
(2006) 05 GAU CK 0060
In the Gauhati High Court

J.S.Ringkahao Jajo

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0060

Hon'ble Judges : R.B.Misra, J

Bench : Single Bench

Advocate : K.Kumar Singh, Y.Z.Shimray, Th.Ibohal Singh, Advocates appearing for Parties

Judgement

1. Heard Mr.Y.Z. Shimray, learned counsel appearing on behalf of the petitioner, Mr.K. Kumar Singh, learned CGSC for the respondents 1, 3 and 4 and Mr.Th. Ibohal Singh, learned state counsel for the respondent no.2.

2. The petitioner has prayed for holding an independent judicial enquiry or a C.B.I. enquiry in the matter of death of Miss Deborah Jajo, daughter of J.S. Angai of Thangchingpokpi Village who was killed by the Rashtriya Rifles Force on 21st January, 1998. The facts as described on behalf of the petitioner are that the village Thangchingpokpi is a small village consisting of 39 houses perching mostly inhabited by Tangkhul tribe of Manipur with a total population of 160, however worst affected under insurgency operation. On 21st January, 1998 at about 8 a.m. the Rashtriya Rifles personnel for the second time attacked the said village in the name of counter insurgency operation called "GEN" and by surrounding the whole village started open fire at U.J.B. School building and the house of one Hopson. Miss Daborah Jojo was staying with her parents and her relatives in the School building as her house was burnt down/destroyed in fire at the instance of the respondents on 22.12.1997. During the process of indiscriminate firing by Rashtriya Rifles over the said School, Miss. Deborah Jojo, a student of Mapithel Arma Govt. High School who was to appear in the ensuing H.S.L.C. examination, 1998., was shot dead. Many individuals and social organizations namely Tangkhul Student Union, Thangkhul Shanalong (Women

Union) had lodged complaint to the Deputy Commissioner, Ukhrul land and had submitted a number of memorandums to the Chief Minister of Manipur of State of Manipur for making judicial inquiry in reference to the death of Deborah Jojo and for adequate compensation to the deceased's family, when nothing turned favourably the petitioner has preferred the present writ petition.

3. Whereas, according to the respondents ethnic tension and clashes were reported Kuki and Naga tribes at Keithelmanbi village from November, 1997 to January, 1998 which had even led to burning of some villages. In order to ease out the tension and to bring the normalcy a unit of Rajputana Rifles was ordered to establish a post at Keithelmanbi on 19th November, 1997, thereafter the troop from there carried out operation in the area so as to establish the confidence of the local people and to curb insurgency. On 28th Jan. 98 at 2300 hours it was reliably learnt from a source that some of armed insurgents with sophisticated weapons were operating in the area of Thangjingpokpi, therefore, an operation was arranged but exchange of fire between the insurgents and army column lasted for about 30 minutes. Two insurgents belonging to NSC of Nagaland (IM) group were killed and their bodies were recovered with weapon. The other members of the group managed to flee from the side. Additional army column were put into action as reinforcement to pursue the fleeing insurgents. They fired back indiscriminately over the operating unit. In the cross firing one civilian girl was killed by the bullet of the insurgent while she tried to run away from the area where the insurgents were taking shelter. A large quantity of illegal arms and ammunitions were recovered from the area. The operation undertaken by the security force was under the provisions of Armed forces Special Power Act, 1958 and the counter firing was also in self defence.

4. In view of the direction of this court dated 12.5.2000 passed in the present writ petition, the District Judge conducted the fact finding enquiry in respect of the killing of Miss. Deborah Jajo on 21.1.1998 at 8 a.m. in the hands of Rashtriya Rifles. The District Judge after examining as many as 5(five) PWs and also examined about 5 RWs(respondentwitnesses) and after taking into consideration of the materials on record, PWs and RWs has arrived at a finding that Miss Deborah Jojo was shot dead by the army personnel on 21.1.1998 at the said village, and respondents were responsible for such killing.

5. According to the learned counsel for the petitioner, the principles laid down by the Apex Court in (1997) 1 SCC 416: D.K. Basu vs. State of W.B. is also applicable in the present case, where apparently life of a person has been taken away therefore in peculiar facts and circumstances the petitioner claimant is entitled to be given exemplary compensation amounting to Rs.6 lakhs under the public law in addition to private law remedy to be kept open for tortious action and punishment of wrongdoers under the criminal law. According to the learned counsel for the petitioner, this court in 2003(2) GLT 501: HEO RULHO VRS UNION OF INDIA & ORS. Decided in reference to the decision of the Apex Court in (2000) 2 SCC 465: Chairman, Railway Board & Ors vrs Chandrima Das (Mrs.) &

Ors. had awarded compensation of Rs.6 lakhs to the father of the victim girl who was killed by the army men while on active service but was subsequently convicted under the court martial proceedings. It was observed in *Chairman, Railway Board & Ors vrs Chandrima Das (Mrs.) & Ors. (Supra)* as below:

? Having regard to what has been stated above, the contention that Smt.Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law.?

6. According the learned counsel for the respondents, the fact finding report of the District Judge is not free from comments and procedural infirmities; therefore, the same cannot be relied upon. The said incidence where Miss Deborah Jojo had died by the firing of Rashtriya Rifles during an incidence which took place in the area for the second time was under the influence of insurgency where Rashtriya Rifles were endeavouring to restore peace and in bona fide exchange of firing, the bullet might have killed the said girl, Miss Deborah Jojo. However the said incidence cannot be a deliberate attempt against an individual. In the facts and circumstances the fact finding report of the District Judge is not enough for granting compensation to. The learned state counsel appearing for the state respondent has relied on the following decisions of the Apex Court:

(1) In 1997 (11) GLT (SC) 22: *People's Union for Civil Liberties vrs Union of India & Anr.*; where compensation of one lakh was awarded .

(2) In 2002 (3) GLT 367: *S. Saikia vrs Union of India & Ors.*; a compensation of Rs.1.25 lakhs was awarded;

(3) In 2004(3) GLT 1: *Mohon Das vrs Union of India & Ors.*; a compensation of Rs.1.5 lakh only was awarded.

(4) In 2003 (3) GLT 163: a compensation of Rs.2 lakhs was awarded.

7. According to the learned counsel for the state government, awarding of compensation of Rs.6 lakhs in case of *HEO RULHO (supra)*, to the father on the death of his daughter cannot be a matter of precedence as the army man was said to responsible in killing the young girl was identified and was convicted under court martial proceedings, therefore, the facts and circumstances of *HRO RULHO (supra)* is different and distinguishable.

8. I have heard the learned counsel for the parties and have perused the fact finding report of the District Judge and the materials available on record. The District Judge has taken into consideration the PWs and RWs and has analyzed these properly and has arrived at the finding that Miss Deborah Jojo was killed by indiscriminate firing of the Rashtriya Rifles. There was no scope of any doubt over the fact finding report of the District Judge.

9. In keeping in view the totality of facts and circumstances a compensation of Rs.3 lakhs is being awarded to the petitioner in reference to the death of Miss. Deborah Jojo, to be paid within 3(three) months from the date of receipt of the judgment and order by the respondents 1,3& 4.

10. In view of the above observations and directions, this writ petition is disposed of. No order as to costs.