

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P(C) NO.109 OF 2012

Smt. Shukla Saha,
wife of late Palash Saha,
resident of Amiya Sagar Par,
Hari Ganga Basak Road,
near Mitterson Lane,
P.O. Agartala, P.S. West Agartala,
Sub-Division: Agartala,
District: West Tripura

..... Petitioner

- Vs -

- 1. The State of Tripura,**
represented by the Chief Secretary,
Department of Home,
Govt. of Tripura, Agartala,
having his office at New Secretariat Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division: Agartala, District: West Tripura
- 2. The Secretary,**
Department of Home, Govt. of Tripura,
having his office at New Secretariat Complex,
Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
Sub-Division: Agartala, District: West Tripura
- 3. The Director General of Police, Govt. of Tripura,**
having his office at Police Head Quarters, Agartala
P.O. Agartala, P.S. West Agartala,
Sub-Division: Sadar, District: West Tripura,
- 4. The Superintendent of Police,**
West Tripura,
having his office at Police Head Quarters, Agartala
P.O. Agartala, P.S. West Agartala,
Sub-Division: Sadar, District: West Tripura,
- 5. The Officer-In-Charge,**
West Agartala Police Station,

Government of Tripura,
 having his office at Agartala, P.O. Agartala,
 P.S. West Agartala, Sub-Division: Sadar,
 District: West Tripura

- 6. Tripura State Rifles,
 represented by the Director General of Police,**
 Government of Tripura,
 having his office at Police Head Quarters, Agartala,
 P.O. Agartala, Sub-Division: Sadar,
 District: West Tripura
- 7. Sri Ratan Kumar Sarkar,**
 Investigating Officer of West agartala P.S. Case No.235/2011,
 holding the post of Inspector of Police(CID),
 having his office at Bidur Karta Chowmuhan, Agartala,
 P.O. Agartala, P.S. West Agartala,
 Sub-Division: Agartala, District: West Tripura

..... Official Respondents

- 8. Sri Amarjit Debbarma,**
 son of not known resident of Abhoynagar,
 P.O. Abhoynagar, P.S. East Agartala,
 Sub-Division: Sadar, District: West Tripura,
 holding the post of Assistant Commandant, 11th Battalion, TSR
- 9. The Police Accountability Commission, Tripura,**
 represented by its Secretary,
 having office at Shyamali Bazar, P.O. Kunjaban,
 P.S. West Agartala, Sub-Division: Sadar,
 District: West Tripura

.....Private Respondents

- 10. The Chairman,**
 Police Accountability Commission, Tripura,
 having his office at Shyamali Bazar, P.O. Kunjaban,
 P.S. West Agartala, Sub-Division: Sadar,
 District: West Tripura

..... Proforma Official Respondents

**B E F O R E
 THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. Somik Deb, Advocate

For the respondents : Mr. B. C. Das, Advocate General,
Ms. A. S. Lodh, Addl. G. A.

Date of hearing : 18.11.2015

Date of judgment & order : 11.12.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By this writ petition the petitioner, a grief-stricken mother lost his son on 11.07.2011 allegedly for fire opened by the respondent No.8 who was holding the position of Assistant Commandant, 11th Bn. of Tripura State Rifles or the personnel who accompanied him at the relevant point of time.

2. The petitioner's son, namely Papai Saha was an energetic young man. For premature death of his father, he discontinued his education and joined hands with his elder brother for running a business of steel utensils at the Hawker's Corner, Agartala. On the fateful day, the Indian National Congress(I) organised an agitation, which went berserk in front of West Agartala Police Station and suddenly it resulted in wholesome deterioration of law and order situation. The tranquil city turned turbulent within a moment. The allegation of the petitioner in the writ petition is that the wife of the respondent No.8 was purchasing some gold ornaments from a jewellery shop, called 'Shyam Sundar Co. & Jewellery' when the said turbulence broke out. As a result, the respondent No.8 sent the armed TSR personnel to rescue his wife from the said jewellery shop. Without any provocation they open fire from

their sophisticated weapons and the youngest son of the petitioner fell prey to the bullets fired by them. When her son was taken to the GBP hospital, he was declared dead. From the post-mortem report (Annexure P/2 to the writ petition), it is clear that petitioner's son died out of the bullet injury.

3. On 16.07.2011, having recovered from the sudden grief petitioner's elder son filed an ejahar in the West Agartala Police Station, which was initially reluctant to register any case. However, later on West Agartala P.S. Case No.235 of 2011 under Section 302/34 of the IPC was registered against unknown TSR personnel. The petitioner has also averred that the Police Accountability Commission, Tripura inquired into that police action suo motu and the order dated 08.08.2011 passed in *suo motu* complaint No.14 of 2011 was sent to the Director General of Police, Government of Tripura, Agartala. The said order dated 08.08.2011 has been signed by all the members of the Commission and its Chairman. On the basis of certain media reports about the mob-violence and the police firing on 11.07.2011 around Kaman Chowmuhani area, Agartala, which resulted in the death of one Papai Saha, the son of the petitioner, aged 20 years, the Commission took up an inquiry as they were *prima facie* satisfied that the said incident required to be inquired into. According to their report, there are *prima facie* evidence to take a view that Papai Saha sustained fatal bullet injuries from a gunshot by a member of the police force. The said order dated 08.08.2011 has observed inter alia, as under:

“Right to life is a basic human right preserved by our constitution as fundamental right. Infringement of that right is a major misconduct within the meaning of section 66(2) of the Tripura Police Act, 2007 calling for an inquiry by the Commission. Hence this inquiry.

We have not officially received any information from police as to whether any regular investigation into the death of Papai Saha has been set in motion. We believe it has been done. If not we direct that it should be done immediately.

While it is within the exclusive jurisdiction of the police to investigate into the occurrence find out and prosecute the person responsible for the alleged offence, the job of the Commission is to see whether the police did act within the limits of the law wherefrom it derives its powers, the accountability of the police being to the rule of law only.

As regards the decision to open fire, the Supreme Court has laid down certain important guidelines in Naga People's Movement for Human rights Vs. Union of India. It is fact that the police in India to-day have to perform a difficult task particularly in deteriorating law and order situation, political turmoil, student unrest, communal riots and terrorist activities. Very difficult and extraordinary situations sometimes compel police to open fire. The guidelines provide that if you decide to open fire (a) give warning that fire will be effective; (b) attract attention before firing by bugle or other means; (c) aim at the front of crowd actually rioting or inciting to rioting; (d) do not fire into the thick of the crowd at the back; (e) aim low and shoot for effect.

The short inquiry by us did not find any evidence about substantial compliance of the above directions. However, the place of bullet injury on the victim being on the upper part of the body it is not difficult to hold that the aim was not low. This infringes the direction mentioned in(e) above.

Without troubling ourselves more with the question who is guilty for opening fire, which part will be definitely looked into by police investigating into the occurrence, we would like to know from police whether our provisional view from the short inquiry that the death of Papai had occurred from police firing is the most possible and acceptable factual position or it is in dispute. If disputed, we call upon the police authority to produce before us evidence to dispel our view. If not disputed, we propose to proceed with the question of suitable compensation to the surviving legal heir of the victim. Sub-section (2) of Section 70 of the Police Act provides that the commission may recommend to the State Government payment of monetary compensation by the government to the victim

of the subject matter of inquiry. In the case in hand the surviving victim is the mother of the deceased Papai Saha.

It is trite to say that victim compensation is now a developing ethos in the modern society. It has recognition even in Section 29(C) of the new Police Act which enjoin every police officer to facilitate compensation for the victims of crime.

In **D.K. Basu Vs. State of West Bengal** the Supreme Court observed:

'Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do.'

The upshot from the above premises lead us to opine that a compensation which may extend to rupees five lakh may be suitable amount in consideration of the age of the deceased and the circumstances in which he lost his life. But before finalising our opinion we are required by first proviso to section 70(1) of the Police Act to afford an opportunity to the Director General of Police, Tripura to present the departments' view and additional facts, if any, not already in the notice of the Commission.

We order accordingly for such presentation within 15(fifteen) days from to-day. A copy of this order shall be forwarded to the Director General of Police, Tripura, Agartala."

4. The respondents No. 1, 2, 3, 4, 5 and 6 filed a combined counter-affidavit and on denying the general allegations made in the

writ petition they stated that the unlawful activities were unleashed by some processionists in front of West Agartala Police Station and against them West Agartala P.S. Case No.231 under Sections 148/149/325/326/307/427/436 of the IPC had been registered and was investigated. Those respondents have categorically denied that the respondent No.8 was present in the place of occurrence or he and his armed personnel opened fired at all. They have asserted that, in the course of investigation of Agartala P.S. Case No.235 of 2011 it revealed that on 11.07.2011 at about 1700 hours, one maruti gypsy of TSR 1st battalion stopped in front of 'Shyam Sundar Co. Jewellers', which is about 20 feet away from the spot where the petitioner's son with his brother were standing. The wife of the said Assistant Commandant and her colleague came out of the said jewellery shop. They were evacuated through a lane along side Amiya Sagar Par. The independent witnesses corroborated such fact. Moreover, the respondents have asserted that no force was deployed nearby Meterson lane of Hari Ganga Basak Road on the relevant date and time of incident. The other allegations are also squarely denied by them including that they were reluctant to register the First Information Report (FIR) when the written ejahar was lodged by the elder son of the petitioner, namely Pinaki Saha. So far the report of the Police Accountability Commission is concerned, the respondents have categorically stated that the said report did not follow the basic parameters of inquiry. By their letter, in response to the said order dated 08.08.2011, they urged that the Police Accountability Commission's finding is not tenable. They have given vivid details how the said

'unruly' agitation broke out and spread over to the various nook and corner of the city at the behest of the said political party. They have asserted that:

“The mob, which was being led by Congress leaders, broke the police barricade near Dhaleswar side and started brick batting and pelting stones/missiles at the security personnel. Some of the agitators entered the by lanes leading towards MBB College to disrupt the examination. SP West, Shri Anish Prasad along with available staff managed to restrain the crowd from moving towards MBB College but by that time about 300-400 agitators had already managed to move towards MBB College. SP West, Shri Anish Prasad and other police personnel deployed at the above location sustained injuries to their person in the process.”

5. As sequel to the said agitation, restriction under Section 144 of the Cr.P.C. was imposed. Even a case was registered against the members of that unlawful assembly. On 11.07.2007, the Indian National Congress took permission from the police for organising the peaceful protest rally which would originate from the front of the Congress Bhawan. When the said rally was moving towards Kaman Chowmuhani, the supporters in the tail of that procession unleashed violent activities, damaging the Government vehicles and private properties. The Addl. S.P. (Urban), who was in position observed utmost restraint in controlling the ground, but the processionists did not heed to him. The Superintendent of Police including the Addl. S.P. of Police (Urban) and the other police personnel were attacked. The processionists were incited by the senior Congress leaders and they continued to pelt stones, brickbats, crude bombs and fire from illegal fire arms etc. One TSR jawan sustained multiple splinter injuries on his back and became

unconscious. The police personnel were trying to control the situation, but those leaders were still inciting the mob and spreading violence in all directions. They were throwing country-made crude bombs all around to spread further panic. Within a moment, the entire area became panicked. Three police vehicles, parked near the West P.S. was set in fire by the unruly mob. In such a situation, Papai Saha fell victim to bullet injury. From the post mortem examination conducted by a team of autopsy surgeons, it has been confirmed that his death was due to gun-shot injury. Papai Saha received the gun-shot at Meterson lane, 40 meters away from West PS. When the respondents filed the counter-affidavit, investigation was on.

6. In the counter-affidavit, the Tripura Police Accountability Commission's report has been lambasted for alleging serious misconduct without affording any opportunity to the police. Section 72 of the Tripura Police Act, 2007 prohibits the Police Accountability Commission to take up any inquiry when the matter is in seison of any court. A magistratial inquiry was ordered by the Home Department, Govt. of Tripura. All these matters were brought to the knowledge of the Police Accountability Commission by the letter dated 23.08.2011 (Annexure-R/2 to the counter-affidavit). But, in the entire counter-affidavit those respondents did not attribute any involvement of the deceased son of the petitioner in the agitation nor stated that the death was a result of felonious act. The respondent No.8 also denied his involvement in the death of Papai Saha, by filing a separate counter-affidavit. The petitioner had also applied for investigation into the

murder of his youngest son by the Central Bureau of Investigation (CBI) by filing a separate writ petition, being WP(C) of 107 of 2012, which was dismissed by this court by the judgment and order dated 23.11.2013 holding that, that was not such a case where this court would intervene or direct investigation by the CBI or any other agency. This writ petition was filed simultaneously with that writ petition. The petitioner has claimed compensation to the extent of Rs.18,79,000/- assessing the same on various counts, as is available in paragraph 4.3 of the writ petition. This petition is a public law remedy action for compensation.

7. Mr. Deb, learned counsel appearing for the petitioner has submitted that, this court by the judgment and order dated 27.09.2014 delivered in WP(C) No. 61 of 2012 has awarded compensation in favour of one victim of the gun-shot in the same occurrence. In the said judgment it has been observed as under:

“In this background, this Court would hold that even if it is assumed that the TSR personnel did not open fire that would not absolve the respondents from their liability to compensate a citizen who has suffered for failure of maintenance of the law and order in the heart of the city. Even no restriction of movement was declared as a matter of caution. No such averment is found in the entire counter-affidavit. As such, this Court has no hesitation to hold that due to breach of public duty by the State, the petitioner's son has suffered that disability.”

8. Mr. Deb, learned counsel appearing for the petitioner has urged that the same principle can also be applied in this writ petition for giving compensation. Whether the State can be made liable for discharging its duty in every matter or not - is highly debated all over the world. A Canadian judgment in the case of **John Just v. Her**

Majesty The Queen, has been discussed in **(1989) 2 SCR 1228** alongwith some other English laws and other Canadian cases. In that case, the Canadian Court has held that :

“In order for a private duty to arise in this case, the plaintiff would have to establish that the Rockwork Section, having exercised its discretion as to the manner or frequency of inspection, carried out the inspection without reasonable care or at all. There is no evidence or indeed allegation in this regard... I would therefore dismiss the appeal.”

9. The apex court was in the view that just because an authority owes a public duty under any statute it can in no way mean that such a statute will give rise to a duty of care. But, the Indian law has travelled far beyond the restrictive understanding of public law jurisdiction. In **D.K. Basu v. State of West Bengal**, reported in **1997 CrI. LJ 743**, the apex court has held as under :

“The court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further to give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong and give judicial redress for legal injury is a compulsion of judicial conscience.”

10. In this case, the respondents No.1 to 6 have clearly admitted that there was total collapse of law and order situation in the place where the petitioner's son was shot dead. The police was not in a situation to control the 'unruly mob'. The police gave the permission to organise the rally without any assessment as to the nature of agitation,

participation and without any prohibitive and protective preparation. As a result, the unruly agitators, by whatever name they may be called, seized the city and there was a serious break-down of law and order situation when it is the police or some miscreants or someone else opened the fire and the petitioner's son fell prey. That part of culpability is subject to the investigation or the trial of the competent court. This court will not make any observation in this regard. This court is concerned with the unfortunate and untimely death of a young person for the total failure of law and order and complete breach of public duty by the police. The State failed to protect the fundamental right to life of a young citizen.

11. Hence, this court is of the view that the petitioner is entitled to compensation under the public law jurisdiction. In the public law remedy, the compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for their breach of the duty and is independent of the rights available to the aggrieved person to claim compensation under the private law action, based on tort through a suit instituted in a court of competent jurisdiction and to prosecute the offender under the penal law. This law has been reiterated in **Nilabati Behera alias Lalita Behera vs. State of Orissa** reported in **1993 (2) SCC 746**. Thus, the compensation as awarded in the public law jurisdiction is palliative in nature not on ascertaining the damage that actually has been suffered by the victim. Such damage can only be awarded in the civil suit, not under the public law jurisdiction.

12. The doctrine of sovereign immunity is a legal concept which has founded on the concept that the State cannot commit any wrong. But there are circumstances when the State can be held liable for the wrong committed by its machinery or the personnel. The State has been provided with the public duty to guarantee the safety of life and the liberty to life as enshrined in Article 21 of the Constitution of India. If infringed by any action or inaction of the State, the State becomes liable to be robed out of that immunity. Here is a case where the State's failure to discharge the public duty, has taken away the life of a young citizen. Their own counter-affidavits is a testament of breach of public duty. This court has no hesitation to hold that the State is liable to compensate the petitioner. That compensation would be however in addition to any damage that can be recovered for tort by a civil action or under the victim's compensation scheme during or on culmination of the trial.

13. Having regard to the age, both of the deceased young man and the petitioner, and their family's economic condition this court is of the considered opinion that the State shall, represented by the respondents No. 1, 2 and 3 in particular, compensate the petitioner. The petitioner shall be paid a sum of Rs 5,00,000 (rupees five lakhs) and that amount shall be paid within a period of 3(three) months from today. In the event of failure to pay within the stipulated time, that amount shall carry interest @ 9% from the day of expiry till the payment is made. Any observation made in this judgment and order will have no bearing on the trial or any other judicial proceeding that has emerged from the said occurrence.

14. The writ petition is allowed to the extent as indicated above.

There shall be no order as to the costs.

The records as produced by the official-respondents shall be returned to Ms. A. S. Lodh, learned Addl. G.A.

JUDGE

Moumita