
(1993) 08 GAU CK 0032
In the Gauhati High Court
Case No : Civil Rule No. 78 (K) of 1991

R. Talimeren and Another	Vs	APPELLANT
State of Nagaland and Others		RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (1994) 1 GLR 19

Hon'ble Judges : W.A. Shishak, J;H.K. Sema, J

Bench : Division Bench

Advocate : C. Jajo and L.S. Jamir, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This Writ Petition is espoused by the President and General Secretary of Kohima Ao Union in the nature of public interest litigation, claiming a compensation of Rs. 3 Lakhs for the death of late Mrs. Imtimenla while she was in judicial custody.

2. Facts leading to the death of Smt. Imtimenla and thereby causing for filing of the present Writ Petition. may be briefly stated. On the night of 18th May, 1989 Smt. Imtimenla who was serving as Superintendent in the Personnel and Administrative Reform Branch, Nagaland Secretariat was picked up by a group of women on suspicion of being a trafficker in drugs. She was handed over to the custody of the Police at Kohima on 19-5-1989.

3. Sequence of events subsequent to kidnapping and ultimately leading to the murder of Smti, Imtimenla as disclosed in the Commission of Inquiry report are that, on the night of 18th May, 1989, a group of women raided the house of Smti. Imtimenla at Agriculture Colony and searched her house and arrested her along with her son and some friends. They were first brought in front of District Jail, Kohima. They were all kept tied with rope for some hours. After that

they were taken in a Mini Bus to Kohima Village Panchayat Wall where they were kept under confinement throughout the whole night of 18th May. Next morning, the 19th May, 1989 deceased Imtinenla was singled out and taken in a Jeep to a jungle towards Don Bosco School by the two young men and some women. While two men held her arms, the other women started beating her by turn till she became unconscious. Her hair was also clipped blouse torn and holes were cut in her petticoat. She got bleeding on her legs. Thereafter she was brought to the Mission Compound where she was kept and demonstrated, almost half naked in front of a big crowd with a placard hung on her neck with words written as (Drug Paddler) and tied to a post till she was handed over to the Police. Thereafter she was brought to the District Jail on 19-5-89 with a serious injury to her left leg. The Medical Officer in charge of the District Jail gave her first aid. He was however, of the opinion that the leg injury could lead to bone disease Osteomyelitis and therefore recommended her for a proper treatment in Naga Hospital at Kohima. Realising the seriousness of the condition, the Medical authority decided to remove Mrs. Imtinenla to the Naga Hospital and on 29th June, 1989 she was taken from the District Jail under escort to the Naga Hospital and admitted her as an indoor patient. She was first admitted in the male eye ward; but two weeks later she was shifted to the isolation ward and she was receiving treatment for her leg injury till she was shot at on 8th of August, 1989. While in the Hospital she was provided with guards for security of her life. The guards were however, unarmed constables and there was also one guard commander provided for supervising their duties. On the fateful night of 8th August, 1989, there were three constables on duly guarding Mrs. Imtinenla. At about 7.30 P.M. some unknown persons entered the room of Mrs. Imtinenla and fired several shots at her with a pistol as she lay in bed. The assailants immediately absconded. At that particular point of time the guards (as would reveal from the report of Inquiry Commission, they were engaged in a game of Ludo) which we shall be dealing in detail presently. Mrs. Imtinenla was critically injured with five bullet wounds, four in the legs and one in the abdominal wall. She was given medical aid but her condition turned critical and the Doctors at Civil Hospital on 11 August, 1989 took a decision to remove her to the Army Hospital at Jakhama for intensive care. She was removed to the Army Hospital at Jakhama on 12 August, 1989 and expired there on 14-8-89.

4. Immediately after the expiry of Mrs. Imtinenla, there was a public hue and cry over the incident resulting the appointment of a Commission of Inquiry by the Governor of Nagaland enquiring into the murder of Mrs. Imtinenla vide notification No. CON-49/89 dated Kohima the 23rd August, 1989 issued by the Chief Secretary to the Govt, of Nagaland. The one man Commission of Inquiry was to be headed by Shri T.C.K. Lotha, the then Commissioner Nagaland. The Commission had 11 sittings from 18 December, 1989 to 16 March, 1990 and submitted its detailed report. No action appears to have been taken on the report of the Commission of Inquiry, hence the present petition.

5. We have heard Ms. C. Jajo, Learned counsel the Petitioner as well as Mr.

Imzang Jamir, learned Sr. Govt. Advocate.

6. No counter has been filed on behalf of the Respondent Government inspite of several adjournments granted to them and so Mr. Imzang at the outset expressed his inability to address the Court. Situated as such we have decided to dispose of this petition after hearing the learned Counsel for the Petitioner and on the basis of the Inquiry Report submitted by the Commission and reported in the local paper viz., the Weekly Journal and annexed as Annexure-B/1 of the Writ Petition.

7. The sole question that arises for determination in this writ petition is that, whether the death of Mrs. Imtimenla had occasioned due to the negligence of the Police personnel on guard and if so whether the State is liable to pay compensation?

8. Pursuant to the Notification appointing Mr. T.C.K. Lotha, the then Commissioner, Nagaland as one man Inquiry Commission, the Commission framed as many as 18 issues. For present controversy the issue Nos. 5,12,13,14 and 17 are relevant.

Issue No. 5:

When the Police took over charge of her custody?

Issue No. 12:

Who was the alleged murderer of Imtimenla and under what circumstances she was shot on 8-8-89 in the Hospital?

Issue No. 13:

Whether there was any Police guard detailed for her guard duty? If so, where they were on duty on 8-8-89 the date of incident?

Issue No. 14:

Whether the Police took any precautionary measures for her safety while she was receiving her treatment in the Hospital?

Issue No. 17:

Whether there was any lapses or dereliction of duty on the part of officers and men of Administration, Police and Doctors?

9. The finding of the Commission on issue No. 5 is that the Police took the custody of Mrs. Imtimenla on 19-5-1989.

10. With regard to the finding of issue No. 12 it was stated by Shri Sakutemjen, one of the constables who was on guard duty of Mrs. Imtimenla that he with other two constables were in the room of Imtimenla at the time she was shot at by the miscreants, but the room was partitioned only by a clothes screen. They were playing Ludo (emphasis supplied). They did not see when the miscreants

came.

The Commission had recorded its findings as under:

In spite of the fact that there is no security fencing in the isolation wards, Police Guards (although not armed) was given. The Police were in the same room of Imtinenla partitioned by a cloth screen only. At the time of the incident on 8-8-89 it was raining. Imtinenla was listening to music with her tape. The Police (three of them) were playing Ludo. It was about 7 P.M. and quite dark. It was a perfect setting for any determined group/ person to commit any kind of offence. Since, she was listening music and Police were playing at Ludo, any person coming stealthily could not be noticed, This time was seized by the miscreants and they came and shot Imtinenla. It appears that the miscreants were watching. However, had the Police been alert and conscious of their duty, it could have been a different story. The police were not briefed before they were sent to guard Imtinenla. There is clear laxity on the part of the Police. The guard were not given arms and they were not briefed either". (emphasis supplied).

Similarly the constables detailed for guard duty of Smt. Imtinenla also admitted in issue No. 13 that they were playing Ludo at the relevant time so they did not see the miscreants entering the room.

11. The Commission recorded its finding in issue No. 14 as under:

In connection with this question, it is worthwhile to mention that the Police Officer no less than S.P. Kohima ought to know that precautionary measures would be essential since from the beginning i.e. 18th May when Imtinenla was arrested from her house by a group of women without any authority and kept her under wrongful confinement and taken her to a jungle towards Don Bosco side where they have tortured her mercilessly, police cannot take it lightly. It is true that she was kept to the Hospital for treatment. However, Jail authority requisitioned armed Police for her guard duty therefore it was the duty of the Police to take steps for her safety.

The Commission found ultimately that the guards neglected their duty. Police has shown total neglect and lack of imagination.

12. The Commission recorded its finding on issue No. 17 that the Police went to the Mission Compound with force and found Imtinenla and others tied to trees and electric post but the police did not try to rescue these captives. They had failed to take any action against those persons who took the law into their hands. The Commission also recorded its finding on this issue that no guard commander was detailed for supervising the guards, no arms were provided to the guards and the guards did not perform their duties properly. They were not also briefed by senior Police. On 8th of August, 1989, when Imtinenla was shot, these duty constables were not on duty and they were playing Ludo in the same room divided by clothes screen. The finding of the Commission is that, therefore there was negligence of duty by the Police.

13. The above findings of the Commission on issue Nos. 5, 12, 13, 14 and 17 are the finding of facts. The Respondents did not controvert this finding of facts by filing counter or otherwise. Therefore, the finding of facts arrived at by the Commission stands admitted facts.

14. From the facts as alluded above, the shooting of Mrs. Imtinenla on 8-8-1989 and subsequent succumbing to her injuries on 14th August, 1989 was due to the culpable negligence of the Police.

15. Next question that arises for consideration is that is the State liable for culpable negligence or for wrongful acts of the Police-its employees. By now it is well settled law that the State is liable for the culpable negligence or wrongful acts committed by its employees negligence of their employment. State is under bounden duty to protect the life and security of its citizens. If the State fails in its obligation, the State is liable for damages.

16. The rights guaranteed under Article 21 of the Constitution is extended to persons convicts, prisoners and under trials. State has strict duty to ensure that a citizen in custody of Police or Prison is not deprived of his right guaranteed by Article 21 of the Constitution except in accordance with law.

17. That in a case of violation of fundamental right by the State's instrumentalities or servants, court can direct the State to pay compensation to the victim or his or her heir by way of monetary amends and redressal has been set at rest by the Apex Court in a recent Judgment in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, This is what Apex Court has to say in Para 17 of its Judgment:

It follows that "a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. In the result the State is liable for exemplary damages which we quantify at

Rs. 1 Lakh. The Respondent Government is directed to pay the exemplary damages of Rs. 1 Lakh to the Petitioners for the benefit and upkeep of the son of deceased within a period of two months from the date of receipt of this order. If the amount is not paid within stipulated time, the same shall carry an interest at @ 16% per annum from the date the payment is due till the payment is made. Regarding the mode of payment, it is stated that Shri Watiniken, the son of the deceased is aged about 17 years. In this view of the matter, the President and General Secretary of the Ao Union at Kohima shall receive the amount on behalf of Shri Watiniken and shall deposit the amount in any Scheduled Bank in the name of Shri Watiniken as "term deposit" for a period of three years. Shri Watiniken would receive only the interest payable thereon, the principal amount being payable to him on the expiry of the term.

19. Before we part with the record, we are constrained to strike a note of caution. We are happy to know that Social Organization like Naga Mothers Association (NMA) are doing laudable jobs in extricating anti social elements like drug addicts, drug paddlers and their virus from the society. However, it must be remembered that they must act within a short campus and within the domain of their jurisdiction. The Organization like NMA is a Social Organization and they must socialize themselves with an investigating/law enforcing agency like Police who are vested with the power under the Code of Criminal Procedure to arrest and to detain and investigate, which power the Social Organization like NMA does not have. In other words they must supplement the investigating agency and not be supplant it. It may so happen that an Organization like NMA in their anxiety to nip in the bud the anti social elements like drug addicts, drug paddlers etc. they may over zeal their jurisdiction and in such event it may create problems than solving it. Their action in arresting the culprit and detaining them without any authority of law may ultimately help the culprit it escaped unpunished instead of helping in punishing them. Because of their detention unlawfully by an Organization who does not have authority to detain them, may question before a court of law in appropriate proceeding and in such even the court has to succumb to the rule of law. In a democratic country like ours, governed by the rule of law, it is unthinkable that a citizen however notorious, he may be, is subjected to torture in the hands of an Organization and wrongful confinement without resorting to the procedure established by law. This will be a negation of Article 21 of the Constitution. If such situation arises, many good cases of the State may ended resulting in the acquittal of the accused persons because of want of jurisdiction. In order to avoid such unfortunate circumstances it has to be borne in mind by every Social Organization that they have to act in aiding or assisting the investigating and law enforcing agency in apprehending or arresting the culprits. Whenever the Organization such as NMA receive any credible information as to the offences punishable under NDPS Act or other offences, they must immediately brought to the notice of the law enforcing agency/investigating agency which is the Police of nearest Police Station within the jurisdiction of which the offence has taken place. In the event of this methodology is not

practicable for want of time, the Social Organization must apprehend the culprit and thereafter hand over the investigating agency forthwith or with least possible delay.

20. Reverting to the facts of the case at hand it is noticed that the Commission had found in its issue No. 1 and 2 that Smti. Imtinenla was arrested by a group of women on 18th May, 1989 from her residence and she was kept in wrongful confinement till the afternoon of 19th May by a group of persons who are not authorized by law to do so. This act could have been fatal to the prosecution case had there been a regular trial, resulting in acquittal of the culprit. It must be remembered that every citizen is entitled to a fair trial. A citizen can be found guilty only after he is tried in accordance with the procedure established by law. Necessary corrolary is that no authority, is permitted to take the law into their own hands. We hope and trust this note of caution of ours would percolates down to all Social Organizations for their guidance and compliance.

With the aforesaid direction and observations this writ Petition is allowed as indicated above.

Chief Secretary, Govt. of Nagaland is directed to circulate the copy of this Judgment to all the District Meads and S.P.s for wide circulation to all the Social Organization like the NMA and Tribal Hohos (Assembly of Supreme Body) and other tribal Organizations.