

(2001) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24992 of 1999 and 784 and 14840 of 2000

A. Anasurya

APPELLANT

Vs

Station House Officer, Tadicherla Police Station, Karimnagar
District and Others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 307

Citation : (2001) 2 ALD 87 : (2001) 1 ALT 712

Hon'ble Judges : Satayabrata Sinha, C.J.; S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. K. Balagopal and Mr. V. Raghunath, for the Appellant;

Judgement

Satyabrata Sinha, C.J.

1. All these writ applications relate to killing of (1) Nalla Adi Reddy @ Shyam, (2) Erram Reddy Santosh Reddy @ Mahesh, (3) Sheelam Naresh @ Murali and (4) Singam Ixmirajan, allegedly by police on 2-12-1999 in Koyyur Forest at Mallaram village, Malahar Mandal, Karimnagar District in a police encounter.

2. The prayer in one of the writ petitions being WP No.24992 of 1999 filed by the mother of one Erram Reddy Santosh Reddy @ Mahesh is to direct the fourth respondent, the State of Andhra Pradesh to get the matter investigated by an independent agency in terms of the directions issued by the National Human Rights Commission as contained in its letter dated 29-3-1997 addressed to the Chief Minister of the State of Andhra Pradesh.

3. Two facts that have been admitted by the parties are: (1) that the matter is pending investigation by the National Human Rights Commission; and (2) that the National Human Rights Commission, in a letter addressed to the Chief Minister dated 29-3-1997 inter alia stated:

The practice obtaining in Andhra Pradesh, as perhaps elsewhere also, is that

when an encounter death takes place, the leader of the police party engaged in the encounter furnishes information to the Police Station about the encounter and the persons that died. The stand taken by the police in all these cases brought by the APCLC was that the deceased persons, on sighting the police, opened fire at them with a view to killing them and were, therefore, guilty of the offence of attempt to murder u/s 307 IPC. The police justified their firing and killing as done in exercise of their right of self-defence. This information was recorded in the Police Station describing the persons killed by the bullets fired by the police as accused and FIRs were drawn up accordingly. Without any more investigation, the cases were closed as having abated in view of the death of accused. No attempt whatsoever was made to ascertain if the police officers who fired the bullets that resulted in the killings, were justified in law to doing so, and if otherwise whether and if so what offences were committed by them.

The validity of the above procedure followed by the police in Andhra Pradesh was challenged before the Commission. After hearing all the parties and examining the relevant statutory provisions in the context of the obligation of the State to conform to Article 21 of the Constitution, the Commission, by its order dated 5-11-1996, found that the procedure followed in Andhra Pradesh was wrong and the Commission laid down and indicated the correct procedure to be followed in all such cases. A copy of the order of the Commission furnishing the reasons and the correct procedure to be followed is enclosed. These recommendations have been accepted by the Andhra Pradesh Government.

As the decision of the Commission bears on important issues of Human Rights, which arise frequently in other parts of the country as well, the Commission decided to recommend correct procedure to be followed in this behalf to all the States. The procedure briefly stated, is as follows:

A. When the police officer in-charge of a police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.

C. As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency such as State CID.

D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation."

4. Shri Tarakam, learned Counsel appearing for the petitioner in WP No. 14840 of 2000 inter alia submitted that having regard to the aforementioned directions

issued by the National Human Rights Commission, it was imperative on the part of the State to institute criminal cases against the erring police officers and get the same investigated by an independent agency.

5. Shri Balagopal, learned Counsel appearing on behalf of the petitioner in WP No.24992 of 1999 urged that the State must implement the aforementioned letter dated 29-3-1997 issued by the National Human Rights Commission.

6. On the other hand, the learned Advocate-General has very fairly drawn our attention to a Circular Memorandum dated 30-8-1999 issued by the Director-General and Inspector-General of Police, Andhra Pradesh, Hyderabad dated 30-8-1999 wherein the directions of the Human Rights Commission have been directed to be implemented: It reads:

""The National Human Rights Commission, New Delhi in their Proceedings 3rd cited has felt that all the encounter cases involving deaths should be (a) investigated by an Officer of the rank of atleast a Deputy Superintendent of Police/Assistant Superintendent of police and (b) He should not be from the same district but from other district.

All Range Inspectors-General of Police/ Deputy Inspectors of Police will ensure that encounter cases involving any death shall be investigated by a Deputy Superintendent of Police from another district under his control. The Deputy Superintendent of Police should not be from the same district where the encounter has occurred.

These instructions should be followed scrupulously now onwards.""

He, however, argued that having regard to the fact that the matter is pending investigation before the National Human Rights Commission, this Court, at this stage, may not interfere with the matter. He would urge that having regard to the fact that investigation is being carried out as directed by the National Human Rights Commission, if any other direction is issued by this Court in the matter, it may run counter to the directions which might be issued by the National Human Rights Commission itself.

7. Having heard the learned Counsel for the parties, we are of the opinion that in the facts and circumstances of this case it is desirable that the State Government implements the aforementioned letter dated 29-3-1997, as modified by the National Human Rights Commission. As we do not find any reason as to why the procedure prescribed by the National Human Rights Commission should not be adopted by the State, particularly when the recommendations of the National Human Rights Commission, as modified by the Human Rights Commission, had been accepted by the State. There cannot be any doubt whatsoever that the aforementioned letter dated 29-3-1997 being general in nature, the same would be subject to any other or further directions that might be issued by the National Human Rights Commission in a particular case and in the event of any such specific direction/ instruction being issued in the instant case, the same should

be complied with.

8. Having regard to the fact that the incident occurred as far back as 2-12-1999, we would request the Human Rights Commission to expedite the investigation and submits a report as early as possible. As the aforementioned directions would meet the ends of justice, no further direction is required to be issued at this stage. These applications are thus disposed of. No costs.