

Postsangbam Ningol Thokchom & Anr.

Vs

General Officer Commanding & Ors.

(CJI J.S. Verma, S.P. Bharucha JJ)

16.09.1997

JUDGMENT

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S.P. BHARUCHA, J.

1. The appellants are the mothers of Thokchom Lokendra Singh and Kangujam Loken Singh respectively. The said boys, each about 20 years old, along with a third, Kangujam Iboyaima Singh, were picked up by the Army in Imphal on September 23, 1980. On September 26, 1980, Kangujam Iboyaima Singh was released, but the said boys were not. On April 9, 1981, the appellants filed habeas corpus writ petitions before the Gauhati High Court. The writ petitions were dismissed by a learned Single Judge on the strength of the averment of the respondents that the said boys had left their custody. Appeals were filed before a Division Bench of the High Court, which also, ultimately, came to be dismissed in view of the respondents' statement.

2. Special leave to appeal against the orders of the Division Bench was granted. The respondents reiterated in this Court the stand that the said boys had been released after interrogation, but without having been first handed over to the police. On April 24, 1990, this Court directed the District Judge, Imphal (West), to conduct an inquiry into the circumstances relating to the disappearance of the said boys. The District Judge was directed to permit the concerned parties to adduce evidence, documentary and oral, and to cross-examine the witnesses of the other side. He was also directed to record the statement of the third boy, Kangujam Iboyaima Singh, who had been released.

3. The District Judge submitted a detailed report on October 6, 1990. His conclusion was that there was no cogent evidence to show that the said boys had been released. He, therefore, found that they had not yet been released from the custody of the first and second respondents.

4. The case before us is squarely covered by the decision of this Court in Nilabati Behera Vs. State of Orissa (1993) 2 SCC 746, the facts whereof were similar to those before us. This Court held that there was an obligation upon it, conferred by Article 32 of the Constitution, to forge the new tools necessary for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution. This enabled it to award monetary compensation in appropriate cases where that was the only mode of redress available. The remedy in public law was more readily available when invoked by the have-nots, who were not possessed of the wherewithal for enforcement of their rights in private law, but the exercise was to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate. The Court awarded compensation in the amount of Rs. 1,50,000/- to the petitioner in that case, and clarified the award thus :

"25. We clarify that the award of this compensation, apart from the direction for

adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby".

5. After the receipt of the District Judge's report mentioned hereinabove, this Court, on August 2, 1991, directed the Union of India to deposit in the names of each of the two appellants in the State Bank of India, Imphal, the amount of Rs. 1,25,000/- the interest whereon was to be paid periodically to them. This has been done.

6. Having regard to the District Judge's finding aforesaid, learned counsel for the respondents does not now contend that the said boys had been released from custody. All that remains to be done, therefore, is to determine, in terms of the law laid down in Nilabati Behera's case, the quantum of compensation to be paid to the two appellants. In our view, each of the two appellants should be compensated in the sum of Rs. 1,25,000/-. The two amounts of Rs. 1,25,000/- already deposited with the State bank of India, Imphal, by the Union of India pursuant to the interim order of this Court dated August 2, 1991, shall, accordingly, be paid over by the said Bank to the two appellants after they have given to its Manager satisfactory proof of their identity.

7. The clarifications quoted above in paragraph 25 of the Nilabati Behera's case shall be applicable to this case as if specifically set out herein.

8. The appeals are allowed accordingly.

9. The respondents shall pay to each of the appellant the costs of her appeal, quantified in the sum of Rs. 7,500/-.