



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

WP(C) No. 2359/2019

Shri Bipul Dey,
S/o Bakul Dey,
R/o House No.29/C, Pragati Path,
Odalbakra, Bye Lane No.3, Guwahati-34, Assam.

.....*Petitioner.*

-Versus-

1. Union of India,
Represented by Secretary,
Ministry of Women and Child Development,
Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi.
2. The Chairperson,
National Commission for Protection of Child Right,
5th Floor, Chanderlok Building,
36 Janpath, New Delhi-110001.
3. The Chairperson,
Assam State Commission for Protection of Child Rights,
Survey, Beltala, Guwahati-28.
4. Director General of Police, Assam,
Ulubari, Guwahati-781007.
5. The Additional Director General of Police (CID),
Assam, Ulubari, Guwahati-781007.
6. The Director General of Railway Protection Force,
Railway Board, New Delhi.
7. Officer-in-charge,
Railway Protection Force,

Pipariya, District Hoshangabad,
Madhya Pradesh.

.....Respondents.

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner(s) : Mr. P.K. Roy,
Mr. S.K. Chakraborty,
Ms. A. Chakraborty,
Ms. M. Dutta. Advocates.

For the Respondent(s): Mr. R.K.D. Choudhury, Dy.S.G.I.,
SC, Railway. Advocates.

Date of Hearing & Judgment : ***20th July, 2023***

JUDGMENT AND ORDER (ORAL)

[*Achintya Malla Bujor Barua, J.*]

Heard Mr. P.K. Roy, learned counsel for the petitioner. Also heard Mr. R.K.D. Choudhury, learned Dy.S.G.I. appearing for the respondent Union of India including the respondent No.2, namely, the National Commission for Protection of Child Rights.

2. The son of the petitioner, namely, Biswajit Dey left his house on 19.10.2014 by intimating the petitioner that he was going to the Paltanbazar area in Guwahati for purchasing a mobile handset and he took a sum of ₹ 2,000/- for the purpose from the petitioner saying that he will return back soon. But as it happened Biswajit Dey did not return back to his house. When Biswajit Dey did not return on 19.10.2014 and

20.10.2014, the petitioner lodged an FIR before the local police station regarding the missing of Biswajit Dey. On 21.10.2014 the petitioner received a phone call at about 5 a.m. from an unknown number when the caller identified himself to be a Railway Protection Force staff member of Piperia Railway Station in the State of Madhya Pradesh and the caller intimated the petitioner that he had recovered the son of the petitioner on being handed over by the guard of Lokmanya Tilak Express, which was travelling from Guwahati to Mumbai. As the petitioner was astonished as to how his son could have reached the Piperia Railway Station, he requested the caller to allow him to talk with his son and when the petitioner talked with his son on the cell phone of the unknown caller, the petitioner could realise that his son was in a terrified state of mind and he was saying that they are all involved and to please come over and take him back or else after crossing border the persons may kill him. The aforesaid circumstance and the subsequent circumstances are stated in detail in paragraph 5 of the writ petition, which is extracted hereinbelow:-

"5) That, on that day itself i.e. on 21.10.2014 at about 5 AM or so, petitioner received a phone call from one unknown number. The caller identified himself as RPF Staff member of Piperia Railway Station and intimated the petitioner that he recovered the son of the petitioner, on being handed over to him (the caller) by the Guard of 'Lokmanya Tilak Express' bound for Mumbai from Guwahati. The caller also intimated the petitioner that his son late Biswajit Dey was recovered in a subconscious state. The petitioner being astonished as to how his son could get there, requested the caller to let him talk to his son. When the petitioner talked to his son on the cell phone of the unknown caller, the petitioner found his son in a terrified state of mind and he was saying only one thing that "they are all involved, please come and take me or else they will cross me the border today or kill me." The petitioner was surprised to hear all these statements of his son. The petitioner, to know the whereabouts of his son, was already in the Guwahati Railway Station at that point of time and therefore promptly went to the office of the RPF

Post, Guwahati Railway Station and he requested the officer present in the said post of RPF, Guwahati to talk with his counterpart at Piperia and accordingly the officer talked from the cell phone of the petitioner (No.9752449403) with his counter-part at Piperia railway station, where the son of the petitioner was at that relevant point of time. The officer of RPF Guwahati consoled the petitioner that since the son of the petitioner has been recovered by RPF of Piperia Railway Station, there was nothing to worry and the petitioner was asked to go to Piperia and get his son without wasting time. The petitioner requested the RPF officer at Piperia over his telephone to take proper care of his son and do all needful till his arrival at Piperia to take back his son. Accordingly, the petitioner managed two tickets for Piperia in the next available train from Guwahati. The petitioner and his brother boarded the train for Piperia. In between all these time, the petitioner received few phone calls from cell no.9755393029, from which his son was talking with him, but he was repeating his earlier statements. On finding the son of the petitioner frightened, the petitioner told his son not to worry and listen to uncle (the RPF Officer under whose custody his son was at that relevant point of time), but the son of the petitioner stated that all are involved and they will either kill him or cross him across the border. Being surprised on such repeated statements of the petitioner's son, the petitioner asked the said RPF Officer Birendra Yadav as to what is the matter, but the RPF Officer Birendra Yadav told the petitioner that since the petitioner's son has travelled in the train for the first time, he might be frightened. This conversation over the Cell phone was at 7:49 PM from Cell No.9752418732, when the caller enquired about the petitioner, as to whether the petitioner boarded the train and the coach number of the train and whether the petitioner was coming alone or with any police officer. The petitioner told the caller that he is going with his brother and is not accompanied by any police officer."

3. In paragraph 5 of the writ petition, it is also stated that the petitioner received a call from a cell phone bearing No.9752418732 at about 7.49 p.m. wherein the caller had enquired from the petitioner as to whether he had already boarded the train from Guwahati as well as the details of the coach number in which he was travelling. But in paragraph 6, it is stated that after about 2 minutes of disconnecting the call made at 7.49 p.m., the petitioner received another call from the cell

No.9752418732 from a person named Birendra Yadav, who had informed the petitioner that his son had ran away from the custody. In paragraph 7 it is stated that Birendra Yadav after about 20 minutes from the earlier call informed the petitioner that his son had died after being ran over by a train and said that he had slipped while he was trying to climb on to the train and had died on the spot. In paragraph 8 it is stated that upon reaching Piperia Railway Station on 23.10.2014, the petitioner was taken to the morgue where the body of his son was kept for identification. It is also stated that Birendra Yadav had told the petitioner that the death of his son took place at about 7.15 p.m. whereas the last call made in the afore-stated cell phone was at 7.45 p which again is an inconsistent situation.

4. In the circumstance, the petitioner approached the Assam State Commission for Protection of Child Rights (in short, 'ASCPCR'). The ASCPCR called for reports from authorities including the Director General of Assam as well as the Director General of Civil Defense and Home Guards and the Additional Director General of Police (CID), Assam, on the issue of death being caused to the son of the petitioner. The Superintendent of Police, CID, Assam submitted a report by Memo No.CID-VI/R/133-15/172 dated 01.02.2016, which is available at Annexure-B (page 21 of the writ petition) and the purport of the report of the Superintendent of Police, CID, is that there was no information that the disappearance of the son of the petitioner was related to human trafficking. Be that as it may, the Chairperson, ASCPCR submitted a communication bearing No.ASCPCR(C)58/2015/51 dated 17.07.2017 to the Chairperson, National Commission for Protection of Child Rights (in short, 'NCPCR'). The communication dated 17.07.2017 is extracted hereinbelow:-

"From: Dr. Sunita Changkakati

Chairperson
Assam State Commission for Protection of Child Rights
Survey, Beltala, Guwahati-28

To: The Chairperson
National Commission for Protection of Child Rights

Sub: Regarding suspicious death of a child named Biswajit Dey (17 years)- Requesting Intervention.

Dear Madam,

Greetings from Assam State Commission for Protection of Child Rights!!

In inviting a reference to the above, I am to bring to your notice a case of suspicious death of a child namely Biswajit Dey. The child reportedly met to accidental death but the parents of the deceased child claims it to be a planned murder to save the strong nexus of traffickers. The Assam SCPCR intervening into the matter requested for a just probe and have received reports which raises few serious questions on the happening of events and lapses in service delivery towards the protection of the child which could have saved the child from meeting an unnatural death.

The following are the sequential details of the events which took place in the above mentioned subject matter:

1. The Assam SCPCR received a complaint letter from Mr. Bipul Dey, a resident of Pragoti Path of Lal Ganesh, Guwahati 34 on 4th of August 2015. The Complaint letter stated that his son Biswajit Dey aged about 17 years went missing on 19th of October 2014 from Paltan Bazar where he went to purchase a Mobile Phone. The child was provided with an amount of Rs.2000/- in cash for the same buy his mother. (Complaint letter enclosed as Annexure-A)
2. On 21st of October 2014, Mr. Bipul Dey received a call from the number 09752449403 at around 05:00 AM. The call was claimed to have been made by an officer of GRP, Piperia Railway Station. He was informed that his son was rescued from a group of unknown people who were dragging him to a remote location. He received another call from a different number 09755393029 and he requested the caller to keep his child under their safe custody so that he can plan out to receive the child.
3. He reached to the GRP Office at the Guwahati Railway Station and the officials there helped him to contact Mr. Birendra Yadav, SI of GRP,

Piperia Railway Station. He provided the details of the child to him and requested for help. The SI, Mr. Birendra Yadav called him after 20 minutes and informed that the child has been identified and they have taken him under their safe custody.

4. The child was connected to talk to him over the phone, wherein Mr. Bipur Dey mentions that his son was in a state of panic and informed that he is under suspicion that he would be handed over to few unknown people who might be the traffickers as the GRP officials are aware of the traffickers. Mr. Bipul Dey, then requested to the SI to keep the child under safe custody and he would be boarding a train that afternoon to reach out there to receive the child.
5. On 21st of October 2014 at 3 P.M., Mr. Bipur Dey boarded the train to Piperia Railway Station to bring his son back home. After boarding the train, he called Mr. Birendra Yadav at 7:49 P.M. and spoke to his son informing him that he was on way to Piperia and asking him to stay there with the police.
6. But at 7:51 P.M. he received a call from Birendra Yadav, who informed him that his son had fled from police custody. Mr. Bipul Dey then requested him to find his son as early as possible as he feared that his son's life was in danger. However, after 20 minutes, Mr. Bipul Dey received a call from Birendra Yadav who informed him that his son tried to flee and tried to board a train but slipped in the railway track and was runover by a moving train.
7. When Mr. Bipul Dey reached Piperia Railway Station, the GRP handed over the belongings of his son and the postmortem report.
8. Raising a concern as to how was it possible for Mr. Bipul Dey to have spoken with his son at 7:49 P.M. on 21st of October 2014, when the postmortem report of his son declared the time of his death to be 7:15 P.M., the aggrieved parent lodged an online complaint with the Addl. Chief Security Commissioner, N.F.R., Maligaon. It was then forwarded to Asst. Secretary to AGM(PG), N.F. Railway Maligaon. (Copy of the forwarded Complaint letters are enclosed as Annexure-B & C respectively).
9. On 4th August 2015, the aggrieved parent approached the Assam SCPCR requesting a fresh enquiry into the matter. The Assam SCPCR registered the case vide No.ASCPCR(C)58/2015 and requested the Director General of Police, Assam and DG Civil Defense & Home Guards and

ADG of Police (CID), Assam. (Copy of the letter to CID enclosed as Annexure-D).

10. After sending a reminder letter Assam SCPCR received a report from the Superintendent of Police, CID, Assam. According to the Report, on 21st of October 2014, at 5 AM, Biswajit Dey had arrived at Piperia Railway Station and was apprehended by the Railway Guard at the station. He was handed over to Havildar Zinak Prasad of RPF, who then handed him over to SI Birendra Yadav, who offered him with lunch as he seemed to be very weak. Birendra Yadav then called up Mr. Bipul Dey and requested him to take his son from Piperia Railway Station and until his father came, Biswajit Dey was kept in the safe custody of the police at Piperia Railway Station. However, at 7:15 PM, on the arrival of an intercity up train, Biswajit Dey, who was carrying a water bottle, started running to board the moving train, but before he could grab the handle of the train's door, he slipped and fell in the gap between the platform and the train, and was consequently run down by the moving train. The CID claimed that in the course of the enquiry, it was revealed that since no sufficient security was provided by the RPF, Biswajit Dey managed to flee away and also declared that the death of Biswajit Dey was completely accidental. It also found that the deceased had purchased a train ticket from Paltan Bazar Railway Station to Chennai, which had been recovered by the GRP at Piperia Railway Station. It also finally declared that it found no information relating to human trafficking in the death of Biswajit Dey. (Copy of the reminder from Assam SCPCR and the CID report are enclosed as Annexure-E & F respectively).

After thorough study of the report and considering the circumstances and sequences of the events that had taken place the Commission finds few points of concern which raises question and recommends following points for re-investigation:

1. There is a serious doubt as to how the postmortem report states the time of occurrence of death of the boy to be 7:15 P.M., while his father claims to have spoken to him over the phone at 7:49 P.M. on the same day.
2. Under what circumstances was the boy apprehended by the police at Piperia Railway Station and why?
3. What could have possibly happened that compelled the boy to run away from the safe custody of the police force?
4. The date of issue of the ticket found from the boy's belonging was 18th October 2014 and the boy went missing on 19th October 2014.

5. Run away from custody raises serious question on the standards of security provided by the police.

Considering the case as a serious concern, the Commission invites your attention and requests needful in this regard so that the facts can come into light and justice be made to the deceased child and to ensure that no further lapses in the system procedures may lead to the victimization of any child.

Enclo: As stated

Sd/- Illegible
Chairperson
Assam State Commission for Protection of Child Rights
Survey, Beltala, Guwahati-28

Memo No.ASCPCR(C)58/2015/51-A

Dated Guwahati, the 17th July 2017

Copy to:

1. Justice Madan B. Lokur, Hon'ble Judge, Supreme Court of India for favour of his kind intervention into the matter.
2. The Hon'ble Minister, Railways, Govt. of India for favour of information and necessary action.
3. The Hon'ble Minister, Home Affairs, Govt. of India for favour of information and necessary action.
4. The Hon'ble Minister, MWCD, Govt. of India for favour of information and necessary action.
5. Mr. Bipul roy, Father of the Lt. Biswajit Dey for information.
6. Office Copy.

Sd/- Illegible
Chairperson
Assam State Commission for Protection of Child Rights
Survey, Beltala, Guwahati-28"

5. A reading of the communication dated 17.07.2017 makes it discernible that the ASCPCR was of the view and also made recommendation for enquiring in the matter inasmuch as according to ASCPCR there was serious doubt as to how the post-mortem report stated that time of occurrence of the death to be 7.15 p.m. whereas the father of the petitioner claimed to have spoken to the dead boy at around 7.49 p.m. on the same day; further under what circumstances

the boy was apprehended by the police at Piperia Railway Station and why; what could have possibly happened that compelled the boy to run away from the safe custody of the police force; the date of issue of the ticket found from the body of the boy was 18.10.2014 whereas the boy went missing on 19.10.2014; as well as that the run away from the custody raises serious question on the standards of security provided by the police.

6. Be that as it may, it is also noticed that the said communication was also addressed to Justice Madan B. Lokur, Hon'ble Judge, Supreme Court of India, for favour of his kind intervention into the matter. The record reveals that Hon'ble Mr. Justice Madan B. Lokur had made a communication addressed to the Chairperson of the ASCPCR dated 20.07.2017, which is extracted as below:-

"Dear Dr. Changkakati,

This is with reference to your letter dated 17th July, 2017 regarding the suspicious death of a child named Biswajit Dey.

The Assam State Commission for Protection of Child Rights may take up the matter itself.

With best wishes,

Yours sincerely

Sd/- Madan Lokur

(Madan B. Lokur)

Dr. Sunita Changkakati,
Chairperson,
Assam State Commission for Protection of Child Rights,
Survey, Beltala,
GUWAHATI-28."

A reading of the communication dated 20.07.2017 makes it discernible that the said communication was with reference to the suspicious death of a child named Biswajit Dey and further that the

ASCPCR may take up the matter itself. From that stage onwards the matter of enquiry of the death of the son of the petitioner did not proceed any further resulting in institution of the present writ petition with a prayer for an enquiry on the circumstance of the death of the son of the petitioner.

7. The contents of the communication dated 17.07.2017 of the Chairperson, ASCPCR makes it discernible that the death of the son of the petitioner took place in the State of Madhya Pradesh and although the ASCPCR was of the view that the death requires further enquiry, but because of the jurisdictional issue, the ASCPCR was unable to make any further enquiry and accordingly, referred the matter to the NCPCR for doing the needful so that justice can be meted to the deceased son of the petitioner as well as to ensure that no further lapses in the system procedure may lead to victimisation of any child.

8. Fundamentally we are in agreement with the communication of the ASCPCR that the matter required an enquiry to be made by the NCPCR inasmuch as the ASCPCR had a jurisdictional issue to carry forward further enquiry on the matter. From such point of view, it can be said that it was for the NCPCR to take up the matter and carry the enquiry further and do the needful and if necessary to also involve the State Commission for Protection of Child Rights of the State of Madhya Pradesh. But it has been informed that because of the communication dated 20.07.2017 requiring the ASCPCR to take up the matter further by itself and because of the inability of the ASCPCR to carry the matter forward as the enquiry is required to be done in the State of Madhya Pradesh, the matter had not proceeded any further.

9. We are of the view that the petitioner has a legal right to have the process initiated by the ASCPCR on the cause and circumstance of

the death of his son Biswajit Dey, to be brought to its logical end, which can be achieved upon the matter being carried forward by the NCPCR.

10. In the circumstances, as the death of the boy was at Pipheria Railway Station in the State of Madhya Pradesh, and it may not be conducive for the ASCPCR to conduct the enquiry at Madhya Pradesh, we direct the NCPCR to take note of the communication dated 17.07.2017 from the Chairperson, ASCPCR and do the needful as regards the death of the son of the petitioner which as per the contents of the said communication had taken place somewhere in the Pipheria Railway Station in the State of Madhya Pradesh. The NCPCR upon doing the needful complete the enquiry and may provide a copy of the report of such enquiry to the petitioner which in our view would serve the purpose of the present writ petition.

11. The petition accordingly stands closed with the aforesaid direction to the NCPCR.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant