
(2003) 12 GAU CK 0029
In the Gauhati High Court
Case No : WP (C) No. 6447 of 1999

Musstt. Khamala Begum

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2004) 2 GLR 3 : (2003) 3 GLT 592

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.R. Sikdar, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Custodial death of an under trial prisoner is the subject matter in the instant writ petition. Alleging violation of basic human rights available to a citizen as a consequence of which the husband of the petitioner died while in jail custody, the petitioner has prayed for adequate compensation towards compensating the loss sustained by the family members.

2. The husband of the petitioner was arrested in connection with Sarbhog P.S. case No. 39/94 (CR Case No. 370/94) and he was forwarded to the Court of Judicial Magistrate, Barpeta on 9.9.1999. The learned Judicial Magistrate, Barpeta upon production before him remanded the accused husband of the petitioner to jail custody by his order dated 9.9.1999. After such remand to jail custody and when the petitioner was at Barpeta District Jail, he died on 12.9.1999. This was reported to the learned Judicial Magistrate, Barpeta on 12.9.1999 by the Jail Superintendent, District Jail, Barpeta, An order was passed by the learned Magistrate in the aforementioned GR Case No. 370/97 on 14.19.1999 which is quoted below :

"Seen the letter from Jail Superintendent, District Jail, Barpeta vide memo No. 1444-A dated 12.9.1999. The Officer concerned simply intimate that the accused

Ismail Ali was found hanged by neck in a Latrine attached to Ward No. 3 of the Jail at about 9:05 A.M. on 12.9.1999.

Heard Id. A.P.P. perused the case-record.

Accordingly, Superintendent of Jail, Barpeta is directed to furnish death report of the U.T.P. within 1.10.1999."

3. The writ petitioner has annexed a copy of the W.T. message dated 12.9.1999 issued by the Superintendent, District Jail, Barpeta to the Office-in-charge, Sarbhog Police Station which reads as follows :

"DTP Md. Ismail Ali @ Ismail Mondal, S/o. Md. Adip Mandal @ Glok Dewan of Vill.- Khudnabsi under P. S. and accd. of C. R. No. 1030/90 and 2 (two) other cases died in BPTA Jail today (12.9.1999) (s) Kly. Inform his relative to came to Jail to take charge of D/body offer P.M. Examination (i)M.M.U. (i)."

4. The petitioner has annexed a copy of the post-mortem report wherein the case of death of the accused has been stated to be asphyxia as a result of hanging. No bodily injury is traceable in the report.

5. The wife of the petitioner made a representation on 22.11.1999 to the Superintendent of Police, Barpeta highlighting the above fact and claimed adequate compensation for maintaining her family consisting of five children and parents of the deceased, which, however did not yield any result. Hence, this writ petition claiming compensation. It is the case of the petitioner that her husband was brutally murdered in a preplanned manner, while in jail custody.

6. The respondents viz., the State of Assam represented by the Chief Secretary; the Secretary, Home and the Superintendent of Police, Barpeta (Respondents No. 1, 2 and 5 respectively) have not filed any affidavit controverting the fact stated in the writ petition. An affidavit-in-opposition has, however, been filed by the Deputy Inspector General of Prisons (Range), Gawahati on behalf of the respondents No. 3 and 4, viz., the Director General of Police, Assam and the Inspector General of Police Assam. In the affidavit it is the simple case of the said respondents that the deceased had committed suicide in a latrine attached to the prison Ward on 12.9.1999 at about 9:15 a.m. According to the said affidavit, inquest of the dead body was conducted at the place of occurrence and postmortem was done on 13.9.1999 observing all required formalities. The dead body was handed over to the family members after post-mortem examination. A case was also registered as U/D case No. 56/99. It is the stand of the said respondents that since the deceased had committed suicide, they are not liable to pay any compensation.

7. I have heard the learned counsel for the parties. Facts are not in dispute. Except the reflection in the order of the learned Magistrate extracted above to the effect that the Jail Superintendent by his letter dated 12.9.1999 intimated the death of the accused husband of the petitioner and that he was found hanged by neck in a latrine attached to Ward No. 3 of the Jail, there is no other

document to suggest that the deceased had committed suicide by way of hanging himself by neck. In the affidavit also, there is no indication as to how the deceased committed suicide and the manner and method adopted by him in the W.T. message extracted above also, there is no indication about the cause of death. It even did not suggest that the deceased committed suicide. The post-mortem report however specified the cause of death as due to asphyxia as a result of hanging. This, however, will not lead to the conclusion that the deceased committed suicide by hanging himself by neck. Even if it is held to be a case of suicide as is sought to be projected by the respondents No. 3 and 4 in their affidavit, can the respondents and for that matter, the State absolve its responsibility towards protection of the life even of a criminal as guaranteed under Article 21 of the Constitution of India ?

8. I have given my anxious consideration to the issue involved in the case. Facts having been admitted by the parties, it is now to be decided as to whether the deceased died of his own fault of committing suicide and even if it is held to be a case of suicide whether the authorities at the helm of affairs requiring them to provide adequate protection of life and liberty of every person under its domain can be absolved of their responsibilities on the ground urged in the affidavit. The deceased was arrested in connection with a criminal case and he was produced before the learned Magistrate on 9.9.1999. He was remanded to jail custody till 23.9.1999. Then came the communication dated 12.9.1999 from the Jail Superintendent to the learned Magistrate intimating the death of the deceased. There is no explanation whatsoever either in any of the communication or in the affidavit as to what prompted the deceased to commit suicide and the manner and method he had adopted towards committing the same. The statements made in the affidavit are all vague, indefinite and evasive. No details relating to the incident have been given and the respondent Nos. 3 and 4 with the mere statement that since the deceased committed suicide, the petitioner is not entitled to any compensation want to absolve them from the duty and responsibility cast on them in such a serious matter.

9. Strangely enough, there is no indication in the affidavit as to the circumstances leading to the death of the husband of the petitioner and as to how he could prepare himself while in jail custody to commit suicide. There is not even any mention about the materials, the deceased had used towards committing suicide. A duty is cast on the Jail authorities to look after the well being including the protection of lives and liberties of the jail inmates. If the plea adopted by the respondent Nos. 3 and 4 and that too in a most casual and irresponsible manner is allowed to stand absolving of the responsibilities of the jail authorities, same will lead to chaotic and insecure situation for the jail inmates.

10. Taking note of growing custodial deaths and violence as disturbing factor, the Supreme Court has also referred to the third report of the National Police Commission in India expressing its deep concern with custodial violence and

death. I am prompted to refer to the decision of the Apex Court as reported in D.K. Basu Vs. State of West Bengal, In this decision, the Apex Court has laid down the requirements to be followed in all cases of arrest or detention. It has been held that the failure to comply with those requirements shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for Contempt of Court. The requirements projected by the Apex Court flow Article 21 and 22(1) of the Constitution of India. After pointing out the different facets of the custodial deaths, its remedial and preventive measures, the Apex Court on conclusion has observed as follows :

"Thus, to sum up, it is now a well-accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their act. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

11. A Division Bench of this Court while dealing with a case of custodial death of a 14 years old boy in which case also the police had tried to make out a case of suicide, after referring various decisions of Apex Court as well of this Court observed as follows :

"If the story as sought to be suggested by the Respondent is true that Romanchal committed suicide, naturally, the first question that arises is what the constable or Havildar was doing, could he not prevent it or at least inform his higher police officer present there? Suicide by hanging must have proceeded by some prior arrangement, it is nobody's case that the police constable posted on

duty were all along dozing or sleeping, as such, they could not see as to what was happening in the police lock up. Whether the rope was supplied by the police or by what means he could hang himself, these are the questions which remain unanswered in the affidavits filed by the D.C. and the incumbent O.C. Naturally, going by the record, their affidavits are bound to be discrepant as they in fact are tortured and as the most heinous of crime committed, it is a sin against humanity as has been observed by the Apex Court in *D.K. Basu v. State of West Bengal* 1999 (1) SCC 416.

I may also gainfully refer to the following decisions.

1. *Murti Devi Vs. State of Delhi and Others*,
2. *Kewal Pati (Smt) Vs. State of U.P. and Others*,
- 3 *Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others*,
4. *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*,
5. 1991 (2) GLR 347 (*Bihar Timung v. Union of India and Ors.*)
6. 1993 (2) GLR 214 (*Smt. Ranubala Sutradhar v. The State of Tripura*)

In all the above cases the custodial deaths have been unequivocally condemned and a need has been emphasized for protection of lives and liberties of the prisoners. As regards the payment of compensation, it has been held that claim in public law for compensation for unconstitutional deprivation of fundamental right of life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system where in their right and interests shall be protected and preserved. Grant of compensation in proceedings under Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

12. In the instant case the respondent No. 1, 2 and 5 have chosen not to file my affidavit. On the other hand the affidavit filed on behalf of the respondent Nos. 3 & 4 does not throw any light regarding the measures taken for the well being and protection of the deceased. A mere statement and that too evasive in nature that the deceased committed suicide while in jail custody and thus the State is not responsible for his death without any material disclosures of the fact incidental thereto cannot, in my considered opinion absolve the prison authorities of its

responsibilities towards protection of life of the deceased. The circumstances in which the deceased was declared to be dead by the Jail Superintendent with a simple intimation to the learned Judicial Magistrate appear to be mysterious. Nothing has been stated in the affidavit as to how his dead body was found and under what circumstances and who are the persons who first witnessed the same.

13. Above being the position of fact and law, I am constrained to hold that the petitioner along with her children and parents of the deceased are entitled to compensation for wrongful loss of life of her husband. Now the question is what should be the amount of compensation. The quantum of compensation will, needless to say, depend upon the peculiar facts and no straight jacket formula can be evolved in that behalf. Nothing has been stated in the writ petition about the profession in which the deceased was in. Rather it appears that at the time of his death he was involved in three criminal cases involving serious offences which fact tentatively suggests that he was anti social element. Having regard to all these factors, I quantify the amount of compensation at Rupees One lakh, which shall be paid by the respondents to the petitioner within a period of one month from the date of receipt of the copy of this judgment failing which the amount will carry interest at the rate of nine per cent per annum. Any amount of unexplained delay towards compliance of this direction will make the erring officials responsible to pay the interest from their own pockets. The Director General of Police, Assam will ensure payment of the compensation awarded within the time limit specified.

14. Having fixed the amount of compensation upon holding the prison authorities responsible for custodial death of the deceased, may be, on account of their negligence, should the matter stop here. Payment of compensation is not the ultimate goal, but a means to achieve a particular goal. The erring officials must be brought on record, to put a deter to such negligence and avoidance of duty and responsibility cast on the concerned officials so that such a sorry state of affairs is not repeated in future. Keeping in mind this aspect of the matter the Director General of Police, Assam is directed to carry out an enquiry relating to the entire incident and proceed departmentally by way of initiation of departmental proceeding against the erring officials. The required exercise be carried out, if need be in association with the State Government preferably within a period of six months from the date of receipt of the copy of this judgment.

15. Before parting with the case record, I make it clear that awarding of the compensation as above under public law jurisdiction will not preclude the petitioner from taking any other action like civil suit for damages which may be lawfully available to her.

16. The writ petition stands allowed.

17. No order as to cost.