

GAHC010001711994



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

Case No. : CR(HC)/16/1994

D.K. DUTTA

VERSUS

UNION OF INDIA

Advocate for the Petitioner : MR. K C ROY

Advocate for the Respondent : MR. S K MEDHI

Linked Case : CR(HC)/17/1994

J. BHUYAN.

VERSUS

UNION OF INDIA and ORS.

Advocate for :

Advocate for : SC
CBI appearing for UNION OF INDIA and ORS.

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

JUDGMENT & ORDER (ORAL)

Date : 09-03-2023

(A.M. Bujor Barua, J)

Heard Mr. HK Mahanta, learned counsel for the petitioner in CR(HC) No. 16/1994 and Mr. KN Choudhury, learned senior counsel assisted by Ms. P Barman, learned counsel for the petitioner in CR(HC) No. 17/1994. Also heard Mr. RKD Choudhury, learned Dy.S.G.I. for the respondents in the Union of India including the Army authorities in CR(HC) No. 16/1994 and Ms. A Gayan, learned counsel for the respondents in the Union of India including the Army authorities in CR(HC) No. 17/1994 and Ms. U Das, learned counsel for the respondents in the State of Assam.

2. Col. Mahesh Sarma, Deputy Judge Advocate General for the army authorities is also present in the hearing.

3. Although the CBI is not a respondent in the proceedings but during the course of the proceedings there was a requirement for the CBI to make an enquiry and submit a report and accordingly, a report is made available on record by means of an affidavit dated 10.03.1998 and Mr. M Haloi, learned counsel appears for the authorities in the CBI.

4. CR (HC) No. 17/1994 had been instituted by Sri Jagadish Bhuyan the then Vice President of the All Assam Students Union raising an allegation that 9 (nine) persons namely Prabin Sonowal, Adviser of the Tinsukia District Students Union, then aged about 24 years was arrested by the army authorities from his residence at Doom Dooma on 17.02.1994; Akhil Sonowal who was an employee of the Khowang Tea Estate under Talap Police Station was arrested by the army authorities on 17.02.1994 while he was discharging his duties in his office; Debajit Biswas, then aged about 23 years, who was a student, was arrested from his

residence at Doom Dooma on 17.02.1994; Gunin Hazarika, then aged about 22 years who was a student, was arrested on 19.02.1994 from his residence at Doom Dooma; Pradip Dutta was arrested on 18.02.1994 from his residence at Talap Doom Dooma; Monoranjan Das was arrested on 18.02.1994 from his residence at Doom Dooma; Bhupen Moran was arrested on 17.02.1994 from his residence at Doom Dooma; Prakash Sarma was arrested on 18.02.1994 from his residence at Doom Dooma and Moteswar Moran was arrested on 19.02.1994 from his residence at Doom Dooma.

5. The petitioner raises an assertion that except for Akhil Sonowal, all other persons who were arrested were members of the All Assam Students Union.

6. In paragraph 4 of the writ petition in CR (HC) No. 17/1994 it is stated that all the persons were arrested by the army authorities between 17.02.1994 to 19.02.1994 and till the filing of the writ petition, their whereabouts were not known and neither the army authorities had informed the respective families about the ground of the arrest.

7. CR (HC) No. 16/1994 had been instituted by Sri Deepak Kumar Dutta raising the allegation that his brother Pradip Kumar Dutta had been arrested by the army authorities on 18.02.1994 from his house. We have taken note that the arrest of Pradip Kumar Dutta is also a subject matter in CR (HC) No. 17/1994.

8. In course of the proceedings on 01.03.1994, out of the 9 (nine) persons, 4 (four) persons were produced before the Court under police escort and in the order dated 01.03.1994 certain statements made in course of the proceeding held by the learned District Judge, Tinsukia, in camera, was produced before the Court which indicated that 5 (five) of the aforesaid persons namely (1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran had died in the meantime. The other 4 (four) persons who were also arrested namely (1) Prakash Sarma, (2) Gunin Hazarika, (3) Monoranjan Das and (4) Motiswar Moran have in the meantime been released.

9. In the circumstance the two Habeas Corpus Civil Rule petitions survive for an adjudication in respect of the death that may have been caused in respect of the aforesaid 5 (five) persons. We take note that the CBI had conducted an enquiry pursuant to the orders dated 10.03.1995 and 31.07.2000 of the Court in respect of the present proceedings and an

enquiry report dated 06.02.2002 of the CBI had also been placed on record by means of an affidavit.

10. Paragraphs 2.21 and 2.22 of the report of the CBI dated 06.02.2002 are extracted as below:

“2.21. In view of the circumstances and the conditions prevailing at the place, where the encounter was supposed to have taken, coupled with the nature of injuries on the persons of the deceased, as discussed above, the encounter theory as claimed by the army is not believable and therefore, 5 accused Army personnel namely (1)IC50772 Capt. R.K. Shivrain of 18th Bn., Punjab Regt. (2) IC174914 Sub. Dalip Singh of 18th Bn., Punjab Regt., (3) 2477695 Nk. Palwinder Singh of 18th Bn., Punjab Regt., (4) 2478543 L.Nk. Shivender Singh, 18th Bn., Punjab Regt. And (5) 2478588 L. Nk. Jagdev Singh of 18th Bn., Punjab Regt., are responsible for killing of 5 aforesaid persons, as they had actually opened fire on them and are therefore, liable to be prosecuted U/S 302, 201 I.P.C. Similarly, two other army personnel namely (1) IC 27022H Col. A.K. Lal, Commanding Officer of 18th Bn., Punjab Regt. C/o. 99 A.P.O., (2) IC47776 Major Thomas Mathew of 18th Bn. Punjab Regt. Coy Commander 'B' Roy, are liable to be prosecuted under U/S. 302, 201 r/w Sec. 109 I.P.C. because Col., Lal had planned the entire operation and Major Thomas Mathew was leading the party and had ordered firing.

2.22. Charge Sheet against the aforesaid accused persons is being filed in the Court of Id. Special Judicial Magistrate, Kamrup, Guwahati with a request to forward the Charge Sheet to the Army authority to try the accused persons under Court Martial as per the mandatory Provisions of Sec. 70 of Army Act of 1950. According to this Section, when a person subject to the Army Act and on active service, commits an offence of murder or culpable homicide not amounting to murder against a person not subject to military, Naval or Air Force Law, he is to be tried by a Court Martial. The accused persons in question were in operation against armed rebels in Assam and therefore, they qualify as being on active service while committing the alleged offence.”

11. A reading of the contents of paragraph 2.21 of the CBI report dated 06.02.2002 makes it discernable that the CBI had arrived at its conclusion that it is disbelievable that the injuries that were found on the deceased persons were caused in any encounter and accordingly, the CBI held that 5 (five) army personnel namely (1) IC50772 Capt. R.K. Shivrain of 18th Bn., Punjab Regt; (2) IC174914 Sub. Dalip Singh of 18th Bn., Punjab Regt; (3) 2477695 Nk.

Palwinder Singh of 18th Bn., Punjab Regt; (4) 2478543 L.Nk. Shivender Singh, 18th Bn., Punjab Regt. and (5) 2478588 L. Nk. Jagdev Singh of 18th Bn., Punjab Regt. are responsible for killing of the five persons namely (1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran, as they had actually opened fire on them and therefore, liable to be prosecuted under Sections 302/201 of the Indian Penal Code. The CBI report dated 06.02.2002 also arrived at its conclusion that two other army personnel namely (1) IC 27022H Col. A.K. Lal, Commanding Officer of 18th Bn., Punjab Regt. and (2) IC47776 Major Thomas Mathew of 18th Bn. Punjab Regt. Coy Commander 'B' Coy are liable to be prosecuted under Sections 302/201 read with Section 109 of the Indian Penal Code as because Col. A.K. Lal had planned the entire operation and Major Thomas Mathew was leading the party and had ordered the firing.

12. Paragraph 2.22 of the CBI report dated 06.02.2002 makes it discernable that charge sheets against the aforesaid army personnel were filed in the Court of the learned Special Judicial Magistrate, Kamup, Guwahati along with a request to forward the charge sheets to the army authorities to try the accused persons in a Court Martial proceeding as per the provisions of Section 70 of the Army Act of 1950.

13. In the order of the Court Martial Proceeding corresponding to File No. C/06280/EC/597(17/13)/AG/DV-2 dated 13.10.2018 the Court found that the accused Shri Anil Kumar Lal, formerly IC-27022H Major General Anil Kumar Lal of 18th Battalion of Punjab Regiment, IC-47776Y Colonel Thomas Mathew of 3 Kerala Battalion National Cadet Corps Trivandrum (Kerala), Colonel RK Shivrain of Headquarters 73 Mountain Brigade, Shri Dalip Singh, formerly JC-174914N Subedar Major and Captain Dalip Singh of 18th Battalion of Punjab Regiment, Shri Palwinder Singh, formerly No 2477659N Naik Palwinder Singh of 18th Battalion of Punjab Regiment, Shri Shivender Singh, formerly No. 2478543Y Naik Shivender Singh of 18th Battalion of Punjab Regiment and Shri Jagdev Singh, formerly JC-429866L Subedar and Lieutenant Jagdev Singh of 18th Battalion of Punjab Regiment are guilty of the first charges i.e. under Section 302 of the Indian Penal Code. As there is a requirement under the Army Act of 1950 to have the conclusion of the Court Martial to be confirmed by the competent authority, the proceeding of the Court Martial in respect of the aforesaid army

personnel were placed before the competent authority. The competent authority by its order dated 05.11.2019 had sent the matter back to the Court Martial authorities for a revision of their earlier decision in terms of the provisions of Section 160 of the Army Act of 1950 and in the revision the Court Martial authorities took some further evidence and accordingly by the order dated 01.03.2020 found the army personnel to be not guilty of the charges, which again had been confirmed by the competent authority by the order dated 15.11.2020.

14. In the aforesaid factual situation, the two habeas corpus writ petitions are taken up for its final hearing. On one hand the petitioners urge upon the report of the CBI dated 06.02.2002 to establish that the aforesaid five persons namely 1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran were killed in the custody of the army authorities and the death was caused to them in a manner other than a manner acceptable in law whereas, on the other hand it is the stand of the army authorities that in furtherance of the report of the CBI enquiry the Court Martial proceedings were held as per law which resulted in the order in revision dated 01.03.2020, which again had been confirmed by the competent authority by the order dated 15.11.2020 wherein all the army personnel were found to be not guilty of the charges.

15. Without going into any further enquiry, to establish the facts as to whether the death caused to the five persons namely 1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran were in a manner unacceptable in law or otherwise, the materials available before the Court at the present stage would be that the report of the CBI enquiry indicates towards the death being caused in a manner other than a manner acceptable in law whereas the conclusion of the army authorities in the Court Martial proceeding that the death was caused in a manner acceptable in law, meaning thereby that the army personnel are not guilty of the charges. To understand the veracity of the allegations that the death of the five persons took place in a manner other than a manner acceptable in law, an enquiry by the CBI was held wherein there is a conclusion that the army personnel concerned are guilty of the charges and therefore, charge sheets were filed in the competent criminal court, but as the matter is covered by the Army Act of 1950, therefore, the proceedings were held in a Court Martial, where the conclusion is that the army personnel are not guilty of the charges. In other words the situation is that there was an enquiry and

investigation, the charge sheets were submitted, the trial was held but led to a conclusion that the charges are not established. If the petitioners are still aggrieved by the conclusion of the army authorities in the Court Martial, the remedy available would be to proceed against the conclusion of the army authorities in the Court Martial proceeding that the army personnel concerned are not guilty of the charges, if permissible under the law and as per the procedure of law.

16. But at the same time, we have also taken note that these are the writ petitions pending since the year 1994 and twenty nine years have already passed by.

17. Submissions are also made from the respondents that if at this stage an enquiry is ordered, due to the elapse of time of almost twenty nine years, the army personnel who are alleged to have been involved in causing death to the five persons namely 1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran in a manner other than acceptable in law would be seriously prejudiced to defend their cases. A stand is also taken that seven army personnel who are indicted in the CBI report have already successfully defended themselves in the Court Martial proceeding, which proceeding was initiated in furtherance of the report of the CBI where the CBI had also filed their charge sheets.

18. We have also enquired from the learned counsel for the petitioners as to whether the petitioners still have any credible materials with them to prove it beyond reasonable doubt that the death to the aforesaid five persons were caused by the army authorities in a manner other than a manner acceptable in law. It is clearly stated that as of now no such material would be available.

19. Considering the rival submissions regarding the futility of ordering a further enquiry, where it is the stand of the petitioners that no further credible materials may be available and also the stand of the army authorities that because of the elapse of time the army personnel, where most of them have retired from service in the meantime, may not be in an appropriate situation to defend themselves, we are of the view that instead of trying to arrive at a definite conclusion as to whether the death was caused in a manner other than acceptable in law, we accept the situation that the death of the aforesaid five persons namely 1) Prabin Sonowal,

(2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran took place during an army operation. We also take note that the conclusion of the army authorities in the Court Martial proceeding would be that the army personnel are not guilty of the charges against them, i.e. committing an offence punishable under Sections 302/201 of the Indian Penal Code. But from the materials produced before the Court as well as submissions made it is not discernable that the act of having caused death to the aforesaid 5 (five) persons did not take place while they were in the custody of the army personnel and the conclusion of the army authorities in the Court Martial proceeding is that the death of the persons concerned would not lead to the army personnel being guilty of an offence under Sections 302/201 of the Indian Penal Code.

20. Without arriving at any conclusion as to whether the death was caused in a manner acceptable in law or in a manner unacceptable in law but however, as the materials on record clearly indicates that the death had been caused in an army operation, although the materials available on record cannot lead to a definite conclusion as to whether the death was caused in a manner acceptable in law or unacceptable in law and for the interest of justice, we order the respondents in the Union of India through the army authorities to pay adequate compensation to the families of the five deceased persons. In this respect we take note of a judgment rendered by this Court dated 25.03.2022 in WP(C) No. 4368/2014 reported in *2022 (3) GLT 187* wherein in a similar circumstance where the death was caused to certain persons in an army operation, it was deemed appropriate that the compensation amounting to Rs.20,00,000/- (Rupees Twenty Lakhs) be paid to the families of the each of the deceased persons. Without proceeding in the matter any further, we accordingly direct the respondents in the Union of India through the army authorities to pay an amount of Rs.20,00,000/- (Rupees Twenty Lakhs) as compensation to the family members of each of the deceased persons namely 1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran.

21. As over the years, a question would remain as to who would be entitled to receive the compensation in respect of the five deceased persons, we place the matter before the learned District Judge, Tinsukia for issuing notice to the family members of the five deceased persons and ascertain as to who amongst them would be entitled to receive the

compensation amount. The Union of India through the army authorities are directed to pay an amount of Rs.20,00,000/- (Rupees Twenty Lakhs) each in respect of the five deceased persons before the Registry of this Court within a period of two months.

22. Pursuant to this order the claimants in respect of the five deceased persons to appear before the learned District Judge, Tinsukia for adjudication as to who would be the most suitable person to receive the compensation within a period of fifteen days. Upon their appearance the learned District Judge, Tinsukia is requested to arrive at a determination as to who would be the best entitled to receive the compensation within a period of one month from the date of their respective appearances. As per the decision that may be taken by the learned District Judge, Tinsukia, the person who are declared to be the best entitled to receive the compensation may receive the compensation from the Registry of this Court after two months from today. In determining as to who would be the best person to be entitled to receive the compensation, the learned District Judge as per its wisdom may issue notice to any other persons who according to the learned District Judge may also be entitled to the compensation.

23. The two writ petitions are closed by providing as indicated.

24. A copy of this order may also be transmitted to the learned District Judge, Tinsukia for doing the needful.

25. The affidavit filed by the petitioners regarding the next to kin of the five deceased persons namely 1) Prabin Sonowal, (2) Akhil Sonowal, (3) Debajit Biswas, (4) Pradip Dutta and (5) Bhupen Moran may also be taken note of by the learned District Judge, Tinsukia. If the learned District Judge is of the view that to arrive at its proper conclusion the record of the present writ proceedings would be also necessary, a photocopy of the records may be requisitioned from the Registry.

Both the writ petitions are accordingly closed in the above terms.

JUDGE

JUDGE

Comparing Assistant