

(2009) 02 GAU CK 0026**Gauhati High Court****Case No:** None

Ratiram Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Feb. 17, 2009**Acts Referred:**

- Unlawful Activities (Prevention) Act, 1967 - Section 10, 13

Citation: (2009) 4 GLR 780**Hon'ble Judges:** Jasti Chelameswar, C.J; Arun Chandra Upadhyay, J**Bench:** Division Bench**Judgement**

Jasti Chelameswar, C.J.

The writ petition is filed with the prayer as follows:

...it is, therefore, prayed that your lordship may be pleased to admit the petition and call for the records of the case, issue a rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued commanding the respondent Nos. 1 to 6 to constitute an enquiry under the Commission of Enquiry Act, 1952 and to command the respondents to hand over the investigation to CBI or any other Independent Agency and also to grant suitable compensation for loss of life, loss of company, loss of supports amounting to Rs. 5 lakh and upon cause or causes may be shown and upon having the parties be pleased to make the rule absolute.

2. The petitioner's son by name Gobinda Das was working as Assistant Teacher in Gandhi Girls ME School. On 1.12.1997 said Gobinda Das died. According to the petitioner said Gobinda Das, while returning home on 1.12.1997 at about 1.30 PM, was shot dead by members of the 68 Bn. CRPF who were accompanied by one Town Sub-Inspector by name Shri T. Saikia of Bongaigaon Police Station.

3. The Superintendent of Police, Bongaigaon (respondent No. 2) filed an affidavit dated 10.12.2008. The other respondents including the Commandant of the 68 B. CRPF, though served did not chose to file any affidavit in opposition.

4. According to the affidavit filed by the Superintendent of Police, Bongaigaon the fact that the petitioner's son was killed on 1.12.1997 at about 1.30 PM is admitted. It is also admitted that such a death resulted as a consequences of the firing by CRPF party. According to the said affidavit the members of the CRPF party had to resort to such firing as the deceased attacked the CRPF party with small arm, a Belgium made .32 pistol. It is further averred that Arms Act, read with Section 10/13 UA(P) Act. It appears that eventually the case was closed by the Chief Judicial Magistrate, Bongaigaon on the ground that the accused died in an encounter by the CRPF.

5. When a person dies because of the firing resorted to by the police personnel in the services either of the State or the Union of India a strange practice of registering the crime against the victims on various counts has become adopted in this country. Invariably all such cases are registered with the allegation that the victim belongs to some prohibited organization or was otherwise involved in some criminal activity. The allegations could be true or not true but in such a situation some impartial body is required to examine the various allegations made by and against the police officer involved in the incident.

6. Normally in such an incident an FIR is required to be registered against the officers who participated in the action. A Larger Bench of the Andhra Pradesh High Court by a recent judgment dated 6.2.2009 in Writ Petition No. 15419/06 (A.P. Civil Liberties Committees v. Govt. of A.P.) and Batch, considered this issue and laid down a principle that necessarily an FIR is required to be registered against the officers involved in such an incident and the case be investigated in accordance with law.

This court in W.P.(C) No. 699 of 2008 (Harendra Kumar Deka v. State of Assam and Ors.) has already examined the legal position in this regard and recorded that the law does not recognize any immunity against registration of a criminal case against the police officers involved in such an incident.

7. In the circumstances the affidavit filed by the Superintendent of Police, Bongaigaon cannot be accepted. But in view of the fact that the incident took place almost 12 years back, we are of the opinion that no useful purpose would be served at this stage by directing registration of a criminal case against the police personnel involved in the incident as no evidence worth its name can be adduced after such a long lapse of time.

8. After only a crime is registered against the officers involved in the incident and investigated properly by an impartial body the truth or authenticity of the allegations such as the ones made in the affidavit filed by the Superintendent of Police could be known.

9. The State of Assam as primary constitutional authority under the Indian Constitution for maintenance of law and order within its territory filed in its constitutional obligation to examine the incident in accordance with law and, therefore, in our view is liable to pay public damages to the dependents of the deceased.

10. In the circumstances we are of the opinion that an amount of Rs. 3,00,000 is required to be paid as public law damages. The liability to pay the said amount is joint and several as against each of the respondents herein.

From the report of the Registry dated 10.9.2008 it appears that the 5th respondent has not been served and no appropriate steps were taken by the petitioner for service of notice on the 5th respondent. In the circumstance the responsibility for payment of the amount as indicated above shall not extend to the 5th respondent.

11. However, we make it clear that the above mentioned amount of Rs. 3,00,000 is to be paid to the dependents of the deceased. The petition does not disclose the martial status of the deceased. In the circumstances we direct that the above mentioned amount shall be paid to such of the dependents who produces a succession certificate in accordance with law before the Superintendent of Police, Bongaigaon.