

**ORISSA HIGH COURT : C U T T A C K**

**W.P.(C) NO.11506 OF 2006**

**AFR**

*An application under Articles 226 & 227 of  
the Constitution of India.*

***Nigar Begum***

***: Petitioner***

***-Versus-***

***State of Orissa & ors.***

***: Opposite Parties***

For Petitioner : Mr.Sk.Zakir Hussain, Adv.

For O.Ps.1 to 3 : Mr.S.P.Panda, AGA

For O.P.4 : Mr.P.K.Mohanty, Adv.

**J U D G M E N T**

**CORAM :**

**JUSTICE BISWANATH RATH**

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Date of Hearing & Judgment : 20.02.2023

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1. The Writ Petition involves a claim of compensation on a serious allegation of death of an innocent civilian and an Engineer involving an illegal act by Police Personnel. This Court here records that this is an unfortunate case pending here for such long time.

2. Factual involvement runs as follows :-

Deceased Sayed Mamtaj Ali, the eldest son of the Petitioner (mother) was serving as Supervisor (Mechanical) and was employed on

contractual basis with the Hindustan Construction Company Ltd. since 8.11.2004 in their “Chandikhol-Paradeep Port Trust Road Project” and at the time of death, he was drawing a sum of Rs.5095/- per month. Deceased held diploma in Mechanical Engineering having qualified himself from the NVJ Polytechnic, Bangalore. Involving some incidence, one Jayanta Kumar Das working as Diesel Genset Operator at the Mahanadi Bridge site of Hindustan Construction Company Ltd. was forcibly taken away from the site in the midnight of 28/29.11.2005 by O.P.4, ASI Muralidhar Sahoo, who was then also the Officer-in-Charge of the Chakradharpur Outpost. On the direction of the site in-charge, some of his co-employees including the deceased went to Chakradharpur Outpost to enquire into the reason of taking away of said Jayanta Das. It is alleged that the ASI sitting in the Outpost in an inebriated condition started abusing one Nihar Roy also accompanied the team including the deceased, deceased attempted to pacify said Muralidhar Sahoo, the Officer-in-Charge but he suddenly brought out his revolver and opened fire, as a result the deceased lost his life there itself. Deceased for material establishment got two bullet shots on him; one at his chest and the other at his waist leading to his death at the spot. There was no immediate registering of the case except there is communication of lodging of a report on 9.12.2005. Subsequently, an F.I.R. was drawn, vide P.S. Case No.267/2005 against the persons involved under the provisions of

Sections 147, 148, 452, 341, 332, 307, 294, 427/149 IPC read with Section 7 of the Criminal Law Amendment Act. This was followed with an administrative enquiry on the direction of Hon'ble Chief Minister as he then was though the R.D.C.(Central), Cuttack. Post-mortem was conducted by the C.D.M.O., Jagatsinghpur clearly revealed two bullet injuries sustained by the deceased and reason of death as opined was due to irreversible hemorrhagic shock with recovery of two bullets also. On the premises of taking away life of an innocent by none else than an S.I. of Police, loss to the deceased, loss to family, the mother filing the Writ Petition while claiming adequate compensation also claimed for an independent and impartial enquiry into the incident.

3. Answering the Respondent filing counter through the Assistant Collector, Judicial, Jagatsinghpur after twelve years of filing of Writ Petition while attempting to give a different colour to the incident taking place submitted that the said Jayanta Das was arrested involving a theft and while attempting to control a mob of 30 persons involving the son of the Petitioner while this Party attempting to take way said Jayanta forcibly from the Police custody, it is claimed, the S.I. remained undone for the unlawful act of the Mob and the S.I. accordingly fired two rounds from his service revolver. Finding the Mob remained uncontrollable, the S.I. opened with three rounds fire to disperse the unlawful Mob in order to save his life. O.P.2 brought to the notice of this Court different Police

F.I.R. attempted to justify the firing taking place in an attempt to save life of a public servant the S.I. of Police. Through Sub-Paragraph of Paragraph-5 of the counter affidavit of O.P.2, it is claimed that the R.D.C. report following the direction of the Home Department dated 5.12.2005 was awaited and there has been payment of Rs.1.00 lakh to the next kin, vide letter dated 29.11.2005. It is unfortunate to note here that the affidavit of responsible Officer was filed on 11.1.2018 after thirteen years of R.D.C. report submitted on 29.11.2005 clearly observing that there is illegal killing of an innocent life thereby while directing to initiate proceeding against the erring officer also directed for considering adequate ex-gratia and the O.Ps. even in 2018 claim awaiting the report of the R.D.C.

4. Keeping in view the position of Parties involved herein, this Court finds, considering the seriousness in the incident and a lawful response required to be given to the bereaved family as well as the citizens of the State for a law and order situation in the State and the turmoil faced in the State Assembly, it appears, there was direction by the then Chief Minister of the State for undertaking an enquiry exercise by the Revenue Divisional Commissioner, Central Division, Cuttack, who appears to have submitted his report filed herein as Annexure-A/2 since 1.2.2006. For the State Authority sitting over such matter even in spite of the report favouring the bereaved family member, the Applicant herein

(mother of the deceased brought the Writ Petition with the following prayer :-

“Under the circumstances the petitioner therefore prays that this Hon’ble Court may be pleased to admit this writ petition for hearing, issue notice of Rule Nisi, calling upon the opposite parties to show cause as to why a direction shall not be given to an independent and impartial agency to conduct an investigation into the circumstances leading to the death of the petitioner’s son by treating annexure-1 as an FIR.

And to further show cause as to why the petitioner shall not be suitably compensated by the State Government for the untimely death of her son caused by a public servant acting in excess of his powers.

And upon the opposite parties not showing cause or showing insufficient cause the rule be made absolute as against them and a writ of Mandamus or any other appropriate writ be issued directing investigation into the circumstances leading to the death of the petitioner’s son and suitable compensation be directed to be paid by the State Government to the petitioner for her son’s death having been caused by a public servant acting in excess of his power.

And to grant such other relief/reliefs as may be deemed fit and proper...”

5. There have been several hearings of the matter recording that there has been direction for enquiry by none else than the Hon’ble Chief Minister of the State, further recording there has been payment of a sum of Rs.1.00 lakh to the bereaved family by way of interim compensation, further also observing a direction to the State Government for producing the report, if any. As a consequence, this Court finds, an enquiry report has been filed by way of additional affidavit by O.P.2, Deputy Collector, Collectorate Jagatsinghpur, vide Annexure-A/2 dated 14.2.2023. This Court finds strange, through Pararaph-4 the Deponent claiming there has

been direction for administrative enquiry by the R.D.C. and his report is awaited even while filing the report on enquiry by the R.D.C. dated 1.2.2006.

6. This Court keeping in view the submission of the respective Counsel and the pleadings herein finds, the undisputed fact remains to be in the night of 28/29.11.2005 in a police firing at Chakradharpur Outpost in the district of Jagatsinghpur, one Mumtaz Ali, S/o.Dr.Manwar Ali of Dhyansahi, Salipur, Cuttack died at the spot. There was lot of hue and cry and law and order situation involving such incident. Being apprised and considering the sensitive issue involved therein, the then Hon'ble Chief Minister on 29.11.2005 had announced ex-gratia of Rs.1.00 lakh for the next of kin of the deceased Mumtaz Ali, who was killed in police firing at Lock Outpost, Chakradharpur. There was hue and cry on the floor of the State Legislative Assemble where Hon'ble Chief Minister, as he was then, also made an announcement for an enquiry to the incident through the R.D.C., Central Division, Cuttack and submitting his report. It appears, soon after the enquiry and based on the commitment of the Hon'ble Chief Minister, the R.D.C. took up preliminary enquiry in presence of the D.I.G.(C.R.), District Magistrate and S.P. also involved discussions with the Project Manager, Personal Officer of H.C. even involved oral evidence of all of them. There has been also involvement of evidence of outsiders. There is also involvement of some outsiders of the

Lock Outpost taking oral evidence from a private driver, a Sentry Constable, a Constable in presence of the D.I.G. of Police. There is involvement of an affidavit of several persons, namely, Sanatan Sethi, Bhagabat Muduli, Pradeep Kumar Lenka, Ramesh Malik and Babaji Choudhuri involved therein private individual as well as police personnel. After a threadbare enquiry examining on the issue of sequence of event leading firing, the R.D.C., Cuttack came to the following observations :-

“It is undoubtedly an established fact that Industrial and construction workers have strong unity which forms a bond. If one is taken away or assaulted or attacked by anybody, they defend unitedly. This happened in the case of arrest of Sri Jayant Kumar Das. During his arrest he was physically assaulted along with Sri Anshuman Samal, who protested. The others witnessed the incident. Then all of them unitedly moved to the Police outpost, Chakradharpur to rescue the victim from the clutch of the drunken Police Officer. They (numbering about a dozen or a few more) reached the Police outpost in a tipper. Sri Muralidhar Sahoo, by that time, was sitting there in the outpost wearing lungi, having covered his body with a chadar. Hearing the noise, Sri Muralidhar Sahoo opened the door and faced the group of people who were unarmed. Undoubtedly there was hot exchange of words for the release of Sri Das. But there is no evidence of any attack. The situation could have been tackled.

In the meanwhile Sri Muralidhar Sahoo, S.I. went to the side room and brought his loaded revolver. He also threatened the people to open fire if they do not disperse. The he opened fire, killing Mumtaz Ali on the spot and grievously injuring Sri Nilamadhab Siya. The cold winter night could not have been darker.

The Memo of Arrest of Sri Jayant Kumar Das reveals that the date and time of arrest was on 29.11.2005 at 1.00 AM and the time of preparation of arrest memo was at 1.05 AM. Sri Kalipada Pattnaik has signed as the witness. This Kalipada Pattnaik is an employee of the Hindustan Construction

Company, who has stated in his affidavit that his signature was obtained under duress. Significantly, the report of the Superintendent of Police states that at about 11.00 AM, SI, Sri Muralidhar Sahoo arrested Sri Jayant Kumar Das and brought him to the outpost at about 1.15 AM. At about 1.30 AM, the agitators came. By his own affidavit, Sri Kalipada Pattnaik came along with the group. Did he come and sign the Memo of Arest at the outpost in the presence of his agitated colleagues when his ostensible mission was to free him ? On the contrary, the signature of Sri Kalipada Pattnaik appears to have been obtained after he was taken into custody after the incident of firing.”

On the aspect whether the firing was justified and proper proceedings were followed before resorting to firing deciding through Chapter No.III, the R.D.C. came to observe as follows :-

“The Collector & District Magistrate, Jagatsinghpur in his report dated 14/15.12.2005 has stated that the Sub-Inspector of Police, Sri Muralidhar Sahoo opened 5(five) rounds of fire from his service revolver, as a result of which two members of the gathering identified as umtaz Ali, S/o.Manwar Ali of Village-Dhuansahi, P.S.-Salipur, District-Cuttack and Sri Nilamadhab Siya sustained injuries and they were shifted to the hospital for treatment. Mumtaz Ali died of bullet injuries and the other injured Sri Nilamadhab Siya was shifted to Kujang P.H.C. and subsequently, to S.C.B. Medical College and Hospital, Cuttack for further treatment.

The Collector & District Magistrate further reports that there may be justification, but no procedures appears to have been followed by the S.I. before resorting to firing. Had the S.I. declared the acts of Mob unlawful and commanded for the dispersal of the assembly before the firing, perhaps there would have been no occasion for opening fire.

I do agree with the above statement of the Collector & District Magistrate, Jagatsinghpur and conclude that neither the firing was justified nor proper procedure was followed before resorting to firing. The fatal wound appears to have been caused by the bullet that has entered the thoracic cavity, passed through the left lungs and lodged at the right clavicle.



The firing has been done to kill, and not to deter, because it has not been aimed low, at deceased Mumtaz Ali, Sri Muralidhar Sahoo, the SI of Police, has pumped another bullet into the pelvic cavity of the deceased, which proves that the firing was indiscriminate. In any case, an engineer working on a National Highway Project is an unlikely ringleader of a mob.”

7. From the above, this Court finds that neither the firing was justified nor proper proceeding was followed before resorting to firing and the fatal wound appears to have been caused by the bullet that has entered the thoracic cavity, passed through the left lungs and lodged at the right clavicle. The firing has been done to kill and not to deter because it has not been aimed to low, at the deceased. It is also observed, Muralidhar Sahoo, the S.I. of Police has pumped another bullet into the pelvic cavity of the deceased, which proves that there has been indiscriminate firing on an Engineer working in an important Project.

8. In Chapter-IV, the R.D.C. considering the measures taken and the quantum of force used in anticipating preventing and handling situation were adequate or in excess of requirement and the responsibility for such act of commission or omission, the Commissioner has come to observe as follows :-

“In view of the aforesaid circumstance the above averment of the Superintendent of Police, Jagatsinghpur seems incongruous. Measures taken by the Police Officer in handling the situation were neither appropriate nor adequate. The S.I. of Police failed miserably in his anticipation, intelligence, handling of the situation and above all in his duty and discipline as a responsible police officer.

Due procedures were not observed at the time of arrest of Sri Jayant Kumar Das. Besides, I am surprised to find that the IIC, Paradeep Police Station vide his letter dated 05.12.2005; has filed affidavits of the persons named below which smacks of an attempt to justify an unjust deed.

1. Sri Babaji Choudhury, a betel shop-keeper of Bhutmundei Bazar.
2. Sri Ramesh Mallick, a resident of Bhutmundei (Who is working as a Home Guard).
3. Sri Sanatan Sethi, sells fish at Paradeep.

For general circulation it was notified in daily Samaj and Sambad dated 12.12.2005, that persons who have direct knowledge of the incident may submit their affidavit in person or by registered post before my Secretary on any working day between 10.00 M and 5.00 PM till 19.12.2005. All unsolicited affidavit filed before 12/12/2005 have no evidentiary value.

It is interesting to find that one witnesses namely, Sri Sanatan Sethi has stated before me that on the direction of IIC, Paradeep he had signed in the affidavit and he did not read it entirely. The informant, Sri Ramesh Mallik, is a home guard. He has stated in his affidavit that on 27.11.2005 evening, when he was in Bhutmundei bazar, S.I., Sri Sahoo had asked him to be alert about the thief of the wielding transformer of the Hindustan Construction Company. He has stated in his affidavit that he came to know about the involvement of Sri Jayant Kumar Das of the same company ON THE NEXT DAY. But in his deposition before me, Sri Mallik has stated that he overheard Sri Jayant Kumar Das discussing the deal about the stolen wielding transformer with an unknown person at Bhutmundei Bazar on 27.11.2005 at 8.00 PM and informed thana babu at 9.00 PM the same night. If Sri Mallik had been tutored to parrot this theory, he had not been tutored well. The contradiction is glaring and severely erodes his credibility. It cannot be relied upon.”

Above goes to make it clear that there has been serious negligence. There has been also no following of proper procedures and directly entangling

the irresponsible behavior and the law and order Authority including the S.I., Muralidhar Sahoo involved.

9. Coming to examine Chapter-V, any other matter connected with or incidental thereto as the Enquiring Authority may consider appropriately including any suggestion to such matter. The Commissioner came to observe as follows :-

“From my visit of the site of incident, affidavits filed by different persons and my enquiry, I am inclined to believe that the police Officer in charge of Chakradharpur outpost has miserably failed in discharging his duty as a Police Officer. Being mentally unsteady he has exhibited his gross non-application of mind, his intelligence and commonsense in handling a small but sensitive issue like this. In the sudden rush of anger Sri Sahoo caused the death of an innocent person named Mr.Mumtaz Ali by firing from his service revolver. He has grievously injured another person, Sri Nilamadhab Siya.

I am further inclined to believe that S.I. of Police Sri Sahoo after the incident has tried to paint the act of killing as an act of self defence. This appears to me to be more dangerous than the incident itself.

Therefore, I suggest penal action be taken against the S.I. of Police, Sri Muralidhar Sahoo as envisaged under the relevant sections of the I.P.C. The Superintendent of Police has reported that on the report of the mother of the deceased alleging murder of her son by S.I., Sri Muralidhar Sahoo, Paradeep P.S. Case No.273 dated 07.12.2005 u/s 302 IPC has been registered against S.I., Sri Muralidhar SAhoo and is under investigation. The case should be handed over to the Crime Branch and investigation should be completed within three months.

I further recommend to Government that due to merciless act of S.I. of Police the precious life of Sri Mamtaz Ali an engineer was lost. He was a young person and a long life was lying before him. The misery and sorrow of Mamtaz Ali's living parents can no way be compensated. But however, like a

drop in the ocean, I recommend to Government to suitably increase the ex-gratia grant.”

Through the above Chapter, the Commission while observing the Police Officer in-charge of Chakradharpur Outpost miserably failed in discharging his duty as a Police Officer excepting his gross non-application of mind, failure in exercise of intelligence and commonsense in handling a small but sensitive issue involved therein, the Commissioner has also observed, there is sudden rush of anger by Sri Muralidhar Sahoo, the S.I. causing the death of an innocent person by indiscriminate firing by the S.I. from his service revolver, also grievously injuring another person, Nilamadhab Siya. It reveals that the R.D.C. has believed that the S.I., Sri Sahoo after the incident tried to paint the act of killing as self defence thereby the S.I. did not remain truthful in his service. Thus while suggesting finally for penal action against the S.I., Sri Muralidhar Sahoo in suggesting appropriate action through the Crime Branch, further also recommending the Government to compensate appropriately and while observing the grant of ex-gratia absolutely insufficient, the Commissioner recommended the Government to consider appropriate compensation keeping in view the death of the victim involving an illegal act of the State while also keeping in view there is loss of life of a young Engineer.

**10.** With the aforesaid observations, the findings of the Authority and the observations of this Court herein above, this Court finds, it is unfortunate to note that even though such a report was given by the Competent Authority, the Enquiry Authority being appointed by the State on the declaration in the floor of State Legislative Assembly since 1.2.2006 and there was no timely attempt to compensate the bereaved family even on the coming of this litigation in the year 2006 by the widow-mother of the victim, an Engineer, bringing the litigation at her age of 53 years at the time of filing of this Writ Petition and already 70 years old by now. State Government instead of volunteering adequate compensation in the given circumstance is fighting such litigation under some plea or other since 2006. The case has also already seen as many as thirteen postings without any commitment from the State in the matter of actual grant of compensation even already a report of the Enquiry Authority being appointed by the State Authority and the report submitted since 2006. This Court keeping in view the age of the Petitioner already in her 70 years of age after losing her young and able-bodied son, who was an Engineer at the time of death and almost seventeen years have passed in the meantime, finds itself to be a mute spectator to the action of the State and still there is no effective response of the State. From the counter and the additional affidavit of the State-O.P., this Court in spite of enclosing the report dated 1.2.2006 finds, State did not remain truthful

to its citizen. There has been false oath even claiming State is awaiting for such report.

**11.** A mother losing her son at such age only can understand her suffering and no amount of money can bring back her star son. Undisputedly despite their status in the Society was an Engineer and an employee in an important Establishment. A brilliant son of the soil must have dreamt a lot coming to such position in his life here ends his life for no reason of him and a Civil Society has no right to sacrifice such a youth for his unable to control the law and order situation. There is even clear finding in the report involved on the S.I. killing the youth attempting to repaint the incident. State even though in its counter attempted to repaint and giving a different colour to the incident in spite of clear observation of the Commission.

It is also not understood when Government on the basis of same report initiates the departmental proceeding against the S.I. killed the deceased in part compliance of the very same report at the same time remaining a mute spectator in respect of observations/recommendations of the Commission for considering grant of appropriate ex-gratia.

It is also beyond imagination to realise the loss of mother having lost such a useful child. Compensation ought to take into account the status of the family so that the amount of ex-gratia does not make the

mother losing any of her expectations through such able-bodied son. For the opinion of this Court, no amount of ex-gratia can bring back her son.

12. This Court here takes down some of legal pronouncements by Hon'ble apex Court as well as this Court read as follows :-

***Malkiat Singh v. State of U.P. , (1998) 9 SCC 351***

2. In view of the report of ACJM this Court on 7-5-1996 passed the following order:

“Mr R.S. Sodhi the learned counsel for the petitioner, states that though the learned ACJM found on the basis of photographs that the petitioner's son Talvinder Singh is one of the persons who died in the incident involving firing by the U.P. Police, the CBI has not accepted the said finding regarding the death of Talvinder Singh. It is obvious that if he is found dead, the writ petition be only confined to the question of the entitlement of the petitioner to compensation. If the said Talvinder Singh is alive then he be produced by the police.

Issue notice.”

3. It is now an accepted position that Talvinder Singh died in the incident which took place on 13-7-1991. All attempts to find his body have proved futile. But from the photograph identified by the father and the grandfather of Talvinder Singh, it is established that he is dead, because the police had taken photographs of all those who were killed in those two encounters. Therefore, the only question which now survives in this petition is what amount of compensation should be paid to the petitioner to compensate him for the death of his son.

4. In a similar case i.e. in Writ Petition No. 632 of 1992 this Court awarded Rs 5 lakhs as compensation. We think that the ends of justice would be met if the respondent-State is directed to pay Rs 5 lakhs to the petitioner by way of compensation for the death of Talvinder Singh. The State shall pay this amount within 8 weeks. The learned counsel for the State states that the State will take out a draft in the name of the petitioner and will deposit the same with the Registrar of this Court. The Registrar shall hand over the draft to the petitioner after proper identification by Mr R.S. Sodhi, learned counsel for the petitioner. The writ petition is disposed of accordingly.

***Rohtash Kumar v. State of Haryana and others, (2013) 14 SCC 290***

8. After carefully perusing the inquiry report dated 17-11-2008 submitted by the Tahsildar, Narnaul and the inquiry report dated 7-1-2011 submitted by the Additional Deputy Commissioner and other relevant record, we are inclined to agree with the learned counsel for the appellant and the learned amicus curiae that Sunil appears to have died in a fake encounter. The post-mortem notes of Sunil state that the bullets were fired from a distance of

about 3-8 ft from the body. They further state that blackening and tattooing were present around the entry wounds caused by the bullets. This indicates that the shots were fired from a very short distance. There was entry wound on the back. The entry wounds are also seen on the chest. The location and nature of wounds are not consistent with the theory of genuine encounter. If the police party wanted to merely prevent Sunil from running away, they could have fired on the non-vital parts of his body. If the police version that Sunil was aggressive, that he and his companion wanted to kill the policemen to deter them from doing their duty and, therefore, Sunil fired at the police party was true, at least one member of the police party would have got injured. Significantly, no one from the police party was injured. There is also no formal record of any recovery of firearms from the body of Sunil. It is significant to note that Umesh who was riding the motorcycle at the time of encounter, was arrested and tried for offences under Sections 332, 353, 307 read with Section 34 IPC inter alia for using criminal force to deter public servants from discharge of their duty. The Sessions Court acquitted Umesh. The acquittal of Umesh makes a dent in the prosecution case that Sunil fired at the police when the police asked him and Umesh to stop.

**14.** Once we come to a conclusion that Sunil is killed in an encounter, which appears to be fake, it is necessary to direct an independent investigating agency to conduct the investigation so that those who are found to be involved in the commission of crime can be tried and convicted. But, as rightly pointed out by the learned amicus curiae directing an investigation, at this distant point of time, will be an exercise in futility. We are informed that witnesses would not be available. It would be difficult to trace the record of the case from the two police stations. Handing over investigation to an independent agency and starting a fresh investigation would be of no use at this stage. Reliance placed by the learned counsel for the appellant on *Rubabbuddin Sheikh* [*Rubabbuddin Sheikh v. State of Gujarat*, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] and *Narmada Bai* [*Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] is misplaced. Those cases arose out of different fact situations. No parallel can be drawn from them.

**15.** We share the pain and anguish of the appellant, who has lost his son in what appears to be a fake encounter. He has conveyed to us that he is not interested in money but he wants a fresh investigation to be conducted. While we respect the feelings of the appellant, we are unable to direct fresh investigation for the reasons which we have already noted. In such situation, we turn to *Nilabati Behera* [*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527] , wherein the appellant's son had died in custody of the police. While noting that custodial death is a clear violation of the prisoner's rights under Article 21 of the Constitution of India, this Court moulded the relief by granting compensation to the appellant.

**16.** In the circumstances of the case we set aside the impugned judgment and order dated 13-9-2010 [*Rohtash Kumar v. State of Haryana*, CRM-M No. 2063 of 2009, decided on 13-9-2010 (P&H)] and in light of *Nilabati Behera* [*Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC



(Cri) 527] , we direct Respondent 1 State of Haryana to pay a sum of Rs 20 lakhs to the appellant as compensation for the pain and suffering undergone by him on account of the loss of his son Sunil. The payment be made by demand draft drawn in favour of the appellant “Rohtash Kumar” within a period of one month from the date of the receipt of this order. The appeal is disposed of accordingly.

***Kalpna Mandal and Ors vs State of Orissa and Ors, AIR 2007 Ori 94***

2. An F. I. R. was lodged at Simulia Police Station on 7-2-2002 at about 9 a. m. alleging therein that the bus, namely, 'Dolphine' Dynamic', in which Sunil Mandal was travelling on 6-2-2002, while crossing Simulia Police Station, the Police personnel waived the bus to stop, but the driver instead of stopping it, sped away. The Police van which was chasing the bus started firing at the bus and it was found that the passenger sitting towards the left of the driver was instantly killed in the police firing. After receiving the aforesaid information, a case was registered under Section 304, I. P. C. against some police personnel of Simulia Police Station. Accordingly, charge-sheet was submitted and as stated by the learned counsel for the petitioners, all the charge-sheeted accused persons have been acquitted. The passenger who died in the police firing was none other than the said Sunil Mandal. After post-mortem was conducted on the body of the deceased, the doctor opined that the death was due to shock and haemorrhage following the injury caused to the left Lung and Heart due to gunshot wound over anterior chest wall and the age of the injuries were within 24 hours from the time of post-mortem examination.

3. It is worthwhile to mention here that a sum of Rs. 1.00 lakh from the Chief Minister's Relief Fund was paid to petitioner No.1 on 21-3-2002. On being noticed, a counter-affidavit has been filed on behalf of O. Ps. 3 and 4 sworn to by the Officer-in-charge, Simulia Police Station, confirming the allegation of the petitioners that the deceased, Sunil Mandal expired in the police firing while travelling in the bus, on N. H. 5 near village Dhobagadia Crossing under Simulia Police Station and in this connection P. S. Case No. 12 was registered. While narrating the details of the incident in paragraph-6 of the counter-affidavit, the deponent has stated that on 7-2-2002 at about 3 p. m. while the Sales Tax Officer along with Vigilance Officer were checking the buses for collection of penalty due to loading of heavy luggage, the 'Dolphin' bus bearing Regn. No. ORD-5525 on the plea of parking the vehicle, avoided the detention and sped towards Bhadrak. O. Ps. 3 and 4 have not disputed the fact of death of late Sunil Mandal in police firing when he was travelling as a passenger in the bus in question. Further a stand has been taken by the said O. Ps. that the compensation of Rs. 1.00 lakh paid to the petitioners from the Chief Minister's Relief Fund being adequate, the petitioners are not entitled to receive any further amount of compensation.

7. The only question, therefore, is that this Court should assess just and proper compensation to which the petitioners will be entitled to. In this regard, learned counsel for the petitioners has submitted that the deceased-Sunil Mandal was aged about 35 years on the date of his death and he was an able bodied youth, who was earning his livelihood by working in an Ice Factory at Paradeep. It is also submitted by the learned counsel for the petitioners that in similar cases, there are instances where the State Government has paid mounts of Rs. 5.00 lakhs to the dependents of persons dying in police firing. Considering all aspects of the matter, we are of the view that an amount of Rs.5,00,000/- (rupees five lakhs) would be the just and proper compensation payable to the writ petitioners. Since an amount of Rs. 2,50,000/- has already been paid to them by the State, we dispose of this writ petition directing the O. Ps. to pay the balance amount of Rs. 2,50,000/- (rupees two lakhs and fifty thousand) to the petitioners within a period of three months from today. On payment of the same, an amount of Rs. 1,00,000/- (rupees one lakh) shall be kept in Fixed Deposit in any nationalized bank in the name of petitioner No. 1 Kalpana Mandal and an amount of Rs.50,000/- (rupees fifty thousand) each in the names of petitioner Nos. 2, 3 and 4, Maitry Mandal, Gayatri Mandal and Pranab Mandal respectively for a period of five years with quarterly interest accrued on the respective amounts being payable to them.

***State of Tamil Nadu, rep. by Secretary to Government, others Vs. S. Sivagami, 2006 (3) CTC 689***

15. We shall now consider the above points in the light of the various decisions of the Supreme Court and High Courts in the matter of payment of compensation in cases of this kind.

(i) The decision of the Supreme Court in the case of **Saheli, a Women's Resources Centre through Ms. Nalini Bhanot & Others v. The Commissioner of Police, Delhi**, AIR 1990 SC 512, in which it is held as: (paragraphs 10 and 11)

“It is now apparent from the report dated 5.12.1987 of the Inspector of the Crime Branch, Delhi as well as the counter affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from the respondent No. 2, Delhi Administration.

An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, batter and false imprisonment, the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the

S.H.O., Lal Singh and as such, she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. The respondent No. 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the S.H.O. of Anand Parbat Police Station, Shri Lai Singh.”

(iv) The judgment of the Supreme Court in the case of **Malkiat Singh v. State of U.P.**, 1998 (9) SCC 351, has held as under: (Paragraphs 2 & 3)

“In view of the report of ACJM, this Court on 7.5.1996 passed the following order:

“Mr. R.S. Sodhi the learned counsel for the petitioner states that though the learned ACJM found on the basis of photographs that the petitioner's son Talvinder Singh is one of the persons who died in the incident involving firing by the U.P. Police, the CBI has not accepted the said finding regarding the death of Talvinder Singh. It is obvious that if he is found dead, the Writ Petition be only confined to the question of the entitlement of the petitioner to compensation. If the said Talvinder Singh is alive then he be produced by the police. Issue notice.”

It is now an accepted position that Talvinder Singh died in the incident which took place on 13.7.1991. All attempts to find his body have proved futile. But from the photograph identified by the father and the grandfather of Talvinder Singh, it is established that he is dead, because the police had taken photographs of all those who were killed in those two encounters. Therefore, the only question which now survives in this petition is what amount of compensation should be paid to the petitioner to compensate him for the death of his son.”

(v) The judgment of this Court in the case of **R. Dhanalakshmi v. Government of Tamil Nadu, represented by its Chief Secretary. Fort St. George. Madras - 9 and others**, 2004 WLR 346, in which it is held as: (Paragraphs 4, 5, 7 and 13)

“From the above, it is clear that as far as the Government is concerned, the deceased Rajmohan died only due to torture and inhuman treatment at the hands of Mr. Eswaran, the then Sub Inspector of Police, Karur Police Station. On the above facts, it must be first concluded that the deceased Rajmohan died while he was in police custody and that too, due to harassment at the hands of the Sub Inspector of Police, Karur Police Station.

In the matter of custodial death, the Supreme Court in more than one case has upheld the power of this Court under Article 226 of the Constitution of India to award just and reasonable compensation. In fact, even when the custody is taken, the procedure to be followed by the Investigating

Agency are enumerated by the Apex Court in the judgment in **Shri D.K. Basu v. State of West Bengal**, 1996 (4) Crimes 233 (SC).

Coming to the question of quantum, it must be noted that the deceased was 29 years age on the date when he died in police custody. This fact has not been disputed by the respondents in the counter affidavit. Further, the fact that the deceased left at the time of his death, the petitioner, wife of the deceased aged about 27 years two minor sons by name Gowthaman aged 7 years and Saravanan aged 5 years apart from his mother Anjalaiammal aged 55 years, has not been

disputed by the respondent in the counter affidavit. In fact, in para 4 of the counter affidavit, the respondents have stated as follows:

“The Writ Petitioner submitted that she is the legal heir of the deceased Rajmohan as the deceased's wife. Records of enquiry revealed that the age of the deceased is 32/95...”

In view of the above, the next question to be considered is, as to the actual amount of compensation to which the petitioner is entitled. There is absolutely no difficulty in determining the quantum of compensation when once the monthly income of the deceased is arrived at Rs. 6,000 and the age of the deceased as 29 at the time of death. The Apex Court in the judgment in *Grewal Ms. & another v. Deep Chand Sood & others*, 2002 (1) LW 491, has broad lined the guidelines to be adopted by the Courts in determining the just and reasonable compensation. The Apex Court has approved the multiplier adopted in the Motor Vehicle cases for the purpose of determining the compensation in the case of custodial torture. Hence, the multiplier method adopted in the case of Motor Accidents is adopted for determining the just and reasonable compensation in this case.”

**vii.** Also yet another decision of this Court in the case of **P. Ranganayagi & others v. State of Tamil Nadu represented by Secretary, Home Department & others**, 2000 (1) LW (Crl.) 96, in which it is held as: (Para 11)

“The case on hand is in no way different from the facts and circumstances of the cases of custodial deaths referred to above as admittedly it is found by this Court that the said Dorairaj died when he was in police custody. Therefore, following the ratios laid down by the Apex Court and this Court, I am obliged to direct the first respondent-State to pay a sum of Rs. 5,00,000 to the petitioners herein by way of compensation for the custodial death of Dorairaj.”

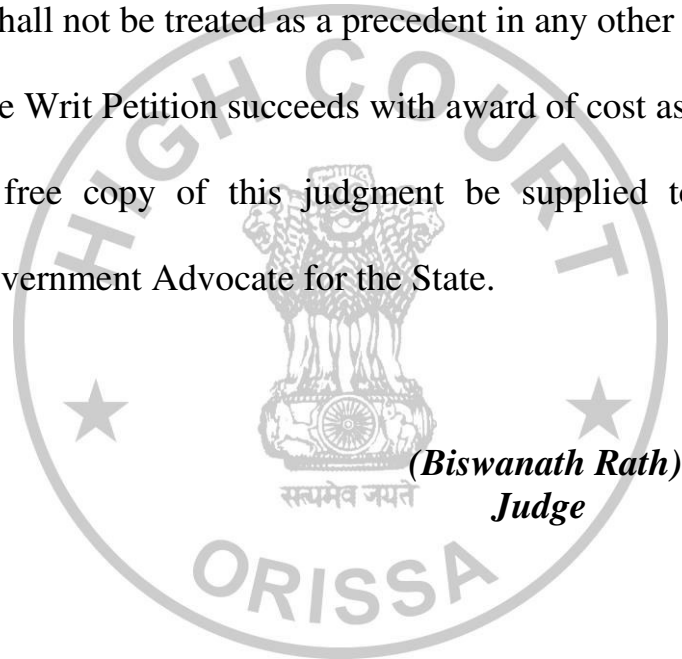
**13.** While condemning the action of the State it's sitting over such sensitive matter for such length of time and finding no purpose in directing the State Government to think on appropriate compensation by way of ex-gratia and to see that there is no further loss of time, while finding payment of a sum of Rs.1.00 lakh towards ex-gratia is completely inadequate and rightly observed by the Commissioner, this payment is a drop of water in an ocean and there is a clear fact-finding report against the State. Recommendation of the Enquiry Authority given in 2006 for considering adequate compensation, while also keeping in view the

deceased was an Engineer and working in an important private company, loss to a mother for losing her child at such age while also keeping in view that here there is no compensation but the amount is paid as a token of respect to the bereaved family, so also to the Society, this Court directs the State Government to make whole payment of a sum of Rs.50,00,000/- (rupees fifty lakh). Since a sum of Rs.1.00 lakh has already been paid to the Petitioner towards compensation, a draft for a sum of Rs.49,00,000/- (rupees forty-nine lakh) in the name of the victim, the Petitioner herein, be made and handed over to the Petitioner at her residence at least within seven days from the date of communication of this judgment. For forcing the Petitioner to bring a litigation to get such order even in spite of a recommendation by the Enquiry Authority since 2005, this Court finds, there has been unnecessary burdening the Petitioner to get her real compensation through this litigation and as such, this Court quantifies a sum of Rs.1,00,000/- (rupees one lakh) towards litigation expenses also be paid to the Petitioner within same time. This Court makes it clear, in the event the compensation, as directed above, is not handed over to the Petitioner within seven days of communication of this judgment, the Petitioner will be entitled to interest @ 7% on the compensation from the date of submission of the enquiry report suggesting adequate compensation.

**14.** Before parting with the judgment, this Court directs the State Government through its Chief Secretary to see that there should not be recurring of such non-compliance in future. This Court makes it clear that the award of ex-gratia is made herein keeping in view the worst situation taking place herein and not taking a decision at appropriate level in releasing appropriate ex-gratia in spite of a report of the Commission being submitted since February, 2006 and the award of compensation/ex-gratia herein shall not be treated as a precedent in any other case.

**15.** The Writ Petition succeeds with award of cost as above.

**16.** A free copy of this judgment be supplied to the learned Additional Government Advocate for the State.



Orissa High Court, Cuttack.  
The 20<sup>th</sup> February, 2023/M.K.Rout, A.R.-cum-Sr.Secy.