

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18310 of 2011

Smt. Kiran Devi W/O Subodh Mandal R/O Village + P.O. + P.S.- Habbipur,
District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Social Welfare Department, Patna
3. The District Magistrate, Bhagalpur
4. The Superintendent, Child Probation Home, Gaayghat, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. MD. WALIUR RAHMAN

For the Respondent/s : Mr. PAWAN KR. MISHRA GP-22

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 21-12-2015

The petitioner is the hapless mother of a young boy called Rajesh Kumar who was apprehended traveling without ticket by the Railway Police Force on 29.03.2011 for which RPF Case No. 164 of 2011 was lodged. Under the orders of the court he was lodged in the Observation Home (for short 'the OH') as he was held a juvenile in conflict with law. On 03.04.2001, the deadbody of Rajesh Kumar was found dumped in the overhead water tank of one portion of the OH. On retrieval of the deadbody, an FIR was lodged on 03.04.2011 vide Alamganj P.S. Case No. 84 of 2011 under section 302 IPC against another inmate of the OH. The deadbody was sent for autopsy which was carried out on 04.04.2011. The doctor found some bones fractured. The cause of death was asphyxia because of pressure on the neck by hard and blunt substance. The petitioner having found his son killed while lodged in the OH in the care and protection of the State filed diverse representations for payment of compensation to her as she being a poor lady belonging to the weaker section of the society

lost her young son due to sheer negligence on the part of the respondent in providing safety to his life. No heed was paid to those representations. Hence the writ petition.

Heard Mr. Waliur Rahman for the petitioner and the counsel for the State.

Parties have exchanged their pleadings.

It has been urged by Mr. Rahman that indisputably the son of the petitioner having been found as juvenile in conflict with law was lodged in the OH under the order of the court/J. J. Board. It was the constitutional obligation of the State to provide safety to his life while he was kept in the OH. That apart, the constitutional mandate under Article 21 of the Constitution obligates the State to ensure that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The respondent State inexplicably failed to discharge the responsibility resulting in the premature death of the son of the writ petitioner who is a poor lady earning her livelihood by vending vegetables. The explanation given by the State that it was a case of murder by another inmate of the OH shall not absolve the State of its constitutional obligation. There has been clear breach of the provision both legal and constitutional which resulted in premature death of her son for which the State is legally obliged to compensate. He has relied in support of his contention on **2015 (4) PLJR 277 (Sunaina Devi vs. State of Bihar) and AIR 1997 SC 610 (D.K.Basu vs. State of West Bengal).**

Per contra, the counsel for the State has submitted that the son of the petitioner became a victim of gruesome murder caused by another inmate of the OH for which a criminal prosecution has been launched in which, upon conclusion of investigation, charge sheet has been submitted against some



accused(s) including the inmate(s) of the OH. There is no criminal negligence in providing safety by the Superintendent of the OH to the victim. The victim being a juvenile was lodged in the OH on 29.03.2011. On 30.03.2011, during the counting of children at night, it revealed that the victim Rajesh Kumar was missing. This was reported to the Superintendent of the OH, Gaayghat, Patna. On 30.03.2011 the inmates of the OH were enjoying cricket match played between India and Pakistan on T.V. An enquiry was made wherein two inmates informed that they had seen the boy at 7.00 pm on that day and thereafter he was missing as the victim tried to escape from the OH. A search was immediately carried out but the victim boy was not found. On 03.04.2011 the security guard deputed at the gate of the OH informed that foul smell/odor was coming out from the water tank. Immediately, a search was made and the deadbody of the victim boy was recovered from the water tank and promptly an FIR was lodged against one named inmate of the OH. It has further been stated that the matter was also brought to the notice of the Bihar State Commission for Protection of Child Rights(BCPCR) which enquired into the incident and thereafter dropped the same finding no culpability on the part of the Superintendent of the OH. Similar enquiry was also made by the Bihar State Human Rights Commission (BSHRC) in which reports were called for. The BSHRC subsequently dropped the matter which was communicated to the Sr. Superintendent of Police, Patna on 27.06.2012. If there was no negligence much less criminal negligence on the part of the in charge of the OH, then the petitioner may not be entitled to compensation. It is not a case of death caused by atrocities committed on the victim by the State functionaries. The court has been invoking the writ jurisdiction under Article 226 of the Constitution of India to grant compensation where the death occurred due to atrocities committed by the police or the State

Administration who are obliged to provide safety and security to the citizens.

Few foundational facts are limpid. The victim was lodged in OH under orders of the court/J.J. Board. He was killed while lodged in OH. Section 11 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act') provides as under:-

“11. Control of Custodian over juvenile_ Any person in whose charge a juvenile is placed in pursuance of this Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.”

Indisputably, the victim died unnatural death while in the care and protection of the State. It was the constitutional duty of the State to provide safety and security to his life. Slackness on the part of the administration thus contributed to the death of the son of the petitioner. In case of **Sunaina Devi** (Supra) this Court found the unnatural death of the detenu in jail custody to hold a case of violation of his fundamental right. The respondent State may be right in submitting that it is not a case of custodial death due to atrocity on the victim by the police or the administration of the State, but nonetheless it is a case of unnatural death of the victim while in the care and protection of the State. The petitioner is a poor lady earning her livelihood from vending vegetables. She has knocked the door of the Court to invoke its equitable jurisdiction for compensation. Law is settled beyond cavil. In a case where the Court finds the petitioner entitled to compensation for violation of certain fundamental right of

the citizens the arms/doors of the Court are always open. The State being a welfare State must soak some of the tears of the hapless lady who lost her young son while in the care and protection of the State. Whether the negligence on the part of the administration was culpable or not would not be of much relevance. The culprit of the murder may be punished but that will not alleviate the loss in terms of mental agony and distress as also the loss of earning hand suffered by the petitioner.

As a palliative measures, this Court, without delving into the actual loss suffered by her on account of the pains and agony and actual monetary loss suffered by her would direct the State to pay compensation to the petitioner in the sum of Rs. two lakh only within six weeks from today. If any ex-gratia payment or otherwise has earlier been made, the same may be adjusted by the respondent State against such payment of the compensation. Needless to observe, the petitioner shall be at liberty to seek adequate compensation from the State in accordance with law.

The writ application is allowed with the aforesaid observation(s)/direction(s).

(Kishore Kumar Mandal, J)

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