
(2010) 08 GAU CK 0130
In the Gauhati High Court
Case No : Writ Petition (C) No. 1482 of 2008

Naisul Khatun

APPELLANT

Vs

Sate of Assam and Others

RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Constitution of India, 1950 — Article 10, 21, 226, 256, 32
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, 12(1), 14, 4, 48
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 9, 9(2)
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2010) 4 GLT 364

Hon'ble Judges : Madan B. Lokur, C.J.; B.P. Katakey, J

Bench : Division Bench

Advocate : M. Dutta and Z. Rahman, for the Appellant; D.K. Mishra, Amicus Curiae, for the Respondent

Judgement

Madan B. Lokur, C.J.—This writ petition, filed by the mother of a 16 year old juvenile (since deceased) alleged to be in conflict with law is an unfortunate case of chargeable callousness, infuriating insensitivity and annoying apathy on the part of all concerned in the care of a juvenile in conflict with law. It is under these circumstances that the Petitioner has prayed for compensation for the custodial death of the juvenile and, in our opinion, she is entitled to compensation to the extent of Rs. 1,50,000/-.

The facts:

2. An allegation was made of a burglary in the residence of one Bimal Kr. Bhatera on 10.2.2007. A case u/s 457/380 of the Indian Penal Code was registered and ASI Gautam Das was asked to investigate the case.

3. During the course of investigation, the investigating officer arrested AB, aged about 15 years and the juvenile, aged about 16 years on 10.10.2007.

4. Both the juveniles were produced before the Sub Divisional Judicial Magistrate

(also doubling up as the Principal Magistrate of the Juvenile Justice Board) who soon remanded them to an Observation Home in Boko, Bamunigaon established under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "theAct").

5. Thereafter, on 12.10.2007, the juvenile's father moved an application for bailing him out but that was rejected by the Principal Magistrate of the Juvenile Justice Board. Two more applications for bail were subsequently filed but both were rejected.

6. Eventually, the matter traveled upto the High Court and in B.A. No. 4478/07 a learned Single Judge passed an order on 28.11.2007 directing the release of both the juveniles on furnishing bail bonds of Rs. 10,000/- with two sureties of the like amount subject to the satisfaction of the Principal Magistrate of the Juvenile Justice Board.

7. After the grant of bail by the High Court, bail bonds were submitted by the juvenile's father on more than two occasions but the Principal Magistrate rejected them on the ground that the sureties were not suitable.

8. Eventually, on 11.1.2008 the juvenile's father moved an application before the Principal Magistrate to the effect that the juvenile is suffering from tuberculosis and he may die if his case is not disposed of quickly. On this application the Principal Magistrate directed the investigating officer to immediately submit a report.

9. It appears that before the matter could be taken up again, the Superintendent of the Observation Home at Boko, Bamunigaon informed the Principal Magistrate by a letter dated 26.1.2008 that the juvenile had expired on 25.1.2008 at about 10.30 P.M.

10. These facts, though not stated in the writ petition, have come on record through a report filed pursuant to an order dated 26.5.2009 passed by this Court. On her part, the Petitioner generally brought out the custodial death of the juvenile and sought a direction that the Respondents should pay her compensation of Rs. 10,00,000/- for his custodial death at the Observation Home at Boko, Bamunigaon.

11. In the writ petition it is stated that the doctor who conducted the post mortem examination of the juvenile opined that his death was due to exhaustion and chronic bilateral pulmonary tuberculosis. The Petitioner says that the juvenile was the only earning member of the family and he worked as an embroidery tailor earning Rs. 7,500/- per month. It is also alleged that the authorities in the Observation Home intentionally neglected in providing him medical care and treatment and did not even bother to take him to a specialist TB Hospital in violation of the provisions of Section 48 of the Act.

12. The Superintendent of the Observation Home at Boko, Bamunigaon denied the allegations made in the writ petition. It is stated on affidavit that the

Petitioner visited the deceased only once before her son's illness as did the father of the juvenile but only after he received information about the ailment of the juvenile. It is not clear what is sought to be insinuated by this averment. Be that as it may, the affidavit goes on to state that when the Petitioner visited the juvenile, she did not mention anything about his illness. On the other hand, when the authorities in the Observation Home came to know about his suffering from fever towards the end of December, 2007 and early January, 2008 he was treated at the Bamunigaon Mini Public Health Centre and he recovered after the treatment. Subsequently, he again fell ill with fever and vomiting with patches of blood. He was immediately taken to the Boko Public Health Centre where investigation were carried out and the juvenile's family was informed about his illness. It is stated that all care was taken to ensure that proper medical treatment was given to the juvenile but unfortunately he died before any substantive steps could be taken.

13. In view of the conflicting reports, this Court passed an order on 26.5.2009 directing the Chief Judicial Magistrate, Kamrup, Guwahati to file a detailed report indicating the events that transpired between 10.10.2007, the date of custody of the juvenile, till 15.5.2009. Pursuant to this order, the Chief Judicial Magistrate submitted a report on 15.6.2009 giving the facts of the case and the relevant details, which we have mentioned above.

Issue of compensation

14. Learned Amicus drew our attention to a few decisions of the Supreme Court. Reference was made to paragraph 6 of D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others, wherein it was observed:

Even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

15. Reference was then made to paragraph 10 of Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, wherein it was held:

It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 of Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government-has the right to take any action

which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State policy contained in Clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

16. More recently, in a case of custodial death, the Supreme Court relying upon *D.K. Basu Vs. State of West Bengal*, held the State of Uttar Pradesh responsible in public law to compensate for the death of the victim. [See *Ajab Singh and Another Vs. State of Uttar Pradesh and Others*,

17. Even more recently, the Supreme Court laid down the law on the subject matter after exhaustively dealing with a large number of precedents. It was held in *Sube Singh Vs. State of Haryana and Others*, (paragraphs 45 and 46 of the Report):

45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. The Courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c)

whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the Courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

18. While it is true that the Supreme Court was dealing with a case of custodial torture, we are of the opinion that the principles laid down are equally applicable in a case of custodial death due to neglect in providing adequate medical treatment - more particularly to a juvenile who is unable to otherwise even fend for himself. Therefore, even if there is no physical violence, but the cause of custodial death is attributable to carelessness, wanton or otherwise, on the part of State functionaries, the State is responsible in public law to compensate for the death. Starvation or deprivation of food or water is an example of causing custodial death without any violence. So also would a case like the present fall in the same genre - causing death by denying timely medical treatment.

19. In terms of the decision of the Supreme Court, the questions that we are required to answer are:

(a) Whether the violation of Article 21 is patent and incontrovertible? In our opinion, the answer to this must be in the affirmative. That the juvenile was in custody is undeniable. That the juvenile was unable to avail of the bail granted to him by this Court is also undeniable. That the juvenile's father was unable to get him released on bail due to poverty is also undeniable - the fact that the juvenile remained in custody for almost sixty (60) days after bail was granted by this Court confirms his poverty. Therefore, even though in a sense the custody of the juvenile was unobjectionable (the custody having been ordered by the Juvenile Justice Board) yet its continuance was constitutionally invalid because the juvenile remained incarcerated despite a bail order in his favour only because of his poverty. And he remained so until his unfortunate death. Under these circumstances, we have no doubt that there was a patent and incontrovertible violation of Article 21 of the Constitution.

(b) Whether the violation is gross and of a magnitude to shock the conscience of the Court? The answer to this question must also be in the affirmative. That a custodial death occurred is bad enough but what certainly makes it gross is that the death was of a juvenile, who was accused not of a heinous crime, but of burglary. What shocks the conscience of this Court, in this case, is that the juvenile died of callous neglect-failure to be treated for TB, a disease that is not latent in the terminal stages. What makes it worse is that even according to the affidavit filed by the Superintendent of the Observation Home, the father of the juvenile had visited him when he was ailing. It is soon thereafter that he moved

Anr. application for bail alleging that the juvenile is suffering from tuberculosis and he may die if his case is not disposed of quickly. Notwithstanding this, neither the police nor the authorities in the Observation Home (who should have been aware of the illness) took any substantive steps to have the juvenile treated for TB. It is this that ultimately cut short his life. To us, the entire sequence of events is rather shocking and telling.

(c) Whether the custodial torture alleged has resulted in death or whether custodial torture is supported by a medical report or visible marks or scars or disability? That the avoidable custody of the juvenile contributed to his early demise is undeniable. Whether violence was the cause of death is not relevant, as we have already held earlier.

Public law remedy

20. The facts of the case having satisfied the parameters set out by the Supreme Court, we have now to decide whether the public law remedy of awarding compensation should be exercised in this case or not.

21. As the Supreme Court noted in *Bandhua Mukti Morcha* (supra) everyone has a right to live with dignity—indeed this is the essence of Article 21 of the Constitution. It is of no consequence that the person is a convict or an under-trial prisoner or a juvenile resident of an Observation Home who is in conflict with law or a free person. On the facts of this case, we have been shown no reason to deny to the Petitioner the public law remedy of claiming compensation for the custodial death of her son. Indeed, given the poverty of the Petitioner, immediate succour is necessary and this can only be provided by giving her access to a public law remedy rather than to relegate her to "the traditional remedies by way of appropriate civil/criminal action".

22. Additionally, we find that there are a series of violations or misinterpretations of the provisions of the Act which can be noticed only in a public law action. We propose to describe some of them.

23. First and foremost it is necessary to draw attention to Section 12 of the Act which deals with bail to a juvenile. This Section reads as follows:

12. Bail of juvenile.— (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under Sub-section (1) by the officer in charge of the police station, such officer shall cause

him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under Sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

24. A reading of Section 12(1) of the Act makes it clear that notwithstanding anything contained in the Code of Criminal Procedure or in any other law, a juvenile is entitled to be released on bail with or without a surety. However, the juvenile will not be released if there appear to be reasonable grounds for believing:

- (i) that the release is likely to bring him into association with any known criminal;
- (ii) that the release is likely to expose him to moral, physical or psychological danger;
- (iii) that the release would defeat the ends of justice.

25. Unlike the usual cases where bail is applied for by an accused and he has to make out a case for grant of bail, the position is the reverse in the case of a bail for a juvenile in conflict with law. Here, it is not for the juvenile to make out a case why he should be granted bail but it is for the arresting authority to satisfy the Juvenile Justice Board that the juvenile should not be released on bail because of the existence of any one of the three circumstances mentioned above. The first and second circumstances are clearly intended to ensure the safety of the juvenile while the third circumstance is to prevent a defeat of the ends of justice. The onus therefore is a reverse onus and is more akin to the prosecution asking for a remand of an accused into custody rather than a prayer by the accused for being released from custody. The language used in Section 12(1) of the Act is rather interesting in this context, and shorn of unnecessary verbiage, the Section would read: "such (a juvenile) shall be released on bail, but he shall not be so released if there appear reasonable grounds for believing that the release is likely to...". Refusal to bail out a juvenile is, therefore, more in the nature of protective custody rather than penal custody.

26. This interpretation of Section 12(1) of the Act is in consonance with the Convention on the Rights of the Children (CRC), the United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. For example, Article 37 of the CRC provides, inter alia.

Article 37. States Parties shall ensure that;

(a)XXX XXX XXX (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the

shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d)xxx xxx xxx

27. Similarly, Article 10 of the Beijing Rules provides:

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

28. Finally, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides as follows, in paragraphs 1 and 2 of the Fundamental Perspectives:

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

29. The main principle invoked in this regard is the presumption of innocence, namely that everyone, including a juvenile, is presumed to be innocent until proven guilty. It is to uphold the principle that the detention of a juvenile should be for the minimum period of time and keeping in mind the presumption of innocence, the prosecution must show to the Juvenile Justice Board that it would be in the best interest of the juvenile if he is kept in custody (rather than not

released from custody).

30. In view of the failure of the Juvenile Justice Board to observe this principle, we direct all the Juvenile Justice Boards falling within the jurisdiction of this Court to take note of the interpretation that we have given to Section 12(1) of the Act and adhere to it.

31. The second disturbing aspect of the case is that it appears the Juvenile Justice Board constituted u/s 4 of the Act did not actually sit or assemble to deal with the case of the juvenile. We say so because from the original case records we find that all the order sheets passed in the matter, including those refusing bail to juvenile have all been signed only by the Principal Magistrate of the Juvenile Justice Board. There is nothing to suggest that the two social worker members of the Board ever met to consider the request of the juvenile's father to grant him bail. This is rather unfortunate because the application of mind has to be by the Juvenile Justice Board and not only by the Principal Magistrate.

32. The philosophy underlining the presence of two social workers in the Juvenile Justice Board is that its proceedings should not be conducted in a legalistic manner, such as in a trial. A reading of the Act makes it clear that the proceedings against the juveniles are an "inquiry" and not a "trial". This is the simple language of Section 14 of the Act which requires the inquiry to be completed within a period of four months from the date of its commencement (unless the period is extended) but is shall not in any case extend for a period beyond six months from the date of its commencement. Section 14 of the Act reads as follows:

14. Inquiry by Board regarding juvenile.-

(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

33. Insofar as the present case is concerned, it appears that even though the juvenile was arrested on 10th October, 2007 till the date of his death on 25th January, 2008 no effective or substantive step had been taken at all to conclude the inquiry nor was any urgency shown by the Principal Magistrate to complete the inquiry.

34. In our opinion, the Juvenile Justice Boards must realize and appreciate the responsibility cast upon them by the statute, which is to make every effort to conclude the inquiry within four months and to ensure that it is not actually converted into a trial. It is quite possible that due to pressure of work it may not be physically possible to complete an inquiry within four months but at least every effort should be made to do so. From the records of the case papers, it appears that no effort was made in this regard by the Principal Magistrate and the situation was simply allowed to drift as if the custody of the juvenile is the be all and end all of the enquiry. We, therefore, direct all Juvenile Justice Boards within the jurisdiction of this Court to make every serious attempt to dispose of an inquiry in respect of a juvenile in conflict with law within the requisite 4(four) months.

35. Thirdly, the requirement of Rule 9 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 framed by the Central Government (for short the Central Rules) for the implementation of the Act is that the sitting of the Juvenile Justice Board should be in the Observation Home or in its close proximity. Rule 9 reads as follows:

9. Sittings of the Board- (1) The Board shall hold its sittings in the premises of an Observation Home or, at a place in proximity to the Observation Home or, at a suitable premise in any institution run under the Act, and in no circumstances shall the Board operate from within the Court premises.

(2) to (5) XXX XXX xxx

In the present case, we are told that the Observation Home at Boko, Bamunigaon is about an hour's drive from the offices of Juvenile Justice Board. This is clearly not acceptable but it appears that the State Government has not taken the matter seriously enough to try and locate the Observation Home close to the place of sitting of the Juvenile Justice Board or to re-locate the Juvenile Justice Board so that it is close to the Observation Home. To make matters worse, the sitting of the Juvenile Justice Board is within the Court premises, which too is in violation of Rule 9 of the Central Rules.

36. Under these circumstances, we have no option but to direct the State Government through the Commissioner, Department of Social Welfare of the Government of Assam and his counterparts in the other States under the jurisdiction of this Court, to ensure that a Juvenile Justice Board is set up in every district of each State under the jurisdiction of this Court and the sittings of the Boards should be in the Observation Homes or a short distance from them so that not much travel time is taken between the Board and the Observation Home. It should also be ensured that the sittings of Juvenile Justice Boards are not held in the Court premises. The reason for the latter direction is to be found in the Central Rules of which Rule 9(2) reads as follows:

(2) The premises where the Board holds its sittings shall be child-friendly and shall not look like a Court room in any manner whatsoever; for example, the

Board shall not sit on a raised platform and the sitting arrangement shall be uniform, and there shall be no witness boxes.

37. Finally, we find it difficult to appreciate how the authorities in the Observation Home at Boko completely failed to notice that the juvenile was suffering from a debilitating disease such as tuberculosis, which is not a disease that can be easily hidden particularly if it is at an advanced stage, as in the case of the juvenile who died as a result of chronic bilateral pulmonary tuberculosis on 25th January, 2008. It appears to us that when he was actually taken in custody and produced in the Observation Home towards middle of October, 2007 it should have been apparent to the Superintendent and Ors. concerned with the welfare of the juvenile in the Observation Home that he was not medically fit. The concerned authorities were then obliged to take steps to ensure that the sick juvenile is not kept in custody and in any event since he is suffering from tuberculosis, he should be dealt with separately through various, specialized referral services as mandated by Section 48(2) of the Act. This has not been done in this case for the lack of sensitivity or a lack of awareness of the disease or a lack of accountability at the Observation Home. Section 48 of the Act reads as follows:

48. Committal to approved place of juvenile or child suffering from dangerous diseases and his future disposal.-

(1) When a juvenile or the child who has been brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognized to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

(2) Where a juvenile or the child is found to be suffering from leprosy, sexually transmitted disease, Hepatitis-B, open cases of Tuberculosis and such other diseases or is of unsound mind, he shall be dealt with separately through various specialised referral services or under the relevant laws as such.

38. To avoid the repetition of such instances in future we direct the Department of Social Welfare, Government of Assam and the other States under the jurisdiction of this Court to issue directions immediately to all the Observation Homes and to all the Juvenile Justice Boards. These directions should be to the effect that every juvenile in conflict with law presently in an Observation Home is medically examined as soon as possible, and all juveniles who are henceforth sent to an Observation Home are medically examined before they enter the Observation Home, or in any case soon after their entry into the Observation Home. Hopefully, if these measures are sincerely adopted, the health of each juvenile in conflict with law can be protected and the constitutional mandate of Article 21 and 39(e) given meaningful effect.

39. To submit, as has been done by the Respondents, that the parents of the

deceased did not come to meet him except only on one occasion, is neither here nor there. The insinuation appears to be that the deceased was not sick or that his parents did not care enough for him. But it is also quite possible that because of their poverty the parents of the deceased were unable to provide him medical assistance or even arrange to travel one hour away to be with the child. We cannot proceed on any presumption of any kind and leave the matter at that but we do feel, from the records of the case, that the poverty of the parents was certainly one factor which prevented them from spending more time with the juvenile and properly caring for him perhaps in his last days as they would have liked to.

Conclusion

40. Having considered all the various factors, the decisions and the financial status of the Petitioner, as they appear from the record, we are of the view that it would be appropriate if the State is directed to compensate the Petitioner with an amount of Rs. 1,50,000/- for the custodial death of her son. We are conscious of the fact that there are no specific parameters for the award of compensation in cases of this nature. But at the same time we are conscious that since the deceased juvenile was aged only about 16 years, he could have at least looked to a better future in the coming years. Even though he may have been suffering from a debilitating disease, he could have been of some use to society, his parents and his immediate family.

41. We direct the Social Welfare Department, Government of Assam to make over the compensation to the Petitioner within four weeks from today and in any case on or before 31st October, 2010.

42. We except the concerned Social Welfare Departments of the various States under the jurisdiction of this Court to implement the directions given by us within a period of four months from today and in any case on or before 31st January, 2011.

43. With the above observations and directions the writ petition is disposed of