



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

Case No. : WP(C) 206/2020

1:KAHULI
W/O DECEASED LATE KHEHUTO ASSUMI,
R/O NEW RESERVE COLONY, KOHIMA, NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY
TO THE GOVT. OF NAGALAND, KOHIMA, NAGALAND

2:THE HOME COMMISSIONER TO THE GOVT. OF NAGALAND
KOHIMA
NAGALAND

3:THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTER
KOHIMA
NAGALAND

4:THE PRINCIPAL DIRECTOR
DEPARTMENT OF HEALTH AND FAMILY WELFARE
KOHIMA
NAGALAND

5:THE SUPERINTENDENT OF POLICE
KOHIMA
NAGALAND

6:THE UNION OF INDIA
REPRESENTED BY THE COMMANDANT
164
NAGA TERRITORIAL ARMY
C/O 99 APO
JAKHAM

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE L.S. JAMIR
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

JUDGEMENT & ORDER
(CAV)

Date : 28-02-2023

(L.S. Jamir, J)

Heard Mr. Joshua Sheqi, learned counsel for the petitioner. Also heard Mr. Thiba Phom, learned Government Advocate as well as Mr. Yangerwati, learned Central Government Counsel for the Union of India.

2. The present writ petition has been filed with the following prayers:

- A. *"Direct the State Respondent to immediately set up an independent enquiry to enquire into the dead (sic) of Late Khehuto Assumi who was shot dead by the Kohima Police called the Anti Extortion Team in civil clothes.*
- B. *Direct the Medical/Health Department to furnish the detailed post mortem report to the family of the deceased and to the appropriate authority(s) with immediate effect.*

- C. *Direct the State Respondents to produce the CCTV footage of the incident.*
- D. *Suspend the Police team that led to the assassination of Late Khehuto Assumi with immediate effect for impartial enquiry.*
- E. *Direct the State Respondents to compensate the petitioner and her children with an amount of Rs.40,000/- (Rupees forty thousand) per month till he attained the age of 60, counting from the date he was murdered, amounting to Rs.1,15,60,000/- (Rupees one crore fifteen lakhs sixty thousand).*
- F. *Direct the State Respondents to further compensate the petitioner and her children with an amount of Rs.1,00,00,000/- (Rupees one crore) for the shock, mental agony and distress caused due to the murder.*
- G. *Direct the Respondents to accommodate one of the children of Late Khehuto in public employment on attaining the major eligible age.*

And/or pass any such further or other order/orders, as this Court may deem fit and proper in the facts and circumstances of the case"

3. The case of the petitioner is that she is the wife of late Khehuto Assumi, who was shot dead by the police team called the Anti-Extortion Team, on 23-06-2020, near Y junction, below the old MLA Hostel, Kohima, at about 4.30 pm.

4. On coming to know about the killing of the husband of the petitioner, the family members of late Khehuto Assumi went to the North Police Station, Kohima, in the evening of 23-06-2020, to enquire about the cause of death. The family refused to take the dead body without conducting necessary formalities. The police, thereafter, assured the family members that the post-mortem report would be furnished to the family members on 24-06-2020. Thereafter, on 24-06-2020, the Post-Mortem-cum-Death Certificate was furnished by the

competent Medical Officer with further assurance that detailed post-mortem report would be furnished within a few days. However, even after a considerable lapse of time, no detailed post-mortem report was furnished to the family members of the deceased and no action was taken to enquire about the cause of death of the petitioner's late husband. Therefore, the petitioner made a representation to the State respondents on 02-07-2020 for setting up an Independent Enquiry Committee, within two weeks, to enquire into the cause of death, to suspend the members of the Anti-Extortion Team, who were responsible for the death of late Khehuto Assumi, to direct the Chief Medical Officer, Kohima, for furnishing the detailed report of the post-mortem conducted on 23-06-2020, to direct the concerned officer to provide the CCTV footage of the incident and further to complete the enquiry within a period of two months. However, the said representation did not yield any result and accordingly, the counsel for the petitioner filed an RTI application on 02-07-2020 in the Directorate of Police Head Quarter, Nagaland, Kohima, seeking information about the CCTV footage near Y junction, below Old MLA Hostel on 23-06-2020 in between 4 to 5 pm, besides other related information. Reply to the RTI application was received vide letter dated 14-07-2020 stating that seven CCTV are installed in Kohima in which the Sl. No. 6 Phoolbari covers the place of occurrence where late Khehuto Assumi was killed. In the reply, it was also stated that the video recorder was removed in May, 2020 to reset the whole system, however, due to COVID-19 lockdown and lack of technician, the same is not operational till date and, accordingly, the CCTV footage in Y junction, below Old

MLA Hostel is not available.

5. The further case of the petitioner is that her husband, late Khehuto Assumi was serving in the Naga Territorial Army in the rank of LHAV and was discharged on health ground on 01-11-2019 and after his discharge; he was doing small business to sustain the family. It is also the case of the petitioner that her late husband was shot at point blank from behind and the injury mark also clearly indicates that the late husband of the petitioner was shot from behind. Further, as per the account of Mr. Aito Awomi, the accomplice of the deceased, late Khehuto Assumi was drunk and had no weapon whatsoever with him. Despite demands being made before the State Government no action was taken even after lapse of five months. Being aggrieved, the present writ petition has been filed with the prayers as already reproduced hereinabove.

6. The State Respondents have filed counter affidavit and in the said counter affidavit, it is stated that the deceased Khehuto Assumi was shot towards the back of the left neck and the bullet exited above his forehead, however, there was no intention to shot him. Relying on the statement of the accomplice, it is stated that the late husband of the petitioner was in a drunken state and, therefore, instead of surrendering to the police, he got aggravated and tried to retaliate and snatch the loaded gun from the police official and in the scuffle, the late husband of the petitioner was shot. The police being custodian of law and order have no intention to cause death to any individual. Further, it is stated that the investigation and enquiry on the incident that took place on 23.06.2020 has been completed and the Charge-

Sheet No.9/2021 dated 25.02.2021 has already been forwarded to the learned trial Court for trial.

7. It is the further case of the respondent that the late husband of the petitioner along with the accomplice, namely, Aito Awomi was extorting money from traders in the name of NSCN-K and on receiving the information, the police proceeded to the place of occurrence and two miscreants were spotted near Y junction, below Old MLA Hostel. One of the officers approached them from the front and asked them to stop and surrender immediately. But, instead of surrendering, one of the miscreants tried to pull out his arm. However, two officers took him down and pinned him to the ground and seized one .32 mm pistol from his possession. The other miscreant, i.e. late Khehuto Assumi, the late husband of the petitioner, was engaged with one of the officers and on seeing his accomplice being neutralized, he became aggressive and confronted with the officers. In the ensuing scuffle, the miscreants tried to snatch the arm from the officers and the gun got fired hitting late Khehuto Assumi from the left side of the neck, who fell down and succumbed to the bullet injury.

8. Considering the controversy involved with regard to the claim of the petitioner as well as that of the State Respondents, this Court, by order dated 11.11.2021, directed the learned Principal District & Sessions Judge, Kohima to conduct an enquiry with regard to the 23.06.2020 incident, which led to the death of the deceased late Khehuto Assumi and the term of reference of the enquiry were as follows :

"(i) The circumstances leading to the incident and the

cause of death of Lt. Khehuto Assumi.

(ii) Whether there was any act of commission/omission on the part of the police officers involved in the incident which led to the death of Lt. Khehuto Assumi.

(iii) Whether there was any person or persons responsible for the death of Lt. Khehuto Assumi or whether there was any person or persons who are suspected of foul play.

(v) Whether there is any ballistic examination reports of the weapon(s) and cartridges alleged to have been used in the incident and if so, what are the findings of the expert.

(vi) On any facts and issues which may be found relevant for further investigation.”

9. The learned Principal District & Sessions Judge, Kohima, on 24.05.2022, forwarded the enquiry report, as directed by this Court, before the Registry of this Court. The enquiry report is placed before us. The learned Principal District & Sessions Judge, Kohima, recorded the statement of the petitioner (Kahuli) , ABSI Kethozelie Liezietsu, UBC Thepfuvilie Belho, UBC Khriekuolie Nakhro, ASI Tekatsungba, UBSI Neivizolie Zumu, and Dr. Rupert Peseyie.

10. The statement of Dr. Rupert Peseyie indicates that the entry wound was on the nape of the neck below the occiput and the exit wound was on the left side of the cheek just left to the angle of the mouth. In his opinion, the entry wound indicated that the deceased was shot at point blank range which means either touching the skin or from within 3-8 cms. The report indicates that the death of the deceased was caused by fire arm, which was the service pistol (9mm) of UBC Thepfuvilie Belho and which went off accidentally in the scuffle while trying to overpower the deceased and there was no foul play.

11. The statement of ABSI Kethozelie Liezietsu indicates that at around 3.30 p.m., he received a call from one informer that two

persons carrying arms were extorting money mentioning that they were from NSCN-K faction. He, accordingly, called UBC Khriekuolie Nakhro and told him to proceed to the location where the call came from, which is Old NST area. He also called UBC Thepfuvilie to assist Khriekolie and in the meantime he started driving towards Naga Hospital Highway via KOHIMAS Hospital Road. After he dismounted from his car, he saw two accused persons walking towards him. His two other colleagues were signalling him that they were the accused/suspects. Just before reaching the place of occurrence, he walked past the two extortionists/suspects and called his men to come towards him. As the backup party could not arrive on time, he told his men that they will apprehend the deceased and his friend without the backup party and he handed over the service pistol to one of his colleagues UBC Khriekolie Nakhro. After that he hurriedly moved past the suspects and got in front of them and asked them to stop saying 'I am police'. The two accused started to move hastily and the short guy, i.e. the accomplice of the deceased moved his hand as if reaching for something behind his back. He quickly caught him by the neck and his arm and with the help of UBC Thepfuvilie managed to pin him down. Then, Thepfuvilie pulled out a pistol from the back of the other accused, who started to run away. Accordingly, UBC Khriekolie went after him and at that time he saw that the deceased was in a scuffle. The other colleague UBC Thepfuvilie ran towards them to assist Khriekuolie to apprehend the deceased and, at that moment, he heard the gun short. As per the statement, UBC Thepfuvilie was carrying 9 mm service pistol, which went off during the scuffle accidentally. The

same statement is made by the other witnesses apart from Dr. Rupert Peseyie.

12. Considering the incident that took place on 23.06.2020, near Y junction, below Old MLA Hostel, it is seen that the husband of the petitioner was in scuffle with one of the police personnel facing each other. Therefore, if the service gun of the concerned police personnel was shot accidentally, the entry should have been from the front side of the deceased and exited from the back. However, the statement of the doctor, who examined the deceased, clearly indicates that the entry wound was on the nape of the neck below the occipital and the exit wound was on the left side of the cheek just left to the angle of the mouth. This would clearly indicate that the claim of the respondents that the deceased was accidentally shot in the scuffle stands belied. We are of the view that it was the highhandedness on the part of the police personnel which led to the death of the petitioner's husband. It is unbelievable that in a scuffle, which had taken place face to face, the petitioner's husband could not have been accidentally shot from the back of his neck and exited from the left side of the cheek. We are, therefore, convinced that it was not an accidental firing of the service gun of the police personnel, but was an intentional killing of the husband of the petitioner and, that too, at point blank. The Inquiry Report came to the conclusion that there was no foul play in the incident that occurred on 23.06.2020. However, the view of our findings, we are unable to agree with the findings of the Inquiry Report. Accordingly, we are of the view that the petitioner deserves to be compensated for the loss of her husband.

13. In Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & ors, (1993) 2 SCC 746, a letter was sent to the Hon'ble Supreme Court by Smt. Nilabati Behera about the death of her son which was converted into a petition under Article 32 of the Constitution of India for determining the claim of compensation. The Hon'ble Supreme Court, after referring to its various decisions on the similar issues, was of the view that the liability of the State of Orissa to pay compensation could not be doubted but the Hon'ble Supreme Court went ahead spelling out the principles as regards the liability of the State for payment of compensation and the liability in private law for payment of compensation in an action tort. It has been observed that the award of compensation in a proceeding under Article 32 or under Article 226 of the Constitution of India is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as defence in private law in an action based on tort. 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 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 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 and others in that line have to be understood and Kasturilal 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.

14. In D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416, a letter came to be treated as a petition which raises an issue to develop custodial jurisprudence and to formulate modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody. The Hon'ble Supreme Court reiterated the decision rendered in Nilabati Behera case and 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."

15. In *M.C. Mehta & anr. Vs. Union of India & ors.* (1987) 1 SCC395, the Hon'ble Supreme Court while observing that it has the power to grant remedial reliefs including the power to award compensation in appropriated cases, held:

"3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this

Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the Bandhua Mukti Morcha v. Union of India and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide Bandhua Mukti Morcha case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental

right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the

violation was gross and its magnitude was such as to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation."

16. From the aforesaid decisions of the Hon'ble Supreme Court, it is clearly seen that the Hon'ble Supreme Court or for that matter, the High Court in exercise of power under Article 226 of the Constitution of India is competent to award compensation in cases where the fundamental rights, guaranteed in the Constitution of India, have been infringed by the State authorities. It may be noted that the aforesaid decisions have been rendered by the Hon'ble Supreme Court on the general issue relating to the liabilities of the States to pay compensation in the cases of violation of fundamental rights.

17. In the case in hand, the petitioner's husband was shot at point blank from behind and the bullet exited from the left side of the cheek. It is a clear case of police atrocity, which led to the death of the petitioner's husband.

18. In view of the above, the instant writ petition is disposed of with a direction to the respondents, particularly, the respondent Nos.1, 2 and 3 to pay a compensation of Rs.10,00,000/- (Rupees ten lakhs only) to the petitioner within a period of six months from the date of receipt of a copy of this judgment and order.

19. It is made clear that this judgment and order shall not preclude the petitioner from approaching the appropriate forum including the civil court for redressal of her grievance under the private law towards payment of compensation.

20. The writ petition is accordingly allowed. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant