
(2017) 12 MAN CK 0005
In the Manipur High Court
Case No : 609 of 2010

Smt. Leishangthem Ongbi Sanarei Devi	APPELLANT
Vs	
State of Manipur	RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 307 - Acts done by several persons in furtherance of common intention - Attempt to murder

Citation : (2017) 12 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : Kh. Mani, S. Niranjana

Judgement

1. Heard Shri Kh. Mani, the learned Senior Advocate appearing for the petitioner and Shri S. Niranjana, the learned Government Advocate appearing for the respondents.

2. By the instant writ petition, the petitioner has prayed for issuing a writ / order / direction to direct the respondents to make payment of Ex-gratia of Rs.1,00,000/- (rupees one lakh) to her for causing the death of her beloved son.

3. 1. According to the petitioner, she is the mother of late Master Leishangthem Simon Singh who, on 14-05-2009, went out of his house by saying that he would meet one of his friend in his locality. However, the petitioner's son did not return home on that night and accordingly, on the next day i.e., 15-05-2009, the members of the petitioner's family, along with some of the members of the local Meira Paibis, made a search for her son in the surrounding villages but they could not find him at all. On the next day, the Lamshang Police Station informed the petitioner that her son had been killed by a combined team of police commandoes, 12 MLI and 39th Assam Rifles in an encounter and that the dead body of the petitioner's son had been deposited at RIMS Mortuary, Imphal. On receipt of the said information, the petitioner along with other members of the

family and some local members, went to RIMS Mortuary and identified the dead body of her son. 3.2. The petitioner came to know from the reliable source that after killing her son by the said combined team of Manipur Police Commandoes, MLI and 39th Assam Rifles, a case under FIR No. 25(5)09 LSG-P.S u/s 307/34 IPC, 20 U.A.(P)A. Act, 25(1-C)A. Act and 5 Expl. Subs. Act was registered by the Lamshang Police Station stating that the petitioner's son was killed in an encounter with the said combined security forces at Koutruck Hillock on 15-05-2009 and since the alleged encounter took place under Saitu Gamphazol Sub- Division, Senapati District, the report of the said FIR came to be treated as the original ejahar of the case under FIR No. 22(5)09 G.S. Police Station in respect of the same offences. While the inquest over the dead body of her son was done on 15-05-2009, the post-mortem examination was conducted on 17-05-2009 at RIMS Mortuary, Imphal.

3.3. At the time of the incident, the petitioner's son was studying at Class-IX at Mayanglangjing Govt. High School and he being a brilliant and obedient student, had no nexus with any unlawful organization nor had he any criminal antecedents before his death. Later, the petitioner learnt that his son was taken by the said combined security forces to Koutruck hillock who shot him dead by staging a fake encounter.

3.4. On 20-11-2009 the petitioner submitted an application/ representation to the Commissioner (Home), Government of Manipur with copies endorsed to the Deputy Commissioners, Imphal West and Senapati districts requesting them to grant appropriate ex-gratia to the petitioner in terms of the order dated 06-08-1998 issued by the Special Secretary (Home), Government of Manipur. But no response was received by the petitioner from any one of them in respect of her application. Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed on the inter-alia grounds that in terms of the policy decision as contained in the order dated 06-08-1998, the ex-gratia of Rs.1,00,000/- (rupees one lakh) only is to be paid to the next of the kin of any person who died due to unjustified action of the police/ security forces; that since the petitioner being the mother and being the next of the kin of her deceased son, she is entitled to ex-gratia of Rs. 1,00,000/- (rupees one lakh) only by virtue of the said policy decision and that the death of the petitioner's son has caused not only mental trauma to her family members but also brings irreparable loss and injury to them as her son was the only hope of the family.

4. On 29-09-2010 when the matter was listed for consideration, the Hon''ble Gauhati High Court was pleased to issue notice to the respondents and thereafter, on the prayers of the learned Government Advocate, various opportunities were granted to the respondents for filing an affidavit-in-opposition but it is unfortunate that even after a lapse of more than seven years, no counter has so far been filed on behalf of the respondents. Since the averments made in the petition have not been denied by the respondents, the same shall be deemed

to have been admitted by them in terms of a catena of decisions rendered by the Hon"ble Supreme Court. On 30-11-2017 when the matter came up for hearing and during the course of hearing, Shri Niranjana, the learned Government Advocate submitted that since the application of the petitioner was submitted beyond 90 days from the date of occurrence, as prescribed in the order dated 15-07-1996, the writ petition is liable to be dismissed.

5. It is true that clause 3 of the order dated 15-07-1996 specifically provides that the claim for ex-gratia shall be made within a period of 90 days, say three months from the date of occurrence of the incident failing which the claim shall be time barred for consideration. In partial modification of the order dated 15-07-1996, the said order dated 06-08-1998 which is relied upon by Shri Kh. Mani, the learned Senior Advocate appearing for the petitioner, came to be issued and even though there is no time period mentioned in the order dated 06-08-1998, both the orders dated 15-07-1996 and 06-08-1998 are to be read together because the order dated 06-08-1998 has been issued in partial modification of the order dated 15-07-1996 and not in supersession thereof. As has been stated hereinabove, the petitioner submitted her application on 20-11-2009 but no affidavit has been filed nor has any document been produced by the respondents to show that the said application has been considered and rejected as barred by time. What happened to the case, is also not known to this court because the respondents have remained silent without sharing its information about it. The payment of ex-gratia is a part of the welfare scheme, the object of which is to mitigate the hardship suffered by the bereaved family and since the respondents have failed to act upon the application of the petitioner for more than seven years, this court is of the view that the State Government being an institution, ought to act fairly and reasonably and it is not too late for the State Government to consider it. Moreover, while implementing the welfare scheme, the State Government shall not be too technical in its approach towards the procedure to be followed except on merit of the case. The State Government is expected to take prompt action to dispose of such application. It is unfortunate that the petitioner's application is being kept pending for such a long time without the same being considered by the State Government. The State Government appears to have shown no concern, as if no application were submitted by the petitioner.

6. For the reasons stated hereinabove, the instant writ petition is disposed of with the direction that the respondents shall consider the application, by condoning the delay, submitted by the petitioner sympathetically within a period of 30 days from the receipt of a copy of this judgment and order and take a decision keeping in mind the observations made hereinabove.