the enquiry, in his report, has squarely held the Jail administration responsible and liable for the incident.

The Magistrate in para 3 of his report has found:

blls Li"V gS fd tsy vf/kdkfj;ksa ,oa deZpkfj;ksa ij izk.k ?kkrd geyk ugha fd;k x;k A cfYd vkUnksyudkfj;ksa ij cfUn;ksa us tyk? ydM+h vkSj iRFkjkksa ls izk.k ?kkrd geyk fd;k

As regards the deceased Lalloosingh, the learned Magistrate was of the view:

mijksDr xokgksa ds ck;ku ds vk/kkj ij esjks vfHker ;g gS fd Jfed yYwflag firk ? hryflag ds flj ij cfUn;ksa }kjk ydM+h ls izgkj djus rFkk okMZ ua- 4 ds cSjd ds xsV esa Hkxnm+ esa iSj dh maxyh njokts esa Qal tkus ls og fxj iM+k] ftlls nwljs vkUnksyudkjH Hkh iwjs fxj iM+s rc cafn;ksa us mlds lkFk ekjihV dh mls xaHkhj pksaV yxus ds eq[; dkj.k flj ij iRFkj yxus rFkk ydM+h ls ekjus vk;s gksaxhA

In the end the Magistrate concluded:

nksuksa i{kksa ds xokgkas ds dFkuksa ds fo"ys?.k ds vk/kkj ij eSaus ;g ik;k fd fnukad 6-1-92 dks fey Jfedkas dh fxj?rkjh dks ysus dh fLFkfr dks /;ku esa j[krs gq, iqfyl daV?ksy :i eas ofj"B vf/kdkjh;ksa }kjk tsyj dks funsZ? fn;s Fks fd os tsy esa iw.kZ O;oLFkk djsa A ;g rF; Jherh bafnj?ekZ v/kh{k d tsy us vius tsy v/kh{k d ds vkMZj cq d esa i`"B 65 ij vafdr fd;k gS A blds cktwn Hkh tsy esa Jfedksa dks nksigj dk [kkuk fn;k vkSj jkr dks Hkkstu ugha fn;k vkSj ;fn fn;k Hkh rks dqN vkUnksyudkfj;ksa dks blds vykok ckn dks I;kZIr la[k esa vksM+us fcNkus ds fy;s njh] dacy] jtkbZ;ka ugha nh xbZ rFkk dqN cSjdksa esa vko";drk ls vf/kd vkUnksyudkj Jfed j[ks x;s ftlls muesa vk?ks? Fkk A blfy;s mUgksaus 6-1-92 dks lfdZV xSV ds lkeus ?ke dks tsy can gksus ds iwoZ ukjs ckth ,oa ?ksj xqy fd;k Fkk A bl laca/k eas ofj"B tsyj Jh tSu us Jfedkas }kjk iRFkj ckth djus o ukjs ckth djus dh i`f"V dh A Jh f=os.khflag lgk;d tsyj us crk;k fd tsy esa fnukad 6-1-92 dks dsoy 500 yksxksa dh O;oLFkk dh x;h Fkh A tcfd vf/kd la[k;eas etnwj fxj?rkj gksdj vk;s A

;fn fnukad 6-1-92 dks tsy esa Hkkstu] vksM+us] fcNkus ds iz;kZIr O;oLFkk le; ij gksrh rks ekjihV ;k >xM+s fnukad 7-1-92 dks ukScr ugha vkrh A bl iwjh ?kVuk esa Jh egs?pUnz xqIrk ?vLi"V? ,oa lgk;d tsyj tks IHkh cSjdksa esa IHkh izdkj dh O;oLFkk djus ds fy;s m?kjk;h gSa A viuh ftEesnkfj;ksa dks fuHkkus esa vLQy jgs ;fn os fnukad 6-1-92 ls gh tsy esa vko";d O;oLFkk djrs rks laHko gS tsy esa dksbZ ekjihV ;k >xM+k gksus dh ukScr ugha vkrhA

8. It will be thus seen that for whatever happened on that morning inside the Jail, the Jail authorities were fully responsible. So even if it to be accepted that the injuries to the deceased were caused by the detainee in the Jail, the Respondents cannot escape their responsibility for the consequences that followed the said riot. The Jail authorities were clearly guilty of not performing or at least being negligent in performance of their duty to protect the limbs and life of the detenus. It is now well settled that even where a person is convicted and imprisoned under sentence of Court, he does not lose all the fundamental rights belonging to any person under the Constitution including the right under Article 21, not to be deprived of his life or personal liberty except according to procedure established by law: see cases of: D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others, and Sunil Batra Vs. Delhi Administration and Others etc., .

9. Dealing with the question of custodial death, Hon. the Supreme Court in Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, , has observed:

It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such prisons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials

or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is "not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

10. It is, therefore, immaterial and not relevant at this stage, to determine as to who whether Jail guards or other detenus were responsible for the injuries and ultimate death of Lalloosingh. What this Court is required to determine in this petition is only this, whether fundamental right to life of the deceased has been violated and the obvious answer is "yes". A custodial death, observed the Apex Court in the case of Nilabati (supra), "is perhaps one of the worst crime in the civilised society governed by the rule of law." The liability of the State Government to pay compensation cannot be, therefore, doubted.

11. As regards quantum of compensation, the deceased at the time of his death was aged about 55 years and earning wages Rs. 1,860/- per month. Having regards to the totality of the facts and circumstances, in my opinion, an amount of Rs. 50,000/- would be proper compensation to be awarded to the Petitioner and other heirs of the deceased.

12. Accordingly, I allow the petition and direct the State of Madhya Pradesh to pay sum of Rs. 50,000/- as compensation to the Petitioner and other heirs if any of the deceased. The Respondents are further directed to pay sum of Rs. 2,000/- to the Petitioner as costs of this petition. The Collector, Indore will take necessary steps to ascertain as to who are the heirs of the deceased besides the Petitioner. The amount of compensation shall thereafter, be distributed amongst them within 3 months under intimation to the Registrar of this Court. Award of this compensation will not, however, effect the right of the Petitioner or any other heir of the deceased to resort to such other remedies as may be available to them in law on account of the said custodial death except that the amount awarded herein shall be taken into consideration for adjustment in the event of any other proceeding taken by any such heir for compensation on the same ground.

13. The State is also expected to take necessary action to ascertain and fix the responsibility of the individuals accountable for the riot that broke out in the Jail and which resulted into the custodial death of Lalloosingh and causing injuries to many others. Appropriate actions against erring officers shall thereafter be taken.

14. The petition thus stands disposed of as aforesaid. The security amount, if any, shall be refunded to the Petitioner after verification.