
(1998) 05 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule (HC) No. 444 of 1997

Smt. Kangujam Ongbi Thoibi Devi	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 19-05-1998

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 5
Constitution of India, 1950 — Article 21, 22(2), 226, 32

Citation : (1999) CriLJ 3584 : (1999) 2 GLT 202

Hon'ble Judges : P.K. Sarkar, J;N. Surjamani, J

Bench : Division Bench

Advocate : Kh. Chonjohn, for the Appellant; M. Ibotombi singh, Addl. CGSC and A. Jagatchandra Singh, Addl. GA, for the Respondent

Final Decision : Allowed

Judgement

N. Surjamani, J.—This case relates to a claim of a mother about the wrongful and illegal detention of her son Shri Kangujam Ojit Singh, aged about 15 years, a student of Class X and custodial death of her said son in the custody of the respondents coupled with a prayer for issuing an appropriate writ or orders of fixing responsibility for the death of her son after arrest and detention in custody and also for a direction to the respondents to pay adequate compensation to the petitioner for the death of her said son Kangujam Ojit Singh in custody.

2. According to the writ petition, she is illiterate and an unsophisticated woman and a weaver by occupation. Her husband is a driver of private vehicle belonging to other persons and all her issues namely, Shri K. Oken Singh (24 years), Kumari K. Shushila Devi (21 years), Shri K. Ojit Singh (15 years) and Shri K. Rajesh Singh (11 years) are all students and her second son, the said K. Ojit Singh was born on 1 -3-1982 and was a student of Class X of Bashikhong High School during the academic session of 1997-98 and he was the General Secretary of the said school in the year 1996 and a good sportsman.

3. On 16-2-1997, her son K. Ojit Singh, in the afternoon of the day went out for

about 30 minutes saying that he would go to the house of his classmate namely N. Kabita Devi of Bashikhong Mamang Leikai which is about 1 km away from the petitioner's house and he would enquire of whether the knitting of his cap by her had been completed or not. Shri Ojit Singh came back to his house. The knitting of his cap had not been completed and, thereafter at about 4 p.m. of the same day, he went again to the house of the said Kabita Devi. At about 5 p.m. of the same day i.e. 16-2-1997 the petitioner got the information that her son Ojit Singh was arrested by the Army from the house/compound of the said Kabita Devi at about 4.30 p.m. and that he had been beaten up by the Army personnel at the time of arrest. On the approach of the petitioner and her family members, the local MLA tried his level best to ascertain in the detailed information about the safe custody of Shri Ojit Singh in the hands of the Army by contacting some civil police officers of Imphal District but the Army did not hand over her said son to the police till the early evening of 19-2-1997 nor did they release him at any time earlier since after his arrest on 16-2-1997.

4. But, only on 19-2-1997 at about 4 p.m. she got the information that the Army had once brought her son Ojit Singh earlier to the Singjamei police station some minutes before she got the said information and that, her said son had been taken by the Army personnel to the hospital and the police could not state as to which hospital her said son had been taken. At about 5 p.m. of the same day i.e. 19-2-1997, two gypsy vehicles said to be of the Army were seen entering into, the compound of the Singjamei Police Station and soon after those vehicles left the Police Station, the petitioner and her party contacted the police personnel of Singjamei Police Station and they came to know that Shri Ojit Singh had been brought to the Police Station and left at that Police Station.

5. It is also the case of the petitioner that, when her husband called his son by his nick-name "Ibomcha", from nearby the room of the Police Station her husband heard his son's reply, "Baba" in a very low and unusual voice but the Police personnel immediately prevented her husband from calling his son saying that his said son should not be disturbed in any manner and the police asked the parents of the boy to bring some warm clothes and food for him and accordingly, at about 8 p.m. of the same evening of 19-2-97, the parents of the boy brought some clothes and food for him at the Police Station. The petitioner wanted and tried to see and talk with her son but the Police told her to see her son in the morning of the following day and asked her further to let her son rest and not to disturb him in any manner. At about 11 p.m. of the same night of 19-2-97, one Sapam Amuba Singh, brother of the local MLA got instruction on phone from Singjamei Police Station for immediate presence of both the parents of Ojit Singh with a doctor at the police station. But, no doctor was available that night as it was also raining at the relevant time.

6. As soon as the parents of the boy and their party entered into the compound of the police station, they heard voice of groaning from inside the room of the police station, said to be the lookup room and they also heard some one saying -

blood is oozing, take him immediately to the doctor/hospital and, thereafter, the said Ojit Singh was immediately taken to the J.N. Hospital, Porompat, Imphal, in a jeep brought by his parents along with two police personnel. On the way to the hospital, Ojit Singh cried of utter pain of his body stating that he could not even respire.

7. At about 12.15 a.m. of 20-2-97, the party reached the hospital and the said Ojit Singh was admitted in the hospital but he never stopped groaning and crying of utter pain, rather he complained of severe pain in his chest and difficulty in breathing. According to the petitioner, her son Ojit Singh got severe multiple injuries on different parts of his body externally and internally while he was in the custody of the Army, i.e. before he was handed over to the Singjamei Police Station and, he succumbed to those injuries in the JN hospital at about 4 : 45 a.m. of 20-2-1997.

8. On further enquiry, the petitioner and her men subsequently discovered material facts and information relating to sequence of events pertaining to and after the death of Ojit Singh. One of the important information is, that after prolonged detention/confinement of Shri Ojit Singh by the Army in their custody for nearly 84 hours from the time of his arrest on 16-2-97, the Army brought him to the Singjamei Police Station for handing him over in a very serious condition, quite unable to move about and the police of Singjamei Police Station initially refused to receive him. Second information is, that at about 5 :45 p.m. on 19-2-97, one Nb/Sub of HQ 9 Sector, 57 Mtn Div, C/o 99 APO handed over Shri Ojit Singh along with an FIR to the officer in charge of Police Station stating that Shri Ojit Singh was apprehended on that day i.e. 19-2-97 at 0500 hours and brought him to BN HQ for questioning. The officer-in charge of Singjamei Police Station received the said report from the Army and a medical certificate at 5.45 p.m. and got the report registered as FIR No. 52 (2) 97 Singjamei P.S. u/s 13 U/ A (P) Act.

9. It is also urged that the parents of late Ojit Singh and local people condemned and resented the action of the security forces and they raised protest against the killing of the boy. The dead body of the boy was cremated after some days, only when the Govt. of Manipur agreed to constitute/appoint a commission of Inquiry under the commission of Inquiry Act, 1952, known as "Ojit Death Inquiry Commission" for inquiry amongst others, with respect to the sequence of events leading to, including the date of arrest and all the facts relating to the death of Ojit Singh and to find out whether there were any lapses on the part of the security personnel of 57 Mtn. Div. C/o 99 APO/Manipur Police personnel and other individual resulting in the death of Ojit Singh and to find out who is/are responsible for the death of Ojit Singh and, accordingly the Govt. issued necessary orders in the matter, thus appointing Commission of Inquiry. But those related orders appointing Commission of Inquiry were suspended/stayed by this Court vide order dated 25-4-97 passed in Civil Rule No. 332 of 1997 on the Motion of the Union of India and others. According to the petitioner, she filed this

writ petition, quite independent of the said questions raised by on between the respondents herein in the said Civil Rule.

10. The case of the writ petitioner is contested by the respondents by filing counter affidavits. The respondent Nos. 1,2 and 3 contended that the averment of the writ petitioner is to be subjected to approbation and reprobation of the "Ojit Death Inquiry Commission", which is a fact finding body constituted by the Govt. and as such, the writ petition is ill-conceived, incompetent, vexacious and mala fide and it deserves its outright rejection. On the other hand, the respondent No. 4 to 7 (Union of India & ors.) urged that Shri Ojit Singh was involved in unlawful activities for a number of years as given out by the source of individuals own statement that he was working for PREPAK which is a banned unlawful organisation and he is involved in tax collection/extortion of money from the peace loving people of the State and he gave information about some PREPAK and PIA activists during the course of investigation by the Army.

11. According to the said respondents, the said Ojit Singh was arrested by the security forces in terms of Armed Forces Special Power Act, 1958 at about 0500 hours on 19-2-97 and at the time of his arrest, he had suffered certain injuries on his right leg and hands due to falling. down in the ditch and he was given proper medical treatment by one Dr. S.S. Saha, senior medical officer and was also given medical treatment at District Hospital prior to the handing over of the said Ojit Singh to the police station and he was never tortured/manhandled during his stay with the security forces. The said respondents denied all other allegations/statements made by the writ petitioner in her writ petition.

12. According to the said respondents, no case had been made out by the petitioner for invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. Shri Chonjohn, the learned counsel appearing for the petitioner submitted that the death of Shri Ojit Singh occurred while he was in custody of the respondents and there is ample evidence and material on record for establishing this fact. As per FIR lodged by the concerned official of the Headquarter, 9 Sector, C/o 99 APO as in Annexure A/1 to the writ petition, the said unit carried out spotting at Singjamei area to apprehend the underground. On seeing the party, one individual tried to flee and fell into a ditch and tried to make good his escape but the party chased him for approximately 300 metres and apprehended him at 0500 hours on 19-2-97 and brought him to BN HQ for questioning and on detailed questioning, it was revealed that the individual Shri Ojit Singh confessed that he is an active underground of the banned organisation, PREPAK and carried out extortion and underground activities as per direction of his commander and later on, he was handed over to civil police, Singjamei Police Station on 19-2-97 at 5 : 45 hours. But, the respondents, Union of India 6 others, arrayed as respondent No. 4 to 7 in their counter affidavit stated that at about 0430 hours on 19-2-97, the said security personnel rushed to certain areas including Haobam Marak, Naorem Leikai, Thongju and Bashikhong in three vehicles. On

getting reliable information that some undergrounds were lurking in the said areas and when the leading vehicle approached the inner lines of Bashikhong, the spotter identified a youth belonging to PREPAK and accordingly he was asked to stop and instead of complying, the individual started fleeing in the opposite direction into the by-lane to make good his escape. But, the suspect dashed against a latrine wall and fell down and thereafter, he picked himself up, ran a few steps and again fell into a ditch and thereafter, he was apprehended by the column and the said column recognised him as Shri Ojit Singh, an active member of PREPAK. The said individual also confessed that he is an active member of PREPAK.

14. Further, the said respondents stated that the said Shri Ojit Singh after giving proper medical treatment by the senior medical officer of the unit hospital was sent to Singjamei Police Station at about 1645 hours on 19-2-97 for handing him over to the civil police and the said individual was also given medical treatment by Dr. Mairembam Dinesh Singh and after administering injection as per the prescription mentioned in Annexure A/3, he was discharged from the district hospital as the injuries sustained by the said Ojit Singh were minor in nature. Further, in paragraph 8 of the counter affidavit, the said respondents stated that Shri Ojit Singh was arrested by security forces at about 0500 hours on 19-2-97. According to Shri Chongjohn learned counsel, the statements of the said respondent Nos. 4 to 7 are self contradictory inasmuch as in the said FIR the informant who is a security personnel of the unit specifically stated that, at 0500 hours on 19-2-97, the said Ojit Singh was apprehended by security forces and he was handed over to civil police on 19-2-97 at 5 : 45 p.m. and whereas, in paragraph 6 of the counter affidavit of the said respondents, they contended that the said Ojit Singh after giving proper medical treatment was sent to Singjamei Police Station at about 1645 hours on 19-2-97 for handing him over to the civil police. Apart from this, the medical prescription issued by the medical officer concerned as in Annexure A/3 to the writ petition shows that Shri Ojit Singh was brought by the police on 19-2-97 at 4 : 55 p.m. before the Chief Medical Officer, Govt. of Manipur, Imphal, and the concerned medical officer, made medical prescription for the said Ojit Singh. In other words, Shri Ojit Singh had been subjected to medical treatment by a doctor concerned at 4 : 55 p.m. before he was apprehended by the security forces at 0500 hours on 19-2-97, Shri Chongjohn argued.

15. Over and above this, Shri Ojit Singh was handed over to civil police on 19-2-97 at 5 : 45 p.m. and, whereas the respondents in their counter affidavit stated that he was sent to Singjamei Police Station at about 1645 hours on that day for handing him over to the civil police, Shri Chongjohn contended.

The learned counsel further argued, that the injuries sustained by the said Shri Ojit Singh were minor in nature as per statement of the said respondents made in their counter affidavit, but the inquest report as well as the post mortem report as in Annexure A/4 and A/6 to the writ petition, there are 16 external

injuries sustained by the said Ojit Singh and there are also serious internal injuries like congested heart and small haemorrhagic spots on different surfaces of the pericardium and heart and as such, the statement of the said respondents are false and concocted stories so as to enable them to have safe from the illegal acts committed by them.

16. The learned counsel for the petitioner also argued that, even though the related Govt. order appointing a Commission of Inquiry for the purpose of making an inquiry into the death of the said Ojit Singh have been stayed and suspended, the writ petitioner may file this writ petition for appropriate order and direction from the end of this Court as the life of her son Shri Ojit Singh has been deprived of by the security forces without any procedure established by law, thus violating the Fundamental Rights guaranteed under Article 21 of the Constitution of India and also the provisions of Section 5 of the Armed Forces Special Powers Act, 1958 and the Mandate of Article 22(2) of the Constitution of India. According to Shri Chongjohn, the petitioner's son Shri Ojit was apprehended by the security forces/ Army personnel on 16-2-97 at about 5 p.m. of the same day and the said Ojit Singh had been beaten up by the army personnel at the time of the arrest and he was wrongfully detained in their custody and, rather he was tortured till he was handed over to the civil police on 19-2-97 at about 5 p.m. and that, because of severe multiple injuries on different parts of the body of Ojit Singh, externally and internally while he was in custody of the security forces he succumbed to those injuries in the JN hospital at about 4 : 45 a.m. of 20-2-97. For such wrongful detention and prolonged confinement of Ojit Singh by the Army in their custody for nearly 84 hours from the time of his arrest on 16-2-97 as well as the carelessness of the civil police of Singjamei Police Station in not affording proper treatment to the injured Shri Ojit Singh, he succumbed to those severe multiple injuries and as such, it is a clear case of custodial death for which the respondents should pay adequate compensation to the tune of Rs. 5 lakhs to the petitioner and also an appropriate order of fixing responsibility for the death of Shri Ojit Singh should be issued from the end of this Court, Shri Chongjohn argued.

17. At the hearing, Shri A. Jagatchandra Singh, learned Addl. Govt. Advocate submitted that, a Commission of Inquiry named, "OJIT SINGH DEATH INQUIRY COMMISSION" was constituted by the Govt. to inquire into; the death of Shri Ojit Singh under a related Govt. order of 24-2-97 and the said order of 24-2-97 was stayed by this Court on 25-4-97 in connection with Civil Rule No. 322 of 1997. In view of the present fact and circumstances, the writ petition is ill-conceived, incompetent, vexacious and mala fide and it deserves its out-right rejection. This is the only contention and argument advanced by the learned Addl. Govt. Advocate at the hearing of this case.

18. On the other hand, Mr. M. Ibotombi Singh, the learned Addl. CGSC submitted, that as per provisions of law laid down in Armed Forces Special Power Act, 1958, the said Ojit Singh was apprehended by the security forces at about

0500 hours on 19-2-97 and at the time of arrest, the said Ojit Singh had suffered certain injuries on his right leg and hands due to falling down in the ditch while he was making an attempt for making good his escape. The said Ojit Singh was given proper medical treatment and the injuries sustained by him were minor in nature. During the period of interrogation, the security forces came to know that Shri Ojit Singh is an active member of PREPAK and the said Ojit Singh had confessed by making his own statement that he was working for PREPAK, which is a banned unlawful organisation and was carrying out activities prejudicial to the security of the country and also involved in tax collection/extortion from the peace loving people of the state as in Annexure x/1 to the counter affidavit. According to the learned Addl. CGSC, after the interrogation and after providing medical treatment to the said Ojit Singh he was sent to the civil police namely Singjamei Police Station at about 1645 hours on 19-2-97. During the period of detention, the security forces treated Shri Ojit Singh well and he was not tortured at all.

19. Now, this Court is to examine as to whether there are materials on record for establishing the fact that human rights are infringed or violated and the life and personal liberty of the said Ojit Singh had been deprived of by the respondents in the instant case, or not.

20. For better appreciation of the real points of controversy between the parties, we are to refer the documents relied upon by the parties and examine the value of it. As per FIR (Annexure A/I) Shri Ojit Singh was apprehended by security forces at 0500 hours on 19-2-97 and he was handed over to civil police namely, Singjamei Police Station on 19-2-97 at 5 : 45 p.m. In paragraph 18 of the counter affidavit of the respondent Nos. 4 to 7, the said respondents stated that, during the period of detention i.e. from 0500 hours on 19-2-97 to 1745 hours on 19-2-97, Shri Ojit Singh was treated well and he was given necessary first aid for his injuries sustained at the time of his arrest. This statement is controverted by the said respondents themselves by stating, that Shri Ojit Singh after giving proper medical treatment he was sent to Singjamei Police Station at about 1645 hours on 19-2-97 for handing him over to the civil police. Apart from this, the medical prescription as in Annexure A/3 established the fact that Shri Ojit Singh was brought by the police for treatment on 19-2-97 at 4 : 55 p.m. before the chief medical officer, Imphal. Further, the alleged confessional statement made by the said Ojit Singh before the security forces as in Annexure X/1 (colly) to the counter affidavit of respondent Nos. 4 to 7, does not indicate the date and time when the said Ojit Singh had made such statement before the security forces. Simply, the said respondents stated that the said Ojit Singh made his own statement before them. How strange it is:

21. Now, we further recall the statement of respondent Nos. 4 to 7 in their affidavit-in-opposition that the injuries sustained by the said Ojit Singh were minor in nature. But, on perusal of the medical prescription as in Annexure A/3 to the writ petition as well as the inquest report and the post mortem report as

in Annexure A/ 5 and A/6, it has been revealed that the said Ojit Singh sustained external injuries numbering 16 and serious internal injuries on pericardium heart and lungs which resulted in the death of Ojit Singh.

At this stage, it can be easily concluded that the said Ojit Singh faced ill-treatment and torture, rather he sustained these number of external, injuries and also internal injuries as reflected in the said document marked Annexure A/5 and A/6 while he was in the custody of the respondents and he succumbed to those multiple injuries on 20-2-97 at about 4 : 45 a.m. in the JN hospital.

22. Upon hearing the learned counsel for the parties and also on perusal of the available materials on record, we are needless to say, that the petitioner and her family members have gone through great mental agony and pain because of the loss of their beloved son Ojit Singh and no amount of money will adequately compensate for the loss of a life. The life of Ojit Singh, the second son of the petitioner was cut short in very unfortunate circumstances. We have no reason to doubt that the said Ojit Singh died of multiple injuries inflicted on his person as is evident from the medical report as discussed above. The only way which we have to console the petitioner and other members of the family is by grant of compensation to the petitioner's mother. As we have seen as on today throughout the history, the preservation of human rights has been a cherished objective of every civilised society. Such human rights should always be protected and it should be well groomed. The judiciary, by virtue of the power vested upon it under the Constitution of India, is the protector of the civil liberties of the citizen and it seeks to protect and guarantee the same under its public law jurisdiction.

23. In a catena of cases, the Apex Court had issued certain orders relating to the enforcement of human rights. Now, we may refer first a decision of the Apex Court rendered in Rudul Sah v. State of Bihar reported in Rudul Sah Vs. State of Bihar and Another, wherein, the Apex Court held thus at page 1647 (of Cri. LJ.) :

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the powers of the Supreme Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. Respect for the rights of individuals is the true bastion of democracy. Therefore, the state must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

In another case between Smt. Nilabati Behera v. State of Orissa, reported in

Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, the Supreme Court, while dealing with a case of custodial death of the son of the petitioner concerned held thus at page 2908 (of Cri LJ):-

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 in-applicable, 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 Arts. 32 and 226 of the Constitution. This is what was indicated in Rudul Sah Vs. State of Bihar and Another, and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights.

In the said case, the Supreme Court further held that :-

It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is "not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong-doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

From these established principles of law laid down by the Apex Court, we have seen the purpose of public law as the same is not only to civilise public power but also to assure to the citizen that they live under a legal system which aims to protect and preserve their human rights.

24. It is true, that the said Commission of Inquiry as appointed by the Govt. under the related order has been stayed by this Court in the connected Civil Rule as discussed above. At this stage, we are not giving any finding on merit, who is the person or officer/officers responsible for the death of Shri Ojit Singh after his arrest and detention in custody of the respondents. It is open to the State Govt. to make necessary investigation and to find out the real culprit responsible for the death of Shri Ojit Singh, second son of the petitioner and to fix the responsibility. But, we are of the view that the writ petitioner has enforceable, legal right in the instant case.

25. For the reasons and observations made above, we direct the respondents/ Union of India and the State of Manipur to pay Rs. 3 lakhs as compensation for the loss of life of Shri Ojit Singh, son of the petitioner while in custody of the respondents and, the respondents are directed to make payment in equal shares to the petitioner within a period of 3 (three) months from today. It is made clear that the State Govt. is at liberty to make necessary investigation as indicated above and to fix the responsibility including the recovery of compensation amount from such person/ persons who is/are found responsible for the death of Shri Ojit Singh son of the petitioner.

With the above observation and direction, this writ petition is disposed of. No cost.