
(1998) 04 GAU CK 0007
In the Gauhati High Court
Case No : Civ. Rule No. 770 of 1992

M. Chongacha Tangkhul

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Guw 25 : (1998) 4 GLT 244

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.K. Senatombi, for the Appellant; G.A. Manipur and C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed by the petitioner claiming ex gratia/compensation of Rs. 20,000/- for the death of his son Mr. M Tharthing aged about 28 years.

2. The cage of the petitioner is that on 22-5-1990 at about 6 p.m. he was apprehended by the security personnel of 20th Assam Rifles and on 23-5-1990 at about 1.30 a.m. the son of the petitioner was brutally shot dead by the security personnel of 20th Assam Rifles at Shiroy Chingkha village in the presence of the petitioner, and other two villagers of Shiroy namely, (i) Mr. V.C. Titus and (ii) Miss Joycee. Thereafter, the dead body was handed over to the members of the family after post mortem. A representation was filed for payment of ex gratia/compensation but that was not paid, hence, this writ application.

3. The Governor of Manipur on 3rd July, 1989 issued an order regarding payment of ex gratia grant. That is quoted below:--

"No. 1 (1)/26/79-H(Pt). -- In supersession of all previous orders on the subject, the Governor of Manipur is pleased to prescribe under mentioned rates of ex gratia grant payable to the different categories of the officers/officials under the

Government of Manipur or their families, non officials and SF/CRPF personnel for relief/ rehabilitation of affected families in the event of death/grievances hurt sustained in performance of their duties as well as civilians who become victims of extremist/unjustified police/S.F. Action."

4. So, in order to be entitled to set the relief the person must be victims of extremists/unjustified Polices/Security Force, etc.

5. An affidavit-in-opposition has been filed on behalf of the army authority as well as on behalf of the State of Manipur; In the affidavit-in-opposition filed on behalf of the army authority it is stated that M. Tharthing was a confirmed underground member of the banned National Socialist Council of Nagaland organisation. He tried to escape while being apprehended by the security force on 23-5-1990. A report dated 25th May, 1990 submitted by the army authority to the Officer-in-Charge, Ukhrul Police Station, Ukhrul (Manipur) and on the basis of this report an F.I.R. being F.I.R. No. 95(8)90 was registered. The whole of the report dated 25th May, 1990 is quoted below :--

"APPREHENSION OF HARDCORE NSCN INSURGENT M. THARTHING AGE 20 YEARS S/o M. CHONGCHA OF VILLAGE SIROHI

1. Credible information was received through own source about the presence of hardcore NSCN insurgents in the house of M. Chongcha aged 50 years S/o M. Chinachin age 80 years. Own source revealed undermentioned hardcore NSCN ipsurgent's presence in the house of M. Chongcha a Siroi Village:--

(a) SS Lt. Phayoo Ragui of Barabasti, Ukhrul,

(b) SS Private M. Lumchumyoage 21 years S/o M. Chongcha.

(c) SS Private M. Tharthingage 28 years S/o M. Chongcha.

(d) M. Ringphami, age 25 years S/o Late M. Luingamaho of Sirohi Village (M. Ringphami on earlier for having links with NSCN in 1987-88. Statement revealed by M. Chongcha).

2. Information was also received that V.C. Trusts, age 40 years, S/o Late V.C. Kangprei a contactment of NSCN Was in possession of two automatic weapons on 20 May 1990. These weapons had already been sneaked in to Ukhrul town by the above hardcore NSCN insurgents and agents to carry out violence and killing of political leaders and laying ambush on Security Force convoy and killing of Security forces personnel prior to the announcement of elections results on 21 May, 1990.

3. Reacting on above credible informations operational plan was made and own troops re acted with 2 Officers and 15 others ranks to raid the house of M. Chongcha at 22.00 hours on 22 May, 1990. On reaching the location two columns under Capt S. Bhattacharjee and Capt S.K. Kathiyal launched the raid at approx. 23.30 hours on 22 May, 1990, M. Choncha was present in his house with one K. Erabat Sing age 52 years of Village Kumbi Bazar, Imphal a carpenter by

profession. On spot interrogation of M. Chongcha, he misled the security forces about the presence of the hardcore NSCN insurgents. On asking the whereabouts of M. Tharthing he again misled the security forces saying he was in Ukhrul town. However, On spot interrogation of K. Erabat revealed that M. Tharthing had dinner with him at 20.30 hours on 22 May, 1990. Who left his house to hide himself in one of the house in the Siroi Village.

4. Immediately the house of V.C. Titus, age 40 years S/o Late V.C. Kangrei was searched and he was apprehended at approx. 0030 hours on 23 May, 1990 and interrogated. He accepted to lead own columns to the house where M. Tharthing was hiding and assist security forces personnel in identification. Own columns raided the houses of A.S. Jaishi, D/o. S. Wungchopai, of village Sirohi at 01.45 hours on 23 May, 1990. On asking M. Tharthing he misled security forces saying he was Wungpam. A.S. Jaishi also initially misled security forces personnel by saying that she was his wife and tried to conceal his identity saying that he was Wungpam and not M. Tharthing. V.C. Titus however, identified M. Tharthing.

5. When he was in the process of being apprehended he tried to escape. While in the process of escaping he was warned. However, he still continued to escape and he was finally warned, and shot at approx. 0230 hours on 23 May, 1990. M. Tharthing received three bullet wounds and could not escape further. Own troops rushed to the spot and apprehended him. His identification was further carried out by M. Chongcha, his father and he identified him as his son.

6. M. Tharthing along with the undermentioned persons were brought back to own post:

(a) M. Chongcha, S/o M. Chinaochin, age 80 years of village Sirohi.

(b) V.C. Titus, age 40 years, S/o Late V.C. Kangrei of Village Sirohi.

(c) A.S. Jaishi; age 30 years, D/o Late A.S. Wungchapai

(d) K. Erabat Singh, age 52 years of Village Kumbi Bazar, Imphal.

7. M. Tharthing succumbed to his injuries at approx. 0400 hours on 23 May, 1990.

8. The Matter was reported by CSO (2) HQ 10 Sector to Superintendent of Police, Ukhrul.

9. M. Chongcha, S/o M. Chinaoching is being handed over as "BLACK" due to his deep involvement and his family's involvement with NSCN. A.S. Jaishi, D/o Late A. Wungchpei is also being handed over as "Black" for her involvement with M. Tharthing. V.C. Titus, S/o Late V.C. Kangrei a confirmed contactmen of NSCN is also being handed over as "Black" K. Erabat Singh of Village Kumbi Bazar, Imphal is being handed over as "WHITE";

10. Further investigation may be carried out against the individuals graded as "BLACK" and handed over to you.

11. Body of M. Tharthing age 28 years, S/o M. Chongcha of village Sirohi is handed over to you for further necessary action.

6. An affidavit has been filed by the Addl. Secretary (Home) to the Government of Manipur and there is also a verification report on the application filed by the petitioner for the ex gratia/compensation as Annexure D/1. That is quoted below:--

"With reference to Govt. of Manipur : Home Deptt. Letter No. 4/2(1)/91-H(Pt). dated 29-10-1991 and its reminder dated 10-11-1992 on the above cited subject, I am to state that during further enquiry and investigation, it was revealed that one NSCN was in possession of two automatic weapons and the said weapons has already been smuggled into Ukhrul Town area on 20th May, 1990 to hand over to the NSCN elements who were already in the town to carry but violent and subversive activities prior to the announcement of election result on 21st May, 1990. The said accused M. Tharthing S/o M. Chongacha of Siroi Chinkha village, Ukhrul District had reportedly collected 20 tins of rice and supplied it to these NSCN elements during their camping in Ukhrul Town area. This fact was supported and confirmed during the interrogation of one Mrs. Jaishi W/o Shrivastava of Siroi, Village.

When the security forces personnel rounded up the said contactant of NSCN namely V.C. Titus and interrogated him, it was revealed that the accused M. Tharthing was given shelter in the house of Mrs. Jaishi of Siroi Village. The security force personnel conducted a raid in the house of Mrs. Jaishi to effect arrest of the accused M. Tharthing without any loss of time. However. Mr. M. Tharthing fled the house of Mrs. Jaishi on getting the information about the arrival of the S.F. personnel, In that the S F personnel made Mr. Tharthing tried to escape resulting in his death due to bullet injury.

Further investigation and interrogation of the persons connected with the incident and other facts of the circumstances of the case brought to light that Mr. M. Tharthing was liable to be prosecuted u/s 4(1) TADA (P) Act as there was sufficient evidence against him for this connection and link with the NSCN organisation."

7. This verification report also will show that this M. Tharthing was a member of the National Socialist Council of Nagaland arid hardcore terrorist and it was stated that when he was sought to be apprehended he tried to flee and as a result, he suffered bullet injury and died. The other persons who have been named herein to be the witness of brutal killing i.e., Mr. V.C. Titus and Mrs. Jaishi also have been found on verification to be the members/sympathizer of NSCN. It was found on verification by the SP/CID (SB), that there was sufficient evidence as against the deceased to have illicit connection nexus with the NSCN organisation. That being the position, there is no merit in this writ application and no relief can be granted as ex gratia/compensation as prayed for in this writ application.

8. Smt. R.K. Senatombi, Learned Advocate for the petitioner has placed reliance in People's Union for Civil Liberties Vs. Union of India and another, . That was a case where two persons were killed and it was found later on that they were killed in an fake encounter. It was further found that these persons alleged to be terrorist were seized by the police and taken to a distant place and shot at causing their death. The Supreme Court pointed out that such administrative liquidation cannot be permitted. The Supreme Court further pointed out that fake encounter cannot certainly be countenanced by the courts even in the case of disturbed areas. The Supreme Court condemned the approach of the authority resorting to administrative liquidation, but that is not the case in hand.

9. Accordingly, this writ application shall stand dismissed as indicated above.