

GAHC010197152017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3363/2017

SHAHAR BANU

VERSUS

THE STATE OF ASSAM and 9 ORS.
REP. BY THE CHIEF SECY. GOVT OF ASSAM, DISPUR, GUWAHATI-6

2:THE COMMISSIONER and SECRETARY
TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI-6

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7

4:THE INSPECTOR GENERAL OF POLICESTF
ASSAM
ULUBARI
GUWAHATI-7

5:THE INSPECTOR GENERAL OF PRISONS
ASSAM
KHANAPARA
GUWAHATI-38

6:THE SUPERINTENDENT OF POLICE
NAGAON

P.O
P.S- NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

7:THE JAIL SUPERINTENDENT
NAGAON CENTRAL JAIL
P.O and P.S- NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

8:THE JAILOR
NAGAON CENTRAL JAIL
P.O and P.S- NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

9:THE OFFICER-IN-CHARGE
DHING POLICE STATION
P.O and P.S- DHING
DIST- NAGAON
ASSAM
PIN- 782125

10:THE IN-CHARGE OFFICERSTF
JAKHALABANDHA
P.O and P.S- JAKHALABANDHA
DIST- NAGAON
ASSAM
PIN- 78213

Advocate for the Petitioner : MR.M K HUSSAIN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 23-03-2023

JUDGMENT & ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Mr. MK Hussain, learned counsel for the petitioner and Mr. D Nath, learned Senior Government Advocate for the respondents in the Government of Assam.

2. The petitioner Shahar Banu has instituted this writ petition on the premises that her deceased husband Idrish Ali was arrested by the police personnel of Dhing Police station along with Special Task Force (in short STF), Jakhalabandha in connection with Dhing Police Station Case No. 322/2016 under Sections 25(1)(A) of the Arms Act read with Section 51(1)(A) of the Wildlife Protection Act, 1972. But, while he was in custody of the police authorities, the husband of the petitioner died on 25.08.2016. In the circumstance, this writ petition is instituted claiming for appropriate compensation to the family members of the deceased by raising an allegation that he died due to internal injuries inflicted upon him by the police personnel of Dhing police station along with STF of Jakhalabandha and further as because of negligence on the part of the jail authorities.

3. In response thereof, the respondents have filed an affidavit in opposition, wherein a death report of the husband of the petitioner Md. Idrish Ali under the signature of the Medical and Health Officer, Central Jail, Nagaon has been annexed as Annexure-2. The death report is extracted as below:-

“Death Report of Md Idrish Ali

Md Idrish Ali S/o Lt. Kitab Ali aged about 50 yes was admitted at Central Jail, Nagaon on 23/08/16. I examined him on that day and given treatment.

O/E BP 124/76mm/Hg Pulse 72/mnts

*1) Pain and swelling over both hips lega and body
Systematic examination: Chest clest*

CNS-Normal, Abdomen pain with distended

CVS – Normal

*Treatment: 1) Inj. Ceftriaxone 1 gm
Sig. 1 vial IV daily ANST*

*2)Inj. Pantoprazole 40
1 vial-IV vial two times ANST*

*3)Inj. Diclofenac
1 mg once daily*

*4)Antacid Liquid
3 tsp three times daily*

*5)Diclofanac Gel
----- daily*

24/08/16- I examined him and given treatment as before. He is doing will on 24/06/16.

25/08/16- I came to Central Jail, Nagaon at 5-35 a.m. I examined Idrish Ali and given treatment and referred him to BP Civil Hospital Emergency OPD immediately at 6-10 A.M.

O/E B.P. 106/70 mints Pulse 70/mint

- 1) Pain abdomen and distended*
- 2) Chest Pain and respiratory difficult*
- 3) Systematic Examination CNS – normal*
- 4) Chest- crepitation +ve: legs and hands*

Treatment:

- 1) R L IV fluids given slowly*
- 2) Inj. Dexona I vial IV in drips*
- 3) Inj. Deriphyllin 1 ample IV in drips*
- 4) Inj. Pantoprazole 40
1 vial IV 5 times*

5) *Antacid Liq*
3 tsp thrice daily

Idrish Ali expired on the same day on 25/8/16 at 6-30 a.m. as reported by B.P. Civil Hospital Authority. Post-mortem was done at B.P. Civil Hospital, Nagaon on that day. Post mortem Report shows-

“The cause of death is due to Cardiomegaly that is a result of Myocardial Infarction” (ML). post Mortem was done by Deputy Superintendent of B.P. Civil Hospital, Nagaon, Assam.

S/d/- P. N. Bora
Medical & Health Officer
Central Jail, Nagaon”

4. In the affidavit in opposition, the post-mortem report of Md. Idrish Ali is also annexed, wherein in respect of the ‘pericar(dium), heart, vessels’, the following is provided:-

“A haemorrhagic slightly Blackish area of 3” x 2” over lateral aspect of left ventricle and another area of 2” x 1” over Posterior aspect of right ventricle with petechial haemorrhage in the wall of the affected heart wall.”

5. In the post-mortem report, the opinion of the Assistant Surgeon/Sub Assistant Surgeon as to the cause of death is provided as extracted:-

“In my opinion the cause of death is due to cardiogenic shock as a result of myocardial infarction.”

6. Based upon the death report provided by the medical authorities read conjointly with the provisions of the post-mortem report, a stand is taken by the respondent authorities that the death caused to the deceased husband of the petitioner cannot be stated to be because of any excess or body pain being inflicted by the police authorities while he was in custody

7. Mr. D Nath, learned Senior Government Advocate strenuously argued that the medical report as well as the post-mortem report would indicate that it was more of a case of natural death rather than a death caused due to any injuries being inflicted on the person arrested by the police or by the jail authorities.

8. A reading of the death report of the deceased would make it discernible that on 23.08.2016, he was examined by the Medical and Health Officer, Central Jail, Nagaon on the symptoms that prevailed that the deceased was having pain and swelling over both hips, legs, as well as body. The chest was found to be clear. But the medical authorities noticed certain 'abdominal pain with distended'. Accordingly, the deceased was provided certain medications, a reading of which shows that certain medications in the nature of antacids were also provided. On 24.08.2016, the same medical authority again examined the deceased husband of the petitioner and continued with the earlier treatment with an observation that he was doing well on 24.08.2016. On 25.08.2016, the medical authorities concerned of the Central Jail, Nagaon at about 5.35 A.M. again examined the deceased husband of the petitioner and after giving some treatment referred him to the B.P. Civil Hospital, Nagaon for emergency OPD at 6.10 A.M. The symptoms noticed amongst others were pain in abdomen, distended chest pain, respiratory difficulty, systematic examination-CNS normal and chest-crepitation. Upon being taken to the hospital, the deceased husband of the petitioner died at 6.30 A.M. of 25.08.2016 in the B.P. Civil Hospital, Nagaon.

9. In the process, a post-mortem examination was also done on the body of the deceased husband of the petitioner. The Medical and Health Officer, Central Jail, Nagaon in his death report provides that as per the post-mortem report, the cause of death was due to Cardiomegaly i.e. a result of Myocardial Infarction and further that the post-mortem was done by the Deputy Superintendent of B.P Civil Hospital, Nagaon, Assam.

10. From the medical death report as provided by the Medical and Health Officer, Central Jail, Nagaon as well as the post-mortem report, which remains

uncontroverted by either of the parties in any manner, the death of the husband of the petitioner apparently took place because of Cardiomegaly, which was a result of Myocardial Infarction. Cardiomegaly in the medical terms is understood to be a medical condition in which the heart becomes enlarged and is also commonly referred as enlarged heart, where because of the underlying conditions of the person, the heart is made to work harder. Cardiomegaly is also in medical terms understood to be a serious condition which can result in congestive heart failure. Some of the signs and symptoms associated with the medical condition Cardiomegaly, as per the material produced before the Court are - heart palpitations, severe shortness of breath, chest pain, coughing when lying down, fatigue, leg swelling, increased abdominal girth, weight gain, edema, fainting etc.

11. Out of the aforementioned signs and symptoms usually associated with the medical condition Cardiomegaly, we have noticed that the deceased husband of the petitioner was found to be having abdominal pain, which again would have a thin line of difference from the condition with that of chest pain; the husband of the petitioner on 23.08.2016 itself was found to be having pain and swelling on his both hips, legs as well as body; and on 25.08.2016 when the medical authorities examined the deceased husband of the petitioner at 5.35 A.M., the symptoms of chest pain and respiratory difficulty were noticed.

12. If the medical condition Cardiomegaly is associated with the aforesaid symptoms and many such symptoms were noticed by the medical authorities to be prevailing in respect of the deceased husband of the petitioner when he was examined on 23.08.2016, 24.08.2016 and 25.08.2016, a question would naturally arise as to why the medical authorities who had examined the deceased husband of the petitioner could not apply its medical mind and arrive

at some kind of diagnosis that there is a possibility of it being a case of Cardiomegaly and accordingly immediately refer him for the specialized medical treatment and diagnosis. If we have no materials on record that the medical condition of the deceased husband of the petitioner was because of any beating or application of any external force by the police authorities while he was in jail custody, but he reported adverse medical condition and was being attended by the medical authority of the jail, it is also reasonably expected that the medical authority would give a more detail application of mind and if the medical condition otherwise would appear to be a serious medical condition, which requires specialized treatment, the law requires that such treatment should be meted to the person.

13. The Hon'ble Supreme Court in its judgment rendered in Writ Petition (Criminal) No. 307/2020 [Kerala Union of Working Journalists –vs- Union of India and others] dated 28.04.2021 had provided as extracted:-

“.....We state that the most precious fundamental 'right to life' unconditionally embraces even an under-trial. ...”

14. The Hon'ble Supreme Court has provided that the right to life would also unconditionally embrace even on an under-trial where a right to life would also include the right to be provided with adequate and appropriate medical treatment whenever it is so required.

15. The Hon'ble Supreme Court in its judgment rendered in Nilabati Behera (SMT) Alias Lalita Behra (Through the Supreme Court Legal Aid Committee) –vs- State of Orissa and others, reported in (1993) 2 SCC 746, in paragraph 31, provided as extracted:-

“31. It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no

infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr Altaf Ahmed it may be recorded that he raised no such defence either."

16. The pronouncement of the Hon'ble Supreme Court in paragraph 31 of Nilabati Behera (supra) makes it apparent that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21, which as per the law laid down by the Hon'ble Supreme Court in some of the later judgments also includes the right to receive adequate and appropriate medical treatment. The Hon'ble Supreme Court is explicit in its proposition that the precious right guaranteed under Article 21 of the Constitution of India cannot be denied to convicts, prisoners or undertrials in custody, except according to the procedure established by law. The pronouncement further provides that the wrong doer is accountable and the State is responsible if the person in custody of police is deprived of life except according to the procedure established by law.

17. By following the proposition laid down by the Hon'ble Supreme Court in its judgment in Nilabati Behera (supra), in the instant case, it is noticed that the fundamental right of the deceased husband of the petitioner i.e. right to life, which also includes the right to receive and be provided with adequate and appropriate medical treatment while he was in the custody of the jail authorities, had been violated to the extent that although his underlying medical

conditions indicated that he had certain symptoms which are also symptoms applicable to the medical condition Cardiomegaly, it was an error of medical judgment on the part of the medical authorities who had examined him on 23.08.2016, 24.08.2016 as well as on 25.08.2016 not to have detected the medical condition of Cardiomegaly and immediately refer him for specialized medical treatment for the medical condition.

18. It is in this respect we find that there was an aberration of the fundamental right of the deceased husband of the petitioner.

19. In paragraph 35 of its pronouncement in Nilabati Behera (supra), the Hon'ble Supreme Court had also provided that in the event there is any violation of the fundamental right of a convict, prisoner or undertrial, it would be for the State authorities to compensate for such violation of the fundamental right notwithstanding the right of the citizen to a remedy by way of civil suit, criminal proceeding etc. The relevant portion of paragraph 35 of Nilabati Behera (supra) is also extracted below:-

“35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.”

20. For the purpose of compensation, we have noticed that there is a notification issued by the Revenue and Disaster Management Department, Relief and Rehabilitation Branch, Government of Assam dated 15.11.2014, which provides for an ex-gratia payment to the next of kin of persons killed due to accident in public places or in public carriers other than killed by extremists,

terrorists, miscreants and due to the firing of security forces, which had been quantified to be Rs. 2, 00, 000/- (rupees two lakhs).

21. We have noticed that the amount of Rs. 2, 00, 000/- is provided by the Government of Assam in case of any death that may happen in any accident in any public place. The jail premise where the happening took place would definitely have to be understood to be a public place although a question may remain as to where the final death ultimately took place i.e. within the jail premises or in the hospital. But, be that as it may, if we construe the death to have taken place in the public place, the next of kin of the husband of the petitioner in any view of the matter would be entitled to a compensation of Rs. 2, 00, 000/-.

22. By the same notification, it is provided that ex-gratia payment amounting to Rs. 5, 00, 000/- (rupees five lakhs) is payable to the next of kin of such persons who are killed by extremist, terrorist, miscreants, during communal/ethnic/group clashes or due to the firing of security forces etc. We are not proceeding in the manner that the death was caused due to any of the reasons provided in the notification of 15.11.2014 as regards the ex-gratia payment of Rs. 5, 00, 000/- for the acts on the part of either extremist, terrorist, miscreants or communal, ethnic, group clashes or due to firing of security forces, but merely refer to the said provisions for the purpose of arriving at the quantum of compensation that may be payable.

23. Although the death may not have been caused because of any extremist, terrorist or miscreants violence or because of communal, ethnic or group clashes or because of any firing of security force or because of any acts attributed to the police force, but the death can also be construed to have been caused as because a timely appropriate and adequate medical facility could not

been provided to the deceased husband of the petitioner because of an error of judgment on the part of the medical authorities regarding his underlying medical condition.

24. From such point of view, the respondents through the Home Department of the Government of Assam is directed to pay an amount of Rs. 5, 00, 000/- (rupees five lakhs) as compensation to the writ petitioner Shahar Banu, who is admittedly the wife of the deceased Md. Idrish Ali and therefore, would have to be understood to be the best qualified next of kin of the deceased person.

25. The payment of compensation be made within a period of two months from the date of receipt of a certified copy of this order.

26. The writ petition is allowed to the extent as indicted above.

JUDGE

JUDGE

Comparing Assistant