

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION No.3402/2015**

Smt. Gendiya Kol

Vs.

State of Madhya Pradesh & others

Shri Sharad Singh Baghel, learned Counsel for the petitioner.

Shri Divesh Jain, learned Govt. Advocate and Shri Alok Tapikar, learned Panel Lawyer for the respondents-State.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R**(24/09/2015)**

1. This petition under Article 226 of the Constitution of India, by a widow of a convict who had died while undergoing sentence in the jail, is filed for grant of compensation and to punish the officers of the jail authorities, who were responsible for the death of husband of the petitioner.

2. The facts giving rise to filing of this writ petition is that one Bachchu Kol, husband of the petitioner, was convicted for committing offence under Section 376 of the Indian Penal Code and was sentenced to undergo 10 years RI. The said convict was undergoing sentence when he fell ill on 10.08.2010 in Central Jail at Satna. Though the report about the illness of the said convict was given to the jail authorities, they have not taken due care for providing sufficient treatment to the said accused, on account of which the said accused died. When the information was

received by the petitioner and other family members, the agitation was raised against the jail authorities. The State administration thereafter directed a judicial enquiry, which was conducted by the Chief Judicial Magistrate, Satna and a report was given in that respect on 30.06.2012. On receipt of the said report under Right to Information Act, the petitioner made a demand for payment of compensation. However, no action in that respect was taken, therefore, the petitioner was required to file the present writ petition. In view of the aforesaid pleadings, the following reliefs are claimed in the present writ petition :

- “(i) To allow the representation of petitioner with compliance of enquiry report given by the office of District and Sessions Judge Satna (Annexure P-3) and given compensation to the petitioner.
- (ii) To punish the officers of Jail Authority, who are responsible for the death of husband of petitioner.
- (iii) To grant any other relief as deemed fit and proper in the circumstances of this case.”

3. Upon service of notice of the writ petition, a return is filed by the respondents. It is contended that in the judicial enquiry since the negligence of some of the Jail authorities was found, appropriate enquiry was conducted against the officials of the Jail Department and the Deputy Jailor has been punished with imposition of punishment of censure. The Warder of the Jail, who too was found responsible for negligence in discharge of duties, was also imposed a punishment of censure. Since one of the Warder has been retired during pendency of the enquiry, recommendations have been made for imposition of penalty against him and matter has been referred to the Governor of the State. It is, thus, contended that so far as the relief of enquiry against the delinquent employee is concerned, that has already been taken care of and no such direction is necessary.

4. It is the further contention of the respondents that the petitioner has approached the Madhya Pradesh Human Rights Commission and the said Commission vide its recommendation dated 02.08.2014 has given certain suggestions. However, no direction to pay any compensation to the petitioner is given by the Madhya Pradesh Human Rights Commission, therefore, such a claim of the petitioner cannot be granted. As far as the other recommendations made by the Madhya Pradesh Human Rights commission are concerned, actions have been taken by the competent authority of the State. Thus, it is contended that the writ petition is liable to be dismissed.

5. A rejoinder is filed by the petitioner and it is contended that right from very beginning compensation was being claimed and this was assured on one occasion that adequate orders would be passed in that respect, therefore, respondents are liable to pay compensation to the petitioner. In view of the aforesaid, it is contended that the petitioner is entitled to grant of compensation.

6. Heard learned Counsel for the parties at length and perused the record.

7. The moot question, which is to be examined is whether in the given circumstances the petitioner would be entitled to grant of any compensation in the proceedings under Article 226 of the Constitution of India or not. A constitutional Bench of the Apex Court in the case of ***Nilabati Behera (Smt.) alias Lalita Behera (through the Supreme Court Legal Aid Committee) vs. State of Orissa and others***¹, has held that the award of

1 (1993) 2 SCC 746

compensation in public law proceeding is also permissible as the difference from the compensation in private tort law action has to be drawn. It has been categorically held by the Apex Court that where it is found that any injury is caused to the citizen of India on account of negligent act of the State authorities, the Court in public law proceedings would also be competent to grant compensation. While discussing the various laws and considering the international Covenant, the Apex Court has held in paragraphs 22 and 23 of the report, which reads thus :

“22. The above discussion indicates the principle on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* and others in that line have to be understood and *Kasturilal* distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

23. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs.1200 to Rs.1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs.1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of

compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) CrPC and Section 141(3) of the Motor Vehicles Act, 1988.”

8. In the case of **D.K. Basu vs. State of W.B.**², further considering the law laid-down by the Apex Court in the case of **Nilabati Behera (Smt.)**(supra), the Apex Court has held that compensation for established breach of fundamental right can be granted under the public law by the Supreme Court and by the High Courts in addition to the private law remedy for tortious action and punishment to wrongdoer under the criminal law. The object of the public law proceeding was also considered by the Apex Court in the said case. Further considering the aforesaid law in the case of **Sube Singh vs. State of Haryana and others**³, the Apex Court in paragraph 38 of the report has held thus :

“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Criminal Procedure.”

Further in paragraphs 45 and 46 of the aforesaid report, certain instances have been pointed out in which compensation can be granted in the given circumstances where violation of Article 21 of the Constitution of India

2 (1997) 1 SCC 416

3 (2006) 3 SCC 178

involving custodial death or torture is established. The report reads thus :

“45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human rights violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. The courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under

Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.”

9. Lastly the Apex Court in the case of ***Deputy Commissioner, Dharwad District, Dharwad and others vs. Shivakka (2) and others***⁴, has held the manner of considering the quantum of grant of compensation in such public law proceeding where the courts are required to take note of certain eventualities, which have taken place, such as the act on account of which the injury in violation of Article 21 of the Constitution of India is caused by public authorities to the complainant or to the deceased.

10. Keeping in view the aforesaid law laid-down by the Apex Court, this Court is required to consider whether in the present proceeding the petitioner would be entitled to grant of monetary compensation or not. Undoubtedly, the husband of the petitioner was undergoing punishment in terms of the sentence imposed by the Court of competent jurisdiction and was confined to the jail in judicial custody. However, even when the husband of the petitioner was in judicial custody of the respondents, his fundamental rights conferred by the Constitution of India were not wiped up completely but were suspended for the time being till the period of sentence. The husband of the petitioner was entitled to live and to get the adequate medical facilities in case of serious ailment from the jail authorities. The judicial enquiry report, which is placed on record as Annexure P-3, indicates that the said convict had suffered a serious heart ailment, which fact was brought to the notice of the jail authorities. From the statements of those, who were assigned the duty at that time, it is clear that fact relating to illness of said convict was intimated to the senior

4 (2011) 12 SCC 419

authorities but even then no care was taken to provide any medical assistance to the said convict. The Chief Judicial Magistrate has categorically found that despite the information, the authorities posted in the jail have not taken any care to provide medical assistance to the convict within time and this was their negligent discharge of duty on account of which the said convict has died untimely.

11. From the report of the Madhya Pradesh Human Rights Commission placed on record as Annexure R-2 also it is clear that negligence on the part of the Jail authorities to provide medical assistance to the husband of the petitioner was proved and, therefore, it was categorically held that the said convict had a heart attack and no treatment for the same was provided to him on account of which he died. Other glaring facts recorded by the Madhya Pradesh Human Rights commission is that no care is taken to provide medical assistance to the inmates of the jail, if any ailment occurs during the night time. The fact further recorded is that sometime without even consulting the physician, certain medicines are provided by the Jail Warders themselves. Untrained persons provide the treatment to the inmates of the jail. No procedure is prescribed for fixing the accountability of the officers posted in the jail and, therefore, because of these reasons certain reforms are required to be done. However, it appears that since fulfilled Madhya Pradesh Human Rights Commission is not in function, the learned Member has given only the suggestion for improvement and omitted to consider the claim of the petitioner for grant of compensation.

12. From the facts as stated in the return, it is clear that in the departmental enquiry conducted by the respondents, negligence of the officials of the Jail authorities in providing

medical assistance to the husband of the petitioner was found. If that was the situation, only by imposition of minor penalty of censure to those officials, the responsibility of the State was not over. Vicarious liability of the State is there to compensate the persons, who have suffered the loss of company, assistance and association of member of the family, who has died untimely in the judicial custody of the State. For that reason the analogy has to be drawn from the law laid-down by the Apex Court in the case of ***Nilabati Behera (Smt.)***(supra).

13. It is vehemently contended by learned Counsel for the respondents that in such case the civil liability can be fixed only after recording of the evidence and assessing the loss caused to the family of the deceased. The proceedings under Article 226 of the Constitution of India would not be appropriate proceedings for grant of such compensation. Such a submission of learned Government Advocate is to be rejected outrightly. In the case of ***Nilabati Behera (Smt.)*** (supra), the Apex Court has categorically held that even in a writ proceeding also adequate compensation can be granted. This being so, the respondents-State is liable to pay the compensation to the petitioner.

14. Accordingly, this writ petition is allowed. The respondents are directed to pay Rs.5,00,000/- (Five lacs rupees) as compensation to the petitioner within a month from the date of receipt of certified copy of the order passed today. The State would be free to initiate proceedings for recovery of the said amount of compensation from the erring officials, who were found guilty of discharge of their duties, in terms of the judicial enquiry and the report of the Madhya Pradesh Human Rights Commission.

15. The writ petition is allowed to the extent indicated herein above. There shall be no order as to costs.

(K.K. Trivedi)
Judge

Skc