
(2012) 02 CHH CK 0077
In the Chhattisgarh High Court
Case No : Writ Petition No. 888 of 2001

Motimbai and Another

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 32

Citation : AIR 2012 Chh 111 : (2012) 3 MPHT 14

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shri Satish K. Agnihotri, J.—By this petition, the petitioners seek a compensation to the tune of Rs. 5,00,000/- on account of death of husband of the petitioner No. 1 and father of the petitioner No. 2, who is alleged to have died while he was in custody of respondents No. 5 & 6. The petitioners further seek a direction for taking suitable action against the respondents No. 5 & 6.

2. The facts, in brief, as projected by the petitioners, are that the husband of the petitioner No. 1 was taken by the respondent No. 6 forcibly from Balco to District Janjgir-Champa on 11.09.1999 and during the course of transit while the deceased namely Chhotelal Soni was in custody, he was beaten brutally, which led to his death on the same date. Earlier, a writ petition being W.P.No.1002 of 2000 was filed before the High Court of Madhya Pradesh at Jabalpur, which was disposed of vide order dated 09.02.2000 (Annexure P-7), on the ground that the petitioners had already invoked the jurisdiction of the State Human Rights Commission (for short "the Commission") for the same relief, as claimed in that petition. However, it was directed that the State Human Rights Commission, shall consider grievance of the petitioner expeditiously.

3. The State Human Rights Commission, in its report dated 08.01.2001 (Annexure P-8), has recommended that the legal representatives of the

deceased Chhotelal Soni be awarded a compensation to the tune of Rs. 50,000/-, which may be recovered from the respondent No. 5 & 6. It was further recommended that the respondent No. 5 & 6 be placed under suspension and departmental enquiry be instituted against them and the respondent No. 5 may not be appointed as in-charge for a period of three years. The Commission has also expressed its distress that the District Magistrate and the Superintendent of Police have not performed their duty properly.

4. Shri Tiwari, learned counsel appearing for the petitioners submits that the action of the respondent No. 5 & 6 is writ large as while discharge of their official duty, they have treated the deceased with cruelty and caused his death, which is supported by the findings recorded by the Commission. Thus, the petitioners are entitled to compensation as aforestated and appropriate action may also be taken against the respondents No. 5 & 6.

5. On the other hand, Shri Murthy, learned Dy. Advocate General appearing for the State submits that an interim compensation to the tune of Rs. 50,000/- had already been awarded to the petitioners and a departmental enquiry had also been initiated against the respondents No. 5 & 6. Therein, they were found guilty and they were penalized by withholding one increment for one year with cumulative effect. Thus, at this stage, no further relief can be granted to the petitioners. So far as, claim of the petitioners to award a sum of Rs. 5,00,000/- as compensation is concerned, the petitioners ought to have filed a civil suit, as the question of claim involves many questions of fact, which cannot be looked into while exercising writ jurisdiction.

6. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto. It is not disputed that Chhotelal Soni died in custody, as has been established by the Commission while directing to make payment of Rs. 50,000/- as compensation.

7. In Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa and Others, the Supreme Court observed that the legal representatives of the deceased, who met with the custodial death, were entitled to compensation for deprivation of fundamental right to personal liberty under Article 21 of the Constitution of India.

8. In another case wherein one Rishipal died in judicial custody, legal representatives of Rishipal filed a petition under Article 32 of the Constitution of India before the Supreme Court in Ajab Singh and another v. State of Uttar Pradesh and Others, the Supreme Court, while deprecating the death of persons in judicial custody, directed the Central Bureau of Investigation to investigate the cause of death and directed the State of Uttar Pradesh to pay a sum of Rs. 5,00,000/- holding as under :

9. The State of Uttar Pradesh is responsible in public law for the death of Rishipal and must pay compensation to the petitioners for the same. [See D.K. Basu Vs. State of West Bengal, . We think that it is appropriate, in the circumstances, to

order the State of Uttar Pradesh to pay to the petitioners compensation for the death of Rishipal in the sum of rupees five lakhs within three months..

10. This direction to pay compensation shall be without prejudice to the rights of the legal representatives of Rishipal to claim compensation in private law proceedings, if so entitled in law, against those found responsible for his death.

9. In identical circumstances, this Court in *Dukharam v. State of Chhattisgarh & Others*, directed payment of compensation to the tune of Rs. 1,50,000/- by the State, further granting liberty to the petitioners to take recourse to traditional remedies for more compensation.

10. In this case, the Commission has let the culprits off lightly by awarding a meager sum of Rs. 50,000/-, which was not sufficient to meet the requirements of the petitioners, who happen to be the wife and son of the deceased.

11. In view of the above, this Court is of the view that personal liberty of the deceased has been deprived by the police, which is meant to protect the rights of the citizens and maintain law & order. Thus, it would be just and proper to award a sum of Rs. 1,50,000/- in addition to the amount already awarded by the Commission within a period of three months and further liberty is reserved to the petitioners to claim further compensation in private law proceedings, if so entitled in law.

12. As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs.