
(2003) 08 JH CK 0099

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4640 of 2002

Dwarika Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Jhar 66 : (2005) ACJ 1605 : (2004) AIR Jhar HCR 828 : (2004) 14 AllIndCas 788 : (2003) 4 JCR 695

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : S.B. Gadodia, Pankaj Kumar and Sumeet Gagodia, for the Appellant; M.L.K. Chitra, JC to SC-I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this writ application, the petitioner prays for a direction upon the respondents to pay compensation to him and to provide appointment to the dependent of deceased Rajnish Prasad @ Dablu who died in a bomb explosion. The petitioner is the father of deceased Rajnish Prasad @ Dablu.

2. The petitioner has stated that on 7.12.2001 Dablu died in a bomb blast in the house of one Bramhdeo Sharma and this incident occurred on account of police negligence who had directed the deceased to open a parcel containing a live bomb. It has further been stated that on the fateful day, one Bramhdeo Sharma informed the police that he had received a parcel which was delivered by a postman. Considering the size of the parcel he kept the same at the back of the house on a wooden log and tried to remove the cover. He found a lunch box inside the parcel and the corners were sealed with leukoplast. He became suspicious. Thereafter he informed the police and a wireless message was sent by the Daltonganj Police Station to the patrolling party. Thereafter the said patrolling party consisting of other police personnel including the Police Inspector reached the house of Bramhdeo Sharma. The petitioner has then stated that the

Inspector of Police called the son of the petitioner namely Rajnish from his STD Booth which was situated adjacent to the house of Bramhdeo Sharma and asked him to open the lunch box. The said Rajnish Prasad, under orders of the police, opened the lunch box and no sooner had he done so that there was a spontaneous explosion. Rajnish died on the spot and even some of the Police Officers including the Chowkidar were also injured. In support of the aforesaid contentions, the petitioner has annexed a news paper clipping has been marked Annexure-1.

3. The petitioner has further stated that the incident took place due to utter negligence on part of the police and that instead of forcing the petitioner's son to open the parcel and the lunch box, they should have summoned explosive experts for diffusing the live bomb. But instead of doing so, they called the petitioner's son who was the owner of the STD booth and who used to earn about Rs. 5,000/- per month. It has further been stated that his family consisted of his father (petitioner), mother and two brothers. It has also been stated that none of the family members had any other source of income except the pension which the petitioner earned after retirement from a Class-IV post.

4. The petitioner has further stated that various representations were filed vide Annexure-2 series for compensation and employment but none have been considered till now.

5. In the Counter Affidavit filed on behalf of the Superintendent of Police, Palamau the statements made in paragraph-9 are as follows :--

"9. That in reply to the statements made in paragraph-5(v), (vi), (vii) and (viii) of the Writ Application, it is stated that unaware of the contents of the parcel, the police party alongwith the son of the petitioner tried to open the parcel and in the subsequent explosion, the son of the petitioner was killed while the members of the police party suffered serious bomb blast injuries. The son of the petitioner himself volunteered to open the parcel and cut open the parcel with the help of the cutting instrument. It is, therefore, incorrect to say that the son of the petitioner died due to negligence of the police authorities. Rather, the police personnel themselves suffered grave injuries in the above mentioned incident. The complainant of the case was aware of the contents of the parcel, but did not inform the police party and the son of the petitioner, who fell a victim to the conspiracy hatched by the complainant in an effort to implicate his rival, viz., Girjija Tiwary."

6. Thus, from the aforementioned statements made in the Counter Affidavit, it is clear that what the parcel contained was not known to anybody and being unaware of the contents of the parcel, the police party and the son of the petitioner tried to open the same. The other thing, which has been stated in the Counter Affidavit, was that the son of the petitioner himself volunteered to open the parcel. The other relevant fact which become evident is that the members of the police party also suffered serious bomb blast injuries.

7. For the reasons, it cannot be said that there was "willful" and/or "deliberate" negligence on the part of the police. However, what cannot be lost sight of is that although there was no deliberate and/or willful negligence on the part of the police, yet the fact remains that having been informed about a suspicious article, they should not have volunteered to open the same themselves and above all, they should never have allowed the son of the petitioner to participate in any adventurous activity. The fact that information was given to the police of a suspicious article and the fact relating to a joint effort of opening the same by the police along with Rajnish @ Dablu is evident from the police supervision report which has been brought on record vide Annexure-A appended to the Counter Affidavit. To that extent, therefore, the State and/or its officers failed to protect the life of Rajnish @ Dablu.

8. In a judgment of this Court passed in the case of "Sametri Devi and Anr. v. State of Jharkhand and Ors." reported in 2003 (2) JLJR 254 , an Hon"ble Single Judge, while granting compensation of Rs. 1,00,000/- has held that it is the duty of the State to protect the life of the people and if the State fails to protect the life, liberty and property of the people, then the affected persons are entitled to get compensation from the Government.

9. In the instant case, it has been held in the foregoing paragraphs that the police, having not called explosive experts, acted in a manner which failed to protect the life of the deceased Rajnish @ Dablu. However, taking into consideration the fact that even the members of the police party were seriously injured owing to the bomb blast, it cannot be held that there was "gross", "deliberate" and/or "willful" negligence on the part of the police. But the fact remains that there was certainly an element of negligence and for which even the Superintendent of Police recommended, vide Annexure-D/1 appended to the Counter Affidavit, that the heirs of the deceased should be appropriately compensated. At paragraphs 8, 9 and 10, the petitioner has stated that the deceased was running an STD Both and also had a small electrical shop and his income from both these was about Rs. 5,000/- per month. It has further been stated in the same paragraphs that the deceased had a father (Petitioner), mother and two brothers and that none of the members of the family have any other source of income except the pension which the petitioner earns each month after retirement from a Calss-IV post. It has also been stated that the members of the. family were dependent upon the income of the deceased Rajnish Kumar @ Dablu. It has also been stated that Rajnish Died due to the bomb explosion.

10. The aforementioned paragraphs 8, 9 and 10 have not been controverted by the respondents in their Counter Affidavit. All that they have said is recorded at paragraph- 11 of the Counter Affidavit where it has been stated that "the statements and submissions made in paragraphs 8 to 15 are matters of records and require no comments from the answering respondents."

11. In the aforementioned judgment quoted above i.e., in the case of "Sametri

Devi and Anr. v. State of Jharkhand and Ors." reported in 2003 (2) JLJR 254" an Hon"ble Judge of this Court granted a sum of Rs. 1,00,000/- to each of the petitioners by way of compensation in a case where the husbands of the petitioners therein were brutally murdered by the extremists. In the backdrop of such an event, this Court held that it is the duty of the State to protect the people and if it fails to do so then affected persons are entitled to compensation from the Government.

12. In another case, a six year old child fell into a 10 feet deep sewerage Tank in the city of Madras. The Tank was not covered and was left open. The mother of the child moved Hon"ble Madras High Court for compensation. The High Court dismissed the writ petition on the ground that in writ jurisdiction, it was not possible to determine as to who was negligent in leaving the sewerage tank uncovered. In appeal, the Hon"ble Supreme Court of India set aside the judgment of the High Court of Madras and directed the State of Tamilnadu to pay a sum of Rs. 50,000/- with interest at the rate of 12% per annum. That judgment is reported in Smt. Kumari Vs. State of Tamil Nadu and others, .

13. In another case of custodial death in the case of "Bahlen Balmuchu v. State of Bihar," reported in 2003 (3) JCR 198", this Court granted total compensation of Rs. 10,00,000/-. However, that compensation was granted in the peculiar circumstances of that case because in the case the person died after having been brutally assaulted by the police, while he was in custody.

14. This Court has already held that this is not a case of such gross negligence and therefore monetary compensation to such a huge extent cannot be made applicable in the facts and circumstances of this case.

15. However, and as has already been held in the foregoing paragraphs, there may not have been gross negligence but there was certainly an element of negligence because instead of calling experts to diffuse the live bomb, the police took upon itself the burden of opening a box. the contents whereof was not known to them but was suspected to be containing a live bomb. In their curiosity, they allowed the petitioner's son to participate and even if he had himself volunteered to open the parcel, the members of the police party should not have allowed him to do so. Thus, even if it is not a case of gross negligence, it can at best termed to be a case of a carefree and/or non chalant attitude on the part of the members of the police. But such attitude proved fatal to the members of the family of the deceased and snatched away their bread winner a disastrous consequence which has to be compensated.

16. The case of the petitioner is that the deceased had STD Booth and was also running a small shop of electrical goods from which he was earning Rs. 5,000/- per month. If the STD Booth was in the name of the deceased then the State must take all steps and ensure that the said STD Booth continues to function and if it was in the name of the deceased then all steps should be taken so that the licence is transposed and/or given in the name of one of the brothers of the

deceased as per the desire of the petitioner. The other brother of the deceased should be provided with the employment so that the family is able to survive. Over and above the aforementioned acts which the State must perform, the petitioner would be paid compensation of Rs. 1,00,000/- (Rupees One Lakh) only. With the aforementioned observations and direction, this writ petition is allowed. There shall however, be no order as to costs.