
(2013) 06 GAU CK 0043

In the Gauhati High Court

Case No : Writ Petition (Criminal) No's. 27 of 2010 and 13 of 2012

Tolaram Ranka and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Citation : (2014) 2 ACC 78 : (2013) 5 GLT 602

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : A.K. Borah, for the Appellant; H.M. Phukan, GA, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Since the subject matter of both the writ petitions are identical, those were heard together and are being disposed of by this common order. Though judgment was to be delivered on 27.05.2013, judgment could not be delivered on that date as this Bench was not available. Accordingly, the judgment is being delivered today.

2. The facts of the two cases portray a disturbing picture. On the one hand is the depredations of the terrorists and on the other hand is the failure of the State to provide security and relief to the victims and their dependents.

3. A brief narration of the facts is considered necessary.

WP (Crl.) No. 27/2010

4. This writ petition has been filed for a direction to produce the son of the petitioner Rajesh Ranka, who remains untraced since 7.10.2007.

5. According to the petitioner, his son Rajesh Ranka, aged about 35 years, was serving as Mohorar in a saw mill in the district of Dima Hasao (NC Hills), Assam. On 6.10.2007, he was reportedly kidnapped by some unknown persons. First information was lodged before the Lanka Police Station on 11.10.2007. On

12.10.2007, a call was received by the employer of Rajesh Ranka, demanding ransom. Police was informed in this regard on 15.10.2007. Petitioner could gather that his son was kept confined in the house of a Gaon Burah at Diyung village. He informed this to the Diyung Police Station on 13.10.2007 but police failed to take any steps to rescue his son. Petitioner, thereafter, submitted an application dated 17.10.2008 before the Superintendent of Police, Dima Hasao (NC Hills) seeking his intervention. Similar applications were made to the Deputy Commissioner of the district as well as to the Director General of Police, Assam, but there was no response.

6. Aggrieved, petitioner has filed the present writ petition.

7. After a number of adjournments, affidavit dated 1.9.2011 was filed by the Superintendent of Police, Dima Hasao (NC Hills) stating that efforts were being made to find out clues of the victim. Another affidavit was filed on 29.11.2011 by the Superintendent of Police stating that in the course of investigation, information was received that Rajesh Ranka was abducted by unknown extremists on 6.10.2007 and was killed along with the other abducted persons. Their bodies were buried in a jungle near Dismaihadi village. Acting on such information, police carried out search operation and recovered skeletons of human bones from a place which was 5 kms. away from Dismaihadi village. It was stated that further investigation was on to find out clues of the victim and the abductors.

8. This Court by order dated 27.2.2012 expressed its disappointment at the way the police authorities were functioning. The Court observed that if a person is kidnapped and murdered, it is difficult to appreciate why investigation should take more than 4(four) years. What clues will be found after 4(four) years and how evidence will be traced out regarding the accused? Further observing that it is the constitutional duty of the State to evolve appropriate monitoring mechanism for speedy investigation so that investigation is not delayed for such a long period as in the present case, this Court directed holding of a review meeting at the level of Home Secretary and Director General of Police to evolve a mechanism to ensure speedy investigation and monitoring of such investigation at appropriate levels fixing outer time limit, indicating consequences for not completing investigation within the target period. Apart from the above, this Court found that as per stand taken by the State, Rajesh Ranka, who is missing since 6.10.2007, has been found to have been killed, though the circumstances in which he was killed and those responsible for such kidnapping and murder have not been identified. Keeping in view the mandate of Section 357-A of the Criminal Procedure Code, this Court held the petitioner, who is the father of the victim Rajesh Ranka, to be entitled to compensation without prejudice to his other remedies. Accordingly, this Court directed payment of interim compensation of Rs. 1,00,000/- (Rupees one lakh) to him within a period of two months.

9. Thereafter, the Superintendent of Police, Dima Hasao filed a further affidavit

on 19.6.2012. It is stated that a review meeting was held on 5.4.2012 which was attended by the Commissioner and Secretary, Home and Political Department, Additional Director General of Police (CID), Assam, Secretary, Home and Political Department, Inspector General of Police (CWR), Deputy Commissioner, Kamrup and Sr. Superintendent of Police, Guwahati City. In the said meeting, a number of decisions were taken to ensure speedy investigation and proper monitoring of such investigation, including fixation of responsibility in case of failure to complete investigation within the time frame fixed. The affidavit further discloses that a Special Investigation Team (SIT) has been constituted for investigation of the case. Accordingly, investigation has been carried out which revealed that in the abduction of the petitioner and other victims, the involvement of one Amul Hojai @ Maurung Dimasa, the Self-Styled Lieutenant and Area Commander of DHD (J) could not be ruled out. However, on 17.5.2011, the dead body of the said Amul Hojai was recovered from a place near Haflong Police Station. SIT is closely monitoring the case to find out clues of the kidnapped persons including the petitioner's son as well as of the abductors.

WP (Crl.) No. 13/2012

10. In this case, the widows of the two victims, Md. Fajar Ali and Md. Umar Ali, who were working as employees of one Sri R.S. Gandhi, a bamboo merchant, for collecting bamboo from various places of Dima Hasao District are the petitioners. While they had gone to collect bamboo from Longkula Dismaihadi Basti to collect bamboo, they were kidnapped from that place by some unknown persons on 6.10.2007 and since then their whereabouts are not known.

11. Though first information was lodged before the Diyungmukh P.P., FIR was not registered. Subsequently, FIR was lodged before the Diyungmukh Police Station on 19.11.2010. As no effective steps were taken, representation was submitted before the Superintendent of Police of the district, but again no steps were taken. Brother of the victims submitted representation before the Deputy Commissioner, Dima Hasao on 1.7.2011. Not getting any relief, the brother submitted representation before the Chief Secretary to the Govt. of Assam on 29.7.2011 which was followed by further representation dated 31.10.2011 before the Director General of Police, Assam.

12. Aggrieved by the inaction of the State in tracing out their missing husbands, petitioners have filed the present writ petition for production of their husbands before the Court or alternatively to pay them just and adequate compensation.

13. Superintendent of Police, Dima Hasao filed affidavit on 24.5.2012. It is admitted that on 6.10.2007, Md. Fajar Ali and Md. Umar Ali, the two employees of Sri R.S. Gandhi, a bamboo merchant, were reportedly kidnapped by unknown extremists while they were on way to Langkula and Dismaihadi village for collecting bamboo. It also admitted that a written report was submitted on 24.12.2007 at Diyungmukh PP by one Md. Umar Ali, brother of the two missing brothers stating about missing of his two brothers on 6.10.2007. GD entry was

made and enquiry was conducted to trace out the missing persons. The affidavit further admits that on 3.2.2011, an FIR was received by Diyungmukh P.S. from Md. Umar Ali, brother of the two missing persons. On the basis of such FIR, Diyungmukh PS Case No. 4/2011 u/s 364(A) IPC was registered and investigated. Despite search operation, the missing persons could not be traced out. In the course of investigation, the Investigating Officer received information that the persons who were abducted by unknown extremists on 6.10.2007 from Diyungmukh Police Station area had been killed and the dead bodies of all the six abducted persons were buried at a particular place in a deep jungle near Dismaihadi village. Accordingly, on 30.8.2011, a search party went to the said place accompanied by an Executive Magistrate and after a detailed search and digging operation, skeletons of human bones along with wearing apparels were recovered. Those were sent for forensic examination and DNA profiling. Families of the victims were contacted for collecting blood samples. The blood samples and the recovered human bones/skeletons were sent to the Forensic Science Laboratory, Kahilipara, Guwahati for DNA profiling.

14. A further affidavit was filed by the Superintendent of Police enclosing therewith the DNA report of Forensic Science Laboratory. The said report however could not throw much light on the identity of the victims because of the poor quality of DNA exhibits.

15. Following orders of this Court, Deputy Commissioner, Dima Hasao filed an affidavit on 18.2.2013 enclosing therewith a copy of the magisterial enquiry report conducted regarding the abduction of the two persons. As per the report, the postmortem examination indicated that the bones and skeletons recovered were of human beings. The report also indicated that blood samples of relatives and recovered human bones/skeletons were sent to the Forensic Science Laboratory, Kahilipara, Guwahati for DNA profiling.

SUBMISSIONS

16. Mr. A.K. Borah, learned counsel for the petitioners submits that there is clear inaction on the part of the police authorities in taking prompt action. When they received information regarding the abduction of the victims, police authorities clearly failed to investigate the matter in a proper and timely manner. Learned counsel submits that almost six years have gone by since the unfortunate incident took place when the three persons went missing w.e.f. 6.10.2007, being abducted by extremists. No useful purpose will be served by directing further enquiry now. Learned counsel submits that in such circumstances the missing persons can very well be presumed to be dead. They were the bread earners of their families. Only because of the intervention of this Court, interim compensation has been paid to the petitioners @ Rs. 1,00,000/- (Rupees one lakh only) per missing person. Mr. Borah, learned counsel has placed before the Court a decision of the Government of Assam in the Relief and Rehabilitation Department dated 14.12.2004 enhancing the quantum of ex-gratia grant from Rs. 1,00,000/- to Rs. 3,00,000/- each to the next of kin of persons killed in

extremist/terrorist violence in the State as on or after 22.6.2004. He, therefore, contends that the petitioners are atleast entitled to the aforesaid amount of Rs. 3,00,000/- each, which would be in addition to the other remedies which may be available to the petitioners. In support of his submissions, learned counsel has placed reliance on a decision of this Court in the case of Tekarongsen and Others Vs. Union of India (UOI) and Others, and the decision of the Hon''ble Supreme Court in the case of The Deputy Commissioner, Dharwad District, Dharwad and Others Vs. Shivakka and Others

17. Mrs. H.M. Phukan, learned Government Advocate, Assam appearing for the respondents on the other hand submits that the situation in Dima Hasao district at that time when the victims went missing was very disturbed. In spite of hostile conditions, police had carried out investigation into the two cases but has not been able to come to any definite conclusion. Though the bones and skeletons recovered have been found to belong to humans, there is no conclusive scientific finding that those are of the victims. Disputing that there was any laches on the part of the State authorities, learned State counsel would submit that petitioners should be relegated to the private law remedy.

DISCUSSIONS & CONCLUSION

18. Submissions made have been considered.

19. From the narration of facts in both the cases as noticed above, it cannot be said that the investigation of the police authorities is satisfactory. In the first case, police registered Diyungmukh P.S. Case No. 10/2010 u/s 364(A) IPC on 14.12.2010, more than three years after the missing of Rajesh Ranka. In the second case, Diyungmukh PS Case No. 4/2011 u/s 364(A) IPC was registered on 3.2.2011, again more than three years after the missing of Md. Fajar Ali and Md. Umar Ali. The investigation of the two cases do not appear to have been carried out with the required promptness and focus. The desired sensitivity was clearly lacking atleast before the Court stepped in. It was only after matters came before the Court that the authorities appeared to have shed some of their inertia. Again, it was at the intervention of this Court, interim compensation of Rs. 1,00,000/- has been paid to the petitioners.

20. Since there was ineptitude on the part of the police authorities leading to delayed and lackadaisical investigation causing agony and hardship to the petitioners who are the near and dear ones of the victims, the petitioners are entitled to compensation. The victims Rajesh Ranka, Md. Fajar Ali and Md. Umar Ali, who are missing since 6.10.2007, have in all probability been killed going by the trend of investigation.

21. The right to life and liberty under Article 21 of the Constitution of India is one of the most cherished and basic rights. It is the bounden duty of the State to protect the life and liberty of all persons. In a case such as this, even if a victim cannot be traced out, which is possible in a terrorist affected area, the State has a duty to provide some relief/succor to the immediate family members of the

victims. In the event there is violation of Article 21, the Court can direct payment of just and adequate compensation in the form of a palliative relief which would be in addition to the normal remedy available to the affected persons. Shivakka (supra) is a case relating to compensation for death in police custody. The Hon"ble Supreme Court after referring to various landmark judgments relating to violation of the rights guaranteed under Article 21 and payment of compensation for such violation, while not only upheld the judgment of the High Court awarding compensation but enhanced it to Rs. 10,00,000/- (Rupees ten lakh only), keeping in view the ratio of the various judgments of the Apex Court, including in the case of The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others,

22. Learned counsel for the petitioners has placed before the Court the Government order dated 14.12.2004 enhancing quantum of ex-gratia grant from Rs. 1,00,000/- to Rs. 3,00,000/- each to the next of kin of persons killed in extremist/terrorist violence in the State. It is also seen from the pleadings that the victims were the bread earners of their families and were working in a remote and disturbed place to sustain their families. For failure of the State to provide them any relief, they had to knock the doors of the Court spending time, energy and money in what is clearly an avoidable litigation. In the circumstances of the case, the Court is of the view that it would meet the ends of justice if the petitioners are paid total compensation of Rs. 5,00,000/- each, which would include the interim compensation of Rs. 1,00,000/-. The said amount shall be paid to the petitioners within a period of 2(two) months from today. Both the writ petitions are allowed.