
(2003) 07 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 148 of 1994

Santosh Chandra Chowdhury	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2004) 1 GLR 311

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : D.B. Sengupta, A.K. Deb and K. Deb, for the Appellant; T.K. Ray A.G., for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—I have heard Mr. D.B. Sengupta, the learned senior counsel assisted by Mr. A.K. Deb, learned Advocate appearing on behalf of the petitioner and Mr. S. Deb, the learned senior counsel assisted by Mr. R. Dasgupta, learned Advocate appearing for the respondents. Also heard Mr. T.K. Ray, learned Advocate General, Tripura who has been requested to assist this court for a limited purpose in order to clarify certain averments made by the State-respondents in its response.

2. The factual matrix of the case necessary for proper appreciation of the controversy at hand is that the petitioner's deceased father Atish Ch. Chowdhury was a dedicated Congress worker having his movable and immovable properties at village West Noabadi under Bast Agartala Police Station in the District of West Tripura. He was elected as Gaon Pradhan of West Noabadi Gaon Panchayat on 17.7.1984. Subsequently, late Atish Ch. Chowdhury was nominated as Chairman of West Noabadi Gaon Panchayat on 8th January, 1991. Due to his political affiliation and political rivalry, the life of the petitioner's father was endangered and having considered the adverse law and order situation in the area, the petitioner's father had to ask for House Guard as security measure and the

Government was pleased to provide the House Guard to the petitioner's father from 30.2.1988 to 22.4.1991. But thereafter, the said House Guard was withdrawn for the reasons best known to the authority. It is averred that till the withdrawal of House Guard on 22.4.1991 the life and property of the petitioner along with his father and other family members had been well protected. After the withdrawal of such House Guard the petitioner's family had to confront the wrath of the miscreants belonging to rival political group. Feeling insecured by such action, request had been made to the authority for retaining the House Guard for security purpose but the same was not attended to.

3. Taking advantage of the withdrawal of House Guard, those miscreants of rival political group felled down valuable trees and plants grown in the house of the petitioner and removed the same for which a report was lodged on 10.6.1991 with the Respondent No. 3 by the petitioner's father. But no action was taken. Again on 4.5.1992 a group of miscreants belonging to rival political group trespassed the house of the petitioner and uprooted 20 number of coconut trees and that was also reported to the respondent No. 3, i.e., the Officer-in-Charge, East Agartala Police Station, but all had fallen on deaf ears. The situation had gone to such an extent that on 5.5.1992 a group of miscreants belonging to the same rival political group trespassed the house of the petitioner in the night and threatened the petitioner's deceased father and the family of the petitioner with dire consequence in case the petitioner's family would not change the political loyalty.

4. On 10.3.1993, the same group of miscreants set fire in some valuables kept outside the house and the same was gutted by fire. Though this matter was also reported to the Respondent No. 3, no proper action was taken. Ultimately, on 7.4.1993 after the 1993 Assembly Election in the State of Tripura the miscreants belonging to political rival group, namely, Communist Party of India (Marxist) under the leadership of one Dulal Dutta, Biswajit Deb, Nisha Dutta, Ajit Deb forming an unlawful assembly having armed with deadly weapons, trespassed into the house of the petitioner at about 7.30 p.m. and set fire in the house of the petitioner and as soon as the family members of the petitioner including the petitioner's deceased father came out of the house, the said miscreants numbering about 20, started beating the inmates with lathi, ballam, dao and they also started charging bombs over the inmates of the house and as a result, the petitioner's father was killed on the spot by chopping and stabbing. Thereafter, they destroyed the other household articles. In the cowshed, as a consequence of fire as many as 7 heads of cattle were killed and all the valuables were looted from the inside the house of the petitioner. The total loss caused to the property by such fire and looting was roughly estimated to Rs. 4,87,000 apart from the loss caused due to killing of the petitioner's father.

5. An F.I.R. was lodged with the East Agartala Police Station which was registered as East Agartala P.S. Case No. 9(4)/93 under Sections 140/149/302/427/436 IPC for killing of the father of the petitioner against above named accused persons

and the police investigated the matter and furnished the charge-sheet against those persons.

6. After the incident on 7.4.1993 the petitioner including the family members consisting of his widow mother and 4 (four) sisters, having been made fatherless and homeless and without having any livelihood, attempted to re-construct the house but the miscreants including those accused named above started threatening the petitioner asking them to leave the village and withdraw the case otherwise they would not allow any family member of the petitioner to be alive. This matter was also reported to the Respondent Nos. 2 and 3 by the petitioner on 17.4.1993 but the Respondent No. 3 expressed his helplessness due to change of political scenario. Under such compelling adverse circumstances on 15.4.1993 the entire family of the petitioner had to shift to their relative at Channmuri, 20 kilometres away from their native home and since then they have been residing therein. The petitioner possesses about 18 kanis of total land - 8 kanis cultivable paddy land and 10 kanis of tilla land. Due to threat on life given by the miscreants of the rival political group, the petitioner since 7.4.1993 neither could cultivate the paddy land nor could enjoy his tilla land by growing trees and fruits thereon. The entire property has remained deserted and miscreants have been enjoying the usufructs of the said land. They have approached the authorities including the respondent Nos. 1 and 2 praying for security and financial help due to their economic constraint which has been caused by those miscreants affiliated a particular political group. On 20.1.1994 the petitioner's mother submitted a representation to the Chief Secretary to the Government of Tripura (Annexure-3 to the writ petition) praying for immediate arrangement for rehabilitation and employment of two daughters stating the loss sustained by them. But till now no action has been taken to mitigate the sufferings of the petitioner and his family. In the meantime, the criminal case which has been initiated against those accused persons ended up in their acquittal.

7. Despite their repeated request and also assurance given by the different political leaders for financial help, the petitioner's prayer has not yet been attended to. Hence, this writ petition has been filed praying for a direction by issuing a writ of Mandamus (i) to provide adequate security measures to the petitioner and his family to protect their lives and property at village Noabadi; and (ii) to pay adequate compensation for the loss and damages allowed to be done by the miscreants despite timely approach seeking protection done by the deceased father of the petitioner.

8. Controverting the averments and submissions made on behalf of the petitioner, the State-respondent has filed its response. Relying on the averments made in the affidavit-in-opposition, Mr. S. Deb, the learned senior counsel appearing for the State-respondents has submitted that the petitioner is not entitled to any compensation as prayed for as he has failed to make out a Case warranting such directions from the court under Article 226 of the Constitution

for payment of compensation in the instant case. According to him, the petitioner has not given any specific particulars and details as regards the damages suffered by him. Further no statement has been made by the petitioner asking relief for the loss suffered by him due to the death of his father. It is also contended by Mr. Deb that the question of payment of compensation as asked for in this petition cannot be entertained in this writ proceeding as the matter relates to disputed question of facts so far the damages are concerned. Drawing the attention of this court to the averment made in paragraph 5 of the additional affidavit filed by the petitioner to the effect that on the basis of the assurance given by the political leader of the rival political group the petitioner did not hesitate to minimise the murder case of their father, Mr. Deb, the learned senior counsel has urged that as the petitioner himself was a party in the acquittal of the accused involved in his father's murder trial, the petitioner cannot come up now with the prayer for payment of compensation for the killing of his father and damages caused to their properties.

9. I have given my anxious consideration to the spirited arguments advanced on behalf of the rival parties and also I have meticulously inspected the rival pleadings including the materials available on record. On close scrutiny of the materials mentioned above it appears that the killing of father of the petitioner on 7.4.1993 has been admitted. Further it is also admitted that the petitioner's properties had been damaged. Paragraphs 12 and 13 of the affidavit-in-opposition may be referred to in support of such admission. For convenience sake paragraphs 12 and 13 are quoted hereunder :

"12. That with regard to para-8 of the writ petition it is stated that over the facts stated in this para, a specific case has been registered in East Agartala Police Station vide Case No. 9(4)93 under Sections 143/149/302/427/436 IPC on the written complaint of Smt. Uma Chaudhury, Daughter of Late Atish Choudhury of West Noabadi, P. S. East Agartala. During investigation 3 (three) persons namely Ajit Deb, son of Shri Nagendra Deb, (2) Biswanath Deb, son of Nagendra Deb and (3) Dulal Dutta, son of Musuri Datta, all of West Noabadi, P. S. East Agartala were arrested and forwarded to the Court. At the end of investigation following persons were sent up on charge-sheet, vide Charge-Sheet No. 71 dated 26.6.1993 u/s 148/149/427/436/302 IPC including the arrested 3 (three) persons showing following 4 persons as absconder namely, (1) Pradip Deb, son of Nagendra Deb, (2) Shri Prasanta Deb, son of Nagendra Deb, (3) Shri Nisha Datta, son of Chinta Datta and (4) Shri Sonaram Deb Barma, son of Prasanta Debbarma, all of West Noabadi, P. S. East Agartala. The case is subjudiced. Regarding killing of as many as 7 (seven) heads of cattle was not mentioned in the FIR. But during investigation the I/O arranged P.M. examination of six heads of cattle (burnt) by the veterinary surgeon."

"13. That with regard to para-9 of the writ petition it is stated that the loss was estimated about 50 (fifty) thousand (approx.) during investigation."

10. It appears from the perusal of aforesaid paragraphs that a criminal case for

the murder of Late Atish Ch. Chowdhury, the father of the petitioner, was initiated though all those accused were got acquittal as revealed from the record and the loss suffered by the petitioner by way of damages of his property including burnt 6 heads of cattle was estimated about Rs. 50,000 during the investigation.

11. At this stage the court's attention has been drawn to paragraph 4 of the affidavit-in-opposition which may be read as under :

"4. That commission of offence in criminal nature is increasing whole over the country day after day. It is the duty of the State to prevent such offences. Police has also its limitations. The incident narrated by the petitioner as alleged since 1988 till filing of the instant writ petition is not an uncommon in any parts of the country. If compensation is to be paid to every such persons and security is to be provided to every such person like the petitioner will be himalayan job and probably not possible. The Police Stations are the responsible for preventing the offences and to take actions after such offences took place and thereafter judiciary shall have to adjudicate the matter on the facts. It is impossible to imagine that each and every citizen can be provided with special security."

12. A bare perusal of this paragraph would go to show that the State has taken a stand that since commission of offence in criminal nature has become the order of the day in the entire country day after day, and though it is the duty of the State to prevent such offence, the incident portrayed by the writ petitioner is not uncommon in any part of the country and as such it is really impossible to provide each and every citizen with special security to protect their lives and property. It is indeed extremely shocking and horrendous to read such averments in an affidavit filed on behalf of the State. It is explicitly clear that the Government with all its sincerity is trying to shirk the responsibility to protect life and property of its citizen. For making this statement in its response the State must be given the benefit of doubt. May be, the State has, in discharging its obligation under a Welfare State, lost sight of the Article 21 of the Constitution of India. Human life is a precious gift of God and nobody is permitted to take it away whether by an act of terrorism, insurgency, individual/State action or political rivalry. The instant case is an example of extreme political rivalry, as a consequence of which a precious human life was lost and properties were damaged.

13. The Apex Court in its decision reported in National Human Rights Commission Vs. State of Arunachal Pradesh and Another, while dealing with the Chakma problem in Arunachal Pradesh made observations in para 20 of the said judgment which may, being relevant in the instant case, be quoted as under :

"20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So, also, no person can be deprived of his life or personal liberty except according to

procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons ; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those given such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, Constitutional and statutory, to be considered for being registered as citizens of India."

14. Having gone through the paragraph 4 of the affidavit-in-opposition as noted above, this court has considered it fit and proper to hear the learned Advocate General of the State and accordingly he has been requested to address this court on this paragraph. Mr. T.K. Roy, the learned Advocate General, has stated that the intention of the State in making this averment was not to defy the Constitutional mandate, but the same was made only out of the frustration and helplessness of the State in tackling the situation of this nature. This submission is also equally depressing. Can such submission be approved when the question of infraction of right to life and personal liberty of a person guaranteed under Article 21 of the Constitution has been raised before this Court ? Obviously not more alarmingly, the Government has gone to the extent to say,

"It is impossible to imagine that each and every citizen can be provided with special security". Is this statement, in the factual background of this case, in consonance with the Constitutional mandate ? Has it been made in conformity with the Preamble wherein our Constitution swearing in the name of Rule of Law guarantees justice in three fronts -Social, Economic and Political ? In a catena of decisions the Hon"ble Apex Court has expressly widened the concept of social justice making it obligatory on the part of the State to practise and implement orthodoxly the mandate of the Constitution so enshrined in Part III and Part IV. Therefore, on discreet scrutiny of such statement and submission, it appears that an attempt has been made to negate those Constitutional obligations."

15. As per averment made by the State-respondent in paragraphs 7 and 8 of the affidavit-in-opposition, admittedly the House Guard was provided to the petitioner's deceased father as security measure from 20.2.1988 to 22.4.1991 and the same was withdrawn from his house on 22.4.1991 without showing any reasons whatsoever. Had the State-respondent been pleased to provide adequate securities in due time, the life of the petitioner's father and their properties could have been saved and protected. It appears from the perusal of the records including the additional affidavit, particularly paragraph 4 therein filed by the petitioner that this court by order dated 25.3.1994 directed the Respondents to

post some Police picket to ensure the security of the life and property of the petitioner. Though a police picket was posted in the house of the petitioner in compliance of the abovenoted order, the same was also for a short term and accordingly withdrawn.

16. That being so, this court is of the considered view that the State is duty bound to perform its obligations entrusted upon it by the Constitution to protect the life and property of every citizen. When the petitioner's father was admittedly killed and his property was damaged, his grievances must not be allowed to gather dust in the corridors of power and the State mandarins must be made to perform their respective duties within the established parameters of the Constitution.

17. Accordingly, this court is of the firm opinion that the petitioner is entitled to adequate compensation of Rs. 2,00,000 (Rupees two lacks) only for loss of life of their father who was killed by the miscreants on 7.4.1993 and also an amount of Rs. 50,000 (Rupees fifty thousand only) for damages caused to the properties which has been estimated by the Government itself as reflected from paragraph 13 of their affidavit-in-opposition. It is ordered accordingly. The State-respondents are hereby directed to make the payment as indicated above to the petitioner within a period of three months from the date of receipt of the certified copy of this order.

18. The State-respondents are further directed to provide adequate security measure by way of posting Police picket ensuring the security of the life and property of the petitioner at Village West Noabadi under East Agartala Police Station in the District of West Tripura within a period of two months from today.

19. In the result, this wit petition is allowed, No costs.