

ORISSA HIGH COURT : CUTTACK

W.P. (C) No. 16060 of 2005

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Kumari Rojallin Nayak	...	Petitioner
Versus		
State of Orissa and others	...	Opposite parties

<i>For petitioner</i>	-	<i>Mr. U. C. Mohapatra,</i>
<i>For opposite parties</i>	-	<i>Government Advocate</i>

P R E S E N T

THE HONOURABLE CHIEF JUSTICE MR. V.GOPALA GOWDA
A N D
THE HONOURABLE MR. JUSTICE S.K.MISHRA

Date of hearing – 30.07.2012 : ***Date of judgment - 30.07.2012***

S.K.Mishra, J. The petitioner being the daughter of Late Ganeswar Nayak has filed this writ application claiming compensation of Rs.4,00,000/- due to the death of her father in the Choudwar Jail on 09.09.2001.

2. Deceased Ganeswar Nayak was arrested in a criminal case on the allegation that he committed murder of his wife. The trial court found him not guilty, but at the same time, keeping in view the fact that the deceased was a Psychiatric patient, directed that he be kept in custody and given treatment. Upon his recovery

from such ailment, he was supposed to be set at liberty. Because of shortage of space for accommodation in Kendrapada jail, the deceased was shifted to Choudwar Jail, where he was kept in the jail hospital. While being treated as such, it is alleged that the deceased committed suicide on 09.09.2001 at about 10.30 P.M. by strangulating his neck with the leading chain of hand cuff attached to the grill of the window. On his death, an U.D. Case was registered bearing No.7 of 2001, which was enquired into and after completion of enquiry, a report was submitted that the deceased died due to suicidal strangulation. Counter affidavit is also filed admitting this fact. The petitioner claimed that because of the negligence of the Jail authorities, her father died.

3. In course of hearing, we have examined the original U.D. Case records. From the inquest report it is apparent that the deceased did not commit suicide by hanging himself from a vantage point, rather it is alleged that he has strangulated himself by means of the leading chain which was connecting his hand cuff with the grill of the window.

4. Thus, from the aforesaid undisputed fact, the following factual findings emerge.

- (i) The deceased was in custody of the Jail authorities when the occurrence took place.
- (ii) The dead body of the deceased was found in the Jail hospital ward with his neck covered by the leading chain of the hand cuff.
- (iii) The deceased was not found hanging from any vantage point.

On the basis of these factual findings, the authorities have come to the conclusion that the deceased strangulated himself by means of the chain and committed suicide. However, this Court is of the opinion that the investigation of the

case does not reveal the correct picture and the death of the deceased is a custodial death.

5. This court in **Sabitri Kanhar and others v. State of Orissa**, W.P.(C) No.23407 of 2010, disposed of on 18.03.2011, has come to the conclusion that in an incident where two persons were killed by another inmate, the jail authorities are responsible for the same as there has been a negligence on the part of the jail authorities keeping the prisoner in safe custody. Holding thus, a Division Bench of this Court in the aforesaid case, awarded compensation to the legal heirs of the deceased.

6. It is duty of the jail authorities to ensure safety and security of the inmates of the jail. Only when there is negligence on their part, such an incident could take place. Though the authorities have termed the incident as a suicide, foul play cannot be ruled out. Therefore, this Court comes to the conclusion that it is a case of custodial death and the authorities are responsible for the same. The authorities being the employees of the State of Orissa, the State is vicariously liable for the death of the aforesaid deceased Ganeswar Nayak.

7. In **Nilabati Behera (Smt.) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa**, (1993) 2 SCC 746, the Supreme Court examined a similar case and has come to the conclusion that enforcement of the constitutional right and the grant of redress embraces award of compensation as part of legal consequences of contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available in a defence in private law in an action based on tort. A

claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from contravention of the fundamental rights. Thus holding, the Supreme Court further clarified that such principle justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for contravention made by the State or its servant in the purported exercise of their power, and enforcement of fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226.

8. Similar view has been taken in **People's Union for Civil Liberties v. Union of India and another**, *AIR 1997 SC 1203*, wherein the ratio decided in Nilabati Behera's case (*supra*) was relied upon and it was further held that in assessment of the compensation, the emphasis has to be on the compensatory and not on punitive manner. 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 court in which offender prosecuted, which the State, in law, is duty bound to do. A similar view has been taken by the Division Bench of this Court in **Ahalya Pradhan v. State of Orissa**, *2009 (1) OLR 526*, wherein the custodial death was leveled as a suicide, which was negated by a fact finding commission, the Division Bench of this Court has come to the conclusion that the legal heirs of the deceased are entitled to receive compensation.

9. Keeping in view the aforesaid proposition of law, this Court comes to the conclusion that on the fact of the case, death of the deceased Ganeswar Nayak is a custodial death and the jail authorities are responsible for the same. As such, the State is liable to pay compensation to the petitioner. Keeping in view in entirety of the facts, we assess compensation of Rs.3,00,000/-.

10. Accordingly, the writ petition is allowed. The opposite parties are directed to pay a sum of Rs.3,00,000/- (Rupees three lakh) to the petitioner within two months, failing which the amount shall carry an interest @ 9% per annum from the date of filing of the writ application i.e.23.12.2005. A copy of this judgment be handed over to the learned Government Advocate for early compliance of the directions.

.....
S.K.Mishra, J.

CHIEF JUSTICE I agree.

.....
V.Gopala Gowda, C.J.

*Orissa High Court, Cuttack,
Dated, July 30, 2012/JNSahu.*