
(2008) 09 GAU CK 0068
In the Gauhati High Court

Dr. Ranjit Reang	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (2008) CriLJ 4607 : (2009) 1 GLR 325 : (2009) 2 GLT 278

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. P. Rathor, learned Counsel appearing for the petitioner. Also heard Mr. S. Chakraborty, learned Govt. Advocate who represents the official respondents.

2. The petitioner, a Medical Officer, posted in a Government Dispensary under Dhalai District has filed the present petition seeking appropriate action against the Tripura Government and the Police Authorities for the unauthorised detention and physical assault on the petitioner by the police when they took him into custody on 2-7-1998 till his release the next day without registering any case against the petitioner.

3. All circumstances pertaining to the instant writ petition need not be narrated since the District and Sessions Judge, West Tripura, conducted an inquiry into the incident and a report in this regard was submitted by the Judge on 10-12-1998.

4. From the inquiry report dated 10-12-1998 of the District and Sessions Judge who has referred to the evidence of the eye-witnesses (PW-4 and PW-5), who were neighbours of the petitioners and who saw the police personnel giving slaps on Dr. Ranjit Reang (the petitioner) when he was being taken into custody at about 10/11 p.m. on the night of 2-7-1998.

The medical evidence of Dr. A.K. Mahapatra who stated that on examination of

the petitioner on 3-7-1998, obviously after he was released from custody, he found that the left ear drum of the petitioner was perforated and the petitioner was complaining of pain and hearing loss because of the injuries suffered by him in the left ear due to slapping by the police, was also recorded in the Enquiry.

5. The Inquiry Officer found that the injury suffered by the petitioner was not very simple and not without any risk and accordingly concluded that force have been applied to the petitioner by the police while they took him into custody on 2-7-1998 and because of such force, the petitioner is likely to have sustained injury on his ear.

However the Inquiry Officer did not find any evidence to show that the respondent No. 4 Arindam Nath, Deputy Superintendent of Police and Respondent No. 5 Rupak Kumar Chakraborty, the Officer-in-charge of West Agartala P.S. had given any orders to the police constables to assault the petitioner. From the inquiry report it could not also be gathered as to which amongst the 10/12 police constables who took the petitioner into custody on 2-7-1998 assaulted the petitioner.

6. The version of the police is that they were on the look out of one Madan Debbarma and the petitioner did not co-operate with police in apprehending the said wanted person and by keeping silent the petitioner also mislead the police. This is submitted to be a cause for the police getting angry which might have resulted in some physical act against the petitioner.

7. In a society, where Rule of Law is paramount and when there is no evidence to suggest that the petitioner resisted the police from arresting him, and particularly when police force numbering 10/12 were present along with CRPF personnel at the time of arrest of the petitioner, no force whatsoever could perhaps be justified in the process of taking the petitioner into custody. Therefore, the force or assault, resorted to by the police, was obviously unnecessary. The force used cannot also be described as simple pulling and shoving as the injury suffered by the petitioner has been described by the Inquiry Officer as not very simple and a risky one. The injury has led to perforation of the petitioner's left ear drum and loss of hearing as has been established through medical evidence. Obviously such injuries were inflicted through slaps administered to the petitioner at the time of arrest by the police and slaps were definitely of sufficient force to have caused such permanent injury.

8. The petitioner herein was a Medical Officer and although he was taken into custody by the police and detained for the night in the police station on 2-7-1998, he was not arrested against any specific case and was released on the next date i.e. on 3-7-1998 without any case being registered against him. The police personnel assaulted the petitioner at the time of his arrest by administering slaps to him, which is found to be established in the inquiry. There was no justification at all for the police even if the petitioner was a wanted person, to have resorted to force at the time of his arrest as the petitioner was

unarmed and was not resisting arrest, and there were 10/12 police personnel present who could have made the arrest without using any force whatsoever.

9. Therefore, the use of force and assault on the petitioner by the police obviously transgressed the authority of the police to make an arrest even if the arrest is considered to be justified. The police must not exceed the powers, which have been entrusted to it and it must duly perform the duties which have been laid upon it. If it does not do so, they must answer for it.

10. Although the names of the individual police personnel who humiliatingly assaulted the petitioner in front of his neighbours are not available, the State must be considered answerable and also to be vicariously liable to pay damages in Public Law for the unjustified assault of its police. Of-course the actual quantum of damages may be assessed appropriately through proceeding in Private Law to claim damages. But when a writ Court finds unjustified police assault established through enquiry it would certainly be entitled to order compensation as a Public Law remedy when violation of fundamental rights guaranteed under Article 21 of the Constitution of India is established. The right of a Writ Court to grant such compensation has been crystallized in a series of cases and reference may be made to Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,

In Nilabati Behera (supra), the Supreme Court laid down the following principles:

(A)ward of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

* * * ...enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

...a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

11. Having regard to the above decision and considering the facts in the instant case, I am of the opinion that compensation in Public Law ought to be directed to be paid by the State for the humiliating and unauthorized assault caused on the petitioner by the State police personnel on 2-7-1998, which led to perforation of the left ear drum of the petitioner and loss of hearing of the said ear. This assault has certainly infringed his rights guaranteed under Article 21 of the Constitution. Of course by granting this compensation, the right of the petitioner to seek damages in private law is not extinguished.

12. Accordingly this writ petition stands allowed by directing the State authorities to pay a compensation of Rs. 20,000/- (Rupees twenty thousand) only to the petitioner for the unauthorized assault on his person by the police personnel on 2-7-1998 while they took him into custody. The State must make this payment to the petitioner within a period of 2 months i.e. by 7-11-2008. In default the compensation would be paid with interest @ 7% from the due date till actual payment.

13. A copy of this Court's order be furnished immediately to Mr. P. Rathor, learned Counsel for the petitioner and Mr. S. Chakraborty, the learned Government Advocate for communication with the competent authorities.