
(2014) 11 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5710 of 1998 (O&M)

Kirandeep Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) ACJ 395 : (2015) 177 PLR 822

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Kuldip Sanwal, Advocates for the Appellant; Vandana Malhotra, Addl. A.G, Advocates for the Respondent

Judgement

Ritu Bahri, J.—The present petition under Article 226/227 of the Constitution of India is for issuance of direction to the respondents to pay compensation of Rs. 25,00,000/- to the victim family since deceased Dr. Parkash Singh Dhaliwal was killed by the Punjab Home Guard constable Nasib Singh. Petitioner No. 1 Kirandeep Kaur is a qualified B.A.M.S. doctor and was doing private practice and was running her nursing home at village Devigarh, P.S. Julka Tehsil and Distt. Patiala in the name and style of Dhaliwal Nursing Home. Her late husband Dr. Parkash Singh Dhaliwal was also qualified as B.A.M.S. doctor and was employed at Govt. Dispensary village Dann Singh Wala Distt Bathinda. His salary was Rs. 8814/- per month, as per salary certificate (P-1).

2. On 15.08.1997, it was a holiday and Dr. Parkash Singh Dhaliwal was present at the nursing home of petitioner No. 1. Compounder Madan Lal, nurse Paramjit Kaur, Chaman Lal and Bhupinder Singh were present there. At about 12.00 O, clock, Punjab Home Guard Constable Nasib Singh posted at P.S. Julka Tehsil and Distt. Patiala came with his official rifle. At that time, Dr. Parkash Singh Dhaliwal was talking to the persons present there. After coming over there, Nasib Singh constable fired at Dr. Parkash Singh Dhaliwal in the chest and he was taken to

Rajendra Hospital, Patiala where he was declared dead. Nasib Singh fled away from the spot towards police station. In the way, he himself fired from upon him and killed himself with the same rifle. F.I.R. No. 87 dated 15.08.1997 was registered at P.S. Julka in this regard (P-2). As per PMR, the cause of death was found to be shock and hemorrhage due to firearm injuries, which are anti mortem and sufficient to cause death in routine course of nature (P-3). Dr. Parkash Singh Dhaliwal left behind his widowed mother Dalip Kaur-petitioner No. 4 aged about 70 years, petitioner No. 1 Kirandeep Kaur @ Kiran Bala (wife), his two minor daughters, Sonal Dhaliwal aged about 13 years and Komal Dhaliwala aged about 6/7 years, petitioner Nos. 2 and 3 respectively. There are his legal representatives and were dependent upon his income.

3. The present writ petition has been filed for seeking compensation from the Government of Punjab as Nasib Singh Constable was an employee of the Punjab Government who had killed Dr. Parkash Singh Dhaliwal without any reason. At the time of his death, Dr. Parkash Singh Dhaliwal was 39 years of age and he was a regular government employee.

4. On notice, a written statement has been filed on behalf of respondent Nos. 1 & 3 in which they submitted that they are not liable to pay any compensation as the Home Guards organisation is basically a purely voluntary organisation and Nasib Singh was not a regular employee of the department and his appointment was on voluntary basis. The Home Guard volunteers are called out for duties during external or internal emergency or during natural calamities which may last for a short or long time. However, they have admitted that an F.I.R. Has been registered on account of the incident mentioned above (R-1)

5. An affidavit has been filed on behalf of respondent Nos. 2 and 4 in which they have submitted that Nasib Singh was not performing his official duties which were assigned to him but the misuse of fire arms was in his private capacity and not in official capacity. Nasib Singh had fired on account of personal enmity and thereafter fired himself and it was not a case of negligence on the part of the department which resulted in to the death of Dr. Parkash Singh Dhaliwal. On the application given by petitioner No. 1, an enquiry was conducted by DSP Pariala and it was found that no police action was necessitated in this respect as Nasib Singh had committed suicide with the same rifle.

6. An additional affidavit dated 18.02.2014 has been filed on behalf of respondent Nos. 1, 2 and 4 stating therein that after registration of the F.I.R., the case was investigated and on completion of investigation the case was sent as cancelled as the accused has committed suicide and there was no accused in existence to face trial. A cancellation report was prepared and was submitted in the court which has been duly accepted vide order dated 13.02.2014 (R-1).

7. The present is a case where Nasib Singh employee of the Home Guard had gone to the nursing home of petitioner No. 1 and shot at her husband Dr. Parkash Singh Dhaliwal who died on the way to the hospital. Thereafter, Nasib

Singh fired himself with the same rifle. Even though Nasib Singh was not working as regular employee with the State of Punjab, he was working as Home guard are called out for duties during external or internal emergency or during natural calamities which may last for a short or long time. He was given the official rifle which was used for committing crime. The stand of the respondents that Nasib Singh did not commit the crime while performing his official duties and therefore the department is not liable to pay compensation.

8. Reference at this stage can be made to a judgment of Hon"ble the Supreme Court in a case of Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, whereby Hon"ble the Supreme Court has relied upon various judgments of Hon"ble the Supreme Court and gave the compensation to the mother of the deceased who died in police custody.

9. In paragraph 10 of Nilabati Behera the Supreme Court held as under:-

"10. In view of the decisions of this Court in Rudul Sah Vs. State of Bihar and Another, , Sebastian M. Hongray Vs. Union of India (UOI) and Others, and Sebastian M. Hongray Vs. Union of India (UOI), , Bhim Singh Vs. State of Jammu & Kashmir, and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , Saheli, A Women"s Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, and State of Maharashtra and Others Vs. Ravikant S. Patil, , the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It, would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award 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. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle."

10. In paragraphs 17, 18, 19 and 22 of the report there are contained guiding principles for Courts to follow and apply. They read as follows:-

"17. It follows that "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 the 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. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in *Ratanlal & Dhirajlal's Law of Torts*, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

19. This view finds support from the, decisions of this Court in the Bhagalpur blinding cases: *Khatri and Others Vs. State of Bihar and Others*, and *Khatri and Others Vs. State of Bihar and Others*, , wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain-the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.,* , Misra, C.J. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future.....there is no reason why we should hesitate to evolve such principle of liability" To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

xxx xxx xxx xxx xxx xxx xxx

22. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* and certain further observations therein adverted to earlier, which may tend to minimize the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* and

others in that line have to be understood and Kasturilal distinguished therefrom.

We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

11. Recently, Hon"ble the Supreme Court in a case of Rajesh and Others Vs. Rajbir Singh and Others, has awarded the compensation of about 23 lacs in a fatal motor accident.

12. Similar issue had come up for consideration before a Co-ordinate Bench of this Court in a case of Raman Vs. State of Haryana and Others, wherein while examining a case of compensation where both arms and one leg of the child was amputated which rendered him completely invalid for whole life, Rs. 60 lacs compensation was awarded by this Court.

13. This Court in LPA No. 123 of 2013 titled as Amandeep v. State of Punjab and another had granted compensation of Rs. 5 lacs to the appellant, who was son of a deceased Surinder Mohan, who was a life convict and was undergoing sentence in Central Jail, Ferozepur. An under trial prisoner hit him with a steel chair on his head while he was lying asleep. This Court had followed the judgment passed by Hon"ble the Supreme Court in a case of Sube Singh Vs. State of Haryana and Others, which relates to custodial death.

14. In the facts of the present case, on account of personal enmity, Dr. Parkash Singh Dhaliwal was killed by the Punjab Home Guard constable Nasib Singh. Thereafter, Naib Singh committed suicide after killing Dr. Parkash Singh Dhaliwal with same rifle.

15. As per additional affidavit dated 18.02.2014, F.I.R. No. 87 dated 15.08.1997 under Section 302 I.P.C. was registered against Nasib Singh. After investigation, However, the said cancellation report was misplaced. In this regard, the Circle Officer was directed to fix the responsibility of the negligent. The case file was re-built and the cancellation report was submitted before the trial court and the same was accepted on 13.02.2014 (R-1). The compensation is being denied on the ground that neither the husband of the petitioner was killed by terrorist nor he was killed by security officers. He had been killed by PHG Volunteer in revenge who has enmity with the husband of the petitioner. Since the accused himself has committed suicide, therefore, no criminal proceeding can be launched against the accused.

16. The very fact that Nasib Singh used his official rifle to kill Dr. Parkash Singh Dhaliwal, the victim i.e. the present petitioner is liable to be compensated for the act committed by PHG Volunteer, appointed by the Government. The official rifle was being entrusted to Nasib Singh for doing official duty and even at the time,

he committed murder, had not been called by the office and he could not misuse the official rifle to kill Dr. Parkash Singh Dhaliwal.

17. The judgment of Smt. Nilabeti Behera (supra) is applicable to the facts of the present case. The petitioner is claiming Rs. 25 lac as compensation. The husband of the petitioner was qualified doctor and was employed at Govt. Dispensary village Dann Singh Wala Distt Bathinda. His salary was Rs. 8814/- per month, as per salary certificate (P-1) He was 39 years of age at the time of his death.

18. Recently, Hon"ble the Supreme Court in a case of Rajesh and Others Vs. Rajbir Singh and Others, has awarded the compensation of about 23 lacs in a fatal motor accident.

19. Following the ratio of law laid down by Hon"ble the Supreme Court in Rajesh"s case (supra), the compensation is being assessed as follows:-

Resultantly, the petitioner shall be entitled to a total compensation of Rs. 23,25,800A, which is to be given by the respondents, within a period of four months from the date of receipt of certified copy of this order.

Accordingly, the petition stands allowed.