

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
WRIT PETITION (CREL) NO. 54 OF 2009

Mrs. Leivon Rosmi Kom, aged about 31 years, W/o late Khumukcham Thoiba alias Tomba Singh of Mahou Tera, Wangoo Lamkhai, P.O. & P.S. Sugunu, Chandel District, Manipur.

....PETITIONER

-VERSUS-

1. The State of Manipur, through the Principal Secretary(Home), to the Government of Manipur, P.O. & P.S. Imphal, West District, Manipur.
2. The Director General of Police, Manipur, P.O & P.S. Imphal, Imphal West District, Manipur.
3. The Superintendent of Police, Thoubal District, P.O. & P.S. Thoubal, Thoubal District, Manipur.
4. The Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi – 110011.
5. The Commanding Officer, 21 Assam Rifles, C/O 99 A.P.O.

.....RESPONDENTS

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

For the petitioner	:	Shri M. Rakesh, Advocate
For the Respondents	:	Shri R.S. Reisang, Sr.GA Mr. Shyam Sharma, GA Shri S. Rupachandra, 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 respondents No. 1-3; and Mr. S. Rupachandra, learned ASG assisted by Ms. Kramasori, learned counsel appearing for respondents No. 4 & 5.

[2] Though members of this Bench in one way or other had been associated with some of the similar matters relating to alleged killing by the security forces, 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] The present petition has been filed by Ms. LeivonRosmiKom seeking various reliefs, including for payment of compensation for the death of her husband, namely, Mr. KhumukchamThoiba alias TombaSingh for which she blames security forces of killing him after being picked up from his residence.

[4] The petitioner states that the petitioner was married to the deceased in the year 1995 and settled at Umathel Village, Thoubal District till 2005. Thereafter they had been staying at Mahou Tera, WangooLamkhai, Chandel District, and out of their wedlock they have been blessed with 3 (three) children who are all studying presently. the petitioner claims that her husband was suffering from Cervical Spondylitis for the last about 10 (ten) years and as such he could not walk normally and used to walk with the help of a stick. Though on earlier occasion, her husband was arrested by the police on the allegation that he was a cadre of KYKL, a proscribed organization, he was ultimately released on bail as there was no prima facie evidence against him and accordingly, he was leading a normal life. However, on 19.01.2009 while her husband was in house of the petitioner's sister, several personnel of Manipur Police Commandos in mufti armed with Ak-47 rifles intruded in their house, and took her husband away on the ground that they would like to talk with him on certain issues. He was put inside their vehicle and taken away. Thereafter, on the same day the petitioner and other relatives went to the Waikhong Police Station and informed the police about her husband being picked up. On the next day, i.e. 20.01.2009 when thepetitioner and others went to the Waikhong Police Station, she was informed that her husband had been killed the night before in an encounter with the security forces at KeirakAchouba, Thoubal District.Subsequently, an FIR was registered in the

Kakching Police Station in connection with the death of her husband where it was alleged that her husband was found dead and certain arms and ammunitions were recovered from him. The plea of the petitioner is that the said alleged encounter in which her husband was said to have been killed is purely a concocted one as her husband was picked up from their house.

[5] Since the aforesaid allegation was denied by the State as well as Union respondents, this Court, by observing that there are certain disputed questions as regards the facts and circumstances leading to the death of the petitioner's husband, had directed on 06.07.2010 for holding an enquiry by the Learned District Judge, Manipur West and submit a report. The Learned District Judge, Manipur West accordingly conducted an enquiry and in due course submitted a report, copies of which were made available to all the parties and they also submitted their respective comments and objections.

[6] We have also gone through the enquiry report submitted by the Learned District Judge, Manipur West. On the basis of the claims and counterclaims made by the contesting parties, the following issues were framed by the learned District Judge.

1. Whether the husband of the petitioner, namely Khumukchamthoiba alias Tomba Singh was killed on 14th January, 2009 at Keirak Achouba, Thoubal District by a combined team of Manipur Police Commando and 21 Assam Rifles after arrest from his house situated at Mahou Tera Village, Chandel District on 19th January, 2009?
2. Whether the husband of the petitioner, namely Khumukchamthoiba alias Tomba Singh was killed in an encounter at Keirak Achouba, Thoubal District on 19th January, 2009 with Manipur Police Commando and 21 Assam Rifles?
3. What are the facts and circumstances leading to the death of Khumukchamthoiba alias Tomba Singh?

[7] The learned District Judge, Manipur West after considering the evidence on record and testimony of the witnesses, come to the conclusion that the husband of the petitioner namely Khumukchamthoiba alias Thoiaba Singh was killed on 19.01.2009 at Keirak Achouba, Thoubal District by a combined team of Manipur Police Commando and 21 Assam Rifles after his arrest from his house at Mahou Tera Village, Chandel District on 19.01.2009.

The above issues were decided in the following manner:

"Issue No. 1:- The first issue is decided in favour of the petitioner.

Issue No. 2:- In view of the findings made above the second issue is answered in the negative.

Issue No. 3:- Having regard to the facts and circumstances of the case supported by evidence on record, a presumption arises that the deceased, Kh. Thoiaba alias Tomba Singh, on account of his being arrested twice on suspicion of his being a cadre of KYKL involving in anti social activities was considered by the security forces involved in the case as anti social element and thus resulted to his elimination."

[8] Though the respondents have not agreed with the conclusions arrived at by the Learned District Judge, Manipur West, it may be noted that the enquiry conducted by the Learned District Judge is not really a criminal trial but in the nature of an enquiry at the instance of this Court for prima facie satisfaction about the circumstances in which the petitioner died. Therefore, this Court is not really sitting on Appeal as an Appellate Court as regards the findings arrived at by the Learned District Judge, Manipur West. In fact, this finding is by way of extension of the power of this Court under Article 226 of the Constitution of India to ascertain the facts and circumstances which led to the death of the petitioner's husband. The enquiry had become necessary in view of the conflicting claims made in the petition, which this Court instead of doing itself, authorized the District Court to do it.

[9] Therefore, our examination will be confined only as to whether the findings arrived at by the learned District Judge, Manipur West is based on certain materials available or not. When we went through the enquiry report, we have noted that the Learned District Judge, Manipur West has examined as many as 5 witnesses produced on behalf of the petitioner and as many as 6 witnesses on the part of the respondents. Evidence of PW-I, who was the petitioner herself is of great significance in as much as it was in her presence that her husband was taken away by the Manipur Police Commando with the Assam Rifles while entering their house. She was an eye witness to her husband being taken away by the police and the conversation which had ensued between the police commandos and her husband. She has also produced various evidences to support the claim that the petitioner's husband

was suffering from Cervical Spondylitis, as such he was undertaking medical treatment. Another witness PW-2, Mr. Lenjathang Leivon Kom, who was the father of the petitioner was also an eye witness who saw the police commandos dragging away his son-in-law, i.e, the husband of the petitioner and being taken away. There is another independent eye witness, namely, Smt. Saikhom Ongbilbecha Devi, PW-4 who also saw the bullet proof vehicle and saw some commandos inside the vehicle and she also saw the petitioner's husband being dragged by 4 (four) persons in civilian dress from nearby place and was taken inside the said bullet proof vehicle and she also narrated that incident to the other villagers when they gathered later on that day.

[10] Therefore, this Court would observe that there is ocular evidence as regards the picking up of the petitioner's husband from their house on that fateful day. These witnesses were also cross-examined. We have also noted that these crucial evidences about the facts of observing the petitioner's husband being taken away by the police commando have not been shaken in the cross-examination.

[11] Of course, the respondents have produced their witnesses to show that the petitioner's husband was killed in an encounter. However, we are inclined to give more credence to the accounts of the PW-I, PW-2 & PW-4 whose evidences have not been shaken in the cross-examination. As mentioned above this is not a criminal trial, nevertheless, the respondents had been given opportunity to revert the claim of the petitioner in the light of the evidences recorded by the Learned District Judge, Manipur West.

[12] The Learned District Judge by referring the evidences of the respondents found that their evidences did not inspire confidence. As per the evidence of most of the witnesses produced by the respondents, the place where the combined security team was allegedly attacked lies at 1 ½ kms from the camp of the 21 Assam Rifles and according to them, they were attacked by the attackers from a distance of about 100 feet. The Learned District Judge on the basis of the evidences produced by the respondents found that the place of the said alleged encounter took place was a plain and vacant area. Referring to the Post Mortem report, the Learned District Judge also found that the death of the petitioner's husband was caused due to injuries to lungs and liver resulting from multiple fire arm injuries to the body and these wounds were caused by fire arms from a distance beyond 2 to 2 ½ ft. On the basis of the evidences, the Learned District Judge came to the conclusion as follows:-

"24. In the light of the considered evidence it has decided such as follows that :

(a) the death of Khumukcham Thoiba alia Tomba Singh as due to injuries to his vital organs produced by gunshots to his fore-head, abdomen, left and right side thighs and shoulder;

(b) Topography of the place of occurrence, which is found lying plain and vacant very near to Kakching Sugnu road shows that the place was not a suitable area where the combined forces could have been attacked from seven directions or points by the militants.

(c) Post mortem examination report of the deceased above named reveals that the injuries sustained by the deceased were resulted from a distance beyond 2 to 2 ½ ft. Such evidence suggests well that the gun shots were made not from a long distance range; and

(d) No empty cases of shoot out cartridges found recovered from the place of occurrence.

25. Further, there is no evidence on record to suggest that the 1.0. of FIR No. 11(1)2009 Kakching P.S. under Section 307/34 IPC, 25(1-C) A.Act, UA(P) Act has investigated into the said FIR case which was registered on the strength of the written report lodged by RW -2 with the O.C., Kakching P.S. in respect of the alleged occurrence of firing between the cadres of KYKL and the combined team of security forces.

There is also no evidence to suggest that the 1.0. of the said case has already sent the seized incriminating arm and ammunitions to the concerned ballistic expert for examination of the said articles in connection with the said case.

26. It has already been discussed and decided above that I found no discrepancies in the evidence of both the eye witnesses i.e. PW-I and PW-2 and the other PWs., whose evidence gave, more or less, corroborative effect to the evidence of the said eye witnesses in drawing a conclusive presumption of the fact that the said Kh.Thoiba alias Tomba Singh was being taken away by the security personnel from his house and he was found killed later.

27. In result, it has decided that the husband of the petitioner namely Khumukcham Thoiba alias Tomba Singh was killed on 19-1-2009 at Keirak Achouba Thoubal District by a combined team of Manipur Police Commandos and 21 Assam Rifles after his arrest from his house at Mahou Tera Village, Chandel District on 19-1-2009."

Having gone through the depositions of the witnesses of the respondents, we are also of the opinion that there is no infirmity with the conclusion arrived at by the Learned District Judge which are based on the evidence on record.

[13] Accordingly, we are also prima facie satisfied that the petitioner's husband died at the hands of the police commandos and 21 Assam Rifles as concluded by the Learned District Judge, Manipur West. If that is so, we are of the view that the fundamental right of life as guaranteed under Article 21 of the Constitution of the petitioner's husband had been violated by the State agencies as well as the Central agencies as mentioned above and accordingly, we hold that the petitioner would be entitled to get necessary compensation as part of the public law remand under Article 226 of the Constitution of India in guaranteed the fundamental rights of the citizen.

[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 RudalSah 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 RudalSah —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 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 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, in the 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 her husband under the circumstances mentioned above for which the State as well as Central Government would be equally

liable as the involvement of the State as well as Central agencies have been clearly indicated. We also make it clear that this compensation has been awarded by this Court 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 her husband at the hands of the police and 21 Assam Rifles as mentioned above, in accordance with law.

[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] Accordingly, we direct the state respondents as well as Central respondents to equally share the amount of Rs. 5,00,000/- as (Rs. 2,50,000/- by the State Government and Rs. 2,50,000/- by the Central Government) which is to be paid to the petitioner within a period of 4 (four) months from today, failing which the respondents will pay interest @ 9% per annum on the aforesaid amount of Rs. 5,00,000/-.

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

Sd/-
KH. NOBIN SINGH
JUDGE

Sd/-
N. KOTISWAR SINGH
ACTING CHIEF JUSTICE