

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(Cril.) No. 38 of 2013

Smt. Hawaibam Ongbi Maipakpi Leima, aged About 45 years, W/O late Hawaibam Ibohi Meitei, a resident of Sekmajin Mamang Leikai, P.O. & P.S. Kakching, Thoubal District, Manipur.

..... *Petitioner*

-Versus-

1. The Union of India through the Home Secretary to the Ministry of Home Affairs, Government of India, Central Secretariat, North Block, New Delhi- 110001.
2. The Defence Secretary, Ministry of Defence, Government of India, Central Secretariat, South Block, New Delhi- 110001.
3. The Commanding Officer, 28th Assam Rifles, C/O 99 APO.
4. The State of Manipur through the Principal Secretary (Home) to the Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur.

..... *Respondents*

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. N.KOTISWAR SINGH
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Mr. M. Rakesh, Advocate.
For the respondents	::	Mr. S. Samarjeet,
CGSC.		
Date of hearing & Judgment and Order	::	14.12.2017

Heard Mr. M Rakesh, learned counsel for the petitioner. Heard also Mr. S. Samarjeet, learned CGSC for the Union Respondents.

[2] The present petition has been filed by the mother of the deceased, namely, Smt. Hawaibam Amujao Meitei on the allegation that her son was picked up by the Assam Rifle Personnel on 18th March, 2010 while he was attending his work as a handyman in a bus owned by one Elangbam Shanta Singh at the Andro Parking located at Imphal, near All India Radio Station (AIR), Imphal and later he was killed in a fake encounter.

[3] It is the case of the petitioner that while her son was on duty on 18th March, 2010 as a handyman of the bus which was at the place of parking, three unknown persons in civil dress came and picked him up after having some conversation in the bus. The caretaker of the vehicle namely, Kshetrmayum Jiten Singh and the driver, Elangbam Jiban Singh when they saw the

petitioner's son inside the bus with the unknown persons tried to intervene but they told to sit quietly on the back side of the bus. After about 5-10 minutes, the petitioner's son was taken away by the said unknown persons in an auto rickshaw and the driver and the owner of the

bus were warned not to do anything about the said incident. Though the said taking away of her son was reported to her, the petitioner's family could not report to the concerned police station the same day, out of shock and nervousness but the owner of the bus reported the matter to the police station on the next day. It has been stated that on the next day in the evening the petitioner came to know that her son was found dead and being kept in the RIMS morgue and was informed that he was killed by the Assam Rifles in an encounter. It is, accordingly, the allegation of the petitioner that her son was picked up by the Assam Rifles Personnel in civil dress and thereafter killed in a fake encounter.

[4] On the other hand, it is the case of the Assam Rifles Respondents that on 18th March, 2010 at about 9.30 p.m. upon getting information that some underground persons numbering about 3-4 were loitering around and trying to extort money from the public at Takhok Mapan, the Assam Rifle Personnel organized an operation to apprehend those persons and laid an ambush. One of the parties of the Assam Rifles saw a person having a conversation with some other persons and saw them proceeding towards the direction where the Assam Rifles party was waiting in ambush and they were asked to stop. However, instead of stopping, the said unknown persons started firing towards the Assam Rifles. In the ensuing retaliatory firing, one unknown individual person was found dead and also one pistol was recovered near the dead body and others escaped. The deceased was later identified as the son of the petitioner. Thus, it is the case of the Assam Rifles authority that the son of the petitioner died in the encounter.

[5] In view of the conflicting claims of the parties, this Court directed the learned District & Sessions Judge, Manipur East to conduct an inquiry to ascertain the circumstances in which the petitioner's son died, which was duly conducted by the learned Sessions Judge, Manipur East and submitted his report dated 28.03.2016, copies of which were furnished to learned counsel for all the parties.

[6] The learned counsel for the parties were heard at length. The report submitted by the learned District Judge, Manipur East gave the finding in the following words:

“.....In the conclusion, on the basis of the evidence on record discussed above, it is proved and established that deceased Hawaibam Amujao was abducted/taken away by three unknown persons in civil dress on 18/3/2010 from Andro Parking. However, there is no evidence that the said three, unknown persons were personnel of 28th Assam Rifle/Security personnel. It is also proved and established that deceased Hawaibam Amujao Meitei died of bullet

injuries fired by personnel of B-Coy, 28th Assam Rifles on 18/3/2010 at about 10/10.15 p.m. on the road leading to Takhok Mapan Village. However, there is no substantive evidence of an armed encounter between the A.R. personnel and 2/3 unknown persons including the deceased Hawaibam Amujao Meitei on 18/3/2010 at about 10/10.15 p.m. on the road to Takhok Mapan Village.

All the issues framed stands decided as discussed above

The reasons for arriving at the aforesaid conclusions are to be found in the preceding paragraphs which are reproduced herein below

“17. The evidence tendered by the RWs had certain questionable doubts and suspects in so far as when there liable information relates to UGs trying to extort money from the Public, why was no formal report made/given to the Civil Police and why was no investigation carried out even after the alleged incident. Besides, the FIR No.22(3)2010 IBG p.s. U/S307/34 IPC, 251(1-C) A. Act & 5 Expl. Subs. Act registered in connection with the present incident does not mention anything about UGs trying to extort money from the Public.

Secondly, bypassing the Civil Police of the reliable information on the ground that it was late in the night is unacceptable. This pass-up may amount to dereliction of duty under the circumstances of the case.

Thirdly, the alleged 2/3 persons were coming on foot towards the ambush site and there is no mention of any visible weapons/arms in their hands. There were more than 20 jawans in the ambush laid at two places on the road at a distance of 150 metres apart. In the situation, the 2/3 persons could have been apprehended if they were allowed to proceed inside the ambush area by covering them from the East and Westside of the ambush area. Hence, the alleged challenge by the jawans of the ambush party, against the 2/3 persons coming on foot before reaching the ambush area and well outside the ambush area, cannot be accepted without doubt and suspect.

Fourthly, it is alleged that when the jawans shouted to halt, they fled and started firing towards the jawans i.e., ambush party. RW2 and another jawan i.e., Stop Group 2 retaliated by firing certain rounds from AK-47 Rifles. The person (deceased) must have been hit by AK-47 Rifles bullets when he was running. The

impact of the AK-47 bullets on the body must have thrown him when hit. In such situation, the alleged finding/recovery of the pistol and the empty cartridge near the dead body is hard to believe in so far as any article in the hand of the deceased person, who was on the run at the relevant time and was

hit by a bullet fired from AK-47 Rifle, was likely to be flung away from the strong impact of the bullet from AK-47 Rifles and if there was firing from the pistol of the deceased person who was on the run, the empty cartridges of the fired bullets, fired from the pistol at the relevant time, would also have been ejected at different places at the time of firing. Hence, the possibility of the pistol and the empty cartridges lying near the dead body of the deceased is also doubtful and hard to accept.

Fifthly, the version of RW1 and RW3 relating to report of the incident to the police and also the seizure of incriminating articles, in particular the alleged seizure of hand grenade are contradictory. According to RW1, he gave the information to the Irilbung p.s. just after the incident and the police came to the P.O. at 11 p.m. and found the hand grenade in the trouser pocket of the deceased person. The other version of RW3 is that on 18/3/2010 one Nb. Subedar Kumar Chettri (complainant), B. Coy, 28 A.R. lodged a written report of the incident with the O/C Irilbung P.S. at the police station and the FIR No.22(3)2010 IBG p.s. U/S 307/34IPC, 251(1-C) A.Act & 5 Expl. Subs. Act, was registered and it was endorsed to RW3 for investigation. RW3 examined the complainant Kumar Chettri at about 11.05 p.m. at the station. Thereafter, RW3 visited the P.O. One hand grenade was also found in the trouser pocket of the deceased person. The complainant Kumar Chettri had seized the incriminating articles under a seizure memo. Thereafter RW3 under a seizure memo took custody of the seized articles from the complainant.

Sixthly, there was considerable time lapse between the alleged occurrence and the *arrival* of the *Civil Police* (RW3) at the P.O. Seizure of all the alleged incriminating articles were made by the complainant who was member of the alleged ambush party. The first hand investigation of the case relating to the alleged incident were already done by the A.R. personnel who had taken part in the alleged encounter and the *Civil Police* (RW3) *visited* the P.O. only as a mere formality. This *give* rise to a strong suspicion of the possibility of the alleged incriminating articles alleged to have been seized in connection with the alleged incident being implanted.

[7] Thus, the learned District & Sessions Judge, Manipur East held that though the identity of the three persons who had taken away the petitioner's son from the parking could not be ascertained as to whether they were persons of the 28th Assam Rifles/Security personnel, it has been proved that the petitioner's son died of bullet injuries fired by personnel of B-Coy, 28th Assam Rifles on 18.03.2010 at about 10/10.15 p.m. and also there is no substantive evidence of any armed encounter between the Assam Rifle personnel and the unknown persons as alleged by the Assam Rifles. Thus, the finding recorded by the learned Sessions Judge is that the petitioner's son was killed at the hand of the Assam Rifles and there is no evidence that any encounter had taken place as claimed by the Assam Rifles.

[8] Mr. S. Samarjeet, learned CGSC appearing for the Assam Rifles has referred to the finding of the learned District & Sessions Judge that it could not be proved that those three persons who had taken away the petitioner's son were the members of the 28th Assam Rifles which would indicate that the Assam Rifles were not involved in the taking away of the petitioner's son. Even if the

Assam Rifles were not involved in the taking away of the petitioner's son from the bus parking, there is a finding arrived at by the learned District & Sessions Judge that the petitioner's son died at the hands of the Assam Rifle on 18.03.2010 and there is also a finding that no encounter had taken place.

[9] The finding arrived at by the learned Sessions Judge is based on the evidences and materials produced before the Court. The learned Sessions Judge has also given the reasons why the plea taken by the Assam Rifles that there was an encounter in which the petitioner's son died is not believable. The learned District & Sessions Judge had given the following inter alia, reasons for disbelieving the version of the Assam Rifles:

Firstly, though the Assam Rifles authorities had received there liable information about certain underground elements trying to extort money from the public, there was no endeavour made by the Assam Rifles authority to inform the civil police. The learned Sessions Judge also did not find it credible the reason for ignoring the civil police after Assam Rifle authorities received information about loitering and extorting money from the public. Learned Sessions Judge also noted that this aspect of making any attempt to extort money from the public by the petitioner's son and others does not find mention in the FIR registered in connection with the said encounter as alleged by the Assam Rifles.

Secondly, though the Assam Rifles alleged that 2/3 persons were seen coming towards the ambush sites, nothing is mentioned of any visible weapons or arms in their hands, which were laid by 20 jawans at two places.

Thirdly, the Ld. Sessions Judge found it difficult to believe the version of the Assam Rifles that they could not apprehend 2/3 persons. The learned District & Sessions Judge also found it difficult to believe the version of the Assam Rifles that the said unknown persons were hit by AK-47 Rifle bullets while they were running, for if the said persons were indeed running while being hit by AK-47 Rifles, it was most unlikely that the pistol would be found near the body. According to the Ld. Sessions Judge, the manner in which the alleged pistol and arms were seized near the dead body did not inspire confidence.

Fourthly, there was considerable time lapse between the alleged encounter and the arrival of the Civil Police at the place of occurrence and the Ld. Sessions Judge also found discrepancies in the manner of seizure as recovered by the Assam Rifles and the civil police

Accordingly, based on the aforesaid circumstances and materials on record, the learned Sessions Judge came to the conclusion that no encounter had occurred as alleged by the Assam Rifles.

[10] This Court is not sitting as an Appellate Court to appreciate the evidences and examine the finding arrived at by the District & Sessions Judge but to examine whether the findings arrived at by the Ld. Sessions Judge is based on

evidence. We are of the opinion that the findings arrived at by the learned District and Sessions Judge cannot be said to be without any basis. The reasons given by the learned Sessions Judge do not seem to be unreasonable under the facts and circumstances of the case and hence, we have no reason to disagree or come to the different conclusion than the one arrived at by the learned District & Sessions Judge. Therefore, we uphold the finding arrived at by the learned Sessions Judge that no encounter took place on 08.03.2010 as alleged by the Assam Rifles when the petitioner's son was killed by the Assam Rifles' personnel.

[11] Having arrived at this conclusion, the next question for consideration before us is whether the petitioner would be entitled for compensation and if so, what would be the quantum. Law is now well settled, as far as compensation claimed by the victim's family is concerned, where breach of fundamental right to life as guaranteed under Article 21 is involved, it can be imposed on the State. In a number of cases this Court as well as the Hon'ble Supreme Court have granted compensation for death occurring in such circumstances at the hands of security forces.

[12] Mr. Rakesh, learned counsel for the petitioner has submitted that in a case involving fake encounter reported in **Rohtash Kumar Vs. State of Haryana &Ors., (2013) 14 see 290**, the Hon'ble Supreme Court had directed the State of Haryana to pay a sum of Rs. 20 lakhs and has prayed for grant of similar amount of compensation in this case also.

[13] It has been submitted by Mr. S. Samarjeet, that this Court, had been giving a sum of Rs. 5 lakhs in many such cases and accordingly, he has submitted that the compensation amount may be restricted to the said amount.

[14] We have given our anxious thought over the matter.

It has been contended by Mr. Samarjeet, learned CGC, that the petitioner's son was involved in subversive activities and in fact, he was arrested on an earlier occasion in connection with FIR No. 11(4) 07 TPL PSU/S 20 UA(P) A.Act dated 11.04.2007 and as such he cannot be said to be an innocent civilian.

[15] Mr. Rakesh, however, submits that the petitioner's son was a minor when he was arrested in the earlier case but he has not been convicted in the aforesaid case nor has been engaged in any illegal activities.

[16] We have gone through the affidavit-in-opposition filed by the Assam Rifles Respondents in which the arrest of the petitioner's son in 2007 was referred to. In the said affidavit-in-opposition filed by the Assam Rifles, it has been stated that the petitioner's son had joined the PLA organisation in the second week of March, 2007 and he was imparted training in the PLA camp but he was in the camp for about 20 days only. It has been further stated that the petitioner's son and his younger brother namely, H. Mangi Singh @ Gokul (15) decided to

escape from the camp which they did. In the said process, he was arrested by the Assam Rifles.

[17] It is the case of Mr. Rakesh, learned counsel for the petitioner that when the petitioner's son was arrested in 2007, he was a minor. The affidavit filed by the Assam Rifle authorities is also suggestive of the fact that the petitioner's son was a minor who along with his younger brother were engaged in the aforesaid work for the PLA as mentioned above. The Assam Rifles themselves recorded that they escaped from the camp which indicates that they were not willing to remain part of the said organisation even if they had joined the said organisation. In other words, it indicates that the deceased petitioner's son was an unwilling member of the organisation and also a minor, when he was arrested earlier in 2007, even Signature of the Copyist if the Assam Rifles authorities claim that he was a member of the proscribed organisation.

The fact also remains that the petitioner's son was engaged as a handyman, which fact is not disputed by anybody, and there is no allegation from anyone including Assam Rifles authority that after the petitioner's son was released in 2007 he was engaged in any subversive activity.

[18] Mr. Samarjeet, learned CGSC has tried to suggest that it might be possible that since the petitioner's son was earlier involved with a proscribed organisation, he might have been kidnapped by the members of the said organisation for re-joining the organisation and engage in illegal activities. This Court finds it difficult to accept that on the same day, the petitioner's son would start engaging in the illegal activities even if he was compelled to join the organisation. Such proposition is merely a conjecture and not based on any material.

[19] Accordingly, taking into consideration all the facts and circumstances referred to above, we are of the opinion that it will meet the ends of justice, if this Court imposes a compensation of Rs. 7 (seven) lakhs to be paid by the Assam Rifle authorities to the petitioner within a period of 5 (five) months from today on account of the death of the petitioner's son at the hands of the Assam Rifles personnel, which we order. In order to make it convenient to the petitioner to receive the amount, the Assam Rifle authorities should deposit the said amount to the Registry of this Court within the aforesaid period, which would in turn be deposited to the individual Bank Account of the petitioner which may be opened by the petitioner, if not already opened by the petitioner.

Petition stands allowed with the above directions.

Sd/-
KH. NOBIN SINGH
JUDGE

Sd/-
N. KOTISWAR SINGH
ACTING CHIEF JUSTICE