

CASE NO.:
Writ Petition (civil) 275 of 1999

PETITIONER:
Masooda Parveen

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 02/05/2007

BENCH:
B.P. SINGH & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

HARJIT SINGH BEDI, J.

In this writ petition, a prayer has been made that the respondent - Union of India be called upon to pay compensation and to provide a job on compassionate grounds for the custodial death of Ghulam Mohi-ud-din Regoo, the husband of petitioner No.1.

The facts taken from the petition are as under:

The deceased Ghulam Mohi-ud-din Regoo, was an advocate enrolled and practicing in the High Court of Jammu and Kashmir before the Srinagar Bench. In addition to his practice he was also a small-time businessman trading in saffron, but on account of certain factors, sustained heavy losses on which his creditors approached local militants for help in recovering the amounts due to them. As a consequence of this pressure, Regoo shifted from his village Chandhara to Sopore and remained away for a period of two years from 1992 to 1994 and then returned as there was in the meanwhile a decline in the strength of the militants. It appears that some militants who were working alongwith the Army got him arrested on 6th October, 1994 on the allegation that he was a Pakistani Trained Militant (PTM) and he was kept in custody for about three months and then released, and on return continued to follow his vocations in a peaceful manner. On 1st February, 1998 some surrendered militants alongwith a unit of the Army (17 Jat) reached Regoo's home in Chandhara at about 8.30 p.m. and searched his house but found nothing incriminating therein. He was nevertheless taken to the Lethapora Army Camp, the Head Quarters of the 17 Jat, and tortured mercilessly leading to his death whereafter explosives were placed on his dead body and then detonated to camouflage the murder. It is further the petitioners' case that the morning after the incident, his body was handed over to the police and was thereafter subjected to a very casual and cursory post mortem examination. It is in these circumstances that a case for compensation etc. has been made on the plea that the deceased had left behind an indigent family comprising of petitioner No.1 (his widow) and four children, the eldest being a son 20 years of age. Petitioner No.1 sent several applications to the State Chief Minister, and other Government agencies and also addressed letters to the Chief Justice of India on 22nd June, 1998 and 20th July, 1998, on which the matter was referred to the Supreme Court Legal Services Committee which advised her to approach the State High Court. Petitioner No. 1 in her letter

dated 19th October, 1998 to the Chief Justice of India pointed out that she was not interested in pursuing her case before the Jammu and Kashmir High Court as the Bar Association was politicizing it which was not called for. The matter was accordingly treated as a Writ Petition under Article 32 of the Constitution of India and after notice to the parties, Rule-Nisi was issued on 9th February, 2001.

Two affidavits in reply have been filed by the respondents; one by Major D.S. Punia, the officer in-charge of the patrol of the 17 Jat which had arrested Regoo and taken him for interrogation to the Lethapora Army Camp and the other by respondent nos. 3 & 4 \026 the State of Jammu and Kashmir etc.

In the affidavit in reply filed by Major D.S. Punia, the story, has to a point, been admitted. It has however been pointed out that on the basis of intelligence provided to the Battalion, a patrol party from the Lethapora Army Camp had searched Regoo's house at about 8.30 p.m. on 2nd February, 1998 which had led to his apprehension and that he had thereafter been taken to the Camp and interrogated on which he had revealed that he was a Pakistani Trained Militant and an Ex-divisional Commander of the Al Barq Terrorist Group, and had also offered to lead a patrol to a hide out in the Wasterwan Heights, a short distance away, where arms and ammunition had been stored in a militant hideout. It has further been deposed that a patrol under his command was accordingly deputed to move to the hideout accompanied by Regoo to effect the recoveries but as patrol leader, he had stopped the patrol fifty meters short of the hideout and after ensuring that he was not in a position to escape, Regoo had been released with a direction to go forward to uncover the hideout and when he had tried to create an opening in it, an explosion had resulted (probably due to booby trapping) leading to his death at about 2.30 a.m. on 3rd February, 1998. It has also been pleaded that three jawans, Sepoy Kashi Ram, Havaldar Randhir Singh and L/NK Munim Singh too had received minor splinter injuries and had been treated in the medical inspection room and thereafter discharged. It has further been highlighted that the search of the hideout had thereafter been carried out and 03-AK Magazines, 130-rounds of AK ammunition and 05-Hand Grenades had been recovered. Along with the affidavit, annexure-A has been appended to prove the injuries suffered by the three jawans, annexure-B the seizure memo in support of the recoveries of the arms and ammunition and annexure-C \026 the copy of the FIR lodged at Police Station Pampore on 3rd February, 1998. It has accordingly been pleaded that Regoo was not an innocent as claimed who had been done to death in army custody but was in fact a militant who had died in an explosion while in the process of uncovering a cache of arms and ammunition. Respondent Nos. 3 and 4 have supported the stand taken by the first and second respondents and have in support of their case, appended several documents from the police record. Several affidavits and documents by way of a rejoinder have also been filed by petitioner No.1. Before we embark on an appreciation of the various contentions raised by the learned counsel for the parties, we must give a preview of the manner in which we intend to deal with this matter. We cannot ignore the fact that many in Kashmir who have gone astray are Indian citizens and it is this situation which has led to this incident. We do appreciate that a fight against militancy is more a battle for the minds of such persons, than a victory by force of arms, which is pyrrhic and invariably leads to no permanent solution. We cannot ignore that in this process some unfortunate incidents do

occur which raise the ire of the civil population, often exacerbating the situation, and the belief of being unduly targeted with a feeling in contrast of the law and order machinery that it is often in the dock and called upon to explain the steps that they have taken in the course of what they rightly believe to be the nation's fight. We however believe that the examination of a complaint, and the provision of an effective redressal mechanism preferably at the hands of the administration itself, or though a court of law if necessary, is perhaps one the most important features in securing a psychological advantage. We also understand that in an investigation of this kind based only on affidavits, with a hapless and destitute widow in utter despair on the one side and the might of the State on the other, the search for the truth is decidedly unequal and the court must therefore tilt just a little in favour of the victims. We have chosen to examine this matter on this broad principle.

Mr. M.S. Ganesh, the learned senior counsel for the petitioner has raised three basic issues before us; first that the search in Regoo's house and his detention was apparently taken under the authority conferred by the Armed Forces (J&K) Special powers Act, 1958 (hereinafter referred to "the Act") which retains the pre-eminence of the civil authority over the army inasmuch that it provides that the use of the armed forces would be only "in aid of the civil power", but has pointed out that the Army Authorities had completely excluded the participation of the local administration and the police in this operation, secondly, that the story projected by the respondents in their affidavit was clearly an afterthought as despite specific orders of this Court and the undertakings given by respondent Nos. 3 and 4 from time to time, the original police record had not been produced and only a shadow file with several significant passages missing, had been put on record from which an inference had to be drawn that an attempt was being made to conceal the truth, and finally, that there were no evidence to show that Regoo was a Pakistani Trained Militant or that he had any association with any militant organization, as alleged.

Mr. Vikas Singh, the learned counsel for respondent nos. 1 and 2 has however pointed out that the action taken on the 2nd and 3rd February, 1988 by the Army patrol was fully in consonance with the provisions of the Act, which authorized a search, seizure and arrest under certain circumstances. It has also been pleaded that the original police file could not be produced in court as it had been lost and this matter had also been referred to a departmental enquiry and that Regoo was a Pakistani trained militant and an Ex-divisional Commander of Al Barq militant organization had been revealed by Intelligence inputs received by the Battalion and by his interrogation on 2nd February, 1988.

We now take up the arguments seriatim.

It is true, as has been contended by Mr. Ganesh, that the Army action had been taken pursuant to the Notification under Section 3 of the Act declaring Jammu and Kashmir as a disturbed area. Section 4 of the Act permits persons of specified rank to arrest without warrant in situations referred to therein. Section 6 to which special reference has been made by Mr. Ganesh, is however, re-produced below.

"Arrested persons and seized property to be made over to the police - Any person arrested and taken into custody under this Act and every property, arms, ammunition or explosive substance or any vehicle or vessel seized under this Act, shall be made over to the officer-in-charge of the nearest police

station with the least possible delay, together with a report of the circumstances occasioning the arrest, or as case may be, occasioning the seizure of such property, arms, ammunition or explosive substance or any vehicle or vessel, as the case may be".

A bare reading of this provision would show that information with regard to the arrest of any person or seizure of property or arms and ammunition or explosives under the Act has to be conveyed to the officer in-charge of the nearest police station with the least possible delay etc. It is Mr. Ganesh's plea that despite the fact that police station Pampore was a stones throw away from village Chandhara, no effort had been made by the army to convey the information to the police at the earliest and the police had been called in only on the morning of 3rd February, 1998 after Regoo had been done to death. Mr. Ganesh has also placed reliance on the judgment of this Court in Naga People's Movement of Human Rights vs. Union of India (1998) 2 SCC 109 to contend that while upholding the vires of the Armed Forces (J&K) Special powers Act, 1958, this Court had laid down certain guidelines which would mutatis mutandis apply to a search, seizure and arrest under the Act as well. He has pointed out that the basic principle which governed the exercise of authority under the Act was that the army was to act in aid of the civil power meaning thereby that the pre-eminence of the civil authority had in no way been diluted. He has, in particular, placed reliance on the specific conclusions drawn in paragraph 74 of the Report and has pointed out that this Court had clarified that the civil power continued to function even after the deployment of the armed forces, and a person arrested and taken into custody was to be handed over to the officer in-charge of the nearest police station with the least possible delay so that he could be produced before a Magistrate within 24 hours and that any property or arms and ammunition likewise seized were to be handed over to the police alongwith a note explaining the circumstances which had led to the recovery, and the creation of an agency which could redress the grievances of those who alleged misuse of authority by the armed forces so that if the allegations were found proved compensation could be paid as a follow up measure.

We have considered Mr. Ganesh's argument in the light of the facts of the case. We have also perused the site plan produced by him in Court today giving the general locations of Chandhara village, police station Pampore, Lethopora Army Camp and the Wasturwan Heights where the Regoo had apparently met his end. Concededly all four locations are very close to each other \026 the maximum distance being 4-5 kilometers, with village Chandhara virtually in the middle. We must however observe that the application of the guidelines referable to Section 6 and in the cited case cannot be mechanically applied and must of necessity relate to the facts of each case. It is almost the admitted position that Regoo had been taken from village Chandhara at about 8.30 on the night of 2nd February, 1998 and had been interrogated at Lethopora Army Camp and had met his end at about 2.30/3.00 a.m. on 3rd February, 1998. To our mind therefore the time gap between the arrest and the death was clearly minimal. It is also apparent, as contended by Mr. Vikas Singh, that after Regoo had been detained, and his interrogation had revealed the presence of arms and ammunition the first priority would have been to recover the weapons as to cause any delay could lead to a failure of the

operation. We agree with Mr. Vikas Singh's submission that in the short time available to the army patrol it was perhaps not feasible nor practicable to first inform police station Pampore situated at the extreme North with the Lethapora and Wasturwan Heights situated towards the extreme South with Chandhara in the centre to first approach the police authorities. We are also not un-mindful of the fact that prompt action by the army in such matters is the key to success and any delay can result in the leakage of information which would frustrate the very purpose of the army action. We re-emphasize however that the guidelines laid down in the cited case must be scrupulously observed and any deviation should be frowned upon by the Court.

We now examine the other two arguments of

Mr. Ganesh. It has been emphasized that the story with regard to the circumstances in which Regoo had died and the fact that the original record had not been produced before this Court led to the inference that there was something amiss and the respondents were accordingly engaged in a cover up exercise.

It is true that the original police record has not been produced before the Court despite several opportunities and only a shadow file with some pages missing is before us and has been appended as an annexure to the written statement on behalf of respondent nos. 3 and 4. Mr. Ganesh has accordingly been at pains to emphasize that had the original file been produced the true story of the circumstances leading to Regoo's death would have been revealed and it is for this reason that the file had been withheld. Mr. Vikas Singh has however, pointed out that it had to be understood at the very outset that the raid on Regoo's house and all subsequent events were purely an army operation and the police had come into the picture only after Regoo had died. He has in this background submitted that the record up to the stage of his death was with the army and he has produced the relevant army file before us during the course of the hearing. We have examined this record and find that it is almost contemporaneous with the incident. The record starts with an application addressed by petitioner no.1 to Shri Atal Bihari Vajpayee, the then Prime Minister of India, asking for relief from the Prime Minister's Relief Fund and compensation on account of the killing of her husband. This application had been received in the Prime Minister's office on 8th June, 1998 and had been forwarded to the Ministry of Defence about three weeks later. The matter had thereafter been examined in the Human Rights Cell of the Army and the entire record including the after action report dated 2nd/3rd February, 1988 pertaining to the incident examined along with the seizure memos and a recommendation had been made that as Regoo was a militant, any compensation awarded to his family would lower the morale of the security forces engaged in fighting militancy. These recommendations were accepted by the General Officer Commanding who was an officer in the rank of Major General. It is noteworthy that this entire exercise started on 26th June, 1998 when the application was received by P.M's Office and the enquiry was completed and approved right upto the rank of Major General by 29th October, 1988.

We have also examined the various annexures constituting the shadow file appended with the reply of respondent nos. 3 and 4. We put it to Mr. Ganesh repeatedly as to whether he could identify the information that had to be obtained from the police record. He could give no categorical answer to this query except to state that the reluctance of the civil authority to produce the file betrayed a guilty mind and the possibility existed that there was something in the file

which needed to be hidden.

It is also interesting to note that in addition to the several documents appended to the inquest report furnished by the police by way of annexures with the written statement of respondent Nos. 3 and 4 a statement of Jalaluddin Regoo, the brother of the deceased completely exonerating the army of any wrong doing, has been appended although it has been pointed out by Mr. Ganesh that he had filed an affidavit denying he had made any such statement. We are therefore of the opinion that there is not an iota of evidence to support the petitioners' plea except for the statements that she has made in the present petition. It has already been observed at the very initial stage that the court must lean a little in favour of the victims on account of the adverse situation in which they stand placed, but the Court must find something to lean on. We find no evidence to suggest that the petitioners' case was worthy of belief. On the contrary we have the army and police record pertaining to the incident which clearly show that Regoo was indeed a militant and that the circumstances leading to his death were as per the circumstances put on record by the respondents.

We thus find no merit in the petition. It is accordingly dismissed with no order as to costs.