

(2008) 06 CHH CK 0010
In the Chhattisgarh High Court

Mohd. Riyaz Khan and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Constitution of India, 1950 — Article 17, 21, 226, 227, 300A
Prevention of Cruelty to Animals Act, 1960 — Section 11

Citation : (2008) CriLJ 3453 : (2010) 3 MPJR 39

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.—Briefly stated the case of the petitioners is that they earned their livelihood through cattle trading. They used to purchase cattle from various cattle markets to sell them at weekly market Surajpur. The petitioners purchased 255 oxen from the various weekly cattle markets in the month of December, 2003 and proceeded for Village Maanpur with the purchased oxen. They stayed at Village Mohanpur in the intervening night of 28th and 29th December, 2003. At about 1.00 a.m., mob of 250 to 260 persons under the leadership of respondent No. 7 and also accompanied by respondent No. 6—S.H.O. of Police Station Ramanujnagar, reached there and charged the petitioners that they were taking the cattle for the purposes of slaughtering. The above persons were claiming that they are members of the ruling political party of the State and they shall not allow slaughtering of animals as it is an offence. The petitioners denied that the cattle were being taken for slaughtering and pleaded that they were taking the cattle to weekly market for sale as the same would be used for agricultural purposes. However, their pleadings and denial went in vain and they were taken to the police station Ramanujnagar by respondent No. 6 where they were illegally detained till 3-1-2004. However, they were released by the police on 3-1-2004 as after inquiry no evidence of any offence could be gathered against them. However, cattle belonging to the petitioners were taken by the villagers with the active connivance of respondent Nos. 6 and 7.

2. The petitioners moved an application for interim custody of cattle before the Judicial Magistrate 1st Class, Surajpur, however, their application was rejected on the ground that the police has not seized the animals. The petitioners moved another application before the Sub-Divisional Magistrate, Surajpur for Dermission to sell their animals. After registering the application as Case No. 141/04, report was called from the Station House Officer, Police Station Ramanujnagar vide order dated 4-2-2004 (Annexure P-2). Thereafter, the matter was referred by the S.D.M., Surajpur to the District Magistrate, who vide order dated 28-4-2004 (Annexure P-3) granted permission to the petitioners for selling the animals with the condition that the animals shall be sold within the Sarguja District and the list of the persons to whom the animals are sold would be submitted with S.D.O. On the basis of order passed by the District Magistrate, Surajpur the S.D.O. granted permission to the petitioners for selling the cattle.

3. Respondent No. 7 vide his application dated 5-10-2004 requested the S.D.O. to review the order granting permission to sell. On the application of respondent No. 7, a report was called from the Police Station Ramanujnagar and thereafter, his application for review was rejected on 25-1-2005. It was also observed that after enquiry it was found that the petitioners have not committed any offence and they are entitled to sell the animals. Even after direction by the S.D.O., the S.H.O., Police Station Ramanujnagar did not restore the cattle to the petitioners nor he took any action against respondent No. 7 and other villagers who have retained the animals belonging to the petitioners.

4. The Station House Officer, Police Station Ramanujnagar addressed a memo dated 6-10-2004 to the S.D.O., Surajpur mentioning therein that in compliance of the order of the District Magistrate dated 28-4-2004 (Annexure P-3) proceeding for restoring the animals to their owners was initiated, however, on account of interference of the members of "Vishwa Hindu Parishad" and workers of the ruling party there is delay in compliance of the order. It was further mentioned that no evidence has been so far gathered for any offence under the Prevention of Cruelty to Animals Act, 1960 (for short "the Act"). The cattle have been seized and misappropriated by the villagers, who are 130 in numbers, and they have distributed the animals amongst them. The Station House Officer, Police Station Ramanujnagar in his report dated 10-5-2004 also apprised the District Magistrate that the petitioners were taking 255 numbers of oxen towards Gadwa for sale after legally purchasing the same. However, animals belonging to the petitioners were seized by the villagers under the leadership of Rajlal Rajwade, who distributed the same amongst themselves. The investigation is going on.

5. Grievance of the petitioners is that the animals belonging to them were illegally looted by certain persons under the leadership of respondent No. 7 with the active connivance of respondent No. 6. Since the perpetrators of illegal act belong to the ruling party and they enjoy patronage of influential persons of the district, therefore, no action has been taken against them and the petitioners

have been deprived of their fundamental rights.

6. Respondent No. 1 to 5 in their joint reply have averred that on the basis of complaint of respondent No. 7 that the petitioners are taking cattle for slaughtering, offence u/s 11(1) of the Act was registered against the petitioners, however, after investigation into the matter the police found that the petitioners have not committed any offence. Some of the animals, which were duly identified by the petitioners, have been restored to them. Since the petitioners were not able to identify other animals, the same could not be handed over to them. The fact that the petitioners purchased the animals, as detailed in Para 5.2 of the petition and the fact that the police did not seize the animals has also not been disputed.

7. After the above reply was filed by the respondent State, this Court vide order dated 18-9-2007 directed the learned Counsel for respondent Nos. 1 to 5 to seek instructions as to why all the catties, numbering 255, have not been restored to the petitioners when it has been found that the catties were purchased for the agricultural purposes and the petitioners were taking them to Surajpur for sale. Respondents were further allowed a week's time to comply with the order dated 18-9-07. On 15-10-2007 on the request of learned Counsel appearing for the State further four weeks' time was granted to take appropriate action and submit appropriate affidavit. On 16-11-2007 at the request of learned Counsel appearing for respondent Nos. 1 to 5, as a last opportunity, four weeks' time was granted to comply with the order dated 18-9-07. Despite several opportunities granted to the respondent State authorities for complying the order dated 18-9-07, the same was not-complied with till 17-12-07 and further time was, prayed for seeking instructions and filing affidavit. Prayer was allowed and two weeks' time was granted on payment of cost of Rs. 5,000/- recoverable from the Superintendent of Police, Surajpur.

8. Respondent No. 7 in its separate counter affidavit has admitted that he lodged the report with the police on 30-12-2003 mentioning that the petitioners were taking 276 animals for the purpose of slaughtering, upon which an offence u/s 11(1)(a) of the Act was registered. Their application for interim custody was rejected by the Judicial Magistrate vide order dated 3-1-2004 (Annexure R7/1). It has been further averred that the S. H. O., Police Station Ramanujnagar issued a memo dated 5-11-2007 directing that the animals be handed over to the petitioners within two weeks' as per direction of the District Magistrate. In detailed reply (Annexure R7-3) to this memo, the respondent No. 7 claimed that the animals in question belong to some other persons. The petitioners are residents of Village Surta. They were sending the cattle to slaughter house through their relatives. Petitioner No. 1-Riyaz Khan forcibly tried to loot the cattle from the villagers, which was duly reported to the police and offence was registered. The petitioners have alleged that the mob has looted the cattle under the leadership of the answering respondent, however, they failed to lodge any report in the police. There is no evidence that the petitioners are the owners of

the cattle. Disputed facts are involved in the petition and that cannot be gone into a writ petition under Article 226/227 of the Constitution of India. The petitioners were taking the cattle to the slaughter house and therefore, villagers restrained them out of religious sentiments and the catties were distributed amongst the villagers for their security. The averment that the petitioners" purchased 255 oxen from the weekly markets in the month of December, 2003 has been denied.

9. In compliance of the order dated 17-12-2007 an affidavit dated 3-1-2008 was filed on behalf of the respondent No. 1 to 5 wherein it has been mentioned that they tried to find out the cattle from the villagers to restore the possession of the same to the petitioners, however, they met with stiff resistance from the villagers, who disputed the ownership of the petitioners over the cattle. It has been further stated that despite resistance offered by the villagers, they could manage to locate and seize 165 numbers of catties from the village and deposited the same at the Gaushala situated in the Village Chaitarma of District Surajpur. The petitioner No. 1 was noticed about the above fact, however, petitioner No. 1 avoided service of notice. It has been further mentioned that Gaushala management is charging a sum of Rs. 50/- per day per cattle as cost of feeding and upkeep of the cattle. Besides 165 catties which were seized, 65 bullocks as well as 13 cows are reported dead by the villagers, who have also submitted documentary proof in support of their claim. 9 numbers of cattle have been forcibly taken by the petitioners.

10. In the meanwhile, application dated 14-1-2008 for permission to intervene in the petition was filed by one Ramanand Singh of Village Surata. The matter was taken up on 14-1-2008 and after considering the written submissions of the State in compliance of the order dated 17-12-2007 and facts mentioned in the application for permission to intervene, the respondents were further directed to file affidavit detailing the villagers from whose custody the catties were seized and reported dead. Necessary information were furnished by respondent Nos. 1 to 5 on 18-1-2008, 25-1-2008, 18-3-2008 and 30-3-2008 in compliance of various orders passed by this Court.

11. Miss Kajal Misra, Advocate was appointed as "Amicus Curiae" to assist the Court, who has also submitted her written note dated 4-3-2008.

12. On basis of the pleadings of the respective parties, documents and reports submitted on behalf of respondent No. 1 to 5 in compliance of direction of this Court, the undisputed facts may be summarized as under:

The petitioners are engaged in the occupation of cattle trading to earn their livelihood. They individually purchased cattle in the month of December, 2003 aggregating 255 in number, as detailed in Para 5.2 of the petition. S.H.O., Police Station Ramanujnagar also accompanied them.

In the intervening night of 28th and 29th of December, 2003 at about 1.00 a.m. large number of villagers under the leadership of respondent No. 7 reached

Village Mohanpur where the petitioners were staying along with their cattle.

Offence u/s 11(1) of the Act was registered on the complaint of respondent No. 7 and respondent No. 6 took the petitioners to police station and detained from there till 3-1-2004.

After release when the petitioners did not find their cattle at the place where they had left it, they moved an application for *suprudnama* before the Judicial Magistrate 1st Class, Ramanujnagar, however, their application was rejected with an observation that the cattle has not been seized by the police.

On 4-2-2004 the petitioners applied before the Sub-Divisional Officer, Surajpur for permission to sell their cattle. On the application of the petitioners, report was called from the S.H.O., Police Station Ramanujnagar.

Shivnath Rajwade submitted his objection against the application of the petitioners.

The S.D.O. referred the matter to the District Magistrate, Ambikapur, who vide order dated 28-4-2004 (Annexure P-3) considering the report of the S.H.O., Police Station Ramanujnagar observed that the cattle was legally purchased by the petitioners, the same were brought to the Surajpur tehsil for the purpose of sale, purchases have been duly verified from Pendra, cattle had been detained by the villagers for their security and upkeep and therefore, there may be no objection if the petitioners are permitted to sell the cattle within Surajpur tehsil.

Thereafter, the S.D.O. vide order dated 5-5-2004 granted permission.

The S.H.O., Police Station Ramanujnagar in response to the memo dated 5-10-2004 of the S.D.O. submitted his report in relation to objections of Rajlal Rajwade and submitted that in compliance of the orders passed by the District Magistrate & S.D.O., they commenced the action of restoring animals from the villagers to the petitioners and the villagers were ready to return the cattle. However, because of intervention by certain leaders of Vishwa Hindu Parishad and local workers of the ruling political party, there is delay in compliance.

On medical examination the catties were found healthy and fit for agricultural purposes and there is no evidence of any offence under the Act. Objectors, who are 130 in number, have impounded all the cattle and distributed amongst themselves. Thus, there is clear injustice to the owners of the cattle.

S.H.O., Police Station Ramanujnagar in his separate report dated 10-5-2004 to the District Magistrate, Sarguja has named some of the villagers who have kept the cattle belonging to the petitioners.

Nine numbers of cattle were restored to the petitioners from the villagers with the intervention of the police.

Respondent No. 7 vide his application dated 30-12-2003 addressed to the S.H.O., Police Station Ramanujnagar alleged that the petitioners were taking 276

number of cattle to slaughter house. The villagers distributed the above cattle amongst themselves for their safety and up-keep and they shall abide by any decision of the Court. Report of Annexure R-3 was registered on the basis of above complaint. The above fact has also been admitted by the respondent No. 7 in his return.

When the animals could not be restored to the petitioners the instant petition was filed by the petitioners on 28-3-2006.

Considering the reply of the respondent Nos. 1 to 5, this Court vide order dated 18-9-2007 enquired from the respondent Nos. 1 to 5 as to why the animals belonging to the petitioners have not been restored when the same were being taken to Surajpur for sale for agricultural purposes.

After taking various adjournments for complying with the above order, an affidavit was filed by respondent Nos. 1 to 5 on 3-1-2008 mentioning therein that during the course of restoration of possession of the cattle they met with stiff resistance from the villagers, the petitioners also did not extend assistance to the authorities, however, they could manage to locate and seize 165 numbers of oxen from the various villagers, which they have deposited in Chaitarma Gaushala of Surajpur district. The petitioners were informed about the above seizure, however, they avoided service of notice, which was served to them by affixing the same in their respective houses. It was also stated that Gaushala is charging Rs. 50/- per animal per day for their maintenance. It was also submitted that besides above 165 oxen, 65 bullocks and 13 cows have been reported dead by the villagers, who have also submitted documentary proof of their claim. Nine numbers of oxen have been reported to be taken away by petitioner No. 1 and seven number of oxen were returned to them earlier.

One Ramnandin Singh of Village Surta in his intervention application has also admitted that the villagers had bona fide taken the cattle with them for saving their lives from the petitioners and till date they are maintaining the cattle. The petitioners are not the cattle traders, they were taking the cattle for slaughtering and due to religious belief the villagers restrained the petitioners and distributed the cattle amongst them.

In compliance of the direction of this Court, respondent Nos. 1 and 5 have also submitted a report dated 18-1-2008 in which 95 villagers have been named from whose custody 1 or 2 oxen were recovered on 28th, 29th and 30th of December, 2007. All the cattle were deposited in the gaushala. Report also contains examination report of cattle given by the veterinary doctor. Report also contains names of 54 villagers in whose custody 65 oxen were reported dead on various dates. Report also includes panchnama of the dead animals. It also mentions that the same were received by them on interim custody. Annexure R1-15 filed with the report is list of 12 oxen and 4 cows returned to the petitioners by the villagers with the intervention of the police. Whereas, Annexure R1-16 is the list of 22 animals which died in Chaitarma Guashala.

The petitioner in response dated 28-1-2008 to the above reports dated 17-1-2008 and 25-1-2008 of the respondent Nos. 1 to 5 has denied that he received any notice from the authorities for taking possession of 164 number of animals. Medical certificates of the animals are forged certificates and the same have been prepared just to complete formalities. Bulls belonging to the petitioners were purchased for agricultural purposes with an average age of 5 years. The petitioners were deprived of the use of above cattle for the last five years i.e. the prime period when they are useful for agricultural purposes and with the passage of time the cattle of the petitioners have lost their optimum utility and their market value had reduced.

Learned Amicus Curiae after careful examination of documents has noted that the medical certificates issued by the veterinary doctor prima facie appears to be not genuine and the same have been prepared to complete formalities and it appears to be forged certificates. Report also underlines illegality of seizure and it pinpoints that the police authorities did not make any effort to trace the cattle of the petitioners and after registering the offence no investigation was commenced and no charge sheet was submitted.

As per affidavit of the Collector, Sarguja dated 19-3-2008, the Deputy Director, Veterinary Services, Sarguja, formed a committee of three veterinary doctors. Members of the committee examined the surviving animals, 86 in number, in Chaltarma Gaushala and submitted report along with assessed value of each animal. They had submitted their report on 11-3-2008 (Annexure R1-25) and reported that only 86 animals valued at Rs. 2,21,300/- approximately were impounded in the gaushala, whereas, 79 number of animals were reported dead while they were deposited in the gaushala. The Deputy Director vide his report dated 16-3-2008 based on the report of the committee has valued the cost of the surviving animals at Rs. 2,21,300/- and cost of dead animals at Rs. 2,05,400/- @ Rs. 2,600/- per animal.

13. As per report the above valuation is based on the prevailing market value and government rates as per order dated 6-11-2007 (Annexure R1-24) issued by the Directorate of Veterinary Services.

Learned counsel for the petitioners submits that from perusal of the undisputed facts of the case it would be evident that the petitioners were illegally detained in the police station from 29-12-2003 to 3-1-2004 on the basis of false complaint of respondent No. 7. The cattle belonging to the petitioners were looted by the villagers under the leadership of respondent No. 7 with the active connivance of respondent No. 6. While the petitioners were illegally detained in the police station no seizure of the cattle was effected after registering the offence under the Act, on the contrary, the villagers were facilitated by respondent No. 6 in taking the animals of the petitioners. The police could not collect any evidence against the petitioners that they purchased the animals for taking them to the slaughter house or they treated the animals purchased by them with cruelty. Considering that there was no evidence of any criminal offence under the Act,

the District Magistrate accorded permission to the petitioners to sell their cattle in Surajpur tehsil and directions were given to the S.H.O. in this regard. However, the directions of the District Magistrate and the S.D.O. were deliberately not complied with by the police authorities as respondent No. 7 and his follower villagers continued to retain illegal possession of the cattle of the petitioners and the police authorities/district administration did not take any action against the miscreants who had in fact indulged into the offence of looting the animals belonging to the petitioners.

It was further argued that even after specific direction dated 18-9-2007 by this Court to restore the possession of the cattle to the petitioners, the same was not complied with for almost more than three months and it has been stated on oath that the authorities could not comply with the directions because of stiff resistance from the villagers. However, no action has been taken against them till date. Respondent No. 7 as also the intervener in their separate affidavits before this Court have admitted that the villagers under the leadership of respondent No. 7 took the cattle of the petitioners and distributed the same amongst themselves for their safety and upkeep as they were convinced that the petitioners were taking the animals to the slaughter house. Thus, from the evidence available on record it is manifestly clear that the cattle belonging to the petitioners were looted by the villagers with the connivance of the police authorities. Inaction and indifference on the part of the police authorities continued subsequently and the petitioners were deprived of their cattle for the last more than 4 1/2 years which is the only source of their livelihood.

The fact that the police authorities could recover 165 animals from the villagers only after this Court imposed a cost of Rs. 5,000/- upon the Superintendent of Police, Surajpur for non-compliance of the order passed by this Court on 17-12-2007 and cattle were recovered on 28th, 29th and 30th of December, 2007, establishes that the police officers were in fact colluding with the miscreants by not recovering the cattle of the petitioners from them and they were allowing them to retain their cattle illegally.

It was further submitted that as per report of the committee of the veterinary doctors and the Deputy Director, Veterinary Services, the valuation of the cattle impounded in the gaushala and animals which died in gaushala i.e. total 165 animals, has been assessed at Rs. 4,26,700/-. Valuation put by the authority is on the lower side. The petitioners are deprived of their livestock from 28-12-2003. The petitioners are poor traders, who earn their livelihood by personally visiting the cattle market in the area, and purchasing and selling the animals and because of the acts of omission and commission on the part of the police authorities/district administration, respondent No. 7 and other villagers they have not been able to do their vocation for the last 4 1/2 years and their family members have reached to the stage of starvation. Whereas, the miscreants, who have looted and cattle belonging to the petitioners, used their animals for their own purposes and in the meanwhile number of cattle belonging

to the petitioners died while they were in the possession of the villagers/police authorities, therefore, the petitioners deserve to be suitably compensated. The police did not conduct any investigation on the complaint of the petitioners and did not take any action against the miscreants. In these circumstances the respondents should also be directed to conduct independent investigation of the offence. The respondent No. 7, other villagers and the officers of the State, who connived with the miscreants and who aided and abetted the commission of offence by their connivance and inaction and indifference, should be prosecuted.

14. On the other hand, Mr. Harit, learned Deputy Advocate General for the State vehemently argued that the petitioners have not been able to establish that they are actual owners of 255 oxen in question. There is no evidence that the oxen were taken away by the villagers from their possession by use of force without their consent. Except petitioner No. 1, other seven petitioners have not cared to file any affidavit in support of the petition. In fact, from the conduct of the petitioner Nos. 2 to 8 it can be inferred that they had no intention of preferring the instant petition. The offence of loot, if any takes place in the intervening night of 28th and 29th December, 2003, however, the application for interim custody was filed on 3-1-2004. The petitioners did not lodge any complaint before any police authority regarding the alleged loot. In fact, the cattle were given in the possession of the villagers voluntarily by the petitioners and therefore, no offence was registered against them. The dispute is entirely of civil nature involving disputed questions of fact including the fact of ownership of the cattle and their identity. The incident is of December, 2003, whereas the petition has been filed on 20-3-2006 i.e. after more than two years from the date of incident and thus, there is delay and laches in filing the petition. There is no evidence available on record that the petitioners were illegally detained by the police from the night of 28th and 29th Dec, 2003 to 3rd January, 2004. The offence was registered against the petitioners u/s 11 of the Act and final report has not yet been submitted. Judgments relied upon by the petitioners pertains to the cases resulting in loss of life, custodial death or wrongly deprivation of personal liberty of a citizen where compensation was awarded under Article 226 of the Constitution of India. In the facts of the present case the question of awarding compensation to the petitioners for the loss of cattle does not arise as the State is immune from liability in respect of tortuous act committed by public servants in course of implementation and in exercise of statutory functions delegated to them by the Government, as held by the Hon"ble Supreme Court in various judgments.

15. Miss Singhani, learned Counsel for respondent No. 7 also argued that the petitioners' ownership over the cattle is highly disputed, the petitioners were taking cattle to the slaughter house through their relatives and the villagers out of their religious sentiments, with a purpose of safety of the cattle and their upkeep, had taken the cattle and distributed the same amongst themselves and informed about the same to the police authorities.

16. Similar arguments were advanced by Mr. H. B. Agarwal, Senior Advocate for the intervenor.

17. Miss Kajal Mishra, Advocate was appointed as "Amicus Curiae" to assist the Court. The Amicus Curiae after carefully examining the pleadings of the parties, documents available on record and further examining various judgments of the Supreme Court in this regard has submitted the report drawing conclusions as under:

There is no controversy or dispute that the cattle were seized from the custody of the petitioners and the respondent No. 6-Station House Officer, Police Station Ramanujnagar had a positive role.

The police did not make any investigation after registering offence u/s 11(a) of the Act. Seizure is manifestly illegal.

Written reports submitted by the respondents clearly show that they were able to locate 165 number of animals from the villagers and the respondent Nos. 1 to 5 also admit that they wanted to handover the possession of cattle to the petitioners.

There has been illegal seizure and there was no justification for the seizure. There is also admission with regard to the death of number of oxen and the petitioners are not responsible for the death. It was obligatory on the part of the State and its functionaries to handover the possession of cattle seized, as it was illegally done.

Referring various judgments of the Hon"ble Apex Court it has been concluded that it was the statutory obligation of the State Government to return the seized property or to pay its value. The private citizen is entitled for monetary compensation for the loss caused to him. The Doctrine that the State is immune on the Doctrine of Sovereign Immunity is out dated as the sovereignty now vest in the people, the State cannot claim any immunity and a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable against the State.

Illegal seizure took place in the year 2003, whereas, petition was filed in the year 2006, as such, there is delay and laches in filing the petition and accordingly, it has been recommended that:

though it is not a case of violation of Article 21 of the Constitution and therefore, compensation cannot be quantified, but at this stage it would not be appropriate to ask the petitioners to initiate civil action. Therefore, a direction can be issued for return of the cattle, as there is violation of Article 300A of the Constitution.

the cattle kept in the gaushala be returned to the petitioners or in alternative cattle can be sold by public auction and value thereof be given to the petitioners.

Valuation of the cattle should be done by respondent No. 3 by affording opportunity to the petitioners to adduce evidence and the amount so determined

be paid to the petitioners subject to challenge before any legal forum as permissible under the law.

If there is resistance by the villagers in handing over the cattle to the petitioners, the same may be dealt with in accordance with law by respondent No. 3.

18. I have heard learned Counsel for the parties and perused the record.

19. As already detailed in the foregoing paragraphs and also pointed by learned Amicus Curiae that there is no dispute that on the fateful day cattle belonging to the petitioners were taken away/looted by the villagers under the leadership of respondent No. 7 herein in presence of respondent No. 6 herein, who took the petitioners to the police station after registration of offence u/s 11(a) of the Act and detained them from the intervening night of 28th and 29th Dec, 2006 to 3rd Jan., 2007. Ultimately, on the direction of this Court the police and the State authorities could recover 165 animals from the villagers which were impounded in Chaitarma Gaushala where only 86 animals were surviving on the date of report and remaining died. There is also report that rest of the animals belonging to the petitioners died while the same were in the illegal custody of the villagers and details of the persons and number of cattle died in their custody is available in the record as submitted by respondent Nos. 1 to 5.

20. In the matter of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, the Constitution Bench of the Hon'ble Apex Court while dealing with the scope of Articles 21, 39A, 41 and 226 of the Constitution held thus:

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

34. Learned Counsel for the respondents placed strong reliance on a decision of this Court in *In Re: Sant Ram*, in support of their contention that the right to life guaranteed by Article 21 does not include the right to livelihood. Rule 24 of the

Supreme Court Rules empowers the Registrar to publish lists of persons who are proved to be habitually acting as touts. The Registrar issued a notice to the appellant and one other person to show cause why their names should not be included in the list of touts. That notice was challenged by the appellant on the ground, inter alia, that it contravenes Article 21 of the Constitution since, by the inclusion of his name in the list of touts, he was deprived of his right to livelihood, which is included in the right to life. It was held by a Constitution Bench of this Court that the language of Article 21 cannot be pressed in aid of the argument that the word "life" in Article 21 includes "livelihood" also. This decision is distinguishable because, under the Constitution, no person can claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade or business, like toutism, gambling or living on the gains of prostitution. The petitioners before us do not claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honourable.

21. In the matter of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, the Hon"ble Apex Court held thus:

Human rights issue:

53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously, requires it and just and prior indemnity has been paid.

Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

Property is surely a right of mankind as real as liberty.

Adding,

The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect

it, anarchy and tyranny commence.

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

22. In the matter of Hindustan Paper Corpn. Ltd. Vs. Ananta Bhattacharjee and Others, , it has been held that "public law remedy for the purpose of compensation is limited and can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of Constitution or a statute which would enable the Court to direct grant of compensation."

23. In the matter of A.K. Bindal and Another Vs. Union of India (UOI) and Others, it has been held that Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this article has been expanded by judicial decisions. Right to life enshrined in this article means something more than survival or animal existence. It would include the right to live with human dignity. But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced.

24. However, in the instant case as already pointed out earlier that by acts of commission and omission on the part of the police authorities and group of certain miscreants allegedly the members of the ruling political party, the petitioners were deprived of their means of livelihood for a period of 4 years and thus, there is a clear violation of Article 21 of the Constitution and therefore, this Court is of the opinion that there is no impediment in awarding compensation in a petition under Article 226 of the Constitution of India. Further the facts of the present case are distinguishable from the facts mentioned in the matters of Hindustan Paper Corpn. Ltd. and A. K. Bindal.

25. In the matter of State of Gujarat v. Memon Mahomed Haji Hasam AIR 1967 SC 1885 the Hon"ble Supreme Court distinguishing the judgments rendered in the matter of The State of Rajasthan Vs. Mst. Vidhyawati and Another, and Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, held that "it was incumbent on the part of the State Government to return the seized property by its statutory obligation to pay its value if it has disabled itself from returning it either by its own act or by any act of its agents or servants."

26. In the mater of B. K. Patil v. State of Mysore, 1977 CriLJ 1141 the Hon"ble Apex Court held thus (paras 6 and 7):

6. It is common ground that these articles belonged to the complainant/appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the

property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. We do not agree with the view of the High Court that once the articles are not available with the Court, the Court has no power to do anything in the matter and is utterly helpless.

...The correct principle, therefore, to apply in this case would be to find out if there is any material to show the value of the articles actually seized by the police from the possession of the accused.

...It is also clear that in the instant case, no plea had been taken by the State that the property was lost in spite of due care and caution having been taken by it or due to circumstances beyond its control. On the other hand, while all the articles were stolen from the trunk kept in the guardroom of the police station, except the formality of a report having been lodged, no action seems to have been taken by the State against the Sub-Inspector or the officers who were responsible for the loss of the property, even to this date.

27. In the matter of N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, the Hon"ble Supreme Court held thus (para 24):

...No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in nineteenth century as a sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not shaken.

In Welfare State, functions of the State are not only defence of the country or administration of Justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere,

educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

28. In the matter of *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, the High Court of Calcutta allowed compensation to her for having been gang raped against the Central Government. Repelling the contentions of the Central Government that rape was committed by employees of Railways and the Government cannot be held vicariously liable, as liability under the Law of Torts would arise only when the act complained of was performed in the course of official duty and since rape cannot be said to be an official act, the Central Govt. would not be liable even under the Law of Torts, held that the argument is wholly bad and is contrary to the law settled by this Court on the question of vicarious liability in its various judgments.

29. In the matter of *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, the Hon"ble Supreme Court held thus (Para 16):

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.

30. In the light of the aforesaid judgments, if we examine the facts of the present case, we find that on the complaint of respondent No. 7, the respondent No. 6-Station House Officer, Police Station Ramanujnagar registered an offence u/s 11(a) of the Act against the petitioners in the intervening night of 28/29-12-2003 and detained the petitioners in the police station up to 3-1-2004. On the fateful night, respondent No. 7 and other villagers, numbering 250 to 260, gathered at the place where the petitioners were resting with their cattle. They were raising slogans and alleging that the cattle are being taken to the slaughter house by the petitioners. The cattle were taken by them with the active connivance of respondent No. 6. Even after registration of offence, the police did

not make any attempt to effect the seizure of cattle which was the property involved in the offence, on the contrary, the police allowed the miscreants to take the possession of the cattle belonging to the petitioners and illegally detained the petitioners in the police station up to 3-1-2004. Since the cattle were not seized by the police after registration of offence, the application of the petitioners for interim custody was rejected by the concerned Judicial Magistrate. The petitioners applied for permission to sell their cattle in the Tehsil of Surapur and the permission was accorded to them by the S.D.O., Surajpur as per direction of the District Magistrate. However, this order could not be complied with because of lack of will on the part of the police authorities, as the persons who are illegally holding the cattle of the petitioners were influential persons belonging to the ruling party, as admitted by the police authorities themselves. The petitioners were made to run from pillar to post to take the custody of their animals.

31. So far as the argument advanced by learned Counsel for the respondent-State that the petitioners did not make any report of loot is concerned, even assuming that the petitioners did not lodge formal report with the police, the fact remains that the report was lodged by respondent No. 7 and it was the duty of the police authorities to fairly investigate the matter on that report and effect seizure. Since the respondents have come up with the admission that after due investigation they were satisfied that the cattle were duly purchased from Pendra by the petitioners, the cattle seized from the petitioners were found healthy and no offence was committed by the petitioners under the Act, it was incumbent on the part of the police authorities to ensure that the cattle belonging to the petitioners was restored to them forthwith and it was also their duty to see that the offence was registered against the miscreants. However, the police did not take any action against the miscreants nor it recovered the cattle till this Court directed them to restore the possession of the cattle to the petitioners. It is worthwhile to mention here that even after specific direction by this Court on 18-9-2007, the same was not complied with for a period of more than three months and ultimately when this Court was constrained to impose a cost of Rs. 5,000/- upon the Superintendent of Police, Surajpur, 165 cattle was recovered within a period of two weeks in just three days i.e. 28th to 30th Dec, 2007. This fact indicates that the police/district administration did not take any action on the complaint of the petitioners solely because the persons involved in the illegal act of taking the animals of the petitioners were the members of the ruling party.

Religious sentiments cannot be used as a pretext for taking the law in hands by the miscreants and interfering in peaceful vocation by a member of society and thereby depriving him from his property and means of livelihood. It is unfortunate that for the last four years the State/district administration did not take any action so that the cattle were restored to its original owner i.e. the petitioners. From the various reports submitted by the police authorities as well as on behalf of respondent Nos. 1 to 5, it is evident that the authorities found themselves helpless in executing their own order for a period of four years as they could not restore the animals to the petitioners despite specific direction in

this regard by the District Magistrate. It is not proper for the State to come up with the arguments that the instant petition was filed after more than two years and as such, it is hit by delay and laches. In view of the admitted fact that there was no evidence against the petitioners of any offence under the Act and that the authorities wanted to restore the cattle to the petitioners, however, they are unable to comply with the directions is sufficient justification for the petitioners to expect that they shall be getting their animals back with the intervention of the police authorities/district administration and ultimately when they failed in their endeavour, the instant petition was filed.

32. Other arguments advanced by the respondents that the petitioners have not been able to establish that they are the owners of the cattle or that the cattle were being taken by the villagers with the use of force are also without any substance. As already stated in the foregoing paragraphs that from the averments of respondent Nos. 1 to 5 the documents filed by the respondents as also admission of respondent No. 7 and the intervener it is manifestly clear that the State at no point of time disputed that the petitioners were the owners of the cattle, in fact, they wanted to return the cattle to the petitioners. It is also not in dispute that respondent No. 7 and his followers have admitted in their replies that they had taken the cattle and distributed it amongst them for their safety and upkeep and there is evidence available on record that when the State authorities tried to restore the possession of the cattle to the petitioners, they met with stiff resistance by the leaders of Vishwa Hindu Parishad and members of ruling party.

33. For the aforesaid reasons, it is held that the cattle belonging to the petitioners, 255 in number, were forcibly taken by the villagers under the leadership of respondent No. 7 in the presence of respondent No. 6-Station House Officer, Police Station Ramanujnagar in the fateful night and respondent No. 6 illegally detained the petitioners after registering the offence u/s 11(a) of the Act. Illegally seized cattle of the petitioners could not be restored to them even after four years because of inaction and indifference on the part of the police authorities/district administration and the State is vicariously liable for the acts of its officers. It is further held that considering the facts and circumstances of the case and also considering that the poor cattle traders are running from pillar to post for the last more than four years to obtain the custody of their cattle which have been illegally seized with the active connivance of respondent No. 6 herein and by deprivation of large number of cattle, the petitioners have been deprived of their right to livelihood as the cattle trading is means of livelihood of the petitioners, the petitioners are entitled for suitable compensation.

34. As already detailed in the foregoing paragraphs that three members committee was appointed by the respondents for the purpose of valuing, the cattle that was recovered from the villagers by the police and deposited in the Chaitarma Gaushala. On the date of examination by the committee, out of 165 animals only 86 were surviving and remaining 79 were reported dead. From the

documents available on record it is also not in dispute that out of 255 cattle only 165 remained alive, 15-16 were returned to the petitioners with the help of the police and rest of the cattle, died while they were in illegal custody of the villagers. In these circumstances, the compensation to be paid to the petitioners shall be computed as per compliance report dated 30-3-2008 submitted by the State.

35. Accordingly, this Court directs the respondent State of Chhattisgarh to pay compensation @ Rs. 2,600/- per animal to the petitioners within a period of three months from today towards the animals which could not be returned to them as per compliance report dated 30-3-2008 submitted by the State.

36. No useful purpose would be served in returning the cattle, numbering 86, which were recovered by the police on compliance of the Court's order, as after passage of such a long time it would be of no use to the petitioners and therefore, it is further directed that surviving cattle in the custody of police, presently deposited in the Gaushala at Chaitarma be auctioned and proceeds be utilized for payment of compensation to the petitioners.

37. It is clarified that the award of this compensation shall not prejudice the right of the petitioners to claim suitable compensation on the same ground by initiating independent legal proceedings. However, in case the petitioners initiate any proceeding for recovery of compensation on the same ground, the amount of compensation paid to the petitioners shall be adjustable.

38. It is also expected that the State of Chhattisgarh shall conduct independent investigation in the matter by Senior Police Officials and fix the responsibility of individuals responsible for illegal taking the cattle of the petitioners and also take all available appropriate actions against each of them including their prosecution for the offence committed by them.

39. Before parting with the matter, this Court acknowledges and appreciates the valuable assistance rendered by the Amicus Curiae Miss Kajal Mishra.

40. Writ petition is accordingly allowed in the aforesaid terms.