
(2014) 07 MAN CK 0006
In the Manipur High Court
Case No : W.P.(C) Nos. 773 and 774 of 2008

Kabrabam Ojit Singh

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Citation : (2014) 07 MAN CK 0006

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ph. Sanajao, Advocate for the Appellant; R.S. Reishang, GA and Amarjit Naorem, CGSC, Advocate for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, C.J.—The petitioner in W.P.(C) No. 773 of 2008 is the mother of one late Kabrabam Ranjit Singh. The petitioner in W.P.(C) No. 774 of 2008 is the wife of late E. Kanto Singh. Both the writ petitions have been filed for fixing responsibility on the officers of 21 Assam Rifles for illegally causing death of Kabrabam Premjit Singh and E. Kanto Singh and a further prayer has been made for grant of compensation. Since both the writ petitions involve same issues and both the deceased persons are alleged to have been taken away by the officers of 21 Assam Rifles on the same day and their dead bodies were found on the next day, both the cases were heard together and are disposed of in this common judgment.

2. The case of the petitioner in W.P.(c) No. 773 of 2008 is that on 24.4.2008 at about 3.00 a.m. she, alongwith her two sons including the deceased Premjit Singh, heard the presence of some persons outside their house and she also heard a knocking sound at the door. When she was about to open the door, it was kicked open and the security personnel in uniform belonging to 21 Assam Rifles rushed inside the house, without any reason. They wanted to know about whereabouts of deceased Premjit Singh. While searching, they found other son of the petitioner sleeping on the bed. They rudely woke him up by slapping his face

3/4 times. In the mean time, the petitioner called out her deceased son Premjit Singh. Thereafter, the security personnel ordered all the occupants of the house to sit quietly at the verandah and took away deceased Premjit Singh in their vehicle.

On the same day, at about same time while the petitioner in W.P.(c) No. 774 of 2008 was sleeping with her husband E. Kanto Singh and their baby boy were sleeping, she heard the presence of some persons outside their house. Some of the relatives were also staying with them. The petitioner woke up her deceased husband and when they opened the door, they saw some security personnel in uniform belonging to 21 Assam Rifles near the door. When the petitioner inquired as to why they were in the house, instead of giving any reply, they forcibly entered into the house and dragged her husband (deceased) out of the house. They also confiscated some wearing apparels of the petitioner's husband (deceased) and left the place alongwith the deceased. While leaving the place, they also threatened the inmates to maintain silence. Both the petitioners having no alternative raised alarm in the locality. The petitioners and some of the villagers assembled and decided to report to the local MLA. Accordingly, representatives of the locality numbering about 6 (six) persons met the MLA in her house and thereafter, went to Kakching PS and lodged their respective reports about the incident.

On 25.4.2008, at about 3.30 a.m., the petitioners and some of the residents of their locality heard the intermittent sound of gun firing within the vicinity of their locality. On the next day, two of the residents of the locality went to the Kakching PS to inquire about the matter. In the morning of 25.4.2008, the petitioners also received news that bullet ridden bodies of two youths were lying near the Kharungpat Buffalo farm. Further, the dead bodies have been handed over to Kakching PS and the said dead bodies were of Kubrambam Premjit Singh and Elangbam Kanto Singh. It was also learnt that a false written report was lodged by the Subedar of 21 Assam Rifles with the Officer-in-Charge of Kakching PS at the time of handing over the dead bodies of late K. Premjit Singh and late E. Kanto Singh. It was alleged that an operation was launched by troops of 21 Assam Rifles consisting of 23 members. At about 1.00 a.m. of 25.04.2008 in and around Kharungpat Buffalo Farm, gun battle took place between armed undergrounds who were the deceased persons. From the spot, 2 chinese 9 mm pistols, 4 live rounds along with two fired cases and 2 magazines were recovered from the possession of the deceased persons.

3. Both the petitioners specifically stated that the two deceased persons were not members of any underground group and they were not involved in any criminal activities. For the reasons best known to 21 Assam Rifle personnel, the deceased persons were picked up at night from their respective houses and were killed near the Kharungpat Buffalo farm. On these allegations, the two writ petitions have been filed praying for payment of compensation as well as for fixation of responsibility on the officers who caused death of the two deceased persons.

4. During pendency of the writ petitions, by an order dated 20.03.2009, the Court directed the learned District & Sessions Judge, Manipur West to conduct an inquiry with regard to the death of the two deceased persons and submit a report. In compliance of the said order, learned District & Sessions Judge, Manipur West has submitted a report holding that the two deceased persons were lifted from their respective houses and were killed by the 21 Assam Rifles.

5. The respondents have filed an objection to the above report of the District & Sessions Judge, Manipur West on the allegation that the evidence collected in course of the inquiry has not been properly appreciated by the learned District & Sessions Judge, Manipur West and a report has been submitted holding that 21 Assam Rifle personnel involved in the incident were guilty of killing the two deceased persons after lifting them from their respective houses at the dead of night.

6. On examination of the order sheet, we find that when both the writ petitions were taken up on 10th May, 2013, it was submitted on behalf of the respondents that some cases relating to "fake encounter" are pending before the Supreme Court and therefore, these two cases should await disposal of the above cases pending in the Supreme Court. The Court accordingly deferred hearing of the two writ petitions awaiting final outcome of the Supreme Court's decision to be rendered in one PIL regarding fake encounter. Thereafter, the case was listed on one occasion and the petitioners insisted upon to hear the writ petitions without awaiting for disposal of the cases pending before the Supreme Court as stated above. These writ petitions were filed in 2008 and the incident occurred in April, 2008. In the mean time, 6 years have passed. We, therefore, thought it proper to consider the two writ petitions and dispose of the same.

7. The learned District & Sessions Judge, Manipur West, after examination of witnesses in course of inquiry came to the following conclusion:

37. In the conclusion on the basis of the available evidence on record discussed above, the finding is that the two deceased persons namely Kabrambam Premjit Singh son of Kabrambam Ongbi Amusana Devi (In W.P.(c) No. 773 of 2009) and Elangbam Kanto Singh, husband of Elangbam Ongbi Sunita Devi (In W.P.(c) No. 774 of 2009) were picked up/apprehended from their respective houses at about 3 a.m. of 24.4.2008 by the security personnel and were killed on 25.4.2008 at about 3.45 a.m. by the security personnel of 21 Assam Rifles near the Kharungpat Buffalo farm. The existence of an encounter between the deceased two persons and the security personnel of 21 A.R. on 25.4.2008 at about 3.45 a.m. is not supported by any credible evidence.

8. An objection has been raised by the learned counsel appearing for the respondents that the said conclusion arrived at is without appreciating the evidence adduced in course of the inquiry. From the record of inquiry, we find that 4 witnesses were examined on behalf of the petitioners and two witnesses were examined on behalf of the respondents. Though we are not sitting in an

appeal over the report of District & Sessions Judge, Manipur West, considering the objection raised by the respondents, we perused the evidence collected in course of the inquiry. All the witnesses examined on behalf of the petitioners including the petitioners have repeated the same story that in the night of 24th April, 2008, 21 Assam Rifles personnel forcibly entered into the house of the both the deceased persons, lifted them in their vehicle and on the next day i.e. on 25th April, 2008, their dead bodies were found near the Kharungpat Buffalo farm. In the night also, they heard sound of gun fire whereafter, dead bodies were found.

The two witnesses examined on behalf of the respondents are Subedar and Havildar of 21 Assam Rifles respectively. RW-1 examined on behalf of the respondent stated that on 24.4.2008 at around 9 p.m. 23 jawans were called by Major Dixit to his office. They were again directed to come to his office on 12.30 a.m. of 25.4.2008 to conduct an operation at general area of Kharungpat area near the Kharungpat Buffalo farm. It was informed to them that three or four members of the UNLF were loitering in the area. Accordingly, at 12.30 a.m. of 25.4.2008, 23 jawans reported in the office and moved to the place of ambush at about 1.00 a.m. They left the camp in three vehicles. Ambush was laid at 3 places having 7 jawans each. At about 3.45 a.m. at one of the ambush places, the jawans shot two youths coming from Tentha side. Since they entered into the ambush area, the jawans challenged them. In return, the two civilians fired upon the jawans and tried to escape. Jawans thereafter, fired at them for half to one minute and in that firing from both sides, the said civilians received the bullet injuries and died. From the spot, two 9 mm pistols, 2 magazines of 9 mm pistol, 4 live ammunitions and 2 fired cases were found from the possession of the deceased persons. RW-2 who was working as Havildar also narrated the same story. From the documents produced in course of the inquiry, we find that post mortem report of the deceased persons had been filed before the learned District & Sessions Judge, Manipur West. If arms and ammunitions were seized from the two deceased persons immediately after the incident, at least seizure list should have been produced before the inquiry officer. In absence of any document to show that any arms and ammunitions had been seized from the deceased persons, oral evidence adduced by the RW-1 and RW-2 cannot be accepted without supporting documentary evidence. On the other hand, evidence adduced on behalf of the petitioners prove that in the night of 24th April, 2008, both the deceased persons were taken away from their respective houses by the personnel of 21 Assam Rifles. In the night of 25th April, 2008, the residents heard sound of gun fire and next morning, the two dead bodies of the two deceased persons were handed to the OC, Kakching PS by the personnel of 21 Assam Rifles. This evidence also get support from the post mortem report which shows that both the deceased persons had received 6 bullet injuries each on different parts of the body. For the reasons stated above, we do not find any infirmity or illegality in the conclusion arrived at by the learned District & Sessions Judge, Manipur West in his report dated 5th November, 2012.

9. Having accepted the Report of the learned District & Sessions Judge, Manipur West, the petitioners' claim for payment of compensation appears to be justified. Though in the writ petitions compensation has been claimed to the tune of Rs. 40 lakhs, considering the age of both the deceased persons, their background, we are of the opinion that compensation of Rs. 3,50,000/- (Rupees three lakh fifty thousand) each will be just and proper. We accordingly, allow both the writ petitions and direct the respondent to pay compensation of Rs. 3,50,000/- to each of the petitioners in both the writ petitions.

10. These writ petitions are, accordingly, disposed of.