
(2006) 06 GAU CK 0072
In the Gauhati High Court

Pradhan Baskey and Others	Vs	APPELLANT
State of Assam and Another		RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 353

Citation : (2007) 2 GLR 65 : (2006) 3 GLT 32

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. P.K.R. Choudhury, learned Counsel for the petitioners. Also heard Mr. K.C. Mahanta, learned standing counsel appearing for the State respondents.

2. By means of this writ petition presented under Article 226 of the Constitution of India, the petitioners have sought for a direction from this court to hold an enquiry to be conducted by the Central Bureau of Investigation and to submit its report and thereupon to award adequate compensation for the death of their relatives, namely, Som Murmu, husband of the petitioner No. 4, Smti. Tolamoy Hembram, daughter of the petitioner No. 3, Renta Soren, son of the petitioner No. 2 and Smt. Baha Baskey, daughter of petitioner No. 1 who were killed in the police firing that took place in Kachugaon Adivasi Relief Camp on 7.5.1998.

3. This Court by order dated 19.1.2005, taking note of non-filing of the affidavit by the Government since 2002, directed the learned District Judge Kokrajhar to hold an enquiry into the matter and submit a report within four months.

4. In compliance of that order, the learned District Judge, Kokrajhar held an enquiry and submitted his report dated 1.12.2005 with the finding that all those persons, namely - Som Tudu, Renta Soren, Baha Baskey and Tolamay died in the police firing but the respondents failed to prove that the police personnel

resorted firing to control the situation under an Executive Magistrate Mr. N.A. Ali.

5. Be it noted that both the girls, namely, Late Tolamoy Hembram and Late Baha Baskey were aged about 12 years and 8 years respectively at the time of their death.

6. It would be necessary and expedient to refer to the enquiry report submitted by the learned District Judge and the same may be reproduced as under:

ENQUIRY REPORT OF MISC. (E) No. 1/2005 Ref:- WP(C) No. 5794 of 2002

Versus

Present :- B.K. Sarma, M.A. LL.B. Enquiry Officer-cum-District & Sessions Judge, Kokrajhar.

This enquiry was directed by the Hon''ble Gauhati High Court vide its Order dated 19.1.2005 in connection with WP(C) No. 5794 of 2002 and directed this court to hold an enquiry into the matter and to submit report within a period of four months.

After receiving the said order, notice issued to both the parties and O.P. Nos. 1, 2, 3, 4, 5 and 7 appeared filed written objection and enquiry was held against to O.P. No. 6 ex parte as O.P. No. 6 did not appear and notice could not be served upon him for want of proper address.

The fact of the petitioners case in brief is that in the year 1996 an ethnic clash broke out in the Kokrajhar district between the Bodo and Adivasis communities. As a result of such ethnic clash a large scale riot took place where a large number of people lost their lives, houses were set ablaze, life and liberty of people residing of Adivasis people had to flee their place of living and took shelter into the Relief Camps started by the District Administration and petitioners with their deceased family members were living in the Relief Camp at Kochugaon.

Although the relief camp were set by the Government with assurance of giving adequate relief, the inmates of the camps were not distributed material timely and properly which are the minimum requirements of livelihood in spite of repeated assurance by the Government such inhuman treatment meted out to the inmates of the camps were time to time brought to the notice of the Deputy Commissioner, Kokrajhar and other dignitaries who visited relief camp but without any result. In the last part of 1998 when materials of the relief camp were not supplied in the Kochugaon Adivasi relief camp, the matter was brought to the Deputy Commissioner, Kokrajhar and the D.C. Kokrajhar deputed one Shri N.A. Ali, Executive Magistrate to take step of the situation. Then Sri N.A. Ali come to Kochugaon Adivasi relief camp on 7.5.1998 alongwith a police party. When Magistrate asked the problems of the inmates, the inmates of the relief camp appeared before the Magistrate and started to explain their grievances. When the inmates of the camp gathered narrated the problems faced by them.

The police party tried to dissuade the peace loving citizens from exercising their democratic right and started misbehaving and pushing some of the inmates who were present there as a result of which some discontent arose in the minds of the inmates and they raised slogans demanding relief materials. Then Police went to the Magistrate and started indiscriminate firing on the inmates of the relief camp and as result of indiscriminate firing four persons namely (1) Som Murmu, husband of the petitioner No. 4, (2) Smti. Tolamoy Hembram daughter of the petitioner No. 3, (3) Renta Soren, son of petitioner No. 2 and (4) Baha Baskey, daughter of petitioner No. 1 died on the spot. The inmates of the relief camp went to Kochugaon P.S. to lodge a complaint against the police officials who had no valid reason to fire and kill four persons of the relief camp and injuring many others. But surprisingly enough, the O/C, Kochugaon P.S. refused to accept the FIR lodged by the inmates of the relief camp. Being failed to get justice in the hands of respondent authorities the petitioner submitted an application through their advocates to the Home Secy., Govt. of Assam on 15.1.2002 praying for inquiry of the incident by the C.B.I., and or to appoint a Commission to inquiry into the matter and to grant ex-gratia compensation to each of the next kin of the victim killed by indiscriminate police firing. Being a citizen of India the petitioners are entitled to the right and privilege available to the citizen of India under the Constitution of India and other law of the land. Hence, the petition.

O.P. Nos. 1, 2 and 4, filed show cause reply denying the allegation of the petitioners stating that the petitioners have no locus standi to institute the above suit against the respondent and that there is no prima facie case made out against the respondents. Hence, writ petition does not lie against the respondents as the same is time barred.

O.P. Nos. 3 and 5 filed written objection denying the allegation of the petitioner stating, inter alia, that the writ petition is barred by limitation, that the petitioners have no locus standi to file the present writ petition against the respondents. That the deceased persons become violent and gharoed and tried to attack police force who were deputed for maintenance of law and order duty. That the respondents have denied the allegations of violation of the present provisions of Rules 113, 114, 115 and 116 of the Assam Police Manual.

The facts of their case in brief is that on 7.5.1998 at about 5.45 PM when the police personnel were executing duty at Kochugaon market then Adivasis miscreants about 700/800 Adivasis people came out from the relief camp located at Kochugaon market and gharoed the police personnel at Kali Mandir premises. The police personnel came back to Kochugaon market but the Adivasis people became more violent and tried to attack the police force and also started pelting stones upon the police party. Finding no other alternative the E.M. the respondent No. 6 Mr. N.A. Ali who was accompanied the police for law and order duty at first wanted to disperse the unruly mob peacefully but failed for which the police resorted to petty lathi charge as per the direction of the E.M. and this

unruling mob become more violent and tried to snatch away service pistol from Asstt. Commandant of 7th A.P. Bn. E.H. Laskar who was also in law and order duty at Kochugaon for an ethnic clash between Bodo and Adivasi. Since the situation became more serious in order to control the agitated mob the police party first warned the unruly mob and resorted to firing under the order of E.M. Mr. N.A. Ali and as a result few persons were injured, namely, Sri Gopal Murmu, Smti Telamoni Hembram, Som Tudu, Albert Mardi, Renta Soren, Sunder Membrem, Baha Baskey. At the same time, as a result of attack by the unruling mob police personnel, namely, C/585 Dwijen Ch. Baishya, C/599 Dhiren Bhuyan, ABSI Mahanta Roy and other police personnel were seriously injured. That the police official never refused to accept the FIR of the public and prayed to accept the written statement.

Respondent No. 7 separately filed W.S. stating that he was the O/C of Kochugaon, P.S. on 7.5.1998. On that day at about 4.30 PM he alongwith S.I. B. Bora, H/G, Khagen Baishay C/331 Sahay Borgoyari, C/258 Sidhiswar Kalita, C/292 Teren Barman, H/G Kamal Barman, H/G Sonil Nath, H/G Asab Ali and H/G Rajen Brahman went for investigation of Kochugaon P.S. Case No. 12/98 u/s 395 IPC. Then the E.M. of Gossaigaon N.A. Ali and Asstt. Commandant of 7th A.P. Bn. also went with them. At about 4/5 PM some Adivasi people of Kochugaon relief camp came out from the camp and entered in the Kochugaon market and looted rice, dal, sugar and some utensils and also looted cash money from the shopkeepers of Kochugaon market. While the shopkeepers raised protest against such illegal act the said Adivasi miscreants armed with lethal weapons and dao threatened the shopkeepers with dire consequences which is referred to Kochugaon P.S. Case No. 12/98 u/s 395 IPC. When they arrived at Kochugaon market for investigation of Kochugaon P.S. No. 12/98 u/s 395 IPC then we noticed that about 700/800 violent Adivasi miscreants came unitedly in a group and tried to attack the police force and also E.M. and pelted stones broken pieces of brick to the police party and tried to snatch away the service pistol of Asstt. Commandant 7th A.P. Bn. Finding no other alternative the E.M. that means respondent No. 6 who accompanied the police party tried to disperse unruling mob and control the situation failing which the police resorted petty lathi charge in his direction. Then unruling mob became more violent and tried to snatch away the service pistol from Asstt. Commandant of 7th A.P. Bn. Since the situation became more serious in order to control the agitated mob the police resorted to firing as a result, namely, Gopal Murmu, Talomay Hembram, Mantri Hembram, Sunka Hasda, Minu Hembram and Baha Baskey sustained injuries. That the police personnel Dhiren Bhuyan, Dwijen Ch. Baishya A.B.S.I. Mahanta Roy and other police personnel also seriously injured for attack of unruling mob. A criminal case was registered against the accused persons vide Kochugaon P.S. Case No. 13/98 u/s 147/148/149/353/323/379/511/ IPC and he took the charge of investigation of the case. That the respondent No. 7 is law abiding police personnel guided by the police manual and prayed to accept the show cause reply and to pass necessary order.

Now Point for determination is -

Whether Som Murmu, Tolamay Hembram, Renta Soren and Baha Baskey died on the spot due to indiscriminate firing by police on 7.5.1998.

The petitioners examined four witnesses to prove the allegation and the O.P. respondents adduced no evidence. The O.P. No. 7 filed the Photostat copies of F.I.R. of Kochugaon P.S. Case No. 13/98 as ext. 1 with his cause.

It is mentioned here that my learned predecessor recorded the evidence of petitioners in absence of O.P. for which the statement is discarded and after appearance of O.Ps. evidence of the petitioners were recorded afresh and was cross-examined by O.Ps.

Discussion and decisions with reasons thereof:

Petitioner Sri Kabiraj Hembram deposed in his evidence that Tolamoy Hembram was his daughter and her age was 12 years. The occurrence took place on 7.5.1998 at 3 PM. On that day he was not available in his house as he went out for earning of livelihood. At the time of occurrence they were living in the relief camp of Kochugaon and at the time of occurrence her daughter went to the Durga Temple to take Ration supplied by the Govt. and then firing started and as result of which Tolamoy sustained bullet injury in her belly and died on the spot. Thereafter police brought the dead body of Tolamoy Hembrem to Kokrajhar for P.M. and his wife went to Kokrajhar with the dead body. His brother Bijoy Hembram also came to Kokrajhar with the dead body and his brother buried the dead body of Tolamoy Hembram at Kokrajhar. He filed writ petition for compensation. In cross-examination he deposed that he has not received any compensation after filing the writ petition. He filed no case for the death of his daughter in the court. He denied that his daughter has not died in the police firing. There is an army camp at Kochugaon at a distance from their relief camp. There is market at Kochugaon. At the time of occurrence he was in Meghalaya and after 15 days of occurrence he came back home. He filed no criminal case against the police personnel either in the P.S. or in court. He cannot say whether his daughter died in the firing caused by Police and Army.

Petitioner Smti. Mani Mardi deposed in her evidence that her husband Late Som Murmu died about seven years ago in police firing caused by Police near the Durga Temple. At that time they were in Kochugaon relief camp. Police brought the dead body of Som Murmu for post mortem to Kokrajhar RNB Civil Hospital. She came with the dead body to Kokrajhar with other people and the people buried the dead body of her husband at Kokrajhar. In cross-examination she stated that she does not know who started firing. There is a military camp near the place of occurrence and she does not know who started firing.

Petitioner Smti. Lakhi Murmu deposed in her examination-in-chief that her son Prada Soren died in police firing about seven yeas ago at Kochugaon near Durga Temple. Thereafter police took the dead body of her son for P.M. and thereafter

handed over the dead body at Kochugaon relief camp and the dead body was buried in relief camp. Thereafter she filed writ petition. In cross-examination she stated that they filed no case for compensation except writ petition. They have not received money from the Govt. and they filed no case against the police personnel. She denied that she has not mentioned the name of her son Prada Soren in the writ petition filed before hon''ble High Court. She denied that her son died in the police firing. They filed no case against the police as police did not received their FIR.

Petitioner Sri Pradhan Baskey, deposed in his evidence that about 3-4 years ago his daughter Baha Baskey aged 8 years died in the Durga Temple of Kochugaon in the firing. At that time he was in Bihar and hearing about the occurrence he came back home from Bihar after one month. He cannot say who fired his daughter. In cross-examination he has stated that he has not received any compensation from the Government. His brother-in-law Sri Bijoy Kisku filed a case in the hon''ble High Court but he has not filed case in the hon''ble High Court. He has not filed any case regarding this occurrence.

Respondent No. 7 that means O/C Kochugaon P.S. stated in his written objection that on 7.5.1998 at about 4.30 PM he along with S.I., B. Bora, H.G. Khagen Baishya, Sahay Borgoyari, Sidheswar Kalita, Taren Barman, H.G. Kamal Barman, H.G. Sonil Nath, H.G. Asab Ali, and H.G. Rajen Brahma went for investigation of Kochugaon P.S. Case No. 12/98 u/s 395 I.P.C. At that time E.M. of Gosaigaon Mr. N.A. Ali and Asstt. Commandant, 7th A.P. Bn. also accompanied with them. At about 4/5 PM some adivasis of relief camp came out from the camp and entered in the Kochugaon market and looted rice, dal, sugar and some utensils with cash money from the shop of Kochugaon market. As soon as they arrived at Kochugaon market for recovery of looted booties they noticed 700/800 Adivasi youth came unitedly in a group and tried to attack the police party and E.M. and pelted stone and broken pieces of bricks to the police party and tried to-snatch away pistol of Asstt. Commandant of 7th A.P. Bn. Then Police party resorted the petty lathi charge to disperse the unruling mob. Then the mob came violent since the situation became more serious in order to control agitated mob. The police party starting firing as a result of which Gopal Murmu, Tolamoy Hembram, Mantri Hambram, Sunka Hasda, Smti. Minu Hambram, Baha Baskey sustained injuries. As a result of attack of unruling mob, Police personnel, namely, Dwijen Ch. Baishya, Dhiren Bhuyan, A.B.S.I. Mahanta Roy and other police personnel sustained injuries for which Kochugaon P.S. Case No. 13/98 u/s 147/148/149/353/323/379/511 I.P.C. was registered.

Respondent Nos. 3 and 5 stated in their written objection that on 7.5.1998 at about 5.45 PM while police personnel were executing duty at Kochugaon market then about 700/800 adivasi people came out from the relief camp of Kochugaon market and gharoed the police personnel at Kochugaon market premises. All the police personnel returned to the wooden bridge of Kochugaon market and Adivasi people became violent and tried to attack police force and pelted stones upon the

police party. Finding no other alternative respondent No. 6, N.A. Ali, E.M. who accompanied the police party for law and order duty at first wanted to disperse the unruly mob peacefully but failed for which the police resorted to the petty lathi charge as per direction of the Executive Magistrate on duty. Then unruly mob became more violent and tried to snatch away service pistol of Asstt. Commandant of 7th A.P. Bn. Sri E.H. Lasker who was on law and order duty. As the situation became more serious so in order to control agitated mob the police first warned unruly mob and resorted to firing under the order of E.M. Mr. N. A. Ali and as a result Gopal Murmu, Tolamoy Hembram, Som Tudu, Albert Mardi, Renta Soren, etc. were injured. For the attack of unruly mob police personnel Dwijen Ch. Baishya, Dhiren Bhuyan, A.B.S.I. Mahanta Roy and other police personnel were sustained grievous injuries.

Respondent No. 6 did not appear in enquiry and enquiry was held ex parte against him. Respondents adduced no evidence to prove their contention though O.P. Nos. 3, 5 and 7 categorically stated in their written statements that the police party resorted to firing under order of E.M. but no copy of order was submitted with the written objection. Though it is seen the written objection of O.P. No. 7 that at the time of occurrence he went to P.O. with other police personnel for investigation of Kochugaon P.S. Case No. 12/98 u/s 395 I.P.C. but O.P. No. 7 did not file copy of FIR of Kochugaon P.S. Case No. 12/98 u/s 395 I.P.C.

From the written objection of the O.P. Nos. 3 and 5 it is seen that the police personnel were executing duty at Kochugaon market at the time of occurrence but O.P. No. 7 stated in his written objection that he and other police personnel went to the P.O. For investigation of Kokchugaon P.S. Case No. 12/98.

Considering the age of deceased Tolamoy Hembram who was 12 years old and Baha Baskey who was 8 years old at the time of occurrence. The alleged story of O.P. Nos. 3, 5 and 7 that they also joined in the unruly mob cannot be believed.

Considering the evidences and discussion discussed above it is seen that the deceased Som Tudu, Renta Soren, Baha Baskey and Tolamoy died in the police firing but the respondent has failed to prove that the police personnel resorted to firing to control unruly mob under order of E.M. Mr. N. A. Ali.

In the result it is held in the enquiry that the deceased persons died in the police firing.

Enquiry Officer, Kokrajhar

7. Despite notice and various directions issued by this court, till date the State-respondents have not filed any affidavit-in-opposition nor has Mr. N.A. Ali, the respondent No. 6, Executive Magistrate, Gosaigaon Kokrajhar in his individual capacity, preferred to submit any explanation with regard to the allegations made against him. Even in the enquiry conducted by learned District Judge, this officer did not appear.

8. After carefully going through the enquiry report submitted by the District

Judge above mentioned, taking into account the facts situation in the case as noticed herein above and also having regard to the materials available on record, it transpires that the evidence of all the witnesses is found to be consistent, credible and corroborative and this court is of the view that there is no illegality, infirmity and/or irregularity found in the findings of the said enquiry and the same is accordingly accepted and approved.

9. Having considered the enquiry report and also having been guided by the settled legal position propounded by the series of judicial authorities (See Tekarongsen and Others Vs. Union of India (UOI) and Others, and Smti. Phulo Bala Das v. Union of India and Ors. in Civil Rule No. 3131/98 disposed of on 16.2.2006) this court has no hesitation to record that the respondents were found responsible for resorting to police firing in the refuge camp without any reasonable or acceptable explanation.

10. Since this case is squarely covered by the catena of decisions of the Supreme Court as well as this court relating to the violation of Article 21 of the Constitution, this court is of the view that the petitioners are entitled to get the monetary compensation due to the loss of lives of their relatives mentioned above and accordingly an amount of compensation is quantified as Rs. 2,00,000 (two lakh) for each victim.

11. It is made clear that the entire compensation as quantified above, shall be deposited by the State-Respondents with the Registrar General of the Gauhati High Court, Principal Seat through the Bank Draft within a period of three months from the date of receipt of this order and after being deposited the said amount, the Registry shall pay the same to the petitioners, if they are alive on their proper identification by the learned Counsel appearing on their behalf and in case of death of any of the petitioners herein, the amount shall be released to the legal heirs of any of the petitioner who is dead on production of such testimony issued by the competent authority for such purpose.

12. The State-respondents shall be at liberty to reimburse the compensation amount so ordered from any officer found responsible for such action as indicated above.

13. In the result, this writ petition stands allowed. However, there is no order as to cost.