
(2002) 10 GAU CK 0018
In the Gauhati High Court
Case No : C.R. (HC) No. 8 of 1998

N.S. Vangmila

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Penal Code, 1860 (IPC) — Section 365

Citation : (2005) 2 GLR 622

Hon'ble Judges : Ranjan Gogoi, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : R. Daniel and Y. Ashang, for the Appellant; K. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Though facts and events that had occurred during the pendency of the present writ application has changed its complexion, compelling the writ petitioner to seek additional/alternative reliefs, a recital of the complete facts of the easels considered necessary.

2. The writ petitioner who is the mother of one N. S. John had originally instituted the present writ proceeding praying for a writ of habeas corpus for production of her son N. S. John and for appropriate orders setting him at liberty. According to the writ petitioner her son was, at the relevant point of time, employed as a Rifleman in the Assam Rifles and posted at Charduar in Sonitpur District of the State of Assam. On 8.8.1995, a Column of 31 Assam Rifles personnel posted as Charduar consisting of amongst others, the son of the petitioner, went to Kangpokpi outpost in Senapati District of Manipur on official duty. According to the petitioner, the said Column of Assam Rifles camped at Kangpokpi outpost for 3 days, i.e., from 8.8.1995 to 11.8.1995. Thereafter, as per schedule, the column left Kangpokpi outpost on 11.8.1995 for its Headquarters at Charduar. However, the son of the petitioner did not return with

the column which had left Kangpokpi outpost and her son has been missing since then. According to the writ petitioner the competent authority of the Assam Rifles did not take any steps to inform the parents of N. S. John or any other near relative about the disappearance of the said N. S. John. It is the further case of the writ petitioner that on 8.9.1995, a F.I.R. was lodged with Kangpokpi Police Station by the elder brother of N. S. John and Kangpokpi Police Station Case No. 194(9)/95 u/s 365 I.P.C. was registered on the basis of FIR lodged. The Police investigated the case relating to the disappearance of N. S. John and eventually submitted the final report to the competent Court stating that though the disappearance of the concerned person, i.e., N. S. John was true and correct, the missing person could not be traced out and no clue with regard to the said disappearance could also be collected. A certificate from the Officer-in-charge of Kangpokpi Police Station to the above effect has been enclosed as Annexure-A(4) to the writ petition.

The further case of the writ petitioner as stated in the writ petition originally filed is that her husband, i.e., the father of the missing person made frantic enquiries regarding the disappearance of N. S. John and in that regard the Headman Dail Village had issued a Certificate dated 4.2.1996 to the effect that it is possible that suspected kuki militants had kidnapped N. S. John. According to the petitioner while the aforesaid developments were going on, there was no effort on the part of the Assam Rifles authorities to intimate to the relatives of the missing person either the fact that N. S. John was missing and/or the attempts made by authorities to trace him out. The petitioner contends that a representation was filed by her on 10.8.1997 before the Commanding Officer, 31 Assam Rifles, Kangpokpi as well as to the authorities of the State of Manipur and the Assam Rifles authorities in the response to the representation submitted to the petitioner sent a reply dated 23.9.1997 from which reply, for the first time, the petitioner could come to know the stand of the Assam Rifles authorities in the matter. The aforesaid reply which has been enclosed at Annexure-A(8) to the writ petition described that the Assam Rifles authorities had investigated the matter relating to the disappearance of N. S. John and the result of such investigation had revealed that on 11.8.1995, the aforesaid N. S. John had come out of the Assam Rifles Camp without due permission and had consumed country liquor in an out of bound place whereafter he did not report back to the camp. From the aforesaid reply dated 23.9.1997 it is also evident that a court of the enquiry was held with regard to the disappearance of N. S. John and in the said court of enquiry, the aforesaid N. S. John was declared as a deserter and the matter had been reported to higher authorities.

It is in the aforesaid facts that the instant writ petition was filed praying for a writ of habeas corpus as already stated hereinbefore.

3. The Assam Rifles authorities had filed a counter affidavit in the case denying the allegations of negligence and inaction as alleged in the writ application. In the aforesaid affidavit, the stand taken by the Assam Rifles authorities, their

reply dated 27.9.1997 has been reiterated in some what great details. The case of the said authorities as projected in the affidavit filed is that on 11.8.1995 N. S. John had unauthorisedly left the Assam Rifles camp at Kangpokpi and had gone to an out of bound place to consume liquor where after he had not return to the comp. A court of enquiry was convened in the month of October 1995 by invoking the relevant provisions of the Army Act and other basis of the statements recorded in the said court of enquiry, the aforesaid person N. S. John was declared a deserter and a proclamation was issued in this regard.

4. The State of Manipur has also filed an affidavit in the case contending that in so far as State respondents are concerned, the FIR lodged in respect of the disappearance of N. S. John Was registered an Kangpokpi P.S. Case (9)/95 and the same was duly investigated. The result of the investigation, according to state respondents, revealed that the aforesaid N. S. John was kidnapped by unknown miscreants from Kangpokpi bazaar. Inspite of vigorous investigation, the aforesaid missing person could not be traced out nor any clue as to his whereabouts could be obtained. Accordingly, the investigation was closed as per provisions of law.

5. Two apparently contradictory versions having emanated from the counter affidavits filed by the Assam Rifles authorities and the State respondents, this Court by order dated 28.7.1999 directed a de novo enquiry to be made with regard to disappearance of N. S. John. Such enquiry was required to be made by the nominee of Director General of Police and a report was required to be submitted to this court within a period of 2 months.

Pursuant to the aforesaid order dated 28.7.1999 passed by this court, a de novo enquiry as directed by this Court was held and a report dated 13.12.1999 of the Inspector General of Police, Manipur was placed before this Court. The findings arrived at in course of such enquiry as evident from the report dated 13.12.1999 may be conveniently set out below:

(a) Rfm N. S. John of 31 Assam Rifles reached Kangpokpi on 8th August, 1995 in Assam Rifles convoy from Dimapur.

(b) Rfm N.S. John halted at Kangpokpi along with the other Assam Rifles personnel from 8th August, 1995 to 11th August, 1995 till the departure of Assam Rifles Convoy to Taq Hqs Tamei I.T, Road.

(c) Rfm N. S. Jhon had consumed liquor along with Rfm K. Vaiphei in a vendor at Kangpokpi bazaar on 11th August, 1995.

(d) There was ethinc violence between the Kukis and Nagas in Kangpokpi area, which was dominated by the Kukis in those days.

(e) Rfm N. S. John in all probability was the one who was taken Turibari area by the Kuki militants as certified by Mr. Vabo Headman of Dailli Village (Anaga Village) Kangpokpi area on that fateful day.

(f) The family members made all out efforts to trace out Rfm N. S. John immediately after disappearance of Rfm N. S. John.

(g) The Police Station Kangpokpi made their level best to locate N. S. John but he could not be found.

(h) The efforts made by the family members and police party were all genuine efforts in attempting to trace Rfm John.

(i) The representation made by the mother of Rfm. N. S. John to the then Chief Minister of Manipur and her final move of habeas corpus in the Gauhati High Court, Imphal Bench are genuine efforts to trace out her son.

(j) The matter of Rfm. John's missing from Kangpokpi was discussed with the Village Authorities/Villagers in 1995 and the Villagers deputed Rfm. John's father to Kangpokpi "Tamie etc., in search of him.

(k) Rfm. N. S. John has not been seen after the news of missing from Kangpokpi in 1995 for, the last four years in his village Khaojai Ukhrul Dist.

(l) There is no information about Rfm N. S. John joining the underground set up and also about living in any area for the last four years.

(m) The proceedings of the court of enquiry conducted and declaration of Rfm N. S. John as deserter was formally obtained and made available through Mr. Bishnu Gurung, Havildar Clerk No. C/360893 of Hqs. of Manipur Range, Assam Rifles.

(n) Rfm. N. S. John kidnapped by the Kukis on 11th August, 1995 from Kangpokpi killed and buried somewhere and he is not a deserter.

(o) The declaration of Rfm. N. S. John of 31 Assam Rifles as deserter is neither justified nor correct.

6. It is at this state that the writ petitioner had filed an additional affidavit dated 16.1.2001 reiterating her allegations of negligence, inaction and failure on the part of the Assam Rifles authorities in tracing out her missing son and on the basis of the report dated 13.12.1999 of Inspector General of Police putting forward alternative/additional claims relating to the monetary compensation, on an assumption that the aforesaid missing person N. S. John had died. The amount of compensation claimed has also been quantified in the aforesaid additional affidavit dated 16.1.2001.

7. Mr. R. Daniel, learned counsel for the petitioner after making an elaborate recital of the facts, as noted above, contends that the materials on record amply demonstrates that the conduct and action of the Assam Rifles authorities all throughout spells out clear negligence, inaction, indifference and apathy. The various omissions and commissions of the said authorities in the matter, clearly demonstrate conduct and actions below what can reasonably be the expected standard. It is specifically argued that the Assam Rifles authorities had failed to intimate the relatives of the missing person as to his disappearance; the first of

such communication having been addressed by the Assam Rifles authorities only on 23.4.1997 and that too in response to the representation of the present petitioner. The findings arrived at in the court of enquiry, it is argued, are superficial and stand contradicted by the findings recorded in the subsequent enquiry conducted by the Inspector General of Police pursuant to the order dated 28.7.1999 passed by this court. The son of the petitioner is not deserter and his disappearance had occurred while he was on duty, it is argued. The findings recorded in the enquiry held by the Inspector General of Police, Manipur, according to the learned counsel for the petitioner, justifies the assumption that the son of the petitioner is no more and entitles her to the claim of monetary compensation on account of death of her son due to the wrongful, negligent and irresponsible conduct of the Assam Rifles authorities in the matter. The learned counsel has placed before the court a decision of this court in the case of *Mrs. Chingkhovung v. Union of India and Ors.* in CR (HC) No. 49/1996 rendered on 10.12.1997. Reliance has also been placed on the Judgment of the Apex Court in the case of *Smt. Charanjit Kaur Vs. Union of India and others*,

8. Controverting the submissions advanced on behalf of the writ petitioner, Mr. N. Ibotombi, learned CGSC has argued that the statements of the persons examined in course of the proceeding of the court of enquiry held in October 1995 as well as in the enquiry conducted by the Inspector General of Police pursuant to the order dated 28.7.1999 passed by this court, particularly the statement of one K. Vaiphie would go to show that the aforesaid person, K. Vaiphei was present with the missing N. S. John at Kangpokpi Bazar on 11.8.1995 and has consumed alcohol along with him. The missing person, N. S. John unauthorisedly left the camp and had gone to an out of bound place and thereafter, he did not return to the camp. The aforesaid facts, according to the learned CGSC, would go to show that the missing person himself was responsible for his misfortune and that he was not on duty at the time when the incident had occurred. It is argued that no liability can, therefore, be fastened on the Assam Rifles authorities nor can be said authorities be held guilty of any negligence or inaction in the matter. According to the learned CGSC, a court of enquiry was convened in accordance with the provisions of the Army Act and on the basis of the statements recorded in the said court of enquiry, the missing person was declared a deserter and a proclamation was issued for his apprehension. The matter was reported to the higher authorities and an intimation to the above effect was also sent to the Home address of N. S. John as stated in paragraph 10 of the counter affidavit filed by the Assam Rifles authorities.

9. We have considered the rival submissions advanced on behalf of the parties. We have perused the pleadings made in the writ petition as originally filed as well as in the several affidavits filed subsequently. We have noticed that the aforesaid pleadings there is no specific challenge with regard to the validity of proceedings of the court of enquiry held by the Assam Rifles authorities and/or the findings recorded therein. Consequently, we are of the view that in absence of any specific challenge to the proceedings of the court of enquiry and the findings

recorded therein, it would not be appropriate for this court to express any opinion on the validity of the said proceedings on the basis of oral submissions advanced. Instead, we would consider it more appropriate to proceed to determine the entitlement of the writ petitioner to compensation on the basis of the other materials on record and if such entitlement is otherwise found in favour of the writ petitioner, to apply the correct tests to determine the liability of the Assam Rifles in the light of the Report of the court of enquiry.

10. The claim for compensation made in the present case by the writ petitioner is in essence a claim made in public law for compensation for alleged violation of the fundamental rights guaranteed under Article 21 of the Constitution. The principles governing such a claim for compensation in public law has been succinctly stated by the Apex Court in the case of D.K. Basu Vs. State of West Bengal, The following passage from the aforesaid Judgment of the Apex Court may be usefully extracted below :

"The claim in public law for compensation for unconstitutional deprivation of fundamental right to 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 facts 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 a citilies public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.

Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution for the established violation of the fundamental rights guaranteed under Article 21 is an exercise of the Courts under Public law jurisdiction for penalising the wrongdoer and fixing the liability for public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respondent to their aspirations. A Court of Law can not close its consciousness and aliveness to stark realities. Mere punishment of the offender can not give much solace to the family of the Victim. Civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at the time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim who may have been the bread winner of family."

11. In the instant case, in the proceedings of enquiry held by Inspector General of Police pursuant to the order dated 28.7.1999 passed by this Court, one K. Vaipie examined, had categorically stated that he along with the missing N. S. John had gone to an out of bound place and had consumed liquor whereafter he had come back to the camp, whereas the missing N. S. John stayed back in the Kongpokpi bazaar area. The statement of N. S. Mayouba, Headman of Khagal Village and Ashuli Vabo, Headman Daili Village, examined in the said enquiry, reveals that at the relevant point of time there was an ethnic clash between the Kukis and the Nagas in that area and that in all probability, the missing N. S. John was kidnapped by the Kukis and thereafter, he was killed and buried. The findings of the Inspector General of Police as recorded in his report submitted to this Court are also to the above effect. The case regarding disappearance of N. S. John was fully investigated but the whereabouts of the missing person could not be traced neither any clue could be found. It is to the aforesaid facts that the principles laid down by the Apex Court in the case of *K.D. Basu v. State of West Bengal* (supra) has now to be applied in order to determine whether any violation of the fundamental rights guaranteed under Article 21 of the Constitution as a result of the action of any of the respondents has been established. The proved facts of the present case, in our considered view permits us answer the question only in the negative.

The case laws cited on behalf of the writ petitioner have been duly considered by us and we are of the view that the facts and circumstances of the cases relied upon by the learned counsel for the petitioner are altogether different and distinguishable from the facts of the present case. In the case of *Mrs. Chingkhovung v. Union of India* (supra), the disappearance of the missing person who was declared a deserter had occurred after his apprehension and while he was in custody of the authorities. In the case of *Charinjit Kaur v. Union of India and Ors.* (supra), the circumstances in which death had occurred reasonably pointed to only one possible conclusion, i.e., the complicity of the authorities in such death. The facts of the present case, as already narrated, do not permit us to arrive at any such conclusion. No established violation of the fundamental rights under Article 21 due to any "State action" can be said to be made out from the materials on record.

12. For the foregoing reasons, we are of the view that the claim of compensation made by the writ petitioner ought not to be allowed. The writ petition, therefore, will have to be dismissed which we hereby do but having regard to the facts and circumstances of the case there will be no order as to costs.