

(2014) 02 TP CK 0059
In the Tripura High Court
Case No : Writ Petition (C) No. 150 of 2005
Sri Sudhir Barman VsThe State of Tripura

Date of Decision : 13-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Penal Code, 1860 (IPC) — Section 364

Citation : (2014) 02 TP CK 0059

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; T.D. Majumder, G.A., for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. T.D. Majumder, learned Govt. Advocate appearing for the state-respondents. The undisputed fact that has been unfolded in this writ petition is that the elder brother of the petitioner, namely Manik Barman was abducted by the extremists in the night of 26.11.1985. After due inquiry, the First Information Report was lodged by one Sub-Inspector of Police, namely Sri Purnendu Datta on 19.12.1985 and based thereon, Nutan Bazar P.S. Case No. 34/86 was registered u/s 364 of the IPC. But, after lapse of two years, when nothing was heard about the said abducted person, Death Certificate in respect of the said abducted person was issued by the competent authority on 30.03.2001 in consonance with the policy of the Govt. of Tripura. The petitioner, at the relevant time was minor and was not eligible for any Government job.

2. Mr. Somik Deb, learned counsel appearing for the petitioner, has submitted that by the Memorandum No. F.11(1)-FIN(G)/94, dated 19.02.1996, the Govt. of Tripura has formulated a policy for providing ex-gratia assistance in the event of death due to extremists' violence in case a Government job to the spouse or children or parents, as the case may be and as contemplated by the said policy cannot be provided for want of eligible person in the family. The financial

assistance to the extent of Rs. 50,000 shall be paid to the family member if the deceased is above 18 years of age (adult), otherwise a sum of Rs. 25,000 shall be paid if the deceased is below 18 years of age (minor). It has been further provided by the Memorandum No. F.19(2)-REV/97, dated 27.08.1998 that the said ex-gratia payment of Rs. 50,000 or Rs. 25,000 shall be made in the form of Postal Monthly Income Scheme (MIS) in the name of the children or the spouse of the deceased as the case may be. He has further submitted that definition of the term "family" as provided by the Memorandum dated 19.02.1996 has been later on modified and expanded by the Memorandum No. F.1(1)-GA/92(L), dated 19.11.1997, whereby the dependent unmarried brothers/sisters have been included within that definition of "family".

3. Mr. T.D. Majumder, learned Govt. Advocate appearing for the state has submitted that at the time when the abducted person had been deemed killed by the extremists there was no policy of the State Government to make provision for ex-gratia payment or a job to an eligible person from the family as defined. More so, almost after a decade the said policy had come into existence and the dependent brother has been included much later, w.e.f. 19.11.1997. As such, the petitioner does not have any indefeasible right either for a job or for the ex-gratia payment.

4. The deceased, namely Manik Barman was aged about 25 years on 26.11.1985 when he was abducted and from that day he was never heard of. There cannot be any dispute that the person who has been deemed dead was an adult and as such he would otherwise be governed by the memorandum dated 19.02.1996, if it is deemed effective in the retrospect.

5. Mr. Deb, learned counsel appearing for the petitioner has correctly submitted that such beneficial scheme has to be interpreted in the manner which advances the object for which it has been so framed to cover the victims of the extremists' violence within its ambit by giving the effect, if necessary, in the retrospect.

6. Mr. Datta Majumder, learned Govt. Advocate however has submitted that when the scheme has been framed by the Government it has to be understood within the bounds of its provisions and not beyond. However, Mr. Datta Majumder has not disputed that the Gauhati High Court, Agartala Bench in *Shri Bhakta Debbarma Vs. State of Tripura and Others*, having confronted with a similar situation, has held as under:

7. The above scheme, thus, clearly demonstrates that in case, in a family, there is no person eligible for being provided with any government job, it is the monetary compensation of Rs. 50,000, which would be paid to the affected family members if the person killed was an adult.

8. In the case at hand, the petitioner was, admittedly, a minor at the time, when his father was killed by the extremists. Being a minor, the petitioner was not eligible to apply for any Government job. In fact, none of the petitioner's family members applied for an job. It is also not the petitioner's case that though there

was a person eligible for being provided with Government job, the family had not been provided with a Government job.

9. xxxxxx xxxxxx xxxxxx

10. The impression, that a person is not eligible for being provided with Government job if the person is a minor at the time, when a member of his family is killed in extremist violence, is apparent from the fact that Memorandum, dated 19.2.1996, aforementioned makes it clear that job shall be provided without relaxation of the rules as so far as qualification, age limit, etc., are concerned and that the employment would be provided only to one of the survivors. Had it been the intention of the scheme, in question, to provide job on attaining adulthood, even to a person, who was a minor at the time of the incident, the Memorandum would not have put restrictions on relaxation with regard to qualification, age limit, etc., under the said scheme.

11. In short, thus, under the scheme, in question, job is required to be provided to one of the survivors of the family of the deceased without any relaxation of the essential conditions of recruitment. As the petitioner was a minor at the time of killing of his father by the extremists, he was, obviously, not eligible for job under the said scheme, at that point of time, as no relaxation in respect of age was permissible.

[Emphasis supplied]

7. In Bhakta Debbarma (supra), however, the incident was covered by the said Memorandum dated 19.02.1996, which was given effect from 10.04.1993. No benefit of the said scheme has been extended to the petitioner. If such denial is based on strict interpretation, this court may refer to the decision of the apex court in Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, wherein it has been held that a beneficial legislation has to be interpreted in such a manner which advances the object of the legislation. It cannot be denied that the petitioner is the hapless victim of the extremists' violence. If the petitioner is differently classified as the victim in providing ex-gratia compensation or job in terms of the date of effect, such classification which takes away the benefit as provided by the said scheme cannot sustain the test of Article 14 of the Constitution on the face of the espoused object.

8. In view of what has been discussed above, this court cannot issue any direction to the respondents to provide the petitioner a Government job as he was admittedly ineligible for any Government job at the material point of time. However, in the considered opinion of this court, the petitioner is entitled to get ex-gratia compensation to the extent of Rs. 50,000 for death of Manik Barman, his elder brother, in the hand of the extremists. As such, it is directed that the District Magistrate & Collector, South Tripura, Udaipur (now Gomti District) shall provide the petitioner an ex-gratia payment of Rs. 50,000 (rupees fifty thousand) in terms of the said scheme, contained in the Memorandum dated 19.02.1996, within a period of 3(three) months from today. With this observation and

direction this petition stands allowed to the extent as indicated above. However, there shall be no order as to costs.