

(2003) 11 MP CK 0025
In the Madhya Pradesh High Court

State of Madhya Pradesh and Another	Vs	APPELLANT
Shantibai and Another		RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Constitution of India, 1950 — Article 21, 300

Citation : (2006) 1 ACC 405 : (2004) 2 MPLJ 273

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Judgement

S.P. Khare, J.

This is an appeal u/s 96, CPC by the defendants against judgment and decree by which an amount of Rs. 50,000 has been awarded as compensation, to plaintiff No. 1 Shantibai and an amount of Rs. 25,000 to plaintiff No. 2 Jagrani with interest at the rate of 12 per cent per annum.

It is no longer in dispute that on 26th December, 1989 in Tehsil Headquarters Banda in District Sagar there was a strike of the students against the reservation policy of the Government. There was traffic jam and violence. The police personnel resorted to using tear gas and Lathi charge. Even then violence increased and, therefore, they fired in the air so that mob may disperse. The bullets from the firearms of the police hit the two ladies who are the plaintiffs and who were standing on the roof of their house which was at a height of about 10 ft. from the ground. These ladies were injured. Shantibai had four fractures in right hip and thigh. Jagrani also sustained fracture in right thigh. They were admitted in the Government Hospital and they were treated by Dr. Arun Saraf, PW 3, of that hospital. According to him there were opaque bodies in the thigh of the plaintiffs. They were treated for a long time. To some extent they are suffering from permanent disability.

The plaintiffs claimed an amount of Rs. 1,75,000 as compensation. According to them they had spent about Rs. 25,000 in medical treatment. They have claimed

remaining amount as general damages for the pain and suffering and permanent disability.

The defendant's case is that violence was resorted to by the students and anti-social elements and, therefore, to disperse the mob the police officers opened the fire in the air without aiming at anyone. They did so to protect the members of the public and the property of the Government.

The Trial Court after appreciation of the documentary and oral evidence on the record held that there was negligence on the part of the police officers in firing on account of which the plaintiffs were injured. The State Government has also been held liable for payment of damages as mentioned above.

In this appeal, it has been argued that the State Government is not liable to pay compensation to the plaintiffs as the firing was done by the police officers for maintenance of law and order which is a sovereign function of the State and, therefore, the doctrine of sovereign immunity is attracted in this case. Reliance has been placed on the decisions of the Supreme Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, and Orissa High Court in *State of Orissa Vs. Padmalochan Panda*, . On the other hand, it has been argued that the plaintiffs sustained injuries while standing on the roof of their house from the bullets fired by the police officers negligently and, therefore, they are entitled to reasonable compensation. It is submitted on their behalf that the amount of damages awarded to them cannot be said to be unjust or unreasonable.

The only point which has been debated during the course of hearing of this appeal is whether the State Government is not liable to pay damages because of the doctrine of sovereign immunity.

It is undisputed that the firing was done by the police officers to disperse the mob. The firing was in the air. There were houses in the vicinity of the place of incident. Therefore, the police officers were aware that the inmates of the houses were there and the firing should have been done in such a way that no injury is caused to them. They had a duty to take care of the persons living in the vicinity. They could resort to firing in such a way that no injury is caused to the persons living in nearby houses. The house of the plaintiffs was just at a 10 ft. height from the ground and, therefore, it is clear that so far as the plaintiffs are concerned, the act of the police officer was negligent. This negligence was qua the plaintiffs.

The amount of compensation which has been awarded by the Trial Court to the plaintiffs is on the facts and circumstances of the case, quite reasonable. There were multiple fractures in the hip and thigh of the plaintiff Shantibai and there was also fracture in the thigh of plaintiff Jagrani. They remained in the hospital for a longtime and they have produced the medical bills to show that they spent a large amount on their treatment. The total amount of special and general damages which has been awarded to them cannot be said to be excessive.

The only serious question to be decided is whether the doctrine of sovereign immunity is attracted in the present case and the State can seek protection under it.

The doctrine of sovereign immunity in England was based on the common law maxim: "King can do no wrong". The crown was not liable in tort at common law for wrongs committed by its servants. But the Crown Proceedings Act, 1947 abolished the doctrine of sovereign immunity and thus it disappeared from the country of its origin.

In India the doctrine of sovereign immunity found reference in certain decisions. In *Kasturi Lal v. State of U.P.* (supra), the Supreme Court held that the State is not liable if the wrongful act was committed by its employees "in exercise of delegated sovereign power". The subsequent decisions of the Supreme Court have narrowed down the scope and sphere of sovereign immunity. The defence of sovereign immunity is not available when the State or its officers acting in the course of employment infringe a person's Fundamental Right to life and personal liberty as guaranteed by Article 21 of the Constitution. The decisions commencing from *Rudul Sah v. State of Bihar* AIR 1983 S.C. 1986, have greatly undermined and eroded the concept of sovereign immunity and have laid more emphasis on the principle that if a tortious act has been committed causing injury to any person he would be entitled to claim reasonable compensation from the State for the wrongful act done by its employees. It is by now well settled that the State is responsible for the tortious act of its employees. The compensation for violation of Fundamental Rights can be awarded in exercise of the writ jurisdiction by the Apex Court and the High Court. The Civil Court can also award damages to a person aggrieved by wrongful act of the employees of the State. The maintenance of law and order and repression of crime are the traditional sovereign functions of the State and the doctrine of sovereign immunity must be confined to that sphere alone. In that field also the State can be held liable to pay compensation to its citizens if their Fundamental Rights have been violated and they suffered injuries on that account. The ideal of a welfare State is that it must take care of those who are unable to help themselves. The innocent victims must be provided succour and reasonable compensation. The society as a whole and the people in whom the real sovereignty vests are the insurers of such victims.

In *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, , the Supreme Court has observed that in the modern sense the distinction between sovereign or non-sovereign power does not exist. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in

nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with the archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or governmental and nongovernmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people, the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizen are required to be reconciled so that the rule of law in a welfare State is not shaken. In the welfare State, functions of the State are not only defence of the country or the administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between the sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime, etc., which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity. Maintenance of law and order or repression of crime may be inalienable function, for proper exercise of which the State may enact a law and may delegate its functions, the violation of which may not be sueable in torts, unless it trenches into and encroaches on the Fundamental Rights of life and liberty guaranteed by the Constitution. But that principle would not be attracted where similar powers are conferred on officers who exercise statutory powers which are otherwise than sovereign powers as understood in the modern sense. The suit for damages for negligence of officers of State in discharging statutory duty is maintainable, is also supported by Article 300.

In *Common Cause, a Common Cause, A Registered Society Vs. Union of India and Others*, , a three-Judge Bench of the Supreme Court affirmed the principle of law mentioned above.

In *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*, , it has been observed that "the maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. It is observed that "the Fundamental Rights, which also include basic human rights, continue to be available to a prisoner and those rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts

which has been rejected several times by this Court". - It is further stated: "in this process of judicial advancement, Kasturi Lal's case (supra), has paled into insignificance and is no longer of any binding value". The Apex Court further proceeded to observe in paras 32 and 33 as under:

This Court, through a stream of cases, has already awarded compensation to the persons who have suffered personal injuries at the hands of the officers of the Government including the police officers and personnel for their tortious act. Though most of these cases were decided under the public law domain, it would not make any difference as in the instant case, two vital factors, namely, police negligence as also Sub-Inspector being in conspiracy are established as a fact.

Moreover, these decisions, as for example, Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, ; In re : Death of Sawinder Singh Grower (1992) Supp. (4) SCC 450 and D.K. Basu Vs. State of West Bengal, , would indicate that so far as Fundamental Rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail.

In view of the above legal position, the plea of sovereign immunity is not available to the defendants in the present case. The plaintiffs sustained injuries at the hands of police officers even though unwittingly. They deserve some compensation from the State to repair the damage done to them. They were innocent victims. The judgment and decree of the Trial Court are unassailable.

The appeal is dismissed. Costs as incurred.