

B.G. Verghese

v.

Union of India (UOI) & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE  
CHANDRAMAULI KUMAR PRASAD

Writ Petition (Civil) No. 31 Of 2007 & W.P.(Crl.) No. 83 Of 2008 | 25-01-2012

Chandramauli Kumar Prasad, J.

1. These are two connected writ petitions filed under Article 32 of the Constitution.

2. In Writ Petition (Crl.) No. 31 of 2007, it is stated that during the years 2003-2006, 21 police encounter killings took place in the State of Gujarat. A city-wise list giving the names and some basic informations in regard to the persons said to have been killed in police encounters is given in a tabular form which is enclosed as Annexure P-1 to the writ petition. It is alleged that the so-called police encounters were fake and those persons were killed by the police officials in cold blood.

3. A prayer is made to order an inquiry into all the cases of police encounters which, according to the Petitioner, were fake in order to establish the rule of law and to bring out the truth in each case. The other Writ Petition (Crl.) No. 83 of 2007 relates to the killing of Sameer Khan, once again, in a police encounter. The circumstances in which the encounter is said to have taken place are detailed in the writ petition and as in the connected case, it is alleged that this too was an instance of fake encounter in which the aforesaid Sameer Khan was killed by the officers of the Crime Branch of Police in cold blood and in a premeditated manner.

4. A prayer is made in this writ petition to order an independent investigation by a Special Investigation Team into all the fake encounters, including the one in

which Sameer Khan was killed. It is further prayed that the same investigating team may also be directed to make inquiry "into the cover up of the killing of Sameer Khan".

5. During the pendency of this writ petition, the State of Gujarat has constituted a Monitoring Authority and Special Task Force for investigation of police encounters vide Notification dated September 16, 2010 published in the Gujarat Government Gazette Extraordinary dated September 18, 2010.

6. Clause three of the Notification deals with the powers and functions of the Monitoring Authority, which are as under:

"3. Powers and Functions of the Monitoring Authority: The powers and functions of the Monitoring Authority shall be as under:

(1) The Monitoring Authority shall monitor the investigation into the encounter deaths and all other incidental and ancillary matters of the Special Task Force;

(2) The Monitoring Authority shall have the power to guide and instruct the Special Task Force with respect to any subject, aspect, question or issue in relation to the mode, method and direction with regard to or connected with the investigation of encounter death;

(3) The Monitoring Authority shall have the power and duty to receive complaints of any death alleged to be an encounter death from the relatives of the victim;

(4) The Monitoring Authority shall also have the power to receive inputs and suggestions from the relatives of such victims and also the complaints, if any, of the officers of the police force facing investigation and if such inputs/information/suggestion and/or complaint is related to, whether directly or incidentally, the encounter death, the Monitoring Authority shall direct the

Special Task Force, to take them into consideration during investigation and report to the Monitoring Authority;

(5) It shall be the power and responsibility of the Monitoring Authority to review the progress of the investigation on quarterly basis and it shall be the corresponding duty of the Special Task Force to appraise, inform and brief the Monitoring Authority in detail at the regular interval of three weeks regarding the progress of the investigation in question;

(6) The non compliance with and deliberate disregard of the directions issued by the Monitoring Authority to the Special Task Force and/or any member thereof shall be construed as dereliction of duty and/or insubordination on the part of the Special Task Force and/or any of its constituents."

7. Following the Gazette Notification, an office order was issued on April 2, 2011, appointing certain police officers (named in the office order) as Members of the Special Task Force and by Resolution dated April 7, 2011, Shri M.B. Shah, a former Judge of this Court was appointed as Chairman of the Monitoring Authority. We are of the view that the Monitoring Authority constituted by the Notification dated September 6, 2010 has ample powers and having a former Judge of this Court as its Chairman, it is properly equipped to undertake an inquiry into the cases that are brought before this Court in these two writ petitions.

8. Having regard to the fact that a Monitoring Authority is put in place and a former Judge of this Court is its Chairman, we consider it desirable, at the first instance, to request the Chairman of the Monitoring Authority to look into all the cases of alleged fake encounters as enumerated in these two writ petitions and to have them thoroughly investigated so that full and complete truth comes to light in each case.

9. The Chairman of the Monitoring Authority may give hearing to the Petitioners in these cases or to any aggrieved person, including the kin or associates of the victims of the encounter deaths.

10. For investigating the cases, the Chairman of the Monitoring Authority may constitute different teams of officers from within the Special Task Force or from outside. Needless to say that while constituting investigating teams, the Chairman would bear in mind the sensitivity of the matter and the possibility of interestedness of some of the officers in the State Police.

11. It will be open to the Chairman, for the purpose of inquiry, to call for the police records/court records or the record from the National Human Rights Commission (NHRC) relating to the cases under inquiry.

12. Any case which is under investigation by orders of this Court or by the Gujarat High Court will not come within the inquiry by the Chairman of the Monitoring Authority in terms of this order.

13. If the Chairman of the Monitoring Authority considers it just, reasonable and proper, it will also be open to him to pass directions for grant of interim or final monetary compensation to the kin of the victims of the alleged fake encounters.

14. Let copies of the writ petitions complete with annexures be sent to Hon'ble Mr. Justice M.B. Shah, the Chairman of the Monitoring Authority constituted for investigation of police encounters deaths in Gujarat.

15. It is expected that a report/interim report from the Chairman of the Monitoring Authority would come to this Court within three months from today.

16. Put up on receipt of the report.