



**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP (C) No. 573 of 2021

1. Mrs. Farida, aged about 23 years, W/o (L) Md. Farish Khan of Sangaiyumpham Part I, Mairenkun, PO Wangjing & PS Thoubal, Thoubal District, Manipur.
2. Md. Gurbaj, aged about 5 years, S/o (L) Md. Farish Khan of Sangaiyumpham Part I, Mairenkun, PO Wangjing & PS Thoubal, Thoubal District, Manipur through his mother, Mrs. Farida (Petitioner No. 1 herein).

... PETITIONERS

-VERSUS-

1. The State of Manipur represented by the Commissioner (Home), Government of Manipur office at Secretariat South Block, Babupara, PO & PS Imphal, Imphal West District, Manipur—795001.
2. The Director General of Police, Manipur, Government of Manipur, office at PHQ, Babupara, PO & PS Imphal, Imphal West District, Manipur—795001.
3. The Commandant, 8th IRB, Government of Manipur.
4. The Superintendent of Police, Imphal East, Manipur.
5. The Office in Charge, Porompat Police Station, Imphal East, Manipur.

6. Mrs. Yengkhom Rajshini Devi, MPS, Asst. director, Manipur Police Training School, Pangei, Imphal East, C/o Director General of Police, Government of Manipur (incorporated vide order dated 18-10-202 passed in MC(WP(C)) No. 176 of 2022).

... RESPONDENTS

BEFORE HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Petitioner :: Mr. Juno Rahman S., Adv.
 .
 For the Respondents :: Mr. Sh. Shyam Sharma, GA
 .
 Date of Hearing and
 reserving Judgment & Order :: 02.08.2023
 Date of Judgment & Order :: **22.08.2023**

JUDGMENT AND ORDER (CAV)

The petitioners have filed the writ petition for issuance of a writ of mandamus directing the respondents to pay a sum of Rs.20 lakhs or any reasonable amount to compensate them for the untimely death of their breadwinner Farish Khan.

2. The case of the petitioners is that the first petitioner is the legally married wife and the second petitioner is the minor son of Farish Khan. Farish Khan is a poor villager of Sangaiyumpham Part-I, Thoubal District. On 1.8.2021, due to curfew imposed by the State authorities, Farish Khan could not go out to any place for earning and he along with four others were

sitting at playground of K.R. Lane near Imphal River Bank. At that time, some personnel of 8th IRB led by its Commanding Officer came to the said playground and chased them shouting for arrest by the Commanding Officer and surrounded them near the Imphal river. The IRB personnel arrested Abomcha and the other four of them including Farish Khan and they were forced to jump down at the running Imphal river for avoiding their arrest. But Farish Khan could not swim in the river and he cried for help. In spite of that, IRB personnel who were standing at the river bank along with their Commanding Officer seeing helplessness of Farish Khan floating in the water did not lend a helping hand. The arrested person requested them to release him for saving Farish Khan. But the IRB personnel refused to accede to such request. After about 10 minutes, Farish Khan could not be seen further. However, three of them could reach western bank of the Imphal river by swimming. As the water level of the area was above the height of Farish Khan, he had drowned completely and his physical appearance had also disappeared. After some time, the NDRF personnel came there and a search operation was carried out and the same ended in vain. However, on 3.8.2021 at about 2.00 P.M., Farish Khan was found dead and recovered from a little distance of Sanjenthong bridge.

3. Further case of the petitioner is that because of excessive acts of the said Commanding Officer, 8th IRB as well as her escort party the accident occurred and her husband died. Had he not died in the said incident by way of forceful action of the personnel of 8th IRB, he might have survived up to the age of 65-70 years as he is a strong and healthy person at the relevant time. Due to the untimely death of Farish Khan, the petitioners suffered serious mental torture and their future life is at stake. Therefore, the State respondents are liable to pay reasonable compensation to the petitioners.

4. According to the petitioners, after getting the dead body on 3.8.2021, the Porompat Police took up a case as Unnatural Death and an FIR was registered. A Joint Action Committee led by one Md. Ajad Khan as Convenor for the death of Farish Khan was formed for taking action against the said involved IRB personnel and also for payment of compensation as well as arrest of involved IRB personnel in causing the death of Farish Khan. Despite forwarding the memorandum to the Hon'ble Chief Minister and the Superintendent of Police, no effective action has yet been taken. Hence, the present writ petition.

5. The respondents 2, 4 and 5 have filed affidavit-in-opposition stating that based on the information received by the then Sub-Inspector of Police, a suo moto case was registered on 3.8.2021 and the dead body was brought along with the police party from Namthapung, KR Lane and kept at JNIMS Morgue and post-mortem was conducted. Since after completion of post-mortem no one came forward to receive the dead body, the dead body was kept at JNIS Morgue and on 7.8.2021, the elder brother of the deceased collected the body by observing necessary formalities. In due course of investigation, two prosecution witnesses were examined who have spoken about the incident and recorded their statements. According to the respondents 2, 4 and 5, the deceased died not due to excessive or negligent act of the Commanding Officer of 8th IRB or her escort party. The deceased drowned himself by diving into the river to avoid the police personnel who were on patrolling duty to enforce the curfew imposed due to Covid-19 pandemic. Thus, prayed for dismissal of the writ petition.

6. Pending writ petition, the Commanding Officer by name was impleaded as 6th respondent. The 6th respondent filed affidavit-in-opposition stating that at the relevant point of time, curfew was imposed in the entire Imphal East District, including

Hatta where the petitioners and the deceased are residing. It is stated that no personnel of 8th IRB or Commandant went to the playground of KR Lane near Imphal River and, as such, the question of arresting any person does not arise at all. The question of arresting some curfew violators and seeing the deceased person drowning are all concocted allegations without any legal basis. The Commanding Officer and her team were nowhere in the scene or involved in chasing the persons as respondent No.6 was in her quarters at that relevant point of time and she reached Checkon only around 5.00 P.M. On the date of incident after 5.15 P.M. only the Commanding Officer and her team reached the main road of KR Lane and she came to know about the incident in which one person drowned after he jumped into the river seeing the police patrolling car approaching them. It is stated that in fact the 8th IRB is assisting the Superintendent of Police, Imphal East in the enforcement of law and order. Therefore, the State authorities including the 6th respondent are not liable for any compensation as respondent No.6 has not done any illegal act. As the Commanding Officer and her team were not involved in the incident, the question of payment of compensation does not arise at all. Hence, prayed for dismissal of the writ petition.

7. Mr. Juno Rahman, the learned counsel for the petitioner submitted that in the evening of 1.8.2021, the husband of the first petitioner had gone out to play football at the football field located adjacent to KR Lane. While the husband of the first petitioner and some of his friends were playing football, the Commandant of 8th IRB and her team came around KR Lane for enforcement of curfew. Fearing arrest and beating by the police, the husband of the first petitioner and his friends jumped into the Imphal River in order to escape arrest. While some of his friends had escaped by swimming towards Kangla side river bank, the husband of the first petitioner started drowning at Imphal River. Although the husband of the first petitioner was drowning, none of the police personnel moved forward to save his life, nor did the Commandant of 8th IRB gave any order to her officers to save the life of the first petitioner's husband, which resulted in the recovery of lifeless body on 3.8.2021 by NDRF personnel.

8. The learned counsel further submitted that a Joint Action Committee against the drown and death of Farish Khan was formed with Md. Azad Khan as its convenor and submitted a memorandum dated 4.8.2021 to the Hon'ble Chief Minister with a copy to the local MLA and the other Government officials, including the Superintendent of Police. Despite receipt of the

memorandum, none of them have taken any steps towards redressal of the grievance as meted out in the memorandum, which necessitated the petitioners to file in filing the present writ petition.

9. Mr. Sh. Shyam Sharma, the learned Government Advocate appearing for the respondents 2, 4 and 5 submitted that the concerned Sub-Inspector of Police registered suo motu case and during the investigation two prosecution witnesses were examined who have spoken about the incident. He would submit that at the relevant point of time, curfew was imposed in the entire Imphal East District vide the order of the District Magistrate, Imphal East dated 28.7.2021 passed in Cril. Misc. Case No.8 of 2021.

10. The learned Government Advocate further submitted that the deceased died not due to excessive or negligent act of the Commanding Officer or her escort party and the deceased drowned himself by diving into the river to avoid police arrest. Therefore, the State is not liable for any compensation.

11. The learned Deputy Government Advocate submitted that at the relevant point of time, no 8th IRB personnel

or Commandant went to the playground of KR Lane near Imphal river and the question of arresting any person does not arise. The question of arresting some curfew violators and seeing the deceased person drowning are all concocted allegations without any legal basis. The 6th respondent and her team were nowhere in the scene or involved in chasing the persons as the 6th respondent was in her quarters at the relevant point of time.

12. This Court considered the rival submissions and also perused the materials available on record.

13. The case of the petitioners is that had the police personnel of 8th IRB not chased the deceased and others, the deceased might not have jumped down inside the running Imphal River on the said day and he might not have been died due to drowning in the Imphal River. The further case of the petitioners is that when the deceased was drowning, the personnel of 8th IRB who were standing on the bank of the river have not tried to rescue the deceased.

14. The said fact though was disputed by the 6th respondent by stating that she and her team were nowhere in the scene or involved in chasing the persons, the statement of one of the prosecution witnesses stated in the affidavit in opposition

of the respondents 2, 4 and 5 is to the effect that “*while the other persons crossed the river and ran towards Kangla side, the deceased person was drowning in the river. While the deceased person was drowning, some 3-4 police personnel and one detainee was there*”. The said statement of the prosecution witness namely Sajina clearly shows that at the time of drowning of the deceased, 3-4 police personnel are present. In the said affidavit-in-opposition, it has also been stated that on 1.8.2021 at 4.30 p.m. to 5.30 p.m., when Sajina was at the upper side of the main road near Imphal river bank, two numbers of Gypsy came along with a woman lady officer for checking of curfew violator. She saw three police personnel along with stick running towards the KR Lane playground and chased some five persons. Though the presence of the personnel of 8th IRB and its Commandant at the relevant point of time is a matter of evidence and in this regard, a criminal case is pending, prima facie, it proves the occurrence and drowning of the deceased into the Imphal river was because of chasing of the police personnel with sticks. The pleadings of the parties also prima facie establish that none of the police personnel moved forward to save the life of Farish Khan and now the family of the deceased is under disappointed position and unable to survive.

15. The 6th respondent in her affidavit in opposition has made a contradictory statement. In paragraph 6 beginning, the 6th respondent stated that *“on 1.8.2021, no 8 IRB personnel or Commandant went to the said playground of KR Lane near Imphal River and as such question of chasing the deceased person Md. Farish Khan by the CO and her party does not arise at all”*. However, in the same para, the 6th respondent stated that *“on 1.8.2021, the CO came out from her quarters at about 04.45 p.m./4.50 p.m. with her team. House Guard, Constable Premjit was at the quarters on duty and Personnel Assistant Md. Kalam and CO’s (caretaker) of her kids all saw CO & her team leaving the quarters at around 4.45 p.m. Thereafter, the CO and her team went to KR lane (pucca) road and found some curfew violators and they were asked to go inside their respective houses”*. The aforesaid statement of the 6th respondent clearly shows that at the relevant point of time the 6th respondent and her team were patrolling at KR Lane. The 6th respondent being a State level officer is duty bound to save the life of the deceased by commanding her team personnel to rescue him. No ordinary man would be a silent spectator when seeing a person drowning in the lake or river or tank.

16. Even though curfew was imposed at the relevant point of time and assuming but not admitting the fact that the deceased was in violation of curfew, that does not give any right to the IRB team to remain a silent spectator while the deceased was drowning in front of their eyes. That abetment act of the IRB personnel has led to loss of a precious life.

17. Article 21 of the Constitution of India clearly provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. That no procedure established by law would allow an officer to stand by while a citizen of this nation dies in front of him.

18. The Hon'ble Supreme Court in the case of *Rudu Sah v. State of Bihar and another*, (1983) 4 SCC 141 held:

“10. 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 of 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 civilisation 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."

19. Time and again, the Hon'ble Supreme Court held that compensation can be granted under the public law by the Supreme Court and High Court in addition to private law remedy for tortious action and punishment to wrong doer under criminal law for established breach of fundamental rights.

20. In *D.K.Basu v. State of West Bengal*, (1997) 1 SCC 416, the Hon'ble Supreme Court held:

"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.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people

and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.”

21. In *Nilbati Behera v. State of Orissa and others*, (1993) 2 SCC 746, the Hon'ble Supreme Court held:

“17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is ‘distinct from, and in addition to, the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental right. The defence of sovereign immunity being

inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

.....

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the

award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

.....

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.”

22. On 4.8.2021, a Joint Action Committee was formed to enquire about the drowning and death of Farish Khan and a memorandum was prepared and submitted to the Hon'ble Chief

Minister, Manipur State. According to the learned counsel for the petitioners, despite receipt of the memorandum dated 4.8.2021, no steps towards redressal have been taken by the respondent authorities.

23. On a perusal of the memorandum dated 4.8.2021 of the Joint Action Committee, it has made the following demands:

“1. The persons related in the dead of Md. Faris Khan due to drown on Imphal River in connection with the routine duty by police (uniform) headed by the team must be terminate from their service and be fitting punishment as per law.

2. The deceased person was a daily bread earner and left behind one minor boy and give Rs.10 (ten) lakhs only compensation for the deceased family and along with one suitable Govt. job to the next of kin.

3. Those involved in the dead of Md. Faris Khan must be booked as soon as early before the public.”

24. The respondent authorities have not commented upon the receipt of the memorandum of the Joint Action

Committee dated 4.8.2021. In their affidavit in opposition, the respondents 2, 4 and 5 have stated that “*the deponent has no comment to offer*”, which is a evasive reply filed by the respondents 2, 4 and 5 in respect of the memorandum of the Joint Action Committee. It is the bounden duty of the respondent authorities to show about the steps taken on the memorandum of the Joint Action Committee dated 4.8.2021 and the progress in the FIR No.11/PRT-PS/2021 registered under Section 174 Cr.P.C. However, nothing has been produced by the respondents to show as to what steps they have taken on the memorandum. Therefore, as held by the Hon’ble Supreme Court, the State must make good the damage done by its officers to the deceased and his family.

25. A court of law cannot close its consciousness and aliveness to stark realities. This Court is competent to pass an appropriate order, sitting under Article 226 of the Constitution of India. Grant of compensation in proceedings under Article 226 of the Constitution for the established violation of the fundamental rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction. Considering the facts and circumstance of the case, this is a fit case to award compensation to the deceased poor family.

26. Coming to the quantum of compensation to be awarded, the petitioners claim Rs.20 lakhs as compensation. The Joint Action Committee demanded Rs.10 lakh as compensation to the deceased family. As stated supra, the deceased is a coolie at the relevant point of time and during curfew of Covid-19, the occurrence took place. At the time of occurrence, the deceased was aged 26 years. The first petitioner is aged about 25 years and the second petitioner is a minor aged 7 years. Due to the untimely death of Farish Khan, the family of the deceased suffering serious mental torture and disappointed in the walk of their future life. Considering the financial status of the petitioners' family and that the first petitioner lost her husband at the age of 23 years and the second petitioner lost her father's love and affection at the age of 5 years, this Court is of the view that it would be appropriate to direct the respondent State to pay compensation of Rs.10.00 i.e. Rs.5.00 lakhs each to the petitioners.

27. In the result,

- (1) The writ petition is allowed.
- (2) The respondent State, through the
Principal Secretary/Commissioner,
Department of Home, Government of

Manipur, is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) as compensation to the petitioners.

- (3) The said amount is directed to be paid to the petitioners within a period of six weeks from the date of receipt of a copy of this order.
- (4) The petitioners 1 and 2 are entitled Rs.5.00 lakhs each.
- (5) The compensation of Rs.5.00 lakhs in respect of the second petitioner is directed to be deposited in a nationalised bank till she attains majority and the first petitioner is entitled to receive the accrued interest once in three months for the welfare of the minor.
- (6) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil