
(2000) 04 GAU CK 0014

In the Gauhati High Court

Case No : Civil Rule (HC) No. 54 of 1991

Rajib Lochan Bhattacharjee

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 6, 6
Constitution of India, 1950 — Article 21, 21, 226, 226

Citation : (2000) 2 GLJ 1

Hon'ble Judges : Brijesh Kumar, C.J. and D.Biswas, J

Bench : Division Bench

Advocate : K.K.Mahanta, B.K.Bhattacharjee, Advocates appearing for Parties

Judgement

D. Biswas, J.—This petition has been filed by the petitioner for issue of a writ of Habeas Corpus for necessary direction calling upon the respondents to set the detenu Shri Guneswar Bhattacharjee at liberty who was arrested by the Army on 5.2.91 at Moriani.

2. We have heard Shri B.K. Bhattacharjee, learned counsel for the petitioner as well as Shri K.K. Mahanta, learned counsel appearing for the Union of India and the learned State Counsel.

3. The petitioner's case is that on 5 .2. 1 99 1 at about 11 PM, the detenu along with the members of his family retired to bed when about a group of 30 Army " men stormed their house, dragged his father out of his bed and assaulted him with the but of their guns. They also dragged the wife of the detenu, his 20 years old daughter and 12 years old minor son to the veranda and ransacked their houses at about 2 AM, they sped away in their vehicle forcibly taking their father along with them. The detenu was arrested without any ground and wrongfully kept in Army custody without handing him over to the civil authorities. It was only in the late hours of 7.2.1991, the detenu was handed over to the police. It is specifically alleged that the detenu was physically manhandled and assaulted by the Army men and subjected him to torture in different forms which

eventually made him deaf of hearing. It is further submitted that on an earlier occasion on 9.1.1991, the detenu was picked up by Army while returning from the market. He was detained in the nearest Army Unit where he was subjected to interrogation. However, he was released from detention on 10.1.1991. In both the occasions, the operation was conducted under the command of the Major of the 3rd Battalion of the Bihar Regiment. The Ambassador Car belonging to the detenu was also detained and released later on after causing extensive damage to it.

4. It has been pointed out by Shri Bhattacharjee, learned counsel for the petitioner, that although he was handed over by the Army to the Police on 7.2.1991 and eventually released on bail, yet, as per direction of the Court, the petitioner ? had submitted an amended petition describing in detail the innumerable torture committed upon his father. Shri Bhattacharjee urged that this is a case fit for grant of compensation to the detenu for illegal detention and torture committed on him leaving him deaf of one ear. Referring to a number of decisions of the Apex Court as well as of this Court, Shri Bhattacharjee urged that the detenu having been permanently disabled may be compensated in just and proper manner. The learned counsel laid much emphasis on the decision in DK Basu's case, (1997) 1 SCC 416.

5. The certificate issued by the Resident Surgeon of Guwahati Medical College shows that the hearing capacity of the detenu was impaired. There is no document on record to show whether the detenu had sustained any other injury which eventually caused the deafness of his ear. For want of sufficient materials, it would be difficult for this Court to connect the cause of his deafness with the allegation of torture. However, the fact remains that the detenu was arrested on 5.2.91 and was handed over to Police in the later hours of 7.2.91 which is obvious that the Army, after arrest of the detenu, did not handed over him to the nearest Police Station as is required under the Armed Forces (Special Powers) Act. Shri Bhattacharjee pointed out that the Police Station was not far off and, therefore, there cannot be any tangible reason to appreciate the delay on the part of the Army to hand over the detenu to the Police without loss of time. The respondents in their affidavit have submitted that the detenu could not be handed over to the Police immediately because of unavoidable reason. But the affidavit does not mention of the reasons for which delay occurred. It is obvious that the respondents have failed to explain the causes for such delay in order to justify the plea of unavoidable reason. Since the law requires the Army to hand over a detenu to the Police within a reasonable and shortest possible time, the lapses on the part of the Army in this regard without sufficient explanation cannot be accepted as sufficient to absolve them from the charge. In our opinion as well, the failure of the Army to hand over the detenu immediately to the nearest Police Station has been in violation of the provisions of above Act and the detenu was kept in Army custody unauthorisedly for a period longer than necessary. For this purpose we find that the detenu would be entitled to some amount by way of compensation.

6. Considering the circumstances discussed above and the submission of Shri Bhattacharjee that the detenu be at least given a token compensation, we are of the opinion that it would be just and proper to direct the respondents to pay him Rs. 11,000 (Rupees eleven thousand) as token compensation.

7. In the result, the appeal is disposed of with the above directions that the respondent Union of India shall pay a token amount of Rs. 11,000⁷ to the detenu within a period of 3 (three) months.

A copy of this order be supplied to the learned Senior Central Govt Standing Counsel free of cost.