
(1998) 03 GAU CK 0042
In the Gauhati High Court
Case No : Civil Rule No. 315 of 1996

Smt. Aheibam Ongbi Leihao Devi	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) ACJ 594 : AIR 1999 Guw 9 : (1998) 4 GLT 380

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Ch. Dhananjay Singh, for the Appellant; A. Jagatchandra, Addl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—Heard Ch. Dhananjay Singh, learned counsel for the petitioner as well as Mr. A. Jagatchandra Singh, learned Addl. Govt. Advocate appearing for the respondents.

2. Petitioner's husband was employed as Taxi Driver. In course of his professional duty, he was killed on 14-8-95 by the 5th Bn. Manipur Rifle posted at Iroishemba. This petition has been espoused by his spouse claiming the following reliefs :--

"(i) issue rule nisi calling upon the respondents to show cause as to why the case of the petitioner for payment of adequate compensation and ex-gratia for the death of A. Raghumani Singh in the firing incident by the 5th Bn. Manipur Rifles,

(ii) make rule absolute.

(iii) pass order/direction which Hon'ble Court deem fit and proper in the interest of justice.

(iv) issue a direction to make an enquiry into the case by a competent Court.

(v) pass an interim order directing the Respondents to pay ad-interim compensation and ex-gratia pending disposal of this writ petition for the end of justice."

3. During the pendency of this Civil Rule, petitioner had been paid ex-gratia grant of Rs. 20,000/- on the basis of Government Memorandum dated 21-1-1995. by which ex-gratia payment to non-Govt. servant has been fixed at Rs. 20,000/-. Considering the facts and circumstances of the case, this Court on 18-8-97 directed the State Government to appoint a Competent Officer to make an enquiry to find out as to whether the petitioner's husband had been killed by the 5th Bn. Manipur Rifle posted at Iroishemba by resorting to indiscriminate firing. It is pursuant to the aforesaid direction the Government of Manipur constituted a one man enquiry with the Addl. District Magistrate by an order dated 11-9-97. After the completion of the enquiry the Enquiry Officer submitted his report on 11-11-97. The Enquiry Officer after examining the witnesses and the documents made available on the record had come to the conclusion that the deceased Shri A. Raghumani Singh died due to bullet injuries fired by the personnel of 5th Bn. Manipur Rifle. He has also found that altogether the 5th Bn. Manipur Rifle personnel fired 31 rounds of 303 BDR and 52 rounds of 303 CTN during the incident. It is the case of the respondents that on the fateful night at about 7 p.m. when the sentry on duty ordered to halt a lone vehicle (Jeep) driven by the deceased and on being refused by the driver of the Jeep, the personnel of 5th Bn. Manipur Rifle gave fire to stop the Jeep. It is shocking to notice that in order to stop a lone vehicle (Jeep) altogether about 83 rounds of 303 ammunition had been fired indiscriminately. The incident as narrated do not warrant for the 5th Bn. Manipur Rifle personnel resorting to indiscriminate firing of about 83 rounds of 303 Rifle. It is shocking incident of all right thinking people. At the most, it could be termed as "trigger happy." without any restraint. As a disciplined uniform personnel, the personnel of the 5th Bn. Manipur Rifle posted at Iroishemba had to restrain itself. This unfortunate incident involving the valuable life could have been averted. This is also the view of the Enquiry Officer that considering the facts as narrated above, the quantum of firing could have been restrained. This would clearly show that the firing was indiscriminate.

4. Post-mortem on the body of the deceased had been conducted on 15-8-95 at about 8 a.m. in the RIMS morgue. On examination by the Doctors, the following external injuries were found on the body of the deceased.

"1) Entrance wound of bullet, 6x3 cms. over the upper region of left side chest extended from mid-line with abraded collar on medial and upper region, tract passes towards left and slightly downwards through lungs, heart causing fracture of 1st to 4th left ribs then produces an exit wound 10 x 7 cms. over the lateral region of left side chest.

2) Entrance wound of bullet, 2 x 1 cms. over the lower part back of right side abdomen, 5 cms away from mid-line and 86 cms above heel, bullet passes slightly upwards and frontwards through hip bone and get lodged in front wall of

abdomen, causing fracture of hip bone."

5. In the opinion of the Doctor, the death was due to injury over heart and lungs produced (caused) by fire-arms, homicidal in nature.

6. In the facts and circumstances as alluded above would clearly show, that it is not a killing simpliciter but it amounts to violation of human rights. The way so many rounds of bullets had been fired aiming at innocent unarmed civilians would imply in it that the deceased had been deprived of his valuable life by abusing and violating the human rights, It is definitely a breach of fundamental rights guaranteed under Chapter III of the Constitution. Respondents No. 1 and 2 are vicariously liable for the unlawful action of the respondents No. 3 and 4.

7. The concept of sovereign would not be applicable in the case of violation of the fundamental rights. In Smt. Nilabati Behera alias Lalita Behera v. State of Orissa AIR 1993 SC 1960, it was pointed out by the Apex Court as under (at p. 1969 of AIR) :

"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 of 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."

The facts and circumstances in the present case at hand as recited above is clearly a violation of the fundamental rights.

8. This remains to be seen as what relief the petitioner is entitled to. The victim was aged about 43 years at the time of incident. He was a Taxi Driver and it is stated that he was earning a monthly income of Rs. 3,000/- p.m. He is survived by his wife aged about 40 years, his mother aged about 75 years and minor daughter aged about 16 years. Definitely, they are left as orphans without anybody to look after their welfare. At the same time, the young wife aged about 40 years lost a life companion at the prime of her life which has been snatched away by the unlawful action of the respondents No. 3 and 4. The minor daughter would grow and she needs proper education and a time may come that she would be attaining the marriageable age and expenses for marriage and other would become necessary. No doubt, no treasure on earth would be a suitable

substitute for the tender care of love and dear one. But in the facts and circumstances as recited above, the petitioner definitely deserves a reasonable compensation from the respondents No. 1 and 2. Respondents cannot go away by saying that the petitioner had been paid ex-gratia payment of Rs. 20,000/-. Can ex-gratia payment of Rs. 20,000/- be measured in terms of precious life that has been lost, never.

9. Considering the aforesaid circumstances. the respondents No. 1 and 2 are directed to pay a compensation amount of Rs. 1.50 lakhs (Rupees one lakh and fifty thousand) to the petitioner, minus the ex-gratia payment of Rs. 20,000/- which was already paid. The respondents shall pay the remaining amount of Rs. 1.30 lakh (Rupees one lakh and thirty thousand) to the petitioner within a period of three months from the date of receipt of this judgment and order.

10. With the aforesaid direction, this writ petition is allowed. No costs.