

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WRIT PETITION (CRIL) NO. 31 OF 2008

Shri Khumanthem Nagor Singh

....Petitioner

-Versus-

The Union of India and 5(five) Others

.....Respondents

"TRUE ZEROX CERTIFIED COPY OF THE
JUDGMENT JUDGMENT AND ORDER (ORAL) DATED
07.09.2017 PASSED BY THE HIGH COURT OF
MANIPUR IN WRIT PETITION (CRIL) NO. 31 OF 2008,
FILED BY MR. MEIHOUBAM RAKESH, ADVOCATE
ON 08-04-2008 AT THE IMPHAL BENCH OF THE
GAUHATI HIGH COURT (HIGH COURT OF ASSAM,
NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM & ARUNACHAL PRADESH)".

IN THE HIGH COURT OF MANIPUR AT IMPHAL
W.P.(CRL.) No. 31 of 2008

Shri Khumanthem Nagor Singh, aged about 65 years, S/O late Kh. Ibomcha Singh, resident of Karong Mamang Leikai, P.O. Langjing, P.S. Patsoi, Imphal West District, Manipur.

.....Petitioner

-Versus-

1. The Union of India, represented by the Defence Secretary, Ministry of Defence, Government of India, South Block, New Delhi- 110 001.
2. The Home Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi — 1 10001.
3. The G.O.C., 57 Mountain Division, C/0 99 APO. The Commanding Officer, 19 Rajput Rifles (Bikaner), C/0 99 APO.
4. The State of Manipur represented by the Principal Secretary (Home), Government of Manipur, P.O. & P.S. Imphal - 795001, Manipur.
5. The Director General of Police, Manipur, P.O. & P.S. Imphal - 795001, Manipur.

...Respondents

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR.JUSTICE N.KOTISWAR
SINGH HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Mr. M. Rakesh, Advocate.
For the respondents	::	Mr. RS Reisang, Sr. G.A., Mr. Sh. Shyam Sharma, G.A., Mr. S. Rupachandra, Sr.
		ASG,
		Ms. Kramasori, Advocate.
Date of hearing &	::	
Judgment & Order	::	07.09.2017.

JUDGMENT AND ORDER (Oral)

Acting CJ

Heard Mr. M. Rakesh, learned counsel appearing for the petitioner; heard also Mr. R.S. Resiang, learned Senior G.A. assisted by Mr. Shyam Sharma, learned G.A. appearing for the State respondents; and Mr. S. Rupachandra, learned senior ASG assisted by Ms. Kramasori, learned counsel appearing for the Union respondents.

[2] Though members of this Bench had earlier been associated with some of the similar matters in one way or other relating to alleged killing by the security forces, all the parties have expressed that they would have no objection to hear this petition by this Bench and accordingly, this Court has proceeded to hear this matter.

[3] In the present petition, the petitioner has, inter alia, claimed for payment of compensation on account of the death of his son, namely, Mr. Khumanthem Ajitkumar alias Naoba Singh, which according to the petitioner was caused by the personnel of 19 Rajput Rifles, in violation of the due process of law.

[4] According to the petitioner, the petitioner's second son namely, K. Ajitkumar alias Naoba was an innocent villager of Karong Village who was learning his livelihood by doing all kinds of manual works associated with agriculture and also by engaging in pisciculture in his homestead land. According to the petitioner in the intervening night of 14th and 15th March 2004, at about 1:00 a.m., a team of army personnel belonging to 19 Rajput Rifles (Bikaner) stationed at Leimakhong, without giving any warning broke open the main door and entered their house while all of the members of the family were fast asleep. After entering, they beat up the youngest son of the petitioner and enquired about the second son i.e., Ajitkumar @ Naoba and after going to his room, they dragged him out from his bed, and thereafter, he was taken away in the vehicle. It/ has been also alleged that on that particular night the same army personnel picked up another person namely, Mr. Pebam Ibopishak Singh from Karong Mayai Leikai. It has been also alleged that his son was also taken by the army personnel to the house of another person, namely, Senjam Romen Singh located at Taothong Lamkhai where the army personnel beat up said Romen Singh and his wife namely, Senjam Ongbi Robita. Thereafter, his son was taken away to an undisclosed location. Thereafter, the petitioner made all his efforts to know the whereabouts of his son through the local MLA and others. He was later on informed that a dead body was lying in Mortuary of Regional Institute of Medical Sciences at Lamphel, and on going there, it was found that it was none other than the dead body of his son, Khumanthem Ajitkumar alias Naoba Singh who was picked up by the army personnel as mentioned above by the petitioner. It has been alleged that 19 Rajput Rifles (Bikaner) had lodged a false report before the Sekmai Police Station, stating therein that one suspected militant was found moving on the road and when they challenged, he open fired, and in the retaliatory firing, 19 Rajput Rifles personnel shot him dead, and after the said encounter, certain arms and

ammunitions were recovered from him. Accordingly, an FIR being FIR No. **9(3)04** SEK P.S. UIs 121/121-A/307 IPC, 10/13 UA (P) ct and 25 (I-B) Arms Act was registered.

[5] After the postmortem was conducted on the body of the petitioner's son the following injuries were noted:-

"EXTERNAL INJURIES:-

- (a) Entrance wounds 0.5×0.7 cm on right side fronted chest 3 cm from midline and 1.5 cm above the level of nipple with red abraded collar on right side. Exit wound 1.5×1.5 cm on lateral aspect of left side chest at midaxillary line 3 cm. below axillary fold.
- (b) Entrance wound 2.5×1 cm on inner aspect of left arm 4 cm. below the axillary fold. Exit wound 4×2 cm, on outer aspect of left arm 13 cm below top of shoulder with fracture of humerus bone.
- (c) Entrance wound 0.5×0.7 cm over front of left side chest 4 . cm from midline and 4.5 cm above the level of nipple with red abraded collar on right side. Exit wound 2×1.5 cm around left anterior axillary fold. Exit wound 2.5×2 cm on outer aspect of left arm 5 cm. below of shoulder with fracture of humerus.
- (d) Entrance wound 0.6×0.6 cm on front of right arm 21 cm below top of shoulder. Exit wound 1.3×1 cm. over back of right arm, 19 cm below top of shoulder.
- (e) Entrance wound $0.8 \text{ cm} \times 0.8$ cm over front of right thigh upper part 7 cm below anterior superior iliac spine, Exit wound 1.5×1 cm over right buttock 5 cm, midline."

And accordingly, the Medical Officer indicated that the death was due to injuries caused to vital organs - heart and lungs resulting from firearm injury which was homicidal in nature. Thereafter, the petitioner has approached this Court by filing this petition claiming, amongst others, compensation to be paid to the petitioner for killing his son by the army personnel as stated above. The respondents denied the allegations of the petitioner, thus giving rise to the dispute as to the circumstances in which the petitioner's son died.

[6] Accordingly, this Court vide its order dated 13.01.2009 directed for causing an enquiry by the District Magistrate, Manipur East to ascertain the

facts and circumstances in which the death of the petitioner's son occurred. After due notice and giving opportunity to all the parties the learned District Judge completed the enquiry and furnished a report, copies of which were made available to learned counsel for all the parties and given the opportunity to submit their objections, comments, if any. The learned district judge gave the finding in para 18 of the enquiry report as follows:-

“In the result of the foregoing observations, I find the testimonies of the P.Ws. are more convincing and trustworthy than that of the R.Ws. .

Therefore, I have decided that the son of the petitioner, namely Khumanthem Naoba @ Ajitkumar Singh was arrested / picked up from his residence in the intervening night of 14th and 15th March, 2004 by the personnel of 19 Rajput Rifles and killed him by the personnel of 19 Rajput Rifles on 15/03/2004 at about 3:00 a.m. at Khurkhul-Sekmai Road while he was in their custody in a fake encounter. I have also decided that there was no exchange of firing or encounter with the personnel of 19 Rajput Rifles and the son of the petitioner, Naoba @ Ajitkumar Singh on 15/03/2004 at Khurkhul-Sekmai Road.”

[7] We have also gone through the enquiry report submitted by the learned District Judge, Manipur East and its proceedings. As many as 9 witnesses were examined on the part of the petitioner; and 5 witnesses were examined on the part of the respondents in the course of the enquiry. The following issues were framed by the Learned District Judge, Manipur East:-

- “1. Whether the army personnel of 19 Rajput Rifles apprehended Shri Khumanthem Ajitkumar alias Naoba Singh from his house at Karong Village on 15/03/2004 at 1 a.m. and killed him at Khurkhul Sekmai Road?
2. Whether Khumanthem Ajitkumar alias Naoba Singh was killed by troops of 19 Rajput Rifles in the intervening night of 14/15 March, 2004 in an ambush at Khurkhul Sekmai of Imphal West District?
3. What are the circumstances leading to the death of Khumanthem Ajitkumar@ Naoba Singh?”

[8] The Learned District Judge, Manipur East after considering the evidences on record came to the conclusion as mentioned above by holding that the petitioner's son was killed by 19 Rajput Rifles while he was in their custody and there was no exchange of fire or encounter between the

personnel of 19 Rajput Rifles and the son of the petitioner on 15.03.2004 as alleged by the respondents.

[9] The conclusion arrived at by the learned District Judge is based on the evidences on record. Learned District judge has elaborately discussed the evidence on record of all the witnesses and after considering the evidences on record the learned District Judge arrived at the aforesaid conclusion. P.W. No. 1, i.e. the petitioner himself, was an eye witness who had narrated the incident in detail and the circumstances in which his son was taken away by the armed personnel. P.W. No. 2, namely, Mr. Khumanthem Dilipkumar Singh, is the son of the petitioner and younger brother of the deceased who was also present when his brother was taken away by the armed personnel. P.W. No. 3, namely, Khumanthem Tombisana Devi is the younger sister of the deceased who was also present in the house when her brother was taken away by the armed personnel. P.W. No. 4, namely, Pebam Ibopishak Singh is the neighbour of the petitioner who also saw the army personnel in the village in the night. When the said army personnel enquired from him about the house of one Sangomani, he replied that there was no person in the name of Sangomani in their village, but there is one person by the name of Mani at the adjacent village namely Kachikhu. Then he was forced to go along with the army personnel to locate the house of said Mani and when they reached the house of Mani, Mani was not found and P.W. No. 4 was then beaten up by the army personnel. Thereafter, he was left in the house of said Mani at the intervention of the women folk. He was then brought back to his home by the women folk. Then, he heard the sound of commotion in the house of the petitioner, namely Khumanthem Nagor Singh. After some time, he came to know that the armed personnel had come to the house of the petitioner and they had taken away the petitioner's son, namely Khumanthem Ajitkumar Singh. Therefore, this P.W. No. 4 though was not an eye witness to the taking away of the son of the petitioner, but was witness to the commotion which was taking place in the house of the petitioner at the relevant time and he was a direct witness to the visit of the army personnel in the village. P.W. No. 5, namely, Senjam Ongbi Romita is the cousin of petitioner's son, whose residence the army personnel had visited with the son of the petitioner while enquiring of another person. P.W. No. 6, namely, Yumnam Budhichandra Singh, is another villager who was woken up in the night when the petitioner's son was taken away by the armed personnel and the ensuing commotion and noise and soon came to the house of the petitioner after hearing the

commotion. Though he was not an eye witness to the taking away of the son of the petitioner, he was also informed soon after he came to the house of the petitioner that the petitioner's son was taken away by the army personnel and later he along with the petitioner went to the police station to report about the picking up the son of the petitioner by the armed personnel. P.W. No. 7 was the Pradhan of Maklang Gram Panchayat, who also came to the house of the petitioner after he was woken up by the commotion in the village and when he came to the house of the petitioner he also told that the petitioner's son had been taken away by the army personnel. Thereafter, he along with the petitioner and others went to the police station to report about the arrest of the petitioner's son by the army personnel. P.W. No. 9, namely Sanjenbam Ongbi Keinahanbi Devi is another villager who was also woken up from asleep in the night of 14th March 2004, and she also came to know soon thereafter that the petitioner's son was taken away by the army personnel.

Some P.Ws were eye witnesses who are close relatives of the petitioner, some were villagers who were contemporaneously present at the place of incident soon after the son of the petitioner was taken away by the army personnel.

[10] As regards the witnesses produced by the respondents, Learned District Judge, Manipur East observed that RW-I, RW-2 & RW-3 were not persons who were involved in the alleged incident of firing, as R.W. No. 1 was taking position 100-150 metres away from the occurrence of alleged encounter; and R.W. No. 2 and R.W. No. 3 in the position of about 58-70 meters away from the alleged encounter. Accordingly, the Learned District Judge, Manipur East made the observation about the testimony of the witnesses produced by the respondents as follows:-

"On careful examination of the testimonies of R.W.s, it is axiomatic that R.Ws. No. 1, 2 and 3 are not the personnel who involved to the alleged incident of firing between the personnel of 19 Rajput Rifles and the deceased, Naoba @ Ajitkumar Singh as on that day the R. W. No. 1 was taking position 100 to 150 metres away from the place of occurrence of alleged encounter and R. Was No. 2 and 3 were also in their positions about 50 to 70 metres away from the place of alleged encounter. The respondents also alleged that the said encounter was at about 3 a.m. and R.Ws. No. 1, 2 and 3 admitted that it was completely dark and thus, in that situation it will be very difficult to see any happenings to an area of more than 50 metres. Further, as per

the testimonies of R.Ws, the 1st party group, out of the said three groups of 19 Rajput Rifles, was laying ambush on the Sekmai side that day and the deceased came from Sekmai side and the alleged encounter was between the 1st party group and the deceased person, but the respondents failed to produce any of the personnel who was in the 1st party group led by Maj. Garish Nair in order to establish their case. Thus, the respondents have failed to establish that there was an encounter or exchange of firing on 15/03/2004 at about 3:00 a.m. at Khurkhul Sekmai Road between them and Naoba @ Ajitkumar Singh and in that encounter the said Naoba @Ajitkumar Singh was killed."

[11] Accordingly, the Learned District Judge, Manipur East after weighing the evidences on record produced by the respective authorities was of the view that the version narrated by the petitioner based on the evidences is more trustworthy and according came to the conclusion as mentioned above in para 18 of the enquiry report.

[12] Having gone through the record and also the proceedings of the enquiry, we are also inclined to agree with the conclusion arrived at by the learned District Judge Manipur East. We are also *prima facie* satisfied that the petitioner's son died at the hands of 19 Rajput Rifles as concluded by the learned District Judge, Manipur East. Based on the evidences as available on record as discussed above, we also hold that the petitioner's son was picked up by the personnel of 19 Rajput Rifles (Bikaner) in the intervening night of 14th & 15th March 2004. Since he was taken away alive by them and since he was subsequently found death, the obvious conclusion is that the said armed personnel who picked up the petitioner's son would be responsible for explaining the reasons and circumstances for his death, which is not forthcoming with cogent material. Thus, this Court also holds that the personnel of 19 Rajput Rifles (Bikaner) are responsible for the death of the petitioner's son who was picked up alive from the house of the petitioner in the intervening night of 14 & 15 March 2004. If that is so, we are of the opinion that the fundamental right of life as guaranteed under Article 21 of the Constitution, of the petitioner's son had been violated as he died in the custody of the 19 Rajput Rifles without following the due process of law as mentioned above and accordingly, we are of the opinion that the petitioner would be entitled to get compensation as part of the public law remedy under Article 226 of the Constitution of India.

[13] Accordingly, in the peculiar facts and circumstances as discussed above, we are of the view that payment of compensation amount of Rs. 5,00,000/- may be awarded to the petitioner on account of the death of his son under the circumstances mentioned above for which the Union respondents will be liable to pay. We also make it clear that this compensation has been awarded by this Court is under the public law remedy and as such the petitioner would be entitled to approach the competent Court or Forum if desirous of higher compensation for the death of his son at the hands of the 19 Rajput Rifles (Bikaner) as mentioned above, in accordance with law.

[14] The Supreme Court in the landmark judgment of Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, after discussing the earlier cases in which the Supreme Court had intervened and awarded compensation for violation of fundamental rights succinctly explained the jurisprudential basis for such judicial interventions. The legal principles forming the basis of intervening and awarding damages/compensation in writ proceedings which was otherwise within the purview of the normal civil courts was explained in Nilabati Behera's case (*supra*) by relying on the decision in Rudal Sah Vs. State of Bihar, (1983) 4 SCC 141. It may be apposite to refer to some of the relevant portions of the said judgment referring to Rudal Sah —vrs.- State of Bihar (1983) 4 SCC 141.

"11. 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 to 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 Court of Manipur sclerosis leading to flagrant infringements of fundamental rights Imphal (Manipur) 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 civilization 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. It may have recourse against those officers."

[15] The aforesaid principle was again reiterated in D.K. Basu vs. State of W.B., (1997) 1 SCC 416, where it observed that,

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

[16] Accordingly, we direct the Union Respondents to pay a sum of Rs. **5,00,000/-** to the petitioner within a period of 4 (four) months from today, failing which the Union Respondents will pay an interest @ 9% per annum on the aforesaid amount.

[17] As regards other relief claimed for investigation by an independent agency against the erring persons, it has been submitted that there are similar matters pending before the Hon'ble Supreme Court and the petitioner will be at liberty to approach the competent forum in the light of the final directions/decision of the Hon'ble Supreme Court in that regard.

[18] With the above observations and direction, this petition stands disposed of.

Sd/-
KH. NOBIN SINGH
JUDGE

Sd/-
N. KOTISWAR SINGH
ACTING CHIEF JUSTIC