
(2015) 10 SIK CK 0008
In the Sikkim High Court
Case No : W.P. (C) No. 25 of 2014

Prem Kumar Rai and Others

APPELLANT

Vs

The State of Sikkim and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 57
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 10, 63
Penal Code, 1860 (IPC) — Section 149, 341
Sikkim Police Act, 2008 — Section 169

Citation : (2015) 10 SIK CK 0008

Hon'ble Judges : Meenakshi Madan Rai, J.

Bench : Single Bench

Advocate : Doma T. Bhutia and Sarita Bhusal, Advocates, for the Appellant; J.B. Pradhan, Additional Advocate General, S.K. Chettri and Pollin Rai, Assistant Government Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Meenakshi Madan Rai, J.—In this Writ Petition, the Petitioners pray for a Writ or Order or Direction in the nature of Mandamus, directing an independent inquiry to be conducted by the Learned District & Sessions Judge (South), at Namchi, assisted by a senior advocate and to submit a time bound report before this Court, issue a Writ of Mandamus commanding the Respondents No. 6 and 7 to pay compensation of Rs. 5,00,000/- (Rupees Five Lakhs) only, to the Petitioners for medical expenses incurred during their treatment at Central Referral Hospital, Tadong, Issue a Writ of Mandamus commanding the Respondents No. 1, 2 and 4, to put up in all Police Outposts and Police Stations in Sikkim the guidelines as laid down by the Hon'ble Apex Court, in D.K. Basu Vs. State of West Bengal, and to suspend the Respondents No. 6 and 7 during the course of inquiry.

2. The allegations raised by the Petitioners are that the Respondents No. 6 and 7 committed custodial torture of the Petitioners and by keeping Petitioner No. 1, a

juvenile at the relevant time, in Police custody, contravened the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. It was further urged that the guidelines laid down in D.K. Basu's Case supra were not adhered to by the Respondents.

3. As per the Petitioners, on 8.3.2014 at around 11 a.m., they were travelling from Pelling to Gyalshing, West Sikkim to attend a party meeting of the Sikkim Krantikari Morcha, an opposition political party, at Gyaba Road, Pandey Colony , Gyalshing, when near the Police Outpost at Gyalshing Bazaar, the Respondent No. 6 stopped them and warned them to refrain from shouting slogans and indulging in any political activity without his permission. Later, the same day, at around 2 p.m. when the Petitioners were attending the said meeting, the Respondents No. 6 and 7 accompanied by ten to fifteen Indian Reserve Battalion Jawans entered the Party Office and assaulted the persons assembled there. The Petitioner No. 3 and four others were arrested and taken to the Gyalshing Police Outpost and beaten up for more than half an hour. Respondent No. 6 returned to the Party Office and arrested Petitioner No. 2. Enroute to the Police Outpost, Petitioner No. 1, a spectator on the road side was also arrested. They were assaulted at the Police Station where they were kept in custody for approximately three hours and on the intervention of one S.I. Passang Bhutia, the Petitioners were forwarded to the Gyalshing Hospital for medical checkup. On the refusal of the concerned Doctor to examine them on account of the multiple injuries on their persons, Respondent No. 6 convinced the Doctor that the injuries were sustained while trying to evade arrest. After the medical examination they were taken to the Tikjuk Police Station, where the others were released on Police bail but the Petitioners No. 1 and 3 remained overnight in Police custody and were released on the following day at around 10 a.m. on the orders of the Office-in-Charge of the Police Station. That, one Tshering Bhutia was also a victim of the police atrocity having been beaten up at the Police Station. The Petitioners were brought to the Central Referral Hospital at Tadong their condition, allegedly, being critical.

4. That, the owner of the house where the meeting was held, Mrs. Pushpa Sharma, also witnessed the police brutality and torture at the place of meeting and filed a Complaint before the Superintendent of Police, Gyalshing with a request to take disciplinary action against the Respondents No. 6 and 7, in vain. Reliance was placed on the 113th Report of the Law Commission and Article 9(5) of the International Covenant on Civil and Political Rights, 1966 alluding to an enforceable right to compensation.

5. While advancing her arguments for the Petitioners, Learned Counsel, Dr. Doma T. Bhutia, reiterating the sequence of events reflected hereinabove, vehemently contended that the Petitioners were illegally prohibited from attending a meeting convened by the opposition party in violation of Article 19(1) of the Constitution of India. That, the Petitioner No. 1, a juvenile, was illegally detained at the Police Station in violation of the Juvenile Justice (Care and Protection of Children) Act,

2000. As per the Learned Counsel, it has been admitted that the Petitioners were arrested from the Party Office at Pandey Colony and sent to Police custody. Their Medical Reports indicate that the Petitioners had sustained multiple injuries on their bodies. That, it is not the allegation of the State Respondent that the Petitioners had caused inconvenience, annoyance or danger to the residents or passersby when shouting slogans or imitating police sirens. That, the offences under which the Petitioners were booked were not heinous offences and the Petitioners were arrested without necessary warrants after the Respondents had unauthorisedly entered into private premises and misused their powers as Police Officers, despite the offences being non-cognisable.

6. With regard to custodial torture, it was argued in the first instance that since the offences were not heinous there was no requirement for keeping the Petitioners in police custody. That, the Medical Report of the three Petitioners clearly point to the torture meted out to them which is supported by the photographs filed by them. The injuries on them were found to be tender therefore indicating them to be fresh. Although the Respondents have taken the stand that the injuries may have occurred when the Petitioners were evading arrest, this is demolished by the fact that the Petitioners have similar injuries. Placing reliance on the various Orders of the Learned Judicial Magistrate (West) in General Register Case No. 29 of 2014, it is contended that the Orders explicitly reveal the demeanour of the Respondent No. 6 and his attitudinal stance.

7. Coming to the point of illegal custody of the juvenile, the arguments canvassed was that the Order supra in the General Register case, indicates that the Petitioner No. 1, a Juvenile, ought to have been handed over to the custody of the Special Juvenile Unit in terms of Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which was not complied with, neither was Section 10 of the same Act adhered to. That, the Hon"ble Apex Court while dealing with "lock up" deaths in D.K. Basu's Case has also dealt with monetary compensation to victims and Learned Counsel while relying on the decisions in Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, and Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh and Others, , submits that monetary compensation is to be paid to the Petitioners in terms of the Law laid down by the Hon"ble Apex Court and the guidelines in D.K. Basu's Case be strictly complied with.

8. Resisting the stand of the Petitioners, Mr. J.B. Pradhan, Learned Additional Advocate General, forwarded the argument that in a Writ Petition under Article 226 of the Constitution, finding of facts cannot be entered into. That, in the Petition, prayer (i) is as follows;

"(i) Issue a Writ, Order or Direction in the nature of Mandamus directing an independent, impartial enquiry to be conducted by sitting Learned District and Session Judge (sic), South Shri Prajwal Khatiwada of the State assisted by some senior advocate, and for submitting its report before this Hon"ble Court in a stipulated time to take action as per the finding of the report."

9. This reveals that custodial torture has not been established and the subsequent prayer at (iv) which reads as follows;

"(iv) Issue a writ, order or direction in the nature of Mandamus commanding the respondents" No. 1, 2 and 4 to put under suspension of Respondents No. 6 and 7 during the course of inquiry,"

is consequent to prayer (i) which therefore cannot be allowed.

10. It is next contended that with regard to custodial torture there is no finding of fact that the injuries on the Petitioners had been inflicted by the police. Drawing the attention of the Court to the Medical Report of the Petitioners, it was submitted that the time of arrest was 1300 hours, after which the Petitioners were immediately forwarded for medical examination and after conducting the same, the Doctor has given the Report at 1335 hours, thereby indicating that no time was spent between the time of arrest and medical examination, effectively ruling out the question of custodial torture. Thereafter, the Petitioners were taken into Police custody for the purposes of investigation and released within 24 hours. The question of illegal detention does not arise as the Police have been clothed with powers under Section 57 of the Code of Criminal Procedure, 1973. Concerning the Complaint of the House Owner, relevant inquiry was conducted and a Report submitted on 26.3.2014, to which no protest was lodged. On the other hand, it was the Petitioners who were found to be carrying weapons of offence, such as stones and rod, as revealed by the seizure memo, which facts have not been denied by the Petitioners. Consequent to the FIR lodged against the Petitioners in the said matter, the outcome thereof was the conviction of two Petitioners in G.R. Case No. 29 of 2014. That, infact the Petitioner No. 2 was not even detained overnight. Contrary to the claims of the Petitioners No. 1 and 3, that they were critically injured, the Medical Documents of Central Referral Hospital discloses that the Petitioners were examined on 10.03.2014 and discharged on the same day i.e. 10.3.2014. It is also contended that if the Petitioners were aggrieved by the Police action they have failed to place their grievance before the Human Rights Commission. The question of violation of the Juvenile Justice (Care and Protection of Children) Act, 2000 or illegal detention of the Petitioner No. 1 did not arise as he himself disclosed his age to be Nineteen years, to the Police, as evident from the details recorded down in his Medical Form.

11. The two Inquiry Reports on the incident, one conducted by the Station House Officer (SHO) Gyalshing, Police Station on the Complaint of Pushpa Sharma and the other by the Superintendent of Police (West) on the direction of the Election Commission, were even accepted by the Petitioners. That, the Writ Petition is premature as the Learned Judicial Magistrate in her Judgment in JJB Case No. 05/2014 had observed that action has to be taken against the erring Police Officials, but before steps could be initiated, this Writ Petition has been filed, which being premature deserves to be dismissed.

12. Mr. Karma Thinlay Namgyal, Learned Senior Government Advocate for Respondents No. 6 and 7, while adopting the submissions of Learned Additional Advocate General, denied the allegation that Petitioner No. 1 was only a bystander. That infact, he had imitated the sound of a police siren and when requested to refrain from such acts, threatened Respondent No. 6 with dire consequences to him and his family. That, the Petitioners having been taken to the Police Outpost in the market area where there is no lock up and not to the Police Station at Tikjuk, the question of custodial torture therein does not arise. Infact, the Petitioners were arrested on 8.3.2014 and released the very next day. It is pointed out that Petitioner No. 3 Narendra Pradhan, is not a first offender and was involved earlier in Kaluk P.S. Case No. 1 of 2014 u/s. 149 /341 IPC read with Section 169 of the Sikkim Police Act, 2008. The Petitioners were infact arrested under Section 169 of the Sikkim Police Act, 2008 under the directions of the Sub-Divisional Police Officer, Gyalshing on their conduct being reported to him by the Respondent No. 6.

13. That, on the Complaint of Pushpa Sharma before the Senior Superintendent of Police, West on 10.3.2014, the SHO Gyalshing Police was directed to make necessary inquiry, on completion of which a Report was submitted to the Sub-Divisional Police Officer, reporting that no harassment or brutality could be attributed to the police. The Complainant was informed that should she be dissatisfied with the inquiry, she could approach the Sub-Divisional Police Officer, Gyalshing which, however, she opted not to do. That, as the Medical Officer has not given the age of injuries and in all probability the bruises on the body of the Petitioners could be old ones or sustained while evading arrest. That, infact after the Petitioners were arrested on 8.3.2014 at around 1200 hours and brought to the Police Station, the Medical Forms were filled and they were forwarded to the District Hospital at around 1300 hours, where the Medical Officer opined that the Petitioners were fit for custody, therefore, the question of custodial torture does not arise.

14. That, subsequently, when the Respondents went to the Morcha Office, the people assembled there started shouting, swearing and pushing the Police and resisted them preventing them from arresting the miscreants. With regard to the age of the Petitioner No. 1, it was urged that the Petitioner was allowed to use the mobile phone of the Respondent No. 6 to inform his family of his arrest but neither the Petitioner No. 1 nor his family members disclosed that the Petitioner was a juvenile. Both Respondents No. 6 and 7 denied having assaulted the Petitioners as alleged.

15. The rival submissions put forth were heard at length and carefully considered by me as also the documents relied on by the parties.

16. What arises for consideration before this Court is

(i) Whether the Petitioners were subjected to custodial torture?

(ii) Whether the Police failed to adhere to the provisions of the Juvenile Justice

(Care and Protection of Children) Act, 2000?

(iii) Whether there was non compliance of the directions of the Hon"ble Supreme Court in D.K. Basu"s Case supra?

17. The Hon"ble Apex Court while referring to the decision in Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, and D.K. Basu vs. State of West Bengal : (1977) 1 SCC 416 opined in Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh and Others, that it needs no special emphasis to state that when an accused is in custody, his fundamental rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiori, it includes the right to live with human dignity and all that goes with it.

18. In the same Judgment, the Hon"ble Apex Court referred to D.K. Basu"s Case supra, wherein it has been held thus

"10. Torture has not been defined in the Constitution or in other penal Laws. Torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. The word "torture" today has become synonymous with the darker side of human civilization. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in their chest, cold as ice and heavy as a stone paralyzing his sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself. - Adriana P. Bartow.

11. No violation of any one of the human rights has been subject to so many conventions and declarations as torture all aiming at total banning of it in all forms, but inspite of the commitments made to eliminate torture the fact remains that torture is more widespread ever before. Custodial torture is a naked violation of human dignity and degradation which destroys to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded civilization take a step backward and flag of humanity must on each such occasion.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lockup. Whether, it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of Law."

(emphasis mine)

19. In the backdrop of the above definition of "torture" and "custodial torture", it is to be seen whether the Petitioners were subjected to the same. The Petitioners while alleging custodial torture have stated that they were taken to Gyalshing Police Outpost and were beaten up by the Respondents No. 6 and 7 along with the Indian Reserve Battalion Personnel, enroute to the Police Station as well as inside the Police Station. That, they were made to kneel down and beaten up

mercilessly by blows and sticks for half an hour. The arguments placed by the Respondents in their defence was that the Medical Reports of the Petitioners would reveal otherwise.

20. The Medical documents of the Petitioner No. 1 indicates that on 8.03.2014 at around 1300 hours, he was forwarded for medical examination to the Gyalshing District Hospital, for assessing his "fitness in Police custody" and at 1:35 p.m. the examining Doctor recorded the injuries gave "appropriate treatment" and opined that the Petitioner was fit for police custody. The age of the injuries, where, how and by whom it was inflicted has not been mentioned by the examining Doctor. The Petitioner has not volunteered any information of the same to the Doctor. Similarly, for Petitioner No. 3, he was forwarded for medical examination to the same Hospital on 8.03.2014 at 1315 hours and the Doctor examined him at 2 p.m. Appropriate treatment was given and he was found fit for custody, as per the details recorded by the Doctor. There is no medical report pertaining to Petitioner No. 2.

21. There appear to be anomalies with regard to the time of the police custody given by the Petitioners and that given by the Police in as much as the Petitioners states that the Respondents No. 6 and 7 accompanied by 10 to 15 Indian Reserve Battalion Jawans entered the party office at around "2 p.m." and without warning started man-handling the party workers including the women present at the meeting. That, they assaulted indiscriminately with their batons and threatened with their pistols. Per contra, the medical documents supra of the District Hospital, Gyalshing reveal that the Petitioners were produced before the Doctor at Gyalshing at about 1 p.m. and the Doctor examined the patients as per the time already indicated above. There are no documents relied on by the Petitioners to counter this facet of the Respondents defence.

22. Attention of this Court was drawn to the Medical Reports of the Petitioners at Central Referral Hospital at Tadong. A perusal of which would show as follows:- That, Petitioner No. 1 was brought by one Roshan Shreshta to the Central Referral Hospital at 9.03.2014 at 09:08:09 P.M. The following having been recorded in the Out Patient/Inpatient Medical Report "Case of physical assault yesterday at 3:45 pm and sustained multiple injuries over body....". However, on a perusal of his Discharge Summary, his date of admission has been reflected as 10.03.2015 at 12:27 a.m. and date of discharge is recorded as 10.03.2014 at 03:07 p.m., contrary to what has been shown in the previous document supra. No opinion as to the age or severity of the injuries or the person responsible for the assault on the Petitioner has been given by the concerned Doctor, although it is seen that a medication for pain has been prescribed to him. The Out Patient/Inpatient Medical Report of Petitioner No. 2, reveals that he was brought by Roshan Shreshta to the Hospital on 9.03.2014 at 9:07:26 p.m., also with the history of having been assaulted on 8.03.2014 at 3:45 p.m. and multiple injuries sustained. His Discharge Summary reveals that he was admitted on 9.03.2014 and discharged on 10.03.2014. The specific time of admission and discharge are

not been reflected in the said document. The Medical Documents pertaining to Petitioner No. 2, also do not reveal the age or severity of the injuries or the name of the assailant(s).

23. It is worthwhile mentioning that the documents supra of the Central Referral Hospital, record that the Petitioners came to the hospital on the above mentioned dates, with an alleged history of assault on 8.3.2014 at around 3:45 p.m., however, on pain of repetition it has to be stated that there is no mention in the documents that the alleged assault was by the police while they were in custody or that the patients narrated such history. On this aspect, it is pertinent to point out that no report was lodged by any of the Petitioners of the alleged assault in police custody, before any police authority or a police officer superior in rank to the Respondents No. 6 and 7. The records also do not indicate any Complaint before the Human Rights Commission by the Petitioners alleging custodial violence against Respondents No. 6 and 7.

24. Another point that has to be mulled over is that admittedly the Petitioners were released by the Police at around 10 a.m. on 9.03.2014. They were brought before the Central Referral Hospital, Tadong at around 9 p.m. The distance between Gyalshing and Gangtok is around 109 kms. entailing travel by road for about four hours, but the Petitioners reached the Central Referral Hospital at Tadong only at 9 p.m., what ensued during the intervening time from 10 a.m. when they were released, upto 5 p.m. when they apparently embarked on their journey to Gangtok has not been explained, as a result of which several conclusions can be drawn with regard to the injuries on the Petitioners No. 1 and 2.

25. Also, the injuries on the person of the Petitioner No. 1 and Petitioner No. 3, as recorded in the District Hospital at Gyalshing and the Central Referral Hospital, Tadong on a comparison do not appear to be similar.

26. Strong reliance was placed on Annexure-5, purportedly the photographs showing the injuries on the persons of the Petitioners. It may be mentioned that Annexure-5 is the only photograph which shows a face, alleged to be that of Petitioner No. 1, showing an injury in the inner lower part of this mouth, while the other photographs reveal only various body parts with injuries without the face of the persons. In the first instance, in such circumstances it is difficult to conclude that the injury on the Petitioner No. 1 was inflicted by the police or the injuries on body of the persons shown in the photographs are indeed those of the Petitioners. In the circumstances discussed at length herein before, the Court cannot draw an assumption of custodial torture.

27. Paragraph 8 of the Petition reads as follows:

"That the Petitioners were taken to Gyalshing police out post. That the petitioners were beaten up by Respondents No. 6 & 7 along with IRBn personnel in the way to the police station as well as inside police station. The act of arbitrariness and atrocities of the Respondent Nos. 6 and 7 continued as the

petitioners were made to kneel down and beaten up mercilessly with kicks blows sticks for half an hour."

28. Admittedly, Gyalshing has a Police Outpost and a Police Station at a considerable distance from each other, therefore it is not clear from the above statements as to where the torture was meted out, since they appear to have been taken to the Outpost but allege assault enroute to the "Police Station" and inside the "Police Station".

29. In Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, , the Hon"ble Apex Court while dealing with the principles applicable to an application for condonation of delay inter alia held that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits as seminal to justice dispensation system. Although, this Court is not dealing with the question of limitation in the instant matter the principle reflected in the above observation have to be imbibed while drafting Writ Petitions so as to dispel all confusion that arises by making statements such as the one reflected in Para 8 supra.

30. It also appears that the owner of the house, Pushpa Sharma, lodged a Complaint before the Superintendent of Police, Gyalshing against the brutality and torture committed by the police in the room of her house where the party meeting of the Sikkim Krantikari Morcha was taking place but appears to have complacently accepted the Report submitted by the Station House Officer, Gyalshing wherein such allegations were negatived. She opted not to exercise the option given to her of approaching the Sub-Divisional Police Officer if dissatisfied with the Report.

31. It is no one's case that she had been prevented by any authority from lodging such a Complaint. No Complaint of torture by Respondent No. 6 and 7 was lodged before any authority superior in rank to the Respondents No. 6 and 7 or before the Human Right Commission for that matter.

32. The Affidavits of Janak Kumar Gurung and Chatur Singh Limboo who allegedly witnessed the incident and whose statements have been relied on by the Petitioners are perused.

33. According to Janak Kumar Gurung, he has inter alia stated

"1.....

2. That on 8.3.2014 at around 1400 hours, I was talking with my friends outside SKM Party Office at Pandey Colony, Gyalshing at that time I saw S.I. Bishan Rai and Thinlay Gyatso Rai along with 10 to 15 IRBn constables coming to SKM Party Office and all of sudden started beating, pushing and abusing in filthy language, the people who were present therein indiscriminately and threatening them with pistol.

3. That I had also seen seven people viz. Narendra Pradhan, Basant Tamang, Tshering Chodey, Chewang Rinzing, N.B. Gurung, Chandan Gurung and Prem Rai taken by the police official beating them (Narendra Pradhan, Basant Tamang, Tshering Chodey, Chewang Rinzing, Chandan Gurung and Prem Rai) continuously on roadside and taken them to police station.

4....

5....

6....."

34. Chatur Singh Limboo in his Affidavit inter alia stated that

"1...

2. That on 8.3.2014 at around 1400 hours, I had gone to the Sikkim Krantikari Morcha (SKM) District Party Office, Gyalshing for some party related work.

3. That, when I reached party office, I saw S.I. Bishan Rai and S.I. Thinlay Gyastso Rai along with 10 to 15 IRB constables brutally beating 5-6 SKM party workers and had also pointed out pistol on them.

4. That, I had also seen seven people viz. Narendra Pradhan, Basant Tamang, Tshering Chodey, Chewang Rinzing, N.B. Gurung, Chandan Gurung and Prem Rai taken by the police official beating them (Narendra Pradhan, Basant Tamang, Tshering Chodey, Chewang Rinzing, Chandan Gurung and Prem Rai) continuously on roadside and taken them to the police station.

5....

6....."

35. From the portions of the Affidavit reproduced hereinabove, it appears that Janak Kumar Gurung was outside the party office therefore, obviously he could not have witnessed the alleged indiscriminate assault by the police inside the place of meeting.

36. Janak Kumar Gurung in his Affidavit has clearly stated that he had seen seven people including Petitioner No. 2 Chandan Gurung and Petitioner No. 1 Prem Kumar Rai, taken by the "Police Official" beating them which implies that seven people were taken together by the Police. The statement of Janak Kumar Gurung, finds support in the Affidavit of Chatur Singh Limboo, who has also stated that he had seen seven people including Chandan Gurung, Petitioner No. 2 and Prem Kumar Rai, Petitioner No. 1, taken by the Police Official beating them.

37. It is evident from the above statements made in the Affidavit of Janak Kumar Gurung at Paragraph 3, that the identity of the Police Officer assaulting or taking the said seven persons has not been revealed. Chatur Singh Limboo has stated that 5-6 SKM party workers were beaten by Respondents No. 6 and 7, without identifying the victims in Paragraph 3 of his Affidavit. Secondly, it is the

Petitioners case that "Respondents No. 6 and 7 illegally arrested one Narendra Shrestha, Basant Tamang, Tshering Chodey, Chewang Ringzing and Nar Bahadur Gurung and others". The point being made by the Petitioners that Chandan Gurung and Prem Kumar Rai were not arrested when the first round of arrests were made. It is the specific case of the Petitioners that the Respondent No. 6, returned to the Party Office and arrested some more Party Workers, amongst whom was Chandan Gurung, Petitioner No. 2. That, enroute they arrested Petitioner No. 1, a spectator on the roadside. Thus, from a reading of the Affidavits and the Petition, the contradictions are evident without having to be spelt out.

38. No documents with regard to the amount incurred on medical expenditure at the Central Referral Hospital, Tadong have been furnished, nor is there any Complaint lodged by Tshering Bhutia before any authority, although he is alleged to be another victim of police brutality, while in police custody. His silence thus being intriguing.

39. So far as contravention of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 is concerned, the Medical Documents of District Hospital, Gyalshing, details of which were allegedly filled by the Police reflects the age of the Petitioner to be 19 years, the examining Doctor has not contradicted the same, neither is there any record to the effect that the Petitioner No. 1 revealed his age to be otherwise than 19 years. The Out Patient/ Inpatient document of Central Referral Hospital, Tadong reflects his age to be 17 years, which appears to be an afterthought recorded without proof either of Birth Certificate or ossification test. In the face of the contention of the Respondents that the Petitioner failed to disclose that he was a juvenile or that his father failed to do the same when it was open to the father of the Petitioner No. 1 to have brought the Birth Certificate of the Petitioner and extracted him from the custody of the police, as evidently the Petitioner No. 1 is a resident of Lower Berfok, Gyalshing, it cannot be said that the provisions of the above Act were contravened.

40. In the facts and circumstances and discussions reflected hereinabove, I am unable to bring myself to agree with the submissions of Learned Counsel for the Petitioners that there was custodial torture of the Petitioners or contravention of the Juvenile Justice (Care and Protection of Children) Act, 2000. Accordingly there is no ground for the issue of a Writ, Order or Direction in the nature of Mandamus for conducting inquiry into the incident. Consequently, the question of payment of compensation to the Petitioners or suspension of the Respondents No. 6 and 7 from their services does not arise. In consideration of the above findings non compliance of the guidelines in D.K. Basu's Case supra does not arise.

41. However, over and above the conclusion supra, since the guidelines in D.K. Basu's Case supra deal inter alia with personal liberty which is sacred and cherished under the Constitution, it is directed that the same be put up in all

Police Stations and Police Outposts of Sikkim on or before December 1, 2015 for information and compliance by all concerned.

42. The Writ Petition stands dismissed accordingly, with no order as to costs.