

Munir Alam

Vs

Union of India

Writ Petition (Crl.) No. 352 of 1997

(CJI Dr. A. S. Anand, M. Jagannadha Rao, N. Santosh Hegde JJ)

07.05.1999

JUDGEMENT

N. Santosh Hegde J.

1. On the night intervening 1st and 2nd October, 1996, in the vicinity of the Lodge of the Vice-chancellor, Aligarh Muslim University, firing took place in which Nadeem Alam, the 20 year old son of the petitioner was killed. A formal report was filed by respondent No. 3 (Proctor of the University) on 2nd October, 1996 which was incomplete and therefore, an additional report in continuation of the earlier report was also filed.
2. In this petition, which has been filed by the father of the deceased Nadeem Alam, it is alleged that the police, with a view to cover up its act of commission of unjustified and unprovoked firing, manipulated the record and filed a final report in the committal court. According to the petitioner, the investigation into the incident of firing was conducted in a wholly slip shod and a biased manner. The petitioner has, therefore, *inter alia* prayed in the petition that a fair investigation be got conducted into the incident through the CBI and to punish the guilty and award exemplary damages to the family of the deceased.
3. Notice was issued in the Writ Petition on 13th November, 1997. Counter and rejoinder were filed thereafter by the parties. Not being satisfied with the reply, on 16th March, 1998, a Bench of this Court, felt that for proper disposal of the Writ Petition, the matter required to be inquired into by a competent judicial officer. Accordingly, the learned Sessions Judge, Aligarh was directed to inquire into the matter himself or to get it inquired by a competent officer, not below the rank of an Additional Sessions Judge and to submit the report of inquiry to this Court within two months from the date of communication of the order. The period of two months was, however, extended from time to time to enable the learned Additional District and Sessions Judge, Aligarh, who had been detailed to hold the inquiry, to submit his report.
4. The learned IVth Additional District and Sessions Judge, Aligarh, Sh. S.K. Raturi, submitted his report on 26th November, 1998.
5. The learned IVth Additional District and Sessions Judge had heard counsel on behalf of the petitioner as well as those appearing on behalf of Aligarh Muslim University, Administration and the Government of Uttar Pradesh. After recording evidence, the learned Inquiry Judge in his report dated 26.11.1998 concluded as follows :

"(a) that deceased Nadeem Alam received injuries in the incident that took place near

V.C. Lodge in the intervening night of 1/2.10.1996;

(b) Investigating Officer of Crime No. 420/96 made no efforts to find out facts as to how and under what circumstances body of the deceased was transported to Azamgarh;

(c) that Panchayatnama prepared at Azamgarh (U.P.) under the supervision of the then S.D.M. PW 14 Rajeev Agarwal is a doubtful document;

(d) that injury report prepared by Dr. Salah Uddin at J.N. Medical College, Hospital, A.M.U. and post mortem report prepared by PW 4 Dr. G.C. Maurya & 2 others at District Hospital, Azamgarh are contradictory to each other. Hence, either of the report is false;

(e) that PW 2 Dr. Smt. Shaad Bano Ahmad, Proctor, A.M.U. handed over two written reports at P.S. Civil Lines, Aligarh on 2.10.1996 in respect of incident that took place in the intervening night of 1/2.10.96 and about Nadeem's death. This is evident from G.D. Reports Nos. 20 and 24 dated 2.10.1996 of P.S. Civil Lines, Aligarh, but Police Civil Lines, Aligarh registered Crime No. 420/96 regarding Nadeem Alam's murder only on 17.10.1996 on the basis of a vague report dated 16.10.1996 sent by PW 2 Dr. Smt. Shaad Bano Ahmad, Proctor, A.M.U.;

(f) that the Investigating Officer of Crime No. 420/96 made no efforts to record statements of injured students during investigation."

6. On 8th January, 1999, inspection of the report submitted by the learned Additional District and Sessions Judge was permitted by the Court. The inspection was to be made by learned counsel for the parties.

7. On 16th January, 1999 Senior Superintendent of Police and the District Magistrate, Aligarh appointed, Chief Development Officer, Aligarh and the Superintendent of Police, Aligarh (Rural Area) as Inquiry Officers to enquire into the matter. The order made by the District Magistrate and the Senior Superintendent of Police in that behalf reads as follows :

"In Writ Petition (Crl.) No. 352 of 1997 Munir Alam v. Union of India and others filed in the Hon'ble Supreme Court at New Delhi, the Hon'ble Court has passed orders to have the related matter to be enquired by some independent Agency/Sr. Officer. The date 22.1.1999 is fixed in this writ petition and it has been required that the information about the inquiring Agency/senior officers be submitted by 17.1.1999.

2. Shri H.N.L. Asthana, Under Secretary, Home (Police) Section 12 Govt. of Uttar Pradesh, Lucknow vide his Fax message No. 5CC-6-12-99 dated 15.1.1999 has directed the related matter relating to the above Writ Petition to be enquired by some Senior officer in view of the orders passed by the Hon'ble Supreme Court, New Delhi.

3. The matter relating to the above Writ Petition relates to the incident of firing in the night of dated 1/2.10.1996 in Aligarh Muslim University Campus and relating to the death of one student named Nadim Alam in the said incident.

Hence in compliance of the orders passed by the Hon'ble Supreme Court and the order of the Government, the Chief Development Officer, Aligarh and the Superintendent of Police, Rural Area, Aligarh are hereby appointed as the Inquiry Officers in the above matter. Both these Inquiry Officers shall jointly conduct the inquiry and would ensure immediate submission of their Joint inquiry report."

8. A perusal of the above order shows that the Senior Superintendent of Police as well as the District Magistrate were aware that this Court was seized of the case and that the report of the Additional District and Sessions Judge, the inspection of which had been permitted by this Court on 8th January, 1999 had been submitted to this Court. The communication sent by Mr. A.S. Pundir, learned Advocate on record for the State of U.P., to the Home Secretary, Government of Uttar Pradesh, on 8th January, 1999 shows that he had informed the Home Secretary that this Court had perused the report of inquiry submitted by the Additional District and Sessions Judge, Aligarh and had after examining the same, adjourned the matter by two weeks to enable the State of Uttar Pradesh "to have the matter inquired by some Independent Agency/Senior Officer". Instead of registering a case and getting it investigated by an independent agency, in the light of the report of the Additional District and Sessions Judge, the Under Secretary, Home (Police) on 15.1.1999 directed the matter to be "enquired" into by some senior officers. The Chief Development Officer and the Superintendent of Police were, therefore, appointed to "enquire" into the incident and the related matters.

9. A report dated 12th April, 1999 of the Chief Development Officer, Aligarh and the Superintendent of Police, Rural Area has now been produced before this Court. The findings recorded by the two officers in this report are diametrically opposite to the findings recorded by the learned Additional District and Sessions Judge. Since, no such report had been sought by this Court from the State, we are not taking the same into consideration.

10. Since, this Court was seized of the matter and had required the Additional District and Sessions Judge to hold an inquiry, we fail to understand how the State Government could have, after the report of the Additional District and Sessions Judge was submitted to this Court, directed an enquiry by the two Officers of the State Government. The submission of learned counsel for the State Government that the State Government understood the oral directions of this Court to have the matter *investigated* by an independent Agency/Senior Officer to mean to get an 'enquiry' conducted by a committee of two Officers does not impress us. The explanation is not acceptable and appears to be only a 'cover up' attempt. How could a direction of this Court to get the matter *investigated* by an independent Agency/Senior officer, be understood to imply to get an enquiry conducted by Officers of the status of Chief Development Officer and the Superintendent of Police (Rural) ? The manner in which the inquiry was got conducted by the State Government shows that the indulgence shown by this Court to the State Government to have the matter *investigated* by some independent agency etc. was misused. The State Government, it appears, tried to cloud the entire issue by getting an enquiry conducted by those two officers and its action does not stand proper scrutiny. To say the least, the manner in which the State has acted after the report was submitted by the Additional District and Sessions Judge, does not reflect well and appears to be an attempt to, once again, cover up the lapses pointed out by the learned Additional District and Sessions Judge. We need not, at this stage say any thing more on this aspect of the matter.

11. After perusing the report of the learned IVth Additional District and Sessions Judge dated 26th November, 1998, which we hereby accept, we consider it necessary with a view to arrive at the truth, that the entire matter be got investigated through the Central Bureau of Investigation (CBI).

We, accordingly, direct the Director, CBI to hold an enquiry/investigating into the incident which occurred during the intervening night of 1st and 2nd October, 1996 and into the related matters, keeping also in view the allegations made in this writ petition. The investigation may be got conducted, by the Director CBI, through an officer, not below the rank of a Senior Superintendent of Police (CBI). After the investigation is complete, the CBI shall proceed in accordance with law.

12. The record, which has been sent by the IVth Additional District and Sessions Judge, along with his report to this Court shall be sent to the Director (CBI). A copy of the writ petition together with other documents including counters etc. shall also be forwarded to him to enable the investigating officer of the CBI to conduct proper investigation.

13. In the event, the CBI, after investigation, finds that a challan is required to be filed against the culprits, it shall do the needful before a competent court. The request of the petitioner for award of exemplary damages to the family of the deceased, shall in that event be decided by the trial court, after notice to the petitioner and the accused.

14. The Director, CBI is requested to have the investigation carried out expeditiously and as far as possible within four months from the date of this order. The Writ Petition is, accordingly, allowed with costs. Petition allowed.