

R. S. Sodhi, Advocate

Vs

State of U. P. and Others

State Of U. P.

Vs

R. S. Sodhi and Others

Writ Petition (CRL) No. 1118 of 1991 With R. P. (CRL) No. 793 of 1991 In W. P. No. 1118 of 1991

(Kuldip Singh, A. M. Ahmadi JJ)

15.05.1992

ORDER

1. This writ petition brought under Article 32 of the Constitution concerns the incident which had taken place at Pilibhit on September 12/13, 1991 in which 10 persons were reported to have been killed in what were described as 'encounters' between the Punjab Militants and the local police. The news item in connection therewith appeared in The Times of India on the basis whereof the petition was filed. The issue was raised in the Parliament and teams of MPs belonging to the Congress(I) and BJP also visited the places of occurrence to make an on-the-spot inquiry. Their reports are on record. We have also perused the report of the ACJM, Pilibhit in which it is pointed out that the identity of the persons killed in the encounters was not correctly stated. The investigation in regard to the incident was handed over to an officer of the Inspector General's level and we are told that the local police officers suspected to be concerned with the incidents were also transferred to enable the officer to carry on the inquiry unhindered. Subsequently, the State Government also appointed a one-member commission headed by a sitting judge of the Allahabad High Court to inquire into the matter but it appears that in some writ petition filed in the High Court of Allahabad (Lucknow Bench) a stay has been granted restraining the commission from functioning. Be that as it may, the fact remains that three incidents in which as many as 10 lives (now stated to be eleven) were lost had admittedly taken place and the need for an independent investigation can hardly be disputed. Since the local police was involved in the said encounters, a request has been made that an independent agency may be asked to inquire/investigate into the matter in accordance with the Code of Criminal Procedure with a view to bringing the offenders, if any, to book. Mr. Sodhi contends that the investigation may be directed to be carried out by the Central Bureau of Investigation having regard to the fact that the accusations are levelled against the local police. He points out that even the State Government has seen the need for inquiry by an independent commission. As against this the learned counsel for the respondent-State submits that the State Government has taken prompt action in the matter by appointing a high level officer to inquire into the incidents and by promptly transferring the concerned local police so that there may be no possibility of any tampering or interference by them. He further points out that the State Government has also taken the next step of appointing a commission headed by a sitting High Court Judge to probe the incidents and to arrive at the truth and hence there is no need for directing the Central Bureau of Investigation to investigate into the matter. In support of this contention he invited our attention to

the observations made by this Court in Chaitanya Kalbagh v. State of U. P. ((1989) 2 SCC 314 : 1989 SCC (Cri) 363). In that case this Court observed that in the facts and circumstances presented before it there was an imperative need of ensuring that the guardians of law and order do in fact observe the code of discipline expected of them and that they function strictly as the protectors of innocent citizens. This Court refrained from saying anything further in the matter so that no prejudice is caused to anyone in the course of the inquiry/investigation that may be undertaken. Counsel emphasised that once the State Government has shown its bona fides by taking prompt action in the matter it must be left to the State Government to complete its function under the Code of Criminal Procedure without any interference from outside agency. Emphasis was laid on the observation that matters which properly fall within the domain of the State Government should be left to that Government and that Government should be petitioned first before any interference by the court is called for.

2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.

</html