

(1988) 03 GAU CK 0016

In the Gauhati High Court

Case No : Misc. Case No. 1461/87 in connection and Civil Rule No. 1355/87

Manipur Baptist Convention and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-1988

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 3
Constitution of India, 1950 — Article 23(1)

Citation : (1988) 1 GLR 433

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

Bench : Division Bench

Advocate : H. Roy and B. Das, for the Appellant; S.N. Chetia, Additional Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

B.L. Hansaria, J.—The State of Manipur has been afflicted by insurgency since early 1950s. Senapati district is said to be one of the worst affected area of this insurgency. The Nationalist Socialist Council of Nagaland (NSCN) is alleged be the main insurgent group, This organisation demands (sic)ecession from the Union of India and to meet the situation, aid of Assam Rifles was sought after declaring Senapati district as a disturbed area u/s 3 of the Armed Forces (Special Powers) Act, 1958, hereinafter the Act. A very serious incident took place in Oinam village of this district on 9th July, 1987, in which there was an attack on the Asaam Rifles killing 9 (nine) soldiers and wounding three. This apart, 124 weapons and a large quantity of ammunities were taken away by the hostiles.

2. The armed forces started combing operations, called "Operation blue-bird". A petition (Civil Rule No. 1053/87) was filed by the Naga Peoples" Movement for Human Rights making allegations of murder, torture, assault, rape, destruction and burning of houses of Oinam and surrounding villages in the wake of combing operation. In the present application, he allegations are about extraction of forced labour from the women of four named villages (which includes Oinam) and of their sexual exploitation. By the present application, appropriate interim

orders have been sought to discontinue the alleged activities.

3. The allegations have been denied on behalf of Respondents 1 to 4. The State of Manipur who is Respondent No. 5 as not filed any counter. In the main Rule, no counter has not been filed by any of the Respondents. The point for consideration at the present stage is what orders can reasonably be passed by us to protect the womenfolk of the four villages from forced labour and sexual exploitation in case there be truth in the allegations made by the Petitioners. We have heard Shri Roy for the Petitioners and Shri Chetia for Respondents 1 to 4. Nobody has appeared for Respondent No. 5.

4. The various allegations made against the Assam Rifles both in this Civil Rule as well as in the other Civil Rule referred above have caused us deep distress. The allegations made are undoubtedly serious and shocking. Even if we forget for the case at hand the allegations made in Civil Rule No. 1043/87, the allegation of forced labour from weaker sex is in itself quite serious. There can be no doubt that no citizen of this country can be subjected to forced labour. Forced labour is prohibited by Article 23(1) of the Constitution. The allegation of sexual exploitation has caused deep concern to us. Respondents No. 1-4 themselves in their counter-affidavit have stated that crime against women is taken most seriously in the army and the culprits are punished most severely and very promptly.

5. When the case was taken up for hearing, we had confined our attention to the allegation of sexual exploitation, and there is no doubt car mind that we have to protect the dignity of the womenfolk by passing such interim order as are deemed just and fit by us. But before this is done, we would like to feel assured that the allegation of their sexual exploitation is true. Shri Roy has tried to convince us, on the basis, of the affidavits filed along with the affidavit-in-reply of the Petitioner, that this allegation at least in so far four women (1) Ms. Th. Bathsobha, daughter of late Thiping, (2) Ms. K. Sangla, daughter of Longsa; (3) Mrs. Naonala, wife of Mr. Shem; and (4) Ms. Th. Martha, daughter of late Thissi in concerned, is correct. Shri Chetia's contention on the other hand is that the entire effort of the Petitioner is to malign the fai(sic) name of the Assam Rifles and the allegation has been mad with the ulterior motive of bogging down the morale of the security forces.

6. We have duly considered the aforesaid submissions o the learned Counsel and have gone through the relevant affidavits, and it seem; to us that the allegation of sexual exploitation may have some truth in it, and it does not seem to have bee made to malign the Assam Rifles as such. We have said (sic) because from the affidavit of the four persons, namely, Wakhao Pastor, Benjamin, Zainangla, Nopangla, on whose certificate, inter alia, Respondents 1-4 themselves have wanted to rely to counter the allegation of the Petitioners regarding extraction of forced labour, we find that while speaking about molestation and attempt to rape Ms. Bathsebha and Ms Sangla by a Captain, they have also stated that the aforesaid two women were fortunately rescued by the timely intervention of one

Captain named Srivastava of 21 Assam Rifles and one Subedar (Manipuri), which goes to show that the deponents were not out to malign the Assam Rifles as such. These four persons have also stated as to how they were forced to sign the certificate annexed with the affidavits of Respondents 1-4. They have further stated about singling out of two women, Mrs. S. Naonala and Ms. Martha, by one Captain Shukla of 21 Assam Rifles from amongst the villagers who were kept in concentration camp, and leading them to a secluded place at the residence of one Mr. Nguoui for more than four hours. The affidavit of these persons has inspired confidence in our mind because instead of making the allegation of rape etc. on these two women, they have merely stated that no one knew what happened to them in the hands of the said Captain. There was nothing to prevent the deponents from stating that the two women in question had been reportedly raped if they were really out to make false and wild allegation. This has however not been done. They have merely stated that the concerned women were found in the evening in a "very dazed and choked condition".

7. The affidavit of these four persons has received support from the affidavit of Ms. Khaola. She has solemnly affirmed about molestation and attempted rape of Ms. Bathseba and Ms. Sangla. She has fairly stated that the name of the Captain who did so could not be known as he had removed the badge containing the name from his uniform. She has also stated that the two women were rescued by the timely intervention of Captain Srivastava and one Subedar (Manipur). She has further stated that Mrs. Naonala and Ms. Martha were confined in a secluded place by Captain Shukla of 21 Assam Rifles and in the evening they were found in a very "dazed and choked condition".

8. The aforesaid affidavits do lend some credence to the allegation of the Petitioners relating to sexual exploitation. But then we have not thought it fit to accept this allegation for the purpose of even passing interlocutory order, because we do not have before us the statements of the four women in question. We, however, think that the statements of those women must be available to us before we can prima facie accept the correctness of the aforesaid allegation. We are of the considered view that in a Public-interest-litigation of the present type, where serious allegations relating to violation of the human rights have been made, this Court may not treat the proceeding as adversarial in nature leaving it to the parties alone to file such documents as they may deem fit to establish their cases. We do think that this Court as a protector of fundamental and human rights would be justified in a case of the present nature to collect relevant materials through its own agency and so we would like to obtain the statement of the aforesaid four women to enable us to know for definite as to what had happened to them and we think that the most appropriate person to do so on our behalf is the Registrar (Judicial) of this Court.

9. In this connection we may point out that we are conscious of the fact that we should not do anything which would make the difficult task of the armed forces engaged in fighting anti-secessionism and insurgency more difficult, as the

members of the armed forces while discharging their duties of preserving the unity and integrity of the nation perform a solemn task and the law has to permit them to take all such actions which are reasonably necessary to meet the insurgency and they cannot be made ineffective in this regard. But there can be no doubt that even while fighting insurgency, personnel of the armed forces must show all respect to womenfolk and if they fail to do so this Court as their protector has to pass such order as it deems just and proper to uphold their dignity.

10. Before we pass any order of the above nature in the present case, we must, however, feel *prima facie* satisfied that the allegation of sexual exploitation is true. We have felt the need of this satisfaction even to pass an interlocutory order as any such order without such satisfaction may not be fully conducive to justice. To reach to this satisfaction we do, however feel the necessity of knowing of what the aforesaid alleged victims have to say. For this purpose, we have deemed it fit, for reasons given above, to ask the Registrar (Judicial) to take stop which are being indicated later.

11. Before concluding, we may make some observations about what Shri Chetia had submitted, when the case had come up for bearing, on being asked as to whether we should not order for some enquiry into the allegation of sexual exploitation. The submission of the learned Counsel was that there being no prayer for enquiry we might not order for the same. Another contention advanced was that an enquiry might not be ordered without bearing the State of Manipur. May we say that lack of any prayer for enquiry has not been deemed sufficient by us to stand in our way to collect the aforesaid material by any agency of this Court to enable us to pass appropriate interlocutory order. Further, for this purpose, we have not deemed it necessary to hear the State of Manipur.

12. In view of all that has been stated above, we direct the Registrar (Judicial) to take necessary steps for recording the statement of the aforesaid women, which could be done in camera, if deemed necessary, in the presence of parties and their counsel. For this purpose, he would proceed to Imphal and thereafter to the appropriate place where the statements of the concerned persons can be recorded. The Registrar (Judicial) shall finalise his programme in consultation with the learned Counsel of all the parties. The State of Manipur would provide all necessary facilities to the Registrar (Judicial) to enable him to discharge the aforesaid function smoothly. It would be open to the parties to produce such other persons before the Registrar (Judicial) as they would deem necessary to establish their cases. On this being done, the Registrar shall examine these, persons also. The Registrar would submit his report within a period of one month from today. The case would be listed for further hearing after submission of the report by the Registrar (Judicial) when we shall pass appropriate interim orders concerning discontinuance of the alleged activities of sexual exploitation and extraction of forced labour.