

(1999) 05 GAU CK 0039
In the Gauhati High Court
Case No : Civil Rule No. 1600 of 1995

Subhangsu Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Citation : (2001) ACJ 1148 : (1999) 2 GLT 84

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : R.P. Sarmah, B. Chakraborty and P. Sarma, for the Appellant; D. Goswami, N. Dutta, M.H. Choudhury and D. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This writ application has been filed for claiming an amount of Rs. 10,00,000 for the torture caused to the son of the petitioner in the police lock-up. There is no denying of the fact that the son of the petitioner Ujjal Das is a mentally retarded youth. The petitioner who is the father of the victim boy is a small grocery shop owner. The victim Ujjal Das at present is aged about 25 years and he is dumb and hearing handicapped. He is a student of Mon Vikas Kendra, an institution for mentally retarded and spastic children. On 2.1.95, Ujjal Das came out from his house and was proceeding towards the shop of his father at Bamuni Maidan at about 8 p.m. The Noonmati police took up this boy when he was going from New Guwahati area and took him to police station and started beating him on some false and baseless charges. The victim sustained multiple injuries with fracture at left tibia and on the right foot. The victim was kept in the lock-up for the whole night and was not even served with any food and water. When the victim started bleeding profusely and was groaning in pain, the police personnel to cover up the entire matter and out of fear took the boy on that night to Mohendra Mohan Civil Hospital at Guwahati where he was checked by a resident surgeon. When the petitioner did not find his son, he searched for him in every possible place, but failed to find him, went to the Noonmati Police Station

to lodge an F.I.R. for his missing son and to his utter shock and surprise found his son groaning in pain. When the petitioner asked the police personnel about the cause of arrest and detention of his son in the lock-up the police misbehaved with the petitioner. The police rather asked the petitioner not to highlight this matter and maintain silence. The victim boy, Ujjal Das on being released from Mohendra Mohan Hospital was admitted at a local nursing home at Bamuni Maidan as he did not recover. When X-ray was done at nursing home it was found that there were multiple injuries with fracture of his right foot and fracture shown at left tibia at its proximal. A complaint was lodged before the Superintendent of Police (City), Guwahati highlighting the facts and praying necessary punitive action against the guilty police personnel. Nothing was done. This matter was also highlighted in the local newspapers as well as in the National dailies. Hence, this writ petition for compensation as well as for a direction to the C.B.I. to initiate enquiry.

2. This court asked the learned Additional District Judge, Kamrup at Guwahati to make an enquiry directing the Addl. District Judge to give opportunity to all the parties to place their cases and accordingly the enquiry was made. Witnesses were examined and documents were exhibited and on 18.8.1995, the learned Addl. Distt. & Sessions Judge, Kamrup at Guwahati submitted the report. That report elaborately dealt with the matter and his findings are as follows:

Lastly, I sum up the findings and result of the enquiry as follows:

(i) That on 2.1.95 Ujjal Das, a physically handicapped and mentally retarded person was tortured at Noonmati P.S. by police personnel causing fractural injuries in his both legs.

(ii) It is difficult to locate the officers and staff who tortured Ujjal Das in the police station on that fateful night.

(iii) It is certain that everything had happened within the knowledge of M.A. Laskar, Officer-in-charge, Noonmati P.S., Noonmati, Guwahati as on the fateful night he was present in the police station up to 12 midnight and he was also present in the next morning while Ujjal Das was handed over to his parents at about 10 a.m. in the injured condition.

(iv) The S.P. (City), Guwahati did not take any action on the letter dated 4.1.1995 filed by Subhangsu Das, the father of Ujjal Das alleging the police torture upon Ujjal Das in Noonmati P.S. At that time B.P. Gupta was the S.P. (City), Guwahati.

3. Before I come to the compensation matter, it is necessary to find out what can be done to prevent such things in future. Merely granting compensation itself will not solve the problem as that amount will come from the coffer of the State. It is necessary that the persons responsible for their misdeeds must be made answerable. If they are allowed to go scot free and if compensation burden is thrown on the State Government that does not deliver the message to the

officers. The police instead of being an agency for maintaining peace and harmony in the society, cannot convert itself to an agency of torture of innocent citizens. No doubt no system can be perfect, but at least there must be a bona fide attempt for it.

4. In that view of the matter, before I come to the compensation part, I direct as follows:

(i) That necessary disciplinary proceeding shall be initiated against M.A. Laskar, the Officer-in-charge, Noonmati Police Station by giving all opportunities as available. Further, a case shall be registered against him by the authority under the relevant provisions of IPC and prosecute him along with others who may be found guilty by the authority on enquiry.

(ii) The disciplinary action shall also be taken against B.P. Gupta, the then Superintendent of Police (City), Guwahati for his inaction, negligence in the matter, as head of the police staff in the city he had a duty when a complaint was lodged before him, but he did not do anything. As a head of the police personnel in the district that cannot be expected from a model police officer. For the purpose of initiating necessary disciplinary proceeding against these two officers, if necessary, permission may be obtained from the necessary authority.

(iii) The authority, if satisfied with the matter may do the needful to place these two officers under suspension during the enquiry.

5. Coming to the compensation part as laid down by this court in a number of decisions, i.e., *Arun Ch. Bhowmik v. State of Tripura* 1997 (1) GLT 555 and *Kinjinbou Liangmei Vs. Union of India (UOI) and Others*, I allow the compensation of Rs. 1,00,000. Out of this amount of Rs. 1,00,000 the State Government shall be liable for an amount of Rs. 75,000 and the balance amount of Rs. 25,000 will be the liability of these two officers, i.e., M.A. Laskar and B.P. Gupta jointly and severally. The amount shall be paid to the mother of the victim Kuki Prava Das. The money shall be deposited before the Registry of this court and the Registry shall pay the amount to the mother with clear instruction that out of this amount of Rs. 1,00,000, Rs. 75,000 is invested in FDR and Rs. 25,000 shall be paid in cash. The FDR shall be renewed from time to time. The interest shall be drawn by the mother for the benefit of the victim. The State Government shall pay the entire money and get reimbursed Rs. 25,000 by these two officers, from the salary of the officers. The payment shall be made within a period of three months failing which the amount shall carry interest at the rate of 18 per cent per annum. It will be the responsibility of the Ministry of Home, Government of Assam to pay the compensation amount. A copy of this order shall be furnished to the counsel for the parties.

6. With the above directions and observations, this writ petition is allowed. No costs.