
(2004) 04 GAU CK 0002
In the Gauhati High Court
Case No : W.A. No. 218 of 2003

Nirmal Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2004) 3 GLR 614

Hon'ble Judges : P.P. Naolekar, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : B.D. Goswami, for the Appellant; A. Hazarika, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. B.D. Goswami, learned counsel for the appellant. Also heard Mrs. A. Hazarika, learned Govt. counsel appearing on behalf of the State respondents.

2. The learned Single Judge dismissed the Civil Rule No. 1391/96 by judgment and order dated 7.2.02 holding that there was hardly any clinching or satisfactory material to enable the writ court to hold that my particular police officer was responsible for the death of one Niranjana Kalita so as to fasten any liability on any particular member of the police party for the death of said Niranjana Kalita.

3. In the said writ petition, it was alleged inter alia that in the night of 3/4.6.95, a group of unidentified persons raided the house of one Biren Kalita of village Bamungaon under Kamalpur Police Station in the District Kamrup. During such raid, the inmates of the house of Biren Kalita, having become panicky, raised a hue and cry attracting the neighbours of locality towards their house. Thereafter, the police personnel who were also accompanying the said group of unidentified persons without any provocation, opened fire upon the innocent persons gathered in front of the house of Biren Kalita causing death to Niranjana Kalita

and serious injuries to one Tilak Kalita and Prasanna Kalita who were in the midst of the crowd. Sequel to such firing, an FIR was lodged with the Kamalpur Police Station and accordingly a case was registered being Kamalpur PS Case No. 92/95 under Sections 147/148/149/353/342/336/307IPC.

4. Those contentions and allegations of the writ petitioner, who happened to be the brother of the deceased Niranjan Kalita, were resisted and refuted by the State respondents by filing their counter. The case of the State respondents was that acting on a tip off that some ULFA militants were hiding in the house of Biren Kalita, police went to the house of said Biren Kalita in search of those militants. At that juncture, the people of village had gathered in front of the house of Biren Kalita and resisted such police action. They started pelting stones upon the police party from all sides and even fired at the police party who only in retaliation had to resort to firing upon the mob.

5. On consideration of the claims and counter claims as narrated in the rival pleadings of the parties, the learned Sessions Judge, Kamrup to go into the details of the factual situation of the case at hand and the learned Sessions Judge, after holding enquiry so directed by this court, submitted the report with the finding that steps taken by the police by resorting to firing to disperse the villagers appeared to be an excess act.

6. The learned Single Judge, on careful consideration of the report so submitted by learned Sessions Judge, did not agree with the same as those findings so arrived at by the learned Sessions Judge, were found to be somewhat abrupt and there was no detailed narration of the evidence of 9 witnesses so examined by him. Ultimately, after taking into consideration the entire factual situation of the case and on close perusal of the pleadings of the parties, the writ court came to the conclusion that no liability for monetary compensation should be fastened vicariously on the State respondents.

7. We have carefully gone through the impugned judgment and also have given anxious consideration to the submissions made by the learned counsel of the rival parties. It appears from the scrutiny of the record that the police raided the house of Biren Kalita on receipt of some secret information that some ULFA militants had taken shelter in the said house and finding the presence of the police personnel in front of house of Biren Kalita, the people of the locality gathered thereon and objected to said action of the police raid. Thereafter, the people started pelting stones at the police party. It is also revealed from the record that the mob that congregated in front of house of Biren Kalita were chasing police party by pelting stones at them. Ultimately the police party, in retaliation, had to open fire on the surging mob.

8. In view of factual scenario above mentioned, we do not find any unjustification in the police firing on the mob indulged in attacking the police party in the eventful night. Accordingly, we are of the firm view that the appellant has failed to make out a case for granting adequate compensation for the loss caused to

him as a result of the death of the deceased Niranjana Kalita and he therefore, is not entitled to get any relief as prayed for. That being so, we do concur with the views and findings recorded in the impugned judgment resulting in the dismissal of the writ petition.

9. Police excesses or police atrocities are regarded as crimes in a civilized society governed by the rule of law. Article 21 of the Constitution of India guarantees the protection of the life and personal liberty of a person against any illegal or unauthorised State action. Hence, it is the bounden duty of the persons in uniform to respect and protect such constitutional mandate and behave in accordance with law in their performance of public duty. It is incumbent on the part of State to ensure that there is no infringement of the inviolable rights of a citizen to life, except in accordance with procedure established by law. The state is responsible if the person is deprived of his life or personal liberty for the highhandedness of the police. Therefore, it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims or their relatives in exercise of their writ jurisdiction. The right of compensation is palliative against the infringement of the indefeasible right guaranteed under Article 21. Such compensation is in the nature of exemplary damages awarded against the wrongdoers for the breach of its public duty. The payment of compensation are needed to be made to the victim or his heirs/relatives for flagrant violation of his or their fundamental rights under Article 21. However, the relief of such nature under the writ jurisdiction would be granted only once it is established that there has been an infringement of such fundamental rights of a citizen. In the instant case the appellant could not satisfy this court as regards the violation of any fundamental right, either of the deceased Niranjana Kalita or the petitioner himself.

10. In the result, the appeal fails and stands dismissed.