
(2009) 06 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (C) No. 7855 of 2003

Gauranga Ch. Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Citation : (2010) 1 GLR 706 : (2009) 4 GLT 600

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R.P. Sarmah, A.R. Medhi and T. Roy, for the Appellant; H. Rahman and R. Chakraborty, for the Respondent

Judgement

B.K. Sharma, J.—This writ petition is for adequate compensation for the particular action on the part of the army which the petitioner alleges to be unauthorised. In the particular action, the son of the petitioner was shot at by the army personnel from a short distance, as a consequence of which he had to undergone treatment and allegedly sustained permanent disability to his left leg.

2. As the story goes, it was on 4.4.2002 the victim Sri Dhruba Das @ Dipu was on his duty in the office of the daily newspaper namely Dainik Jugasankha of which he was an employee. After finishing his job, while he was coming back to his residence at morning hours, he was surrounded by some unidentified persons with arms in the campus of the newspaper office. Being frightened, Dhruba started running towards the nearby hotel namely Krishna. While he reached the hotel, he was again surrounded by the said armed personnel and apprehended him. Dhruba then disclosed his identity as an employee of the said newspaper. However, the said armed personnel did not listen to him and fired at him from a short distance, which resulted in serious injury on his left leg (left thigh).

3. As a consequence of the said bullet injury, Dhruba fell down on the floor of the hotel. The owner of the hotel identified Dhruba and told the armed personnel that Dhruba was an employee of the newspaper. Thereafter, the said personnel

took Dhruba to Silchar Medical College where he was admitted. Hearing the news, the petitioner, i.e., the father of Dhruba rushed to the Hospital and could come to know about the whole incident. He also came to know that the armed personnel were in fact Army personnel and they were in search of Kuki extremists on receipt of a secret information.

4. After the incident, the employees of the newspaper including one Sri Nilotpal Choudhury, the Finance Controller also rushed to the Hospital. The petitioner informed the incident to one Sri Shyamal Prasad Saikia, Additional Superintendent of Police, who had gone to the Hospital on receipt of the information regarding the incident. The police recorded the statement of Dhruba and carried out investigation. The police allegedly intimidated the petitioner and others who had gathered in the Hospital that such incident had occurred due to non-cooperation of Army personnel with the local police.

5. In the writ petition, the petitioner has also annexed the newspaper reports relating to the incident including the statement of one Sri Narendra Mohan Dutta, DIG of Southern Range, in which he had stated about the search operation against the Kuki extremists and that before the operation the Army should have informed the local police. It is the case of the petitioner that because of such irresponsible and careless firing of the Army personnel, his son suffered the injury with the resultant effect of weakening of his left leg. His son was operated upon with the advice of further operation. Copies of the medical certificates have been annexed to the writ petition. It appears that on the first occasion the victim was discharged on 9.4.2002 after he was admitted on 4.4.2002 and on the second occasion, he was admitted on 25.6.2002 and discharged on 30.6.2002.

6. An FIR was lodged on 4.4.2002 (Annexure-D) narrating the aforesaid incident and the police registered PS. Case No. 447/2002, but according to the petitioner no action followed. His several approaches to the authorities for adequate compensation also did not yield any result. According to the petitioner, his son remained bed ridden for about 8/9 months and he was incapable of living a normal life.

7. It is in the aforesaid circumstances, the petitioner has filed this writ petition claiming compensation to the tune of Rs. 5,00,000.

8. The respondents have filed their counter affidavit. Their stand is that there was no irresponsible or careless firing in the public place and that the single shot was fired and that too on the lower limbs of the victims, who was suspected to be an extremist and such action was taken to prevent him from breaking the cordon and flee away. According to the respondents the son of the petitioner was in the hotel at early hours of the morning from where three hardcore militants were apprehended. It is their stand that in spite of the warning by the Army personnel to stop, Dhruba tried to break the cordon and flee away which compelled one member of the petrol party to fire a single shot in his lower limbs. Thus, according to the respondents the action was resorted to when Dhruba, who

was suspected to be a militant tried to flee away from the place.

9. In the affidavit, it has further been stated that after the unfortunate incident, all possible help was rendered to Dhruba. A job was arranged for him at Dilkhush Tea Garden. He alongwith his parents was constantly attended to and at no stage, they had indicated any financial hardship. The writ petition having been filed after more than a year of the incident, it is the assertion of the respondent that the case made out by the petitioner is motivated.

10. During the course of hearing of the writ petition and having regard to the nature of the controversy it was felt necessary to cause an enquiry relating to the incident and accordingly by order dated 14.8.2008 a direction was issued to the Deputy Commissioner, Cachar, Silchar to cause an enquiry and furnish report. Pursuant to such direction, the District Magistrate, Cachar, Silchar, vide his letter dated 30.3.2009 addressed to the learned State Counsel has furnished the report dated 4.3.2009 addressed to the Deputy Commissioner, Cachar, Silchar.

11. As per the aforesaid report, the victim was working as Night Chowkidar in the office of the newspaper namely Dainik Jugasankha. On the fateful day, i.e., 4.4.2002, in the morning hours, when he came out from the office, some persons masked with black cloths, came near to him and fearing them to be members of extremists outfit, Dhruba ran inside the hotel called Krishna. Thereafter, the Army personnel fired at him causing the aforesaid injury. Thereafter, they took him to Silchar Medical College Hospital for treatment. His treatment continued for 15 days and he had to be operated upon twice and even after be released from Hospital he had to attend the Hospital time to time for about a year.

12. Thus, as per the report, the son of the petitioner was fired at due to suspicion as he tried to break open the cordon and run away from the place. After the incident, three members of an extremist organisation were apprehended. According to the Army the operation was carried out while on duty in accordance with the law and the power vested on them vide AFSPA. 1958/1983.

13. While Mr. A.R. Medhi, Learned Counsel for the petitioner, during the course of his submission put emphasis on lack of care and responsibility on the part of the Army personnel in taking recourse to unnecessary firing resulting in serious injury to the son of the petitioner, Mr. H. Rahman, learned Assistant Solicitor General of India, referring to the above factual aspects of the matter submitted that the entire action on the part of the Army personnel was bona fide, although unfortunately the son of the petitioner sustained injury. Ms. R. Chakraborty, learned Additional Senior Government Advocate, referring to the aforesaid report of the District Magistrate, submitted that having regard to the facts and circumstances involved in the case, it may not be a case of awarding compensation in public law remedy. Mr. Medhi, learned Counsel for the petitioner has placed reliance on the decision of this Court in Tekarongsan and Others Vs.

Union of India (UOI) and Others, .

14. I have considered the submissions made by the Learned Counsel for the parties and the materials on record including the report of the District Magistrate.

15. There is nothing much of a debate relating to the occurrence of the incident. While it is the case of the petitioner that his son was unnecessarily fired at by the Army personnel even after disclosure of his identity, it is the case of the Army that the single firing was resorted to due to the circumstances in which the petitioner instead of cooperating with Army tried to escape even by breaking open the cordon. The matter will have to be considered in the back ground of the fact that there was an Army operation to apprehend some militants and the said operation was carried out on receipt of secret information. The matter will also have to be viewed taking into account the subsequent conduct of the Army in rendering all possible assistance to the victim and providing him a job, which fact has not been denied by the petitioner.

16. In absence of any counter affidavit filed by the State respondents, it is not discernible what exactly is its stand in the matter. Although, in the writ petition, the petitioner has referred to certain newspaper reports containing the statement of the State police that there was lack of cooperation on the part of the Army personnel with the local police, which resulted in the unfortunate incident, but such statements have not been owned by the State respondents in this proceeding. In the report of the District Magistrate, the version of the Army is vindicated. What had happened is that when the Army conducted the search operation on receipt of specific actionable intelligence that some insurgents belonging to Kuki Revolutionary Army (KRA) had come to the area, they met with Dhruba, who out of fear ran towards the hotel and from there also tried to break open the cordon to get away from the Army personnel. It was in that kind of a situation, the Army took recourse to firing injuring the victim at his lower limb.

17. Unlike the case of Tekarongsen (*supra*) in which there was indiscriminating firing resulting the loss of life and grievous injury, same is not the case in the instant case. The victim was first cautioned by the Army, but when he tried to break away the cordon and run away, the Army fired at him (a single shot) and that too at the lower limb. It will have to be borne in mind that the Army was in search of insurgents belonging to KRA and in fact three of them had been apprehended from the same place. Thus, it cannot be said to be a case of culpable negligence. It is not known as to in what circumstances the Army personnel were not accompanied by the local police personnel, which is the normal practice in case of any search operation of that nature.

18. It is on record that the respondents had rendered all possible help to the son of the petitioner during his hospitalisation and have also provided him a job in the particular Tea Garden. The kind of situation in which a single firing was resorted to and the nature of the injury sustained by Dhruba, clearly indicates

that the action was not motivated and/or was out of sheer negligence. At the same time, the particular approach on the part of Dhruba to run away from the place by breaking open the cordon also cannot be faulted with as he was nervous and scared. As the Army was in search of insurgents of extremist organisation, it was but natural for them to fire at him, which was by way of a single shot and that too at his lower limb with the intention of causing minimum injury. This being the position, it cannot be said to be a case of indiscriminate firing or firing without any rhyme and reason.

19. Considering all the above aspects of the matter, I am of the considered opinion that the Army personnel involved in the incident cannot be said to be guilty of any offence. What they did was under compulsion and bona fide. Their subsequent action in rendering help to the victim and providing job to him is laudable. However, there is no explanation as to why in such an operation there was no intimation to the local police enabling them to accompany the Army personnel. It was but natural for the victim to be apprehensive seeing the Army personnel masked with black clothes. As stated in the writ petition, he suspected the Army personnel to be the militants and became apprehensive of his death in their hands. It was in such a situation he tried to run away, but not before disclosing his identity with the help of the newspaper in his hand. As to whether, the newspaper alone was sufficient to disclose his identity is altogether a different matter.

20. Considering the above aspects of the matter and the fact that the victim had to be operated twice and was under constant medical treatment for about a year, I am of the considered opinion that justice would be met if the victim is made entitled to an amount of Rs. 50,000 is the expenditures incurred towards treatment.

21. Writ petition is disposed of with the direction to the respondent Nos. 2 and 3 to make the payment of Rs. 50,000 to the son of the petitioner as expeditiously as possible, but at any rate not later than 31st August, 2009.