

(2007) 06 GAU CK 0033

Gauhati High Court (Agartala Bench)**Case No:** Writ Petition No. 224 of 2007

Sukladeb & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision: June 25, 2007**Acts Referred:**

- Constitution of India, 1950 - Article 21, 21

Citation: (2008) 4 GLT 626**Hon'ble Judges:** Hrishikesh Roy, J**Bench:** Single Bench**Advocate:** A.Das, K.N.Bhattacharjee, P.K.Biswas, S.Acharjee, Advocates appearing for Parties

Judgement

Hrishikesh Roy, J.

Heard Mr. K.N. Bhattacharjee, learned senior counsel for the petitioners. Also heard Mr. P.K. Biswas, learned Addl. Solicitor General of India, who represents the respondents.

2. The wife, three minor children and the mother of Late Nandan Deb are before this Court seeking direction for compensation for the death caused to Nandan Deb, aged about 32 years, by intentional firing by constable Mahadev of the BSF, who was on duty at the relevant point of time along with his other colleagues. The right of private defence, claimed by the accused constable Mahadev, have not been accepted in the General Security Force Court (GSF Court) proceedings and as per the finding given by the GSF Court dated 10.3.2007, the charge against constable Mahadev of having caused the death of deceased Nandan Deb by shooting him with his service rifle was established.

It may be relevant to extract the charge levelled against the accused constable :

"CHARGE SHEET

The accused No. 89131037 Const. Mahadev of 131 Bn. BSF is charged with: BSF Act. Committing a Civil Offence that Sec. 48 is to say murder punishable u/s 302 IPC. Is that he In a rubber garden located between BP No. 2007/3S and BP No. 2008/MP in AOR of BOP Bamutia on 5.6.2004 at about 8:15 hrs. by firing shots from his INSAS Rifle bearing No. 503, Body No. 19397159 caused the death of a civilian namely Nandan Deb, S/o Shri Atinder Deb, R/o Village Rangotia, P.S. Sidhai Distt. West Tripura and thereby committed murder.

(Mrityunjaya Kumar) Commandant 131BN.BSF. Place: Nalkata, Tripura. Dated, the 12th Feb., 2007. To be tried by General Security Force Court.

Place : Salbagan, Tripura. Dated, the 16th Feb., 2007.

(J.A. Khan) DIG Inspector General. FTRHQ BSF Tripura (Convening Officer)."

3. Mr. K.N. Bhattacharjee, learned senior counsel, appearing for the petitioners, submits that it is clearly established that constable Mahadev was on official duty on 5.6.2004 and was armed with the rifle issued to him in connection with his official duty. Accordingly he contends that the shooting by the said constable on a civilian ought to be considered as an act, which makes his employer vicariously liable to compensate for the death of the deceased civilian.

In support of the contention made, the learned senior counsel has referred to the decision of the Apex Court in D. K. Basu Vs. State of West Bengal reported in AIR 1997 SC 610 to contend that monetary and pecuniary compensation is an appropriate and effective remedy for redressal of established infringement of right to life of a citizen by a public servant and State is vicariously liable for the acts of their employee.

4. The relevant portion of the Supreme Court decision in D.K.Basu (supra) relied on by the learned counsel is extracted herein below for ready reference :

"55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other

action like civil suit for damages, which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straightjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

5. Mr. P. K. Biswas, learned counsel representing the BSF Authorities, on the other hand, submits that constable Mahadev who shot dead the deceased, had not caused the death of the deceased in furtherance of any of his official duties and it appears to be a private quarrel between the accused and the deceased.

The learned counsel further submits that for the wrongful act of constable Mahadev, he has been found guilty by the GSF Court and he is undergoing imprisonment. Therefore, to fasten the Government with liability for the acts of their employees, who choose to act in his private interest and not in course of discharge of his official duties, would be totally unreasonable and the Court ought not to consider the prayer for compensation made by the petitioners.

6. From the records available it can be seen that Sidhai Police Station Case No. 31/2004 was registered on the basis of an FIR lodged by the Company Commander of the 131 Battalion of BSF, where it is indicated that the death of deceased Nandan Deb occurred when the BSF personnel fired while trying to prevent transborder criminals from attacking the BSF personnel. Thus, from the FIR it can be seen that the stand of the BSF was that death had occurred in course of a public engagement of the BSF personnel in connection with their official duties.

7. However, from the finding of the GSF Court, it can be seen that the death of the deceased had not occurred in the manner as is reflected in the version given in the FIR by the Company Commander of BSF, but it appears to be under a different circumstances. The other version is that on the date of occurrence i.e. on 5.6.2004, while the BSF personnel were on duty, constable Mahadev called aside the deceased to a Rubber Plantation and the deceased and the assailant were interacting with each other in close proximity just before Nandan Deb was killed. Constable Mahadev shot the deceased by shooting him with his service rifle from a close proximity.

8. From the facts noticed above, it is difficult to accept the version put forward in the BSF Commander's FIR that the deceased was killed in an encounter engaged in by the BSF personnel with the transborder criminals. But the undisputed fact that emerges is that the deceased was killed by constable Mahadev with his service rifle

while he was posted on official duty and the said service rifle was assigned to the assailants in connection with such duty.

9. When the State deposes armed personnel to discharge State duties and while being so deputed, an armed constable causes death of a civilian by shooting from his service rifle, the State cannot absolve themselves from any responsibility by claiming that the killing was not in course of official duties of the armed personnel and therefore the State cannot be fastened with vicarious liability for the death caused to civilians by on duty armed personnel.

10. Since it is not in dispute that the assailant is an armed member of the BSF and was engaged in official duty at the relevant point of time at the concerned place and was issued with a service rifle for performance of his official duties, the responsibility of the State by way of strict liability must be found in cases, where rights of citizen's are violated through the acts of such armed personnel. When the claim of the citizen is based on the principle of strict liability, it may not be justified to deny the vicarious liability of the State against a claim for compensation to redress a grievance of established infringement of right to life of a citizen guaranteed by the Constitution of India. When the State engages armed personnel for discharge of State duties, it must be prepared to accept liabilities arising out of acts of commission or omission of its forces. If the Commander of Constable Mahadev was vigilant, the constable could not have wavered from his assigned responsibility and find opportunities for using his service weapon on civilians to shoot them in cold blood. The attempt made by the Company Commander to hide the truth by filing a false FIR should also be construed as a vital factor for deciding on the responsibility of the BSF authorities. Therefore, this Court reaches the inevitable conclusion that the State is responsible for the acts of Constable Mahadev and is accordingly liable to compensate the petitioners who were dependent on the earnings of the deceased.

11. Having held that the State is vicariously liable for the acts of its armed personnel to compensate the victim of illegal acts of its designated armed personnel assigned on official duty, the further question that needs to be answered by the Court is the amount of compensation that can be awarded in a case of this nature.

12. It can be gathered from various decision available on the point that it is indeed difficult for a writ Court to assess the quantum of compensation payable, as so many factors are required to be taken into account and it is always preferable to have the compensation payable assessed by a Civil Court by appreciating the evidence on relevant parameters for assessment of compensation/damages.

13. Under the circumstances, although this Court has taken the view that it would be the Civil Court, which would be in a much better position to decide on the actual quantum of compensation payable for the death of Nandan Deb, this Court can also take note of certain available and undisputed facts to decide a lump sum

compensation, which might be paid on provisional basis by a Writ Court, subject to further determination by a competent Civil Court, in the event, appropriate proceedings are initiated for the purpose.

14. It is not in dispute that the deceased at the time of his death was aged about 32 years and he left behind his wife, 3 minor children. Obviously he was the sole provider for these 4 persons. The 5th petitioner is the mother of the deceased and being a widow, she possibly was also dependent on the deceased for her livelihood. Therefore, number of dependents of the deceased is known but there is nothing on record to determine the earnings of the deceased.

15. Under such circumstances, this Court can decide on the quantum of provisional compensation only through a rough and ready reckoning and not through any precise calculation of the actual entitlement, which as it has already been held should be, left for final determination by a competent Civil Court.

16. In view of above discussion and having regard to all attending circumstances, this Court quantifies the compensation payable to the petitioners on account of the death caused to Nandan Deb at Rs. 3,00,000/ (Rupees three lakhs). This amount ordered to be paid within a period of 4 months from today. It is directed that the respondent authorities would deposit the said amount with the Registrar of this Court within the aforesaid period of 4 months. In the event the amount is not deposited within the said period of 4 months, interest at the rate of 8% p.a. will accrue on the amount of Rs. 3,00,000/ from the due date till the actual payment.

17. On receipt of the sum of Rs. 3,00,000/ from the respondent authorities, the Registrar will disburse a sum of Rs. 75,000/ (Rupees seventy five thousands) each to petitioner No. 1, Smt. Sukla Deb and Petitioner No. 5, Smt. Saraswati Deb (the wife and mother of the deceased). The balance amount of Rs. 1,50,000/ would be kept in a long term fixed deposit of not less than 10 years in the name of the 3 minor children of the deceased, namely, petitioner No. 2, Sri Anup Deb, petitioner No. 3, Smt. Smriti Deb and petitioner No. 4, Smt. Madhumita Deb to ensure that maximum interest are accrued on the fixed deposit. The said amount be made available for use by the said 3 minor children on the fixed deposit maturing and the children turning major, by turn.

18. This writ petition is allowed accordingly. No cost.