

Dy.Commr.Dharwad Dist.Dharwad & Others

v.

Shivakka & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE ASOK
KUMAR GANGULY

Special Leave to Appeal (Civil) No. 3780 Of 2010 Cc 18691 Of 2010 | 31-01-
2011

Delay condoned.

Feeling aggrieved by refusal of the Division Bench of the Karnataka High Court to interfere with the order passed by the learned Single Judge for payment of Rs. 3,00,000/- to respondent Nos. 1 to 5 as compensation in lieu of the death of their bread winner Basappa Kuri in police custody. Deputy Commissioner, Dhardwad and two others have filed this petition.

Basappa Kuri (husband of respondent No.1 and father of respondent Nos. 2 to 5) is alleged to have mercilessly beaten by Subhash Desai, President of Amminabhavi Panchayat, District-Dhardwad, after tying him to telephone pole in front of his house in the village. On receipt of information about the incident, the police reached the spot and took Basappa Kuri to Police Station. However, instead of taking action against the wrong doer, the police arrested the victim and kept him in custody for more than 24 hours. During that period, he is said to have been severely thrashed by respondent No.6 K.S. Tanveer, Police Sub Inspector, Dharwad Rural Police Station, Dharwad. After torturing him for two days, the police took Basappa Kuri to City Civil Hospital, Dharwad at 2:30 AM on 29.11.2002, where he breathed his last at 3:00 AM.

A complaint was registered against respondent No.6 for an offence punishable under Section 342 of the Indian Penal Code. After few days, Sub-Divisional Magistrate-cum-Assistant Commissioner, Dharwad announced compensation of Rs.1 lac to the family of the deceased. This appears to have been done after the District Administration realised that it was a case of custodial death.

Feeling dissatisfied with the compensation awarded by the District Administration, respondent Nos. 1 to 5 filed writ petition under Article 226 of the Constitution for issue of mandamus to the petitioner herein to pay higher compensation. The learned Single Judge referred to Article 5 of the Universal Declaration of Human Rights, 1948, the judgements of this Court in Nilabati Behera v. State of Orissa AIR 1993 SC 1960 = (1993) 2 SCC 746, D.K. Basu v. State of West Bengal AIR 1997 SC 610 = (1997) 1 SCC 416 and Ajab Singh v. State of U.P. AIR 2000 SC 3421 = (2000) 3 SCC 521 and directed the petitioners to pay Rs.3 lacs to respondent Nos. 1 to 5 in addition to Rs.1 lac already announced by Sub-Divisional Magistrate-cum-Assistant Commissioner, Dharwad.

The petitioners challenged the order of the learned Single Judge in Writ Appeal No. 366/2007. The Division Bench of the High Court approved the view taken by the learned Single Judge and dismissed the writ appeal by making the following observations:

"The fact that the deceased Basappa Kuri was within the power and control of the Police and the Police station for two continuous days and nights, is borne out by record and it is also borne out by record that when the deceased person had been taken for medical examination on 27.11.2002, the Doctor had certified that he had sustained three injuries, whereas on 29.11.2002 the Medical Officer had certified that Basappa Kuri was brought dead to hospital. The Postmortem examination Report reveals that deceased Basappa Kuri had suffered multiple fractures and injuries and his death was due to shock and hemorrhage.

The injuries which the deceased had suffered on 27.11.2002 may be due to assault by the said Subhash Desai. But the subsequent facts reveal that something very damaging, disastrous had happened to deceased Basappa Kuri while he was within the power and control of the Police. That is good enough for a writ court to exercise jurisdiction to compensate the kith and kin as in a situation where duty of the State Government is to protect and promote the interest of its citizens, if the protector themselves should turn predators, start beating people black and blue to the extent of causing multiple fractures resulting in a homicidal death, and in a situation of this nature quantification in terms of money definitely fails in any way to repair the damage caused to the

kith and kin, not only to the actual loss of their life support but also due to the mental shock, the agony and the sorrow that they have to suffer during the rest of their lives, is something which is not amenable for determination in terms of money. Therefore in a matter of this nature there is no scope to interfere with the order of the learned Single Judge which in our opinion is the proper order."

On 13.12.2010, this Court made the following order:

"Heard learned counsel for the petitioners.

This special leave petition has been filed impugning the judgment of the Division Bench of the Karnataka High Court whereby learned Judge have computed the compensation to be awarded to the victim, who died in police custody, at Rs.3,00,000/- in addition to Rs.1,00,000/- which was released ex-gratia by the Deputy Commissioner of Police.

Ms. Anitha Shenoy, learned counsel for the petitioners submits that the entire amount of Rs.4,00,000/- has been deposited with the High Court and is lying deposited. If the amount is so far not been disbursed in compliance of the direction given by the High Court, the needful be done without delay. We also direct the petitioners to deposit an additional sum of Rs.1,00,000/- with the Registry of the High Court.

The record of the case does not show whether the criminal case registered against Subash Desai, who is alleged to have been assaulted the victim, has made any progress.

Ms. Shenoy requests and we allow her four weeks' time to file a detailed affidavit of the Director General of Police stating therein the present status of the criminal case against Subhash Desai. The officer concerned shall also disclose whether Subhash Desai has been arrested and whether or not he is still in custody.

While adjourning the case, we make it clear that the amount of compensation fixed by the High Court appears to be inadequate and the same deserves to be enhanced keeping in view the judgment of this Court in *Chairman, Railway Board and others versus Chandrima Das(Mrs.) and others*, reported in (2000) 2 SCC 465.

The matter may come for further arguments two weeks after the ensuing Christmas Holidays."

In compliance of the aforesaid order, an affidavit of Dr. Ajai Kumar Singh, Director General and Inspector General of Police, State of Karnataka has been filed. The deponent has stated that Subhash Desai is an accused in S.C. No.77 of 2004 which is pending trial before the First Fast Track Court, Dharwad. He has also given details of the steps taken against the police officials involved in beating Basappa Kuri.

We have heard Ms. Anitha Shenoy, learned counsel for the petitioners and perused the record. The issues relating to violation of the Constitutional right guaranteed under Article 21 of the Constitution has received attention of the Courts in large number of cases. In last 30 years, this Court and various High Courts have evolved new jurisprudence for protecting various facets of life and personal liberty guaranteed under Article 21 of the Constitution. In *Khatri (II) v. State of Bihar* (1981) 1 SCC 627, this Court, while examining the question whether the State is constitutionally bound to provide free legal aid to poor or indigent accused who are incapable of engaging lawyer, observed:

"The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty."

In *Veena Sethi v. State of Bihar* (1982) 2 SCC 583, the letter written by the free legal aid committee, Hazaribagh drawing the attention of the Court to illegal and unjustified detention of prisoners in Hazaribagh Central Jail for almost two to three decades was treated as a writ petition and several directions were given for ensuring their release. Some of the observations made in para 3 of the judgment are extracted below:

"The cases of these prisoners disclose a shocking state of affairs involving total disregard of basic human rights. They constitute an affront to the dignity of man and it is surprising, indeed shocking to the conscience of mankind, that such a situation should prevail in any civilized society. What meaning has the rule of law if the poor are allowed to languish in jails without the slightest justification as if they are the castaways of the society? The rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large sections of the community but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. It is the solemn duty of this Court to protect and uphold the basic human rights of the weaker sections of the society, and it is this duty we are trying to discharge in entertaining this public interest litigation."

In *Rudul Sah v. State of Bihar* (1983) 4 SCC 141, this Court ordered payment of compensation in lieu of illegal detention. While rejecting the State's plea that the petitioner should be relegated to the remedy of suit, the Court observed:

"The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated.

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights." (emphasis supplied)

In *Nilabati Behera v. State of Orissa* (supra), a three-Judge Bench while dealing with a case of custodial death, held that in exercise of powers under Articles 32 and 142 of the Constitution, the Court can grant appropriate relief in case of deprivation of constitutional guarantee of life and personal liberty. After advertent to the decision of Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago* (No.2) (1978) 2 All ER 670, Verma, J. (as His Lordship then was), observed:

"It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to

the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights." (emphasis supplied)

The Court also referred to the earlier judgment in Khatri (II) v. State of Bihar (supra) and observed:

".....the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate." (emphasis supplied)

Chairman, Railway Board v. Chandrima Das (2000) 2 SCC 465 is an important milestone in the field of public law remedies. In that case, this Court approved the exercise of jurisdiction by the Calcutta High Court under Article 226 of the Constitution for award of compensation of Rs.10 lacs to Smt. Hanuffa Khatoon, which was subjected to gang rape by the officials of Easter Railway. The Court extensively referred to the Universal Declaration of Human Right, various

judgments of this Court including those referred to in the earlier part of this order and held:

"34. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.

35. The rights guaranteed under Part III of the Constitution are not absolute in terms. They are subject to reasonable restrictions and, therefore, in case of a non-citizen also, those rights will be available subject to such restrictions as may be imposed in the interest of the security of the State or other important considerations. Interest of the nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes -- political, social and economic while terrorism has disturbed the global scenario. Primacy of the interest of the nation and the security of the State will have to be read into the Universal Declaration as also in every article dealing with fundamental rights, including Article 21 of the Indian Constitution.

37. Now, Smt Hanuffa Khaton, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "right to life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under Article 21 was thus violated.

Consequently, the State was under a constitutional liability to pay compensation to her. The judgment passed by the Calcutta High Court, therefore, allowing compensation to her for having been gang-raped, cannot be said to suffer from any infirmity."

In view of the proposition laid down in the aforementioned judgments, we have no hesitation to hold that the learned Single Judge did not commit any error by entertaining the writ petition filed by respondent No.1 and the direction given by him for payment of compensation to respondent Nos.1 to 5 was rightly affirmed by the Division Bench of the High Court. At the same time, we are of the view that the compensation awarded by the High Court is less than just. The High Court should have taken note of the fact that the only bread winner of the family was killed in a barbaric manner and awarded adequate compensation keeping in view the ratio of the judgments of this Court including *Chairman, Railway Board. v. Chandrima Das (supra)*.

Therefore, while dismissing the special leave petition, we deem it proper to exercise power of this Court under Article 142 of the Constitution and direct the petitioners to pay total compensation of Rs.10 lacs to respondent Nos. 1 to 5. The petitioners are directed to pay the amount of compensation within two months by getting prepared a demand draft in the name of respondent No.1 from a nationalised bank.

Liberty is given to the petitioners to withdraw the amount already deposited in the Registry of the High Court.