

B.G. Verghese

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE
RANJANA PRAKASH DESAI

Writ Petition (Criminal) No. 31 Of 2007 With Writ Petition (Criminal) No. 83
Of 2007 | 02-03-2012

1. On January 25, 2012, this Court passed an order requesting Mr. Justice M.B. Shah, a former Judge of this Court, who was appointed as Chairman of the Monitoring Authority constituted by the State of Gujarat, 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 the full and complete truth comes to light in each case.

2. Mr. Justice M.B. Shah, by his letter dated February 1, 2012, expressed his inability to devote sufficient time to look into all cases of alleged fake encounters and made a request to relieve him from the assignment as Chairman of the Monitoring Committee for the reasons stated in the letter.

3. The two writ petitions along with Mr. Justice Shah's letter were put up before the Court on February 24, 2012. On that date, Mr. Ranjit Kumar, learned senior advocate, appearing for the State of Gujarat, produced before the Court a copy of the Notification dated February 23, 2012, by which Mr. Justice K.R. Vyas, a former Chief Justice of the Bombay High Court, was appointed as the Chairman of the Monitoring Authority.

4. On a query, why the Notification was issued on February 23, 2012, when the case was to come up before the Court on February 24, 2012, Mr. Ranjit Kumar stated that after the previous order was passed on January 25, 2012, the officers of the State Government contacted Mr. Justice M.B. Shah. To them also Mr. Justice Shah expressed his inability to accept the assignment and in those

circumstances the State Government deemed it fit to issue the notification even before the case came to be taken up by this Court.

5. So far as the appointment of Mr. Justice Vyas as Chairman of the Monitoring Authority is concerned, this Court has nothing to say in the matter. But since he was sought to replace Mr. Justice M.B. Shah, who was appointed by this Court to head the investigation of the cases of alleged fake encounters, his appointment could only be made with the express permission of the Court and it was not proper for the State Government to issue the Notification just a day before the case was to be taken up by this Court.

6. On that date the case was adjourned to February 27, 2012.

7. On February 27, 2012, on a request made by Mr. Tushar Mehta, learned Additional Advocate General, State of Gujarat, the case was adjourned for today.

8. Today, Mr. Mehta prayed for further time (that would adjourn the case to the next miscellaneous day on March 12, 2012), stating that he himself along with the Advocate General of the State of Gujarat had met Mr. Justice M.B. Shah and he was hopeful that he would persuade Mr. Justice Shah to recall his letter to this Court and make him agree to accept the assignment.

9. We do not think this to be the proper course. We would rather respect the wishes of Mr. Justice Shah and would not like to burden him with an assignment which he is unwilling to take up for very good reasons, as stated in his letter of February 1, 2012.

10. By the letter dated January 25, 2012. this Court had clearly held that there was a need for investigation of the cases of alleged fake encounters as enumerated in the two writ petitions and we must proceed ahead from that point. Now that Mr. Justice M.B. Shah is not available to head and supervise the investigations we need someone whose neutrality and impartiality is completely beyond question. We, accordingly, deem fit and proper to request Mr. Justice

H.S. Bedi, a former Judge of this Court, to head and monitor the investigation of the cases of alleged fake encounters, as enumerated in the two writ petitions. It is made clear that so far as the investigation of the cases in question is concerned, Mr. Justice H.S. Bedi shall exercise all the powers and authority of the Monitoring Authority constituted by the State of Gujarat vide Notification dated September 16, 2010 published in the Gujarat Government Gazette Extraordinary dated September 18, 2010.

11. All the directions contained in the order dated January 25, 2012 including the following are reiterated and those shall form part of this order as well.

"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.

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.

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.

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.

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."

12. The State of Gujarat shall extend full facility and cooperation to Mr. Justice Bedi for a meaningful and effective investigation in all the cases enumerated in the two writ petitions.

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

14. Put up on receipt of the report.