
(1988) 07 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule (HC) No. 265/83/14/84

Luithukla

APPELLANT

Vs

Rishang Keishing & Others

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 4, 4, 5, 5
Constitution of India, 1950 — Article 226, 226

Citation : (1988) 2 GLR 159

Hon'ble Judges : B.L.Hansaria, J and S.N.Phukan, J

Bench : Division Bench

Judgement

Hansaria, J.—This is yet another case of counterfeit release. The first case of this nature dealt with by this Court was of Chaoba Singh which was the subject matter of Nungshitombi Devi vs. Rishang Keishing (1982) 1 GLR 756 judgment in which had caused a flutter and which still holds good as Special Leave petition against the same was dismissed by the Supreme Court on 29.4.83 in SLP No. 3257/83. Next such case was dealt with directly by the Apex Court in Sebastian M. Hongray vs. Union of India, AIR 1984 SC 571 in which ultimately exemplary cost of Rs 10,000/was awarded to each of the two concerned women, vide Sebastian M. Hongray, AIR 1984 SC 1026.

In the present case the petitioner is the wife of one Kh. Budha Singh. Her case is that on 4.11.83 Budha Singh had left Champhuag village for his native village Pungdongbam to attend a function there. At the midnight of 6.11.83 army personnel took Budha Singh away. on 7.11.83 Pishak Singh, brother of Budha Singh, visited the army camp at Nongdam village and enquired about the whereabouts of Budha Singh but no information was divulged to him. Pishak Singh informed the petitioner about this and lodged an ejahar with the O/C, Lamlai. He also contacted the President of the Civil Liberties and Human Rights Organisation (CLAHRO), Imphal. The President wrote a D. O. letter to Major S. C. Anand of 61 Infantry Brigade. He also met the Brigadier on 10.11.83 who informed him that Budha Singh was involved in anti national activities and after

collection of some information from him he would be handed over to the police personnel as soon as possible. As by 28th November, the whereabouts of Budha Singh could not be known, the President of the CLAHRO wrote another letter to Major Anand. In the meantime Major Anand wrote to the President of CLAHRO stating that Budha Singh had been called for questioning by the army on 5th November in connection with the report about his anti national activities. On both the days he was asked to report the next day to clarify the doubts but he neither returned nor reported to the army since 8th November. Major Anand reiterated that Budha Singh had not been arrested by the army at any stage. As whereabouts of Budha Singh could not be known and nothing was heard about him by his family members the present application was filed in December 1983. It is pity that this petition is being disposed of today after about 5 years. Though long 5 years have passed nothing has been heard about Budha Singh.

2. The case of the Army as transpires from the affidavit in opposition filed by Major Karanjit Singh is that Budha Singh was contacted at 2100 hrs. of 6th November and he voluntarily accompanied the security forces. Again on 7th November Budha Singh voluntarily came and extended cooperation to lead a column of security forces which had started in the evening of 7th November. By the early hours of 8th November Budha Singh led the column to an abandoned hut which was allegedly a meeting place of the extremists near Champhong village. When no extremist was found in the hut, Budha Singh requested that he be allowed to contact the local Gaonburah, who, according to Budha Singh, know about the exact location of the hideouts of the extremists. He also assured that he would return at 1200 hrs. He requested that no security force personnel should accompany him lest he might be identified as supporter/informer of the security forces. The further case of the respondents 2 and 3 is that Budha Singh after having left the column as aforesaid did not return and since then Budha Singh neither contacted the security forces nor has any of their troops seen him.

3. Shri Nilamani Singh first submits that version of arrest etc. given by Pishak Singh should be accepted by us as it finds support from the FIR, lodging of which has been accepted by the State. We find force in this submission as Pishak Singh, a poor unsophisticated villager from a hill area, would not have got in touch with police as early as 8. 11. 83 seeking help to find out his brother if Budha Singh would have voluntarily left the house on the night of 6th, as is the case of the army. The learned counsel then contends that the army has given two versions relating to Budha Singh. Learned counsel draws our attention to the statements made by Major Anand in his letter to the President of CLAHRO wherein nothing has been stated about any action of Budha Singh relating to his leading a army column to Champhong village. As the aforesaid letter was written after the matter was investigated in detail as stated in the letter it is urged by the learned counsel that if Budha Singh would have led any column to Champhong village and would have left column allegedly to contact the village Gaonburah, these facts would have definitely found place in the letter of Major Anand which however is absolutely silent about this aspect of the case of the

anr". Learned counsel finally contends that the story of Budha Singh leading any column to Champhong village and his leaving the column allegedly to contact the village Gaonburah are all matters of afterthought and no reliance should be placed on this case of the army. We are inclined to accept this submission of Shri Nilamani Singh. In the first version of the case given out by Major Anand nothing has been stated about this part of the case of the army. As Major Anand had written the letter after investigating the matter in detail, this part of the case of the army would not have missed Major Anand. We would, therefore, hold that the story of Budha Singh leading the army on 8th November to Champhung village is not believable. We also do not believe that Budha Singh had allegedly left the army column on 8th November to meet the village Gaonburah. If he would have done so it would not have been difficult ca the part of the army to file any affidavit of the village Gaonburah which has not been done.

4. To lend assurance to the case of the army, respondents 2 and 3 filed additional affidavit on 12th December/84 enclosing as Annexure1 a W. T. message dated 9. 1. 84 from the Superintendent of Police/CID, Manipur that Budha Singh was seen on a motor cycle with one Biron Singh on 3.1.84 at Lam leng gate while they were proceeding towards Ukhrul. This W. T. message does not inspire any confidence inasmuch as in the affidavit filed on behalf of the State of Manipur on 5. 3. 84 nothing has been stated about this W. T. message. According to the State, after the Chief Minister had received a representation from the petitioner on 5. 12. 83 all concerned were requested to find out Budha Singh, and so if the State police would have, located Budha Singh, the State machinery must have been acquainted about it, as even the Chief Minister had been approached to find out Budha Singh. The source of information is also vague as it speaks that the matter was "reliably" learnt who is the author of information is not known. This apart, there is no supporting material to assure mind about the truthfulness of the news sent by the W. T. message in question. To lend credence to the W. T. message Biren Singh whose mention has been made in the communication could have been asked to file an affidavit. But this has not been done. For these reasons we are not inclined to place reliance on the aforesaid communication.

5. This is however not all. The additional affidavit has sought to rely on a "Source Report" dated 4th April/84. It has stated that one Havildar Ranjit Singh who was leading a army column had seen three persons moving under suspicious circumstances near the international boundary and when they cased them they proceeded towards the border crossing it. One of the persons of the group was identified as Budha Singh. In support of this Source Report, respondents No. 2 and 3 filed an affidavit of Havildar Ranjit Singh dated 12th day of December/84. We have not felt inclined to place full reliance on this piece of information because we have our doubts regarding proper identification of Budha Singh by the Havildar. We have said so because the statement in the affidavit that Havildar Ranjit Singh knew Budha Singh since November, 1983 as the latter used to come to the army camp for giving certain information is of doubtful veracity inasmuch as nobody also has spoken about visit of Budha Singh to the army camp to give

information. This apart from the D. O. letter of Major Anand dated 26.11. 83 of which reference has been made earlier it appears that according to the army Budha Singh was involved in anti national activities and is for this purpose that he was called for questioning by the army on 6th and 7th November/83. A person who was regarded to have indulged in anti national activities could not have come to the army camp for giving certain information to the army. Further as nobody else had supported the version of Havildar Ranjit Singh, we do not think if we would be justified in rejecting the case of the petitioner solely on the basis of the affidavit of Havildar Ranjit Singh who is definitely an interested person.

6. Because of all the above, we entertain no doubt that Budha Singh had been apprehended by the army on the night of 6. 11. 83 and since then nobody has seen him. The question is whether he is dead or still under the custody of the army. Learned Advocate General contends that as long 5 years have since elapsed we should assume that Budha Singh is dead. We are inclined to accept this submission of learned Advocate General. Question is what relief can be granted to the petitioner if Budha Singh is taken to be dead. Apparently writ of habeas corpus cannot lie but that cannot sound a deathknell to the petition. We have to modify the relief and pass such appropriate order as may be deemed fit and proper by us.

7. At this stage it would be useful to refer two decisions of the Supreme Court in Sebastian M. Hongray vs. Union of India, AIR 1984 SC 571 and 1026. In that case the army had taken into custody two persons Shri C. Denial and Shri C. Paul. On being satisfied that these persons had been taken into custody by the army, the Supreme Court had directed for issuance of writ of habeas corpus to produce these two persons before the Court. This is the subject matter of first Hongray's case. The second Hongray's case deals with the aspect which is more relevant for the case at hand and the same is that on the failure of the Union of India and its officials to produce the aforesaid two persons, exemplary cost of Rs.1,00,000/ was awarded to the wives of the two detained persons about whom it was reasonably believed that they had met unnatural death. Learned Advocate General contended that if the Court be of the view that Budha Singh is dead we could award such cost, compensation or damage as deemed reasonable by us. On the facts and circumstances of the case and taking a cue from Hongray's case we are satisfied that awarding of a sum of Rs. 1,00,000/ would be the proper relief to be granted to the petitioner who is the wife of Budha Singh and we order accordingly.

8. Having come to this conclusion, it is not necessary for us to examine in detail the legal submissions made by the learned Advocate General, but the same deserve to be put on record and answered summarily. The first submission of the learned Advocate General is that as an FIR had been lodged relating to disappearance of Budha Singh the present petition is not maintainable. We do not think if lodging of FIR can be a good ground to reject a writ of habeas corpus

if case for the same is made out. Another submission advanced by the learned Advocate General with some amount of vehemence is that as Major Anand had not been made a party by name the petition is not maintainable. In trying to satisfy us about this defect of the submission, it is contended by the learned Advocate General that when a person comes praying for a writ of habeas corpus the Court calls upon the person who has custody of the detained person to produce him. From the averments made by the petitioner in the application, we do not find any mention of the fact that Major Anand had detained Budha Singh or the former was in custody of the latter. The allegation of illegal detention has been made in a general way against a military personnel under the command of respondents 2 and 3. Respondent 2 is General Officer Commanding, Manipur Sector and respondent No. 3 is Brigade Major, Manipur sector, and as such we do not find any allegation in the petition relating to detention of Budha Singh by Major Anand requiring dismissal of the petition on the ground that Major Anand was not made a party.

9. In usual course we would not have been required to say anything more but then it seems that a misconception persists relating to the role of armed forces when they are called "in aid of the civil power" under the provisions of the Armed Special Power Act, 1958, for short the Act. This Court had occasion to deal with this aspect of the matter speaking through one of us (Hansaria, J.) in *Nungshitombi Devi vs. Rishang Keishang* (1982) 1 GLR 756. We reiterate what has been stated in the aforesaid case regarding the scope of sections 4 and 5 of the Act. We do not propose to burden this judgment with what has been stated in the aforesaid judgment in this regard except that the same has our approval.

10. Another aspect of the matter, however, deserves to be gone into by us. This aspect is related to the role which the district administration has to play after the armed forces have been called in aid of the civil power. A view seems to be gaining ground that after armed forces are deployed in the disturbed area, the civil authorities as if cease to function. But as pointed out in *Nungshitombi's* case though the armed forces have been given wide powers by the Act, these are sought to be confined within the narrow limit and in this limit also they do not really supplant the ordinary machinery for maintaining law and order or for that matter public order, but they supplement the working of ordinary law enforcing machinery. According to us the civil authorities and the armed forces have to work as hand in glove and not in suppression of any side. It is because of this that the Act requires by its section 5 that any person arrested and taken into custody by the armed forces have to be made over to the officer in charge of the nearest police station with the least possible delay. May we say that in our constitutional set up there is no provision for a military rule in any part of the territory of India. Of course, the armed forces must be allowed free hand in so far as dealing with insurgents or terrorists are concerned but then while dealing with others they have to strike a balance between crushing of violence and crushing of liberty. Further the armed forces must act in cooperation with the district administration and not as an independent body. Of course, so far as

operational part of the activity of the armed forces is concerned, they must be given free hand, but in other matters they must take the civil authorities in confidence and work in harmony.

11. In the result the petition is allowed by ordering payment of a sum of Rs. 1,00,000/ (Rupees one lakh) to the petitioner. Of this amount 25% shall be paid by the State of Manipur and the remaining 75% by the Union of India. We have saddled the State also with liability because it cannot shed its responsibility in the matter completely as after all the army was called to aid it. This amount would be paid to the petitioner within a period of 6 weeks from today.