

**IN THE HIGH COURT FOR THE STATES OF
PUNJAB AND HARYANA AT CHANDIGARH**

C.W.P. No. 3670 of 2004
(Public Interest Litigation)

- 1) Malwinder Jit Singh Waraich, S/o S. Bhag Singh, Resident of Village and Post Office Saketri, Distt. Panchkula.
- 2) Mohinder Kaur @ Jaswinder Kaur, W/o Bharpur Singh, R/o 963/1 Kaith Majri, Ambala City (Impleaded *vide* order dated 26/5/10)

... Petitioners

Versus

Union of India, through Ministry of Defence, South Block, Central Secretariat, New Delhi.

... Respondents

Civil Writ Petition under Articles
226/227 of the Constitution of India
praying for:

- i) issue of a writ in the nature of mandamus to respondent to discharge legal obligation, and consequently to sanction grant of at least Rs. 50 lacs to the legal heirs of Lt. Ajmer Singh and Capt. Maghar Singh for having shot dead these two officers on 5.11.1944 while in custody, besides granting other reliefs being granted by the Hon'ble Court for those killed in custody.
- ii) The total record of the case relating to their death and disposal of their dead bodies by summoned.

- iii) Issuance of any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the peculiar facts and circumstances of the case.
- iv) The filing of certified copies of the Annexures be dispensed with.
- v) Issuance of advance notice to the respondent may be dispensed with.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

DATE OF DECISION: MARCH 7, 2011

Malwinder Jit Singh Waraich

... Petitioner

VERSUS

Union of India

... Respondents

CORAM: HON'BLE MR. JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgement should be reported in the Digest?

PRESENT: Mr. M.J.S. Waraich, petitioner in person.

Mr. Anil Rathee, Standing Counsel for Union of India

RANJIT SINGH, J.

History of our freedom struggle is replete with stories of valour and sacrifices of individuals for their contribution for freedom of this country. The story and sacrifice of those who quit lucrative and budding careers in the Armed Forces to join the native Indian National Army on the call given by Neta Ji Subhas Chander Bose may also be well known. However, the individual sacrifice of large number of soldiers, who would have suffered individually would lie buried in some of the archives of history of Nation or the Army and no efforts appear to have been made to dig the same and to bring it into the focus of the Nation. It may be partially because the Army was under strict control of foreign rulers, who must have been too keen to put it under their wraps, lest it led to some revolt in the Armed forces. It would be,

however, unfortunate to notice the conduct of the present day regimes to help hiding this historical blunder and refusing to correct the same in an effective manner. Rather they are seen going overboard to defend the same or the action and thus, in a way facilitating to perpetuate some illegalities to belittle the extreme sacrifice made by soldiers for freedom of this country. Present regime should have been keen to correct this historical infirmity so as to expose the hidden highhandedness on the part of the then rulers who of course had motive to do so and to hide the same. But for a spirited effort made by a counsel of this Court having interest in the study of the history of freedom struggle of our country, a case of two custodial deaths of officers serving in the Army, would have remained buried in the archives of history of the country. His efforts would need appreciation, who, despite unresponsive bureaucracy pursued his mission with zeal and has brought this case to the stage of adjudication for correcting this historic mis-information buried in the records of State.

Mr. M.J.S. Waraich, a counsel of this Court, has filed this petition in person and has argued the same with lot of dedication and perseverance to seek justice for two National heroes of this great Nation, who had remained un-sung so far but had sacrificed their lives for the independence for our country.

Lt. Ajmer Singh and Capt. Maghar Singh were enjoying the status of officers in the British Indian Army and could have continued to enjoy the patronage of foreign rulers but chose the hard and a different and difficult path by joining Indian National Army by fighting for attaining independence for our beloved Nation.

While in pursuit of studying history of freedom struggle, the petitioner, a counsel of this Court, came across a document annexed with the petition as Annexure P-1, showing that these two officers, who had joined Indian National Army (for short, "INA") were done to death on 5.11.1944, after having been captured by the British Forces in June 1944. Annexure P-1 is a document, which is a proceeding of the Court of enquiry, which was assembled at Red Fort at Delhi on 9.2.1946 on the orders of Commander in Chief, India, for enquiring into the conduct of recovered prisoners of war, mentioned therein

i.e. those two officers. The Court of Enquiry was presided over by Major P. Marlow of 3rd Gurkha Rifles with Captain L.S. Puar of Royal, Garhwal Rifles, being its Member. The Court of enquiry assembled and took evidence to find out as to how these two officers switched over to INA and had died in the same cage with gun shot injuries on head. A perusal of this enquiry, which is so brief that, to be 'farcical' would be the only apt word to describe the same. It apparently was done just to complete papers, to pass off two custodial deaths of officers concededly taken as prisoners of war as an act of suicide. The Court of Enquiry examined two witnesses only. Their version is contained in just one or one and half type page, which includes some other details and name of officer constituting the enquiry. Capt. F.E. Hotz. had deposed that Lt. Ajmer Singh was taken as prisoner of war in Singapore in February 1942. As per his version, Lt. Ajmer Singh had voluntarily joined INA in July 1942 and had moved to Neesoon Camp where he became G.S.O. II of 1st Hind Field Force Group. It is stated that Lt. Ajmer Singh was promoted as Captain and in November 1942 moved with INA Advance Party to Rangoon and worked at Cushing High School until February 1943. In August, he was appointed Quartermaster of the High School and was selected as Commander of 3rd Homalian Sector in December 1943. The statement further proceeds to say that the officer arrived in Mandalay for Indo-Burma Front and had surrendered to British Forces in Kezoma in June 1944. This witness has then disclosed abruptly that the officer was murdered in the Red Fort, Delhi by Capt. Maghar Singh on 5.11.1944. This is all what is recorded as evidence. No question asked, no explanation sought and his version is accepted as a gospel truth. The witness has not disclosed his source of information or knowledge. He is not an eye-witness so as to give this account. It is all farcical and nothing else.

Another witness, namely Capt. Ridout, is examined to give evidence that on 5.11.1944 at about 7 O'clock in the evening, he was called to INA cages to investigate a shooting incident, when he discovered that Lt. Ajmer Singh and Capt. Maghar Singh were dead in the same cage with gun shot in the head. Again no effort made by the Court to find out anything further or details of the incident. He is not the one who was present at the time of

incident, as is apparent from his version. No eye-witness is examined. None would be interested to find out the true state of affairs. Aim was to give it decent burial. Obviously, both the officers apparently were shot dead and case was passed off as a case of suicide by one after killing another as per agreed plan. A little intelligence on the part of the officers holding the enquiry, would have prompted them to ask as to how these officers came to possess weapon used in the incident. Such unfair enquiry, which is so bereft and laconic, had gone on to record an opinion that both these officers served with and aided enemy from July 1942 to June 1944. These two officers, who were earlier serving in the British Indian Army and concededly had been taken as prisoners of war, had died in the custody of the Armed Forces of so called Great Country professing itself to be governed by rule of law, had easily passed off this case of cold blooded murder as innocent deaths. The persons, who were responsible for the safe custody of these two officers, were fully accountable for these custodial deaths. No one could ever have questioned them. They were the rulers and persons dying ruled. This may explain the conduct of the then rulers but what about us who are now dealing with the issue after independence. Should not we all wake up and take notice of this inhuman conduct and assuage the hurt caused to these persons, their families and to the whole Nation, as such. This has awakened one public spirited person but why has not this shaken our consciences as a Nation. What about those who have responded to the case by filing reply. It is sad state of affairs to notice.

In a reply filed on behalf of Union of India, Lt. Col. Naveen Kumar Anand serving as Assistant Judge Advocate General at Army Headquarters, New Delhi, has responded to this cry by filing affidavit. He would say that he is conversant with the facts of the case as derived from the official record. I would have my doubts, if he is in any competent position to file this affidavit in response to an issue of such a great public importance raised in the writ petition. He would not have had any access to the record. His first objection is that this writ petition is filed after a lapse of 59 years of alleged occurrence. This would obviously show the insensitivity on his part in regard to the issues agitated in the petition. How could a delay matter in such an important issue,

which is not significant from any individual perception but is of a great importance from the point of view of history of Nation and is relating to sacrifice made by two great sons of the Country. Surely, he would not like this historic blunder to perpetuate. Here was a chance for everyone of us to come clean and help in correcting this blunder of history. Alias! We are found wanting and have adopted a routine bureaucratic denial approach to justify highly illegal and motivated action, which was full of malicious action by the then foreign rulers.

The next objection by the person filing the reply is regarding the territorial jurisdiction of this Court. He would plead that deaths took place at Delhi and hence, no cause of action has arisen under the jurisdiction of this Court. This technical objection can simply be ignored by noticing the position of forces stationed at Delhi at the relevant time, which even now are under the jurisdiction of this Court. I would, thus, ignore this objection more so as it was not pressed during the course of submissions made by the counsel for Union of India.

The next objection raised is in regard to the locus of the petitioner. A petition filed in public interest to correct the historical infirmity, allowed to perpetuate so far is facing one technical objection after another. To overcome this, the petitioner has adopted a right and wise course by bringing in the L.Rs of one of the deceased officer. Thus, locus to claim damages would accordingly survive.

I must express my sense of pride while noticing the attitude of offsprings of these two soldiers. L.Rs of one of the officer, namely, Capt. Maghar Singh, though available, have declined to come forward to claim compensation for the sacrifice of their forefather. It was revealed by the petitioner during the course of his submissions that L.Rs of Capt. Maghar Singh even declined to meet and discuss the issue. They are not even keen to claim some credit for this sacrifice, which is their rightful due. Fortunately, however, surviving daughter of late Lt. Ajmer Singh came forward to be substituted as petitioner being the sole surviving heir and has impleaded as a petitioner being the sole surviving heir and was impleaded as a petitioner on 26.5.2010. The respondents filing reply may have to be reminded that the

petitioner was not asking any compensation for himself but was primarily seeking correction of this wrong in larger public interest. It was more of a case of correcting this distortion of history and to get justice for those two officers, who were killed by the foreign rulers. Instead of helping the Court in correcting the facts so that history could be correctly noted for future, the respondents have made laborious attempts to give this issue a different colour and a filmy twist to this extreme sacrifice made by these two officers. May be the respondents are under illusionary filmy syndrome to narrate a story, which would not only sound puerile but would be highly unbelievable and unworthy of any credence.

While narrating the brief facts of the case, it is stated that Lt. Ajmer Singh had joined 16 Punjab Regiment in 1935 and was granted emergency commission in August 1941 in the British Forces. He proceeded to Singapore with 6/1 Punjab Regiment in January 1942 and was taken prisoner at the fall of Singapore. He had joined INA in early July 1942 and was sent to Burma with an Advance Party in November 1942. The Officer statedly had accompanied the Japanese in their advance to Manipur Plain and was attached to 142 Regiment. Capt. Maghar Singh was also with this Regiment. Lt. Ajmer Singh had allegedly carried out propaganda and patrolling for Japanese forces and was wounded in action on 10.5.1944 and handed over command of Butai for which he was selected as Commander. The Officer was unable to keep up owing to his injury and being unable to walk, was statedly left behind by the Japanese and fell into the hands of British Troops. What would be sad to notice is the fact as disclosed in the reply by our own people to say that this officer was interrogated and revealed considerable amount of information. The person filing the reply still feels that it was against the National interest without realising that the late officers had fought for freedom of our country. The reply otherwise does not reveal anything different.

As per the reply, this officer was kept with Capt. Maghar Singh at Red Fort by the British Forces. Here, then is given a filmy twist, when it is stated, without revealing the sources of this information, that these two officers overpowered the Sentry, who entered their enclosure, when Lt. Ajmer Singh

allowed himself to be shot by Capt. Maghar Singh in accordance, with the pre-arranged plan and later shot himself. This is stated to be on the basis of a letter written by Lt. Ajmer Singh before the incident, which was signed by both the officers and was found at the place of incident. Where is the original of this letter, would be a natural poser? It is not forthcoming. Even if it was available, it would be a document, which was obviously fabricated and framed by the foreign rulers to justify two cold blooded murders. Such a thing can happen only in a movie. A soldier coming to the cage, allowing his weapon to be snatched and silently watching, one person being killed and another shooting himself without any intervention from anyone. It is too much to digest or accept. It is too farcical to believe and clearly a false and fabricated story coined to justify two murders. This Court certainly cannot believe this story. The Union of India or the officer filing reply may believe it to be so to present it before this Court. I would outrightly reject this story, more so, when the letter, which is the basis of so stating, is not forthcoming.

This stand of the respondents, on appreciation, would need outright rejection, if one was to examine the conduct of the respondents, even since the date of filing this petition. Before issuing notice, this Court has assured itself by asking the petitioner to provide authentic proof of documents relied upon. On the asking of the Court, the petitioner had place photocopy of Annexure P-1 on record and thereafter this Court had issued notice of motion. The case was then adjourned on numerous occasions for filing of reply. On 3.8.2005, the counsel appearing for the Central Government, on proper instructions, were to submit before the Court that no relevant record pertaining to the issue agitated in the petition was traceable. The counsel at that time had also raised a plea in regard to territorial jurisdiction of this Court to entertain the petition. This Court asked the counsel to place on record all facts by means of an affidavit. Then followed various adjournments to enable the respondents to file this affidavit and the case had to be adjourned for this purpose. This Court had then enquired from the counsel for the respondents if any original documents, copies of which had been included, were available or not. The process of adjournments began again till finally the counsel submitted before this Court that the respondents were unable to get this

information/documents as these were available with National Archives, New Delhi. The respondents were then directed to make a request to National Archives to secure the necessary information/documents. Some record was then received and the counsel for Union of India was directed to show the same to the petitioner appearing in person in this case. Ultimately on 21.8.2006, this Court admitted the petition. Still, it has taken nearly five years to decide the case.

The Court had to first deal with the objection in regard to locus, which was pressed by the counsel for the respondents. The petitioner then was able to search for L.Rs of the late officers. It certainly was no mean task to undertake this exercise. The self-respect of the L.Rs of one officer was such that he/they refused to come forward to seek any compensation for this extreme sacrifice done by their forefather. I am informed, and have good reason to believe so that the daughter of late Lt. Ajmer Singh, who has come forward, is more concerned in correction of this history rather than to seek compensation. She has come forward as a petitioner only to blunt the hyper-technical objection raised by the respondents about the locus of the petitioner to maintain the petition, seeking compensation on account of these custodial deaths. Respondents could also have shown some sense of responsibility to come clean to correct this historical inaccuracy? They are not carrying any bags of foreign rulers, for which they were required to twist facts to defend these custodial deaths by raising a defence, which is worthy of rejection with contempt. No prudent person with any senses can believe this make belief story as projected. How could the respondents come out with the facts as stated in the reply, if they were not having record of the case available with them and had sought adjournment after adjournment, ultimately to procure something from the archives. The position still is that they have not been able to place any authentic information on record to substantiate their stand, which they have taken before this Court, a stand which is misconceived one. This stand would not inspire any confidence whatsoever. This story is unbelievable and I am not ready to believe it. It would deserve outright rejection. It would be reasonable to hold that these two officers could not have died in the manner as projected but apparently were shot dead, while in

custody by the then regime and projected as a case of deaths in the manner as is disclosed in the reply.

The manner in which enquiry was held would be proof enough of the fact that false details were weaved to justify these killings. Had it been the true reflection of the events, the witness, whose weapon was snatched, could have easily been examined at the Court of Enquiry. No eye-witness was examined to bring out the manner in which the deaths had taken place. This was the requirement even as per the then existing law. Death of a soldier has to be enquired by ordering a Court of Enquiry. Why this was not done, would speak volumes about the manner in which efforts were made to hide these two murders. This could be done only, as foreign rulers could do anything and get away with it.

The story of tyranny of foreign rule, leading to endless death in a brutal manner is imbedded in leaves of history of freedom struggle. Who can forget the massacre of Jallianwala Bagh. So many innocent persons were brutally killed. Was it difficult to kill two officers? Let these two names be added on these leaves for posterity to remember and recollect these sacrifice. These two officers gave up their secure careers in the British Army and chose to join the National Forces to fight the British Rule for freedom of our country. They fought valiantly and were injured in their pursuit and had ultimately sacrificed their lives. Nation needs to salute them.

I would shudder to guess as to why the foreign regime would have decided to do away with the lives of these two soldiers, taken as prisoners of war. It appears that some information had surfaced during their interrogation, which would have prompted the then rulers to adopt this extraordinary and illegal mode to do away with these two precious lives of patriots. Indication on the lines may be had from the reply filed where it is stated that officer during interrogation "revealed considerable amount of information". Was this the reason to do away with the lives of these two soldiers?

Respondents have attached a brief précis of this case with reply as Annnexure R-1. This contains copies of some notings then recorded for taking action for forfeiture of the pay of these two officers. It is recorded in these nothings that Capt. Maghar Singh deliberately shot Lt. Ajmer Singh and

had then committed suicide. This is stated to be a pre-arranged plan mutually agreed to by these two officers. After giving details of service rendered by these officers, it is noted that they had volunteered to serve the 2nd INA. Thereafter details of their participation in the efforts of INA are recorded, besides the manner in which they were captured. During interrogation, the officers claimed that they always had intention to escape and had advised espionage party sent out to do likewise. This noting is by Brigadier G. Leslie Mold and was recorded on 4.3.1946. This Brigadier has recorded that there is no need to go into details of deaths. Without any material, he has recorded that it is proved that after having disarmed the Sentry, Lt. Ajmer Singh allowed himself to be shot by Captain Maghar Singh with a pre-arranged plan, who later shot himself. Copy of the letter purported to have written by Lt. Ajmer Singh, which is on record, would obviously show that it could not have been written by someone who was planning to end his life. In this letter, reference is mainly made to the manner of classifying activities of those caught under different categories. The author is noticed to have made grievance that one is let off whereas another is punished. Having made reference to these aspects and about one Jem. R.H. Ansari, it is recited in this letter that we would easily escape from here but did not think it to be proper and that this action is pure voluntary and nobody is to blame. These are lines recorded at the end of the letter and does not give any indication of a plan which these officers may have formed, as is being stated in the reply. There is no mention in the letter if these officers had decided to do away with their lives in the manner as is urged and it would, thus, not be possible to accept that mention made in the last line of this letter that this action is voluntary and nobody is to be blamed is related to the incident of deaths. I am quite sure that if the original of this letter had been produced, the lines as recorded in the letter would not be found endorsed in the handwriting of the person writing these letter, as is being made out. I would, thus, attach no significance to this material to hold that these two officers died in a manner as is being projected. These two officers were concededly in the custody of the British Army and to keep them safe and sound was the responsibility of the captors. Once they have died while being in the custody, which fact is not in dispute, the responsibility to

account for these deaths would be that of the custodian of these two officers taken as prisoners of war. This is not only a crime against the Nation but is a war crime even against the Geneva Convention requiring the soldiers taken as prisoners of war to be kept safely in a proper and dignified manner. Apparently, the then rulers had extracted the information during interrogation and thereafter had done away with the lives of these two Indian Officers. This would be unacceptable and intolerable too. The then regime has to account for this highly objectionable method. The successor Government has to re-compensate the wrong meted out to these two soldiers and their respective families.

By now, there are enough precedents to award compensation for custodial deaths under public law proceedings. That award of compensation by Supreme Court in proceedings under Article 32 of the Constitution or by the High Court in proceedings under Article 226 of the Constitution is a remedy available in public law based on strict liability and is by now fairly settled. As observed in ***Nilabati Behara (Smt.) alias Lalita Behera (through the Supreme Court Legal Aid Committee) Vs. State of Orissa and others***, (1993) 2 Supreme Court Cases 746, the object of compensation in private tort law action. In case of violation of any fundamental right of an individual by State's instrumentalities or by its servants, the Court can direct the State to pay compensation to the victim or to his heirs by way of monetary amends and redressals. It is observed that the principle of sovereign immunity is inapplicable in such cases and that this remedy is apart from the private law remedy. Once the custodial death is established, then having regard to the age of the deceased and his monthly income, the State can be directed to pay compensation by adopting some parameters and these may be available as are applied under Motor Vehicles Act.

It can be noticed that under public law proceedings, Court can evolve new tools and mould remedy to provide redressal in case of deprivation of fundamental rights like the right under Article 21 of the Constitution of India. This article would now be available for use. The public law proceedings are different from private law proceedings and award of compensation in proceedings for enforcement of fundamental rights under Articles 32 and 226

of the Constitution of India is a remedy available in public law. Even the convicts, prisoners and under trials have been held to have a right under Article 21 of the Constitution and the State has a strict duty to ensure that a citizen in custody of the police or prison is not deprived of his right under Article 21, except in accordance with law. Once a person is taken in custody and he dies, the burden is always on the State to explain how he died and what is the cause of his death. The Court has observed that enforcement of constitutional right and grant of redress embraces award of compensation as part of legal consequences of its contravention. Award of compensation under Articles 32 and 226 of the Constitution is a remedy available in public law on an action 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 as a defence in private law on an action based on tort. Thus, as 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. Such a claim based on strict liability made by resorting to constitutional remedy provided for enforcement of fundamental rights is distinct from and in addition to the remedy in private law for damages for tort, resulting from contravention of the fundamental rights.

In **Rudul Sah Vs. State of Bihar**, (1983) 4 SCC 141, it was held that in a petition under Article 32 of the Constitution, the Supreme Court can grant compensation for deprivation of fundamental rights. Having observed that Art 32 cannot be a substitute for enforcement of rights and obligations which can be enforced through the ordinary process of courts, civil or criminal, Hon'ble Supreme Court went on to hold that the refusal to pass an order of compensation in favour of the person will be doing lip-service to his fundamental right to liberty, which the State Govt. has so grossly violated. As per the Hon'ble Supreme Court, Art 21, which guarantees the right to life and liberty will be denuded of its significant contents if the powers of the court were limited to passing the orders to release from illegal detention. As observed, one of the telling ways in which the violation of the right can

reasonable be prevented and due compliance of the mandate of the Art secured, is to mould its violators in the payment of compensation.

Catena of decisions in this regard recognizing the right to receive compensation in public law proceedings can be noticed. This was so held in **Subastian M. Hongray Vs. Union of India**, (1984) 1 SCC 339 (I), **Sebastian M. Hongray Vs. Union of India**, (1984) 3 SCC 82, (II) **Bhim Singh Vs. State of J&K**, 1984 Supp SCC 504, **Saheli: Women's Resources Centre Vs. Commissioner of Police, Delhi Police Headquarters**, (1990) 1 SCC 422 and **State of Maharashtra Vs. Ravikant S. Patil**, (1991) 2 SCC 373.

In **Sebastian M. Hongray's case (I)'s case** (Supra), it was indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the Court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control and command of the detaining authority. In **Sebastian M. Hongray's case (II)** (supra), exemplary costs were awarded on failure of the detaining authority to produce the missing persons on the conclusion that they were not alive and had met with an unnatural death. In **Bhim Singh's case** (supra), illegal detention in police custody was held to constitute violation of rights under Articles 21 and 22 of the Constitution and the Hon'ble Supreme Court had awarded compensation, directing the State to pay monetary compensation by way of exemplary costs. In **Saheli's case** (supra), the State was held liable to pay compensation to the mother of the deceased, who died as a result of beating and assault by police. The principle indicated therein was that the State was responsible for tortuous act of its employees. In **Ravikant S. Patil's case** (supra) High Court has awarded compensation for violation of fundamental rights under Article 21 of an under trial prisoner, who was handcuffed and taken through the streets in procession by police during investigation.

Similar issue arose and was decided in **Maharaj Vs. Attorney General of Trinidad and Tobago**, (1978) 2 All ER 670. This case related to Section 6 of the Constitution of Trinidad and Tobago, 1962, in Chapter pertaining to human rights and fundamental freedoms. Section 6 provided for

an application to the High Court for redress. The question was whether the provision permitted an order of monetary compensation. A contention was raised that an order for payment of compensation did not amount to enforcement of right that has been contravened. This was expressly rejected. It was held that an order of payment of compensation, when a right protected has been contravened is clearly a form of redress, which a person was entitled to claim under Section 6 and may well be the only practicable form of redress. Lord Diplock, delivering the majority judgements, held that the jurisdiction to make such an order is conferred on the High Court, viz., jurisdiction to hear and determine and application made by any person in pursuance of sub section (1) of Section 6 and that the very wide power to make orders, issue writs and give directions are ancillary to this. Lord Diplock further spoke as under:—

“Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant’s constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.”

This approach would find clear support from the decision of the Hon’ble Supreme Court in **Bhagalpur Blinding Cases: Khatri (II) Vs. State of Bihar**, (1981) 1 SCC 627. The Court in this case has observed that it would not be helpless to grant relief in cases of violation of right to life and personal liberty and it should be prepared to forge new tools and devise new remedies for purpose of vindication of these precious fundamental rights. It was also indicated that procedure suitable in the facts of the case must be adopted for conducting enquiry needed to ascertain the necessary facts for granting the relief as the available mode of redress for enforcement of guaranteed fundamental rights.

From the material that has been placed on record, the factual position can be ascertained. The manner in which the respondents would project

these deaths to have taken place cannot be accepted. In any event, the then Government was certainly found negligent, leading to loss of two human lives. This would reveal gross violation of right of life guaranteed to every human being. Right to life is a basic right of every human being and its violation, without being support of any statute or as Constitution, is unacceptable and, thus, has to be accounted for. In **Union Carbide Corpn. Vs. Union of India**, (1991) 4 SCC 584 also, it is observed that Courts have to develop own law and if the Courts find that it is necessary to construct a new principle of liability to deal with unusual situation, which has arisen and which is likely to arise in future, then there is no reason why the Court should hesitate to evolve such principle of liability.

Article 9(5) of International Covenant on Civil and Political Rights, 1966, would also show that an enforceable right to compensation is not alien to concept of enforcement of guaranteed right. *This Article says "Anyone who has been victim of unlawful arrest or detention, shall have an enforceable right to compensation."*

Ajab Singh and another Vs. State of U.P. and others, (2000) 3 Supreme Court Cases 521, was a case where he deceased was lodged in a jail and was in judicial custody. He was removed to the hospital where he died. The cause of death was shock and hemorrhage. The Police authority put forth concocted explanation. The C.B.I. was not only directed to register a case and conduct investigation but the State Government was held responsible in law for death of the deceased and was, thus, found liable to pay compensation to the petitioners for the same. The law, thus, is fairly settled that compensation by way of public law proceedings can always be invoked and the Courts can evolve new tools and mould remedy to provide redressal in cases where violation of right or fundamental right is seen. I am, thus, clear in my mind that case for award of compensation on account of these two deaths is made out.

The next question is about the quantum of compensation. Though we have some precedents, where the Courts have adopted a multiplier system and applied it for assessing compensation. This method can fairly be adopted to assess the compensation in this case. To do so at this stage on the basis

of income or the earning of the deceased persons may not lead to fair result. In addition, the L.Rs of one of the officers have declined to come forward to seek compensation. In my view, case for award of token compensation on this case is made out just to recognize the fact that the custodial deaths in this case were/are not justified. Accordingly, a token compensation of Re 1 is awarded in the case of custodial death of Captin Maghar Singh. Since the L.R. of Lt. Ajmer Singh has come forward to pray for compensation, I would adopt a rule of guess work to award compensation of Rs. five lacs to the L.R. of Lt. Ajmer Singh by way of public law proceedings. Besides, I would leave liberty with the L.Rs of Lt. Ajmer Singh and that of Captain Maghar Singh to Approach Civil Court to ask for adequate compensation as the present one has not been assessed on the basis of loss that they have suffered and is only on the basis of broad aspect of colossal loss. In fact, the loss of these two persons is invaluable and incalculable to be computed in any pecuniary means and the compensation that has been ordered to be awarded as a stop-gap arrangement is no reflection of the loss suffered by these families and by the Nation.

The writ petition is accordingly allowed in the above terms. The compensation be paid to the L.R. of Ajmer Singh within a period of one month from the date of receipt of copy of this order. The token compensation awarded in the case of Captain Maghar Singh be deposited in the accounts of legal Services Authority, Punjab, if the same is not being claimed by any of his L.Rs.

Sd/- (RANJIT SINGH)

Judge

March 7, 2011
khurmi