

(2023) 01 GAU CK 0037

In the Gauhati High Court

Case No : Public Interest Litigation No. 86 Of 2021

Arif Md Yeasin Jwadder

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 27-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Protection of Human Rights Act, 1993 — Section 30

Citation : (2023) 01 GAU CK 0037

Hon'ble Judges : Suman Shyam, J; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : D. Saikia, P. Baruah, B. Chakravarty

Final Decision : Disposed Of

Judgement

Suman Shyam, J

1. Heard Mr. Arif Md. Yeasin Jwadder, the petitioner-in-person, who has addressed this Court from New Delhi through remote video conferencing (RVC) facility. We have also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Ms. P. Baruah, learned counsel for the respondent nos. 1 to 3 and Mr. B. Chakravarty, learned counsel representing the respondent nos. 4 and 5.

2. The petitioner claims to be a citizen of India and a permanent resident of the State of Assam. Espousing the cause of the victims who had been allegedly killed and / or grievously injured by the Police in 'fake encounters', the instant PIL has been filed with the following prayers :-

"1. Issue an appropriate writ or order or direction calling for records of 1st & 2nd respondents pertaining to all fake encounters killing by police personnel and order for registration of FIR, an independent investigation against the concerned police personnel who are involved in the above said fake encounters killing of the alleged accused shall be conducted by CBI, SIT or any other police teams from other states under the supervision of this Hon'ble Court, get the concerned police

officials who are involved in fake encounters be brought before the law and bring out the truth in each case; and

2. Issue an appropriate writ or order directing the independent agency to strictly comply with the 16 guidelines issued by the Hon'ble Supreme Court of India in the case of PUCL & Anr. Vs. State of Maharashtra & Ors. (2014) 10 SCC 635 in regard to the investigation over fake encounter killing' and or

3. Institute judicial inquiry by a sitting Judge of this Hon'ble High Court, and

4. Direct the Assam government to specify a Human Rights Court in every district as envisaged in terms of section 30 of the Protection of Human Rights Act, 1993 ; and

5. Direct monetary compensation to the victims family after due verification, and

6. Pass such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. A perusal of the averments made in the writ petition goes to show that the statements made therein are primarily based on newspaper reports down-loaded by the petitioner from different websites, which are annexed as Annexure-P/1 (colly). According to the petitioner, there were more than 80 fake encounters conducted by the Assam Police during the period from May, 2021 till the date of filing of the writ petition, resulting in the death of as many as 28 accused persons and injury being caused to more than 48. The petitioner has stated that the persons who have been killed and / or injured are not dreaded criminals but the Police department has adopted the modus operandi of carrying out fake encounters so as to eliminate the accused persons in police custody by making a false allegation that they were trying to snatch away service revolvers of the Police personnel on duty and, therefore, Police had to retaliate in exercise of Right of Self Defense. According to the petitioner, there is no proper inquiry being conducted into any of these incidents of 'fake encounters' and the FIRs that have been lodged in these cases are all against the victims and not the guilty Police officials. The petitioner has also alleged that even in the Magisterial Inquiry conducted in some places into the cases of police encounters are in utter violation of the guidelines laid down by the Hon'ble Supreme Court in the case of Peoples' Union for Civil Liberties (PUCL) and another Vs. State of Maharashtra and others reported in (2014) 10 SCC 635.

4. The petitioner has also filed a separate application, numbered and registered as IA (Crl) 78/2022 arising out of PIL No.86 /2021, with a prayer to direct the authorities to furnish him with the copies of all the relevant FIRs and documents connected with the Police encounter cases during the period from May, 2021 to January, 2022.

5. In support of the prayers made in the petition the writ petitioner, appearing in person, has argued that recently a student leader was killed in a fake encounter in the Nagaon district of Assam and no action has been taken by the Police

department against the erring police officials. It is also the case of the writ petitioner that the respondent nos. 4 and 5 i.e. the National Human Rights Commission (NHRC) and the Assam Human Rights Commission (AHRC) respectively, have failed to discharge their duties enjoined by law in these fake encounter cases by refusing to look into the matter by citing some technical grounds.

6. Responding to the above argument, Mr. D. Saikia, learned Advocate General, Assam, has assailed the maintainability of the PIL by contending that save and except making some vague statements, the petitioner has failed to furnish necessary particulars so as to justify an order, as prayed for, from this Court. The learned Advocate General has submitted that there is nothing on record to indicate as to how the petitioner is connected with the matter. Since none of the family members of the victims have approached this court, hence, submits Mr. Saikia, this PIL need not be entertained at the instance of the petitioner whose credentials are completely unknown.

7. Refuting the contentions advanced by the petitioner on merit, Mr. Saikia further submits that the State is not denying the incidents of police encounters that have taken place in Assam over the past few months but he submits that the Government of Assam, at the appropriate level, is looking into all such cases of police actions leading to death or injury of persons in police custody and if it is found that the Police personnel are guilty of any wrong doing, than in that event, appropriate action would certainly be initiated against them in accordance with law. Assuring this court that the guilty would not be spared, Mr. Saikia further submits that the police department has already lodged FIR against the Police personnel involved in the encounter at Nagaon and those police personnel have also been arrested. The accused (policemen) were in jail for 3 (three) months whereafter, they were released on bail granted by the Court. Mr. Saikia also submits that even the Superintendent of Police of Nagaon was transferred immediately after the incident so as to facilitate a fair and impartial investigation into the matter. As such, submits Mr. Saikia, the allegations made in the writ petition are not based on correct facts. To sum up his arguments, Mr. Saikia submits that since the Government is looking into the matter and inquiry into all cases of Police encounter/ actions is presently under progress, this writ petition is pre-mature and, therefore, be closed.

8. In so far as the prayer made in IA (CrI) 78/2022 is concerned, the learned Advocate General has disarmingly submitted that everybody would be entitled to receive copies of documents which are parts of public record and assures this Court that if the petitioner applies for copies of the FIR/ Final Report, as the case may be, in any of the Police encounter cases, by following the prescribed procedure, such documents would be furnished to him.

9. Mr. B. Chakravarty, learned counsel appearing for the respondent nos. 4 and 5 has submitted that since the matter was sub-judice before this Court, hence, the Assam Human Rights Commission, in view of the provisions contained in section

7(2)(xii) of the Assam Human Rights Commission (Procedure) Regulations – 2001, did not have the jurisdiction to proceed further in the matter. That is the reason why the proceedings were closed.

10. We have considered the submissions advanced by both the sides and have also carefully gone through the materials available on record.

11. At the very outset, we deem it appropriate to note herein that although the petitioner has claimed to be a permanent resident of the State of Assam, yet, nowhere in the petition has he mentioned his permanent address within the State, nor has he furnished any particulars in support of the said claim. In so far as the credentials of the petitioner is concerned, here also, we do not find any documentary evidence in support of the pleadings contained in paragraph 6 of the writ petition. Be that as it may, considering the nature of issues raised in this PIL, we are not inclined to non-suit the petitioner only on such count alone.

12. If it is true that the accused persons in police custody were illegally subjected to police actions/encounters then the matter would certainly be of grave concern for the society at large. To that extent, it cannot be denied that proper enquiry, by following the due process of law, would have to be carried out in all such cases so as to unearth the whole truth. However, the issue that would arise for consideration of this court in the present proceeding, at this stage, is as to whether, the petitioner has succeeded in furnishing the necessary foundational facts so as to justify grant of the reliefs as prayed for in the writ petition.

13. As noted here-in-above, the basic allegation in this PIL is pertaining to the 'fake encounters' carried out by the police. The State has not denied the incidents but have taken a pleaded stand that all incidents of police encounters/ police action are being enquired into. The petitioner has also not disputed the fact that enquiries have been conducted into the cases of police action/ encounters but according to him, the enquiry conducted by the State was not as per law and by following the guidelines laid down in the case of PUCL and Another (supra). However, there is nothing on record to substantiate the said assertion.

14. There are multiple instances of police encounters which have been referred to in this PIL. Consequently, separate enquiry proceedings also appear to have been initiated in all such cases of police action. Materials available on record, more particularly, the statement annexed to the affidavit filed by the respondent No.1 also goes to show that separate Police Case pertaining to each incident has been registered and in many such cases not only the enquiry report but even charge sheet has been submitted. Since these are individual cases of police action leading to registration of separate cases, it was incumbent upon to petitioner to point out infirmity, if any, in the inquiry conducted in any of those individual cases so as to make out a prima facie case on facts. However, the petitioner has failed to point out any infirmity in the procedure adopted in any of those proceedings on the basis of the materials brought on record. The petitioner

has also failed to point out as to which guideline laid down in the case of PUCL and Another (supra) has been violated, in which case and in what manner. Even the instance of failure by the State to take appropriate action in the Nagaon Police action case asserted by the petitioner, as noted above, has turned out to be factually incorrect which is evident from the submission of the learned Advocate General, Assam, which submission the petitioner could not deny. It is no doubt correct that extra-judicial killing through 'fake encounters', if any, would be violative of fundamental rights of the citizens guaranteed under the Constitution. However, unless proper foundational facts are brought to the notice of the court, a Public Interest Litigation in such a matter cannot be maintained merely on the basis of some vague and unsubstantiated assertions.

15. We have also noticed that there is no averment in the writ petition indicating as to why, the aggrieved parties, who had a right to seek redress under the law, could not approach the court by filing a proper petition prompting the petitioner to file this public interest petition.

16. Law is well settled that rules of pleading and locus standi would not have strict application in a PIL. In the case of Ashok Kumar Pandey vs State of West Bengal reported in (2004) 3 SCC 349 the Supreme Court has observed that there must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke ones nose into for a probe. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have the locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions but not for personal gain or any other oblique consideration.

17. In the case of State of Madhya Pradesh Vs. Narmada Bachao Andolan and another reported in (2011) 7 SCC 639, the Supreme Court has observed thus :-

"13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which Court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. Information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the Court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide: A. Hamsaveni and Ors. v. State of Tamil Nadu and Anr. Reported in (1994) 6 SCC 51; Ashok Kumar Pandey v. State of West Bengal, reported in AIR 2004 SC 280; Prabir Kumar Das v. State of Orissa and Ors. Reported (2005) 13 SCC 452; and A. Abdul Farook v. Municipal Council, Perambalur reported in (2009) 15 SCC 351)."

18. The pleadings contained in a petition filed by qualified legal professional is expected to be better quality and therefore, the same cannot be treated in equal footing with that of a laymen. It is to be noted here-in that the petitioner herein is a practicing lawyer. However, after going through the averments in the writ petition, we find that save and except making some vague, omnibus statements regarding alleged violation of the guidelines laid down by the Supreme Court in the case of Peoples' Union for Civil Liberties (PUCL) (Supra) as well as some other subsequent decisions, the petitioner has not been able to furnish the material facts and particulars of such violation. In exercise of extra-ordinary jurisdiction under Article 226 of the Constitution, the writ court cannot embark on a fishing or roving enquiry merely based on some vague and un-substantiated assertions.

19. It is also to be noted here-in that the State has not denied the fact that there were in fact incidents of Police encounters resulting into the death and / or grievous injury being caused to persons (accused persons) in police custody during the period projected in the writ petition. As a matter of fact, on 08/20/2022, an affidavit-in-opposition, sworn by the Additional Secretary to the Government of Assam, Home and Political Department, was filed on behalf of the State/respondent no. 1 wherein, it has been categorically admitted that during the period from May, 2021 to 28/01/2022, there were 30 cases of death and 73 cases of injuries that have taken place due to Police action. In the aforesaid affidavit, it has also been mentioned that the department is following the due process established by law as well as the guidelines laid down by the NHRC and that monthly return is also being regularly filed.

20. In paragraph 12 of the said affidavit, it has also been stated that the Government of Assam has already designated 12 (twelve) numbers of Court of the Sessions Judges in the district of Dibrugarh, Jorhat, Nagaon, Tezpur, Dhuburi, Silchar, Tinsukia, North Lakhimpur, Mangaldoi, Goalpara, Nalbari and Bongaigaon as Human Rights Court as per provisions of section 30 of Protection of Human Rights Act, 1993.

21. On 20/06/2022, another affidavit was filed on behalf of the respondent no. 1 wherein, it was mentioned that after the filing of affidavit on behalf of the State respondents on 08/02/2022, there have been more incidents of deaths/injury of persons due to Police action while in custody. As per record, the number of death has gone up to 51 whereas the number of injuries had climbed to 139 during the period of May, 2021 till 31.05.2022. It has further been stated herein that due to deaths/injuries of persons on account of Police action while they were in police custody, 161 number of cases had been registered in 31 districts of Assam. The averments made in paragraph 6 of the aforesaid affidavit would be relevant for the purpose of this case and, therefore, is being reproduced herein below for ready reference :-

"6. That as regards to the statements made in paragraph 5 of the PIL, the deponent begs to state that out of 161 number of incidents which took place

since May, 2021 till 31/05/2021 in 31 districts in Assam, 161 separate FIRs had been lodged and investigated following the directions of the Hon'ble Supreme Court of India in PUCL and Anr. Vs. The State of Maharashtra and ors, reported in (2014) 10 SCC 635. There are 32 incidents of death as well as 4 other incidents of accidental death of accused while they were escaping from police custody which have been investigated or being investigated by the police officers from different police stations as well as by police officers of different district outside the jurisdiction of the concerned Superintendent of Police. The claim of the petitioner that separate FIR of each incident of police firing which led to death have not been registered is not true and hence denied. It is further submitted that in all incidents where death occurred, separate FIRs were lodged and independent investigation as well as Magisterial Enquiries were ordered as per the provisions of the laws."

22. On 29/09/2022, a third affidavit was filed on behalf of the respondent no. 1 wherein, the following statements were made in paragraph 4 :-

"4. In view of the above, the deponent begs to state that from May, 2021 till August, 2022, a total 171 (one hundred and seventy one) incidents had taken place out of which there were 4 (four) custodial deaths in 32 (thirty two) districts of Assam and accordingly, 171 (one hundred and seventy one) separate FIRs have been registered in connection with the said incidents. Out of the 171 incidents, 145 persons were injured and 56 persons died including 4 (four) custodial deaths in Police action/Police custody. The materials provided herein is in accordance with the guidelines issued by the Hon'ble Supreme Court in the case of Peoples' Union for Civil Liberties (PUCL) and another Vs. The State of Maharashtra and others reported in (2014) 10 SCC 635 indicating the progress made by the concerned districts in 171 cases along with a detailed district wise data sheet showing statement of present status of death as well as injury case as registered in Police action which took place in the State of Assam from 01/05/2021 till 30/08/2022."

23. From the successive affidavits filed on behalf of the respondent no. 1, it is evident that during the period from 01/05/2021 to 30/08/2022, number of persons had lost their lives and/or had suffered grievous injuries in Police action, as a result of which, separate FIRs had been registered. However, there is some explanation in those affidavits as to the circumstances under which the incidents had allegedly occurred. It appears that the process of enquiry in connection with all these cases of Police action is still under progress. What would be significant to note herein is that there has been no attempt on the part of the official respondents either to deny the occurrence or to suppress any facts from this Court. As a matter of fact, in the affidavit filed by the respondent no. 1, it has been clearly mentioned that separate FIRs have been registered in all the 171 cases of Police incidents and investigation is going on in all these cases. The learned Advocate General has also assured this court that appropriate action will be taken against all guilty persons including the erring police officials after the

inquiry process is completed. Therefore, it cannot be said that no action has been initiated by the State in these cases of police action. Having regard to the facts and circumstances of this case, it appears that having read some media reports on police actions leading to death/ injury of some accused persons in police custody, the petitioner has rushed to this court by filing the present petition, without properly verifying the complete facts. Under the circumstances, the possibility of the petitioner approaching this Court by way of this petition merely seeking some publicity cannot be entirely ruled out.

24. Culpable homicide and grievous injury caused to any person are cognizable offences which are punishable under the Indian Penal Code (IPC). Once an FIR is registered and investigation is initiated, law is to take its own course. If the charge is proved, the guilty is punished in accordance with law. In the present case, materials available on record goes to show that FIRs' have already been registered in respect of all the 171 incidents of police action and investigation is going on. The learned AG, Assam, has also submitted that the guilty will be brought to justice on completion of the process of investigation.

25. The question of constituting a SIT or handing over the investigation to the CBI would arise only when a proper case is made out on facts to demonstrate that the State Government, in the Home Department or the Police Department has not taken proper action in the matter or that the respondents are not carrying out proper investigation to punish the guilty by following the due process of law or that, there is some deliberate attempt to shield the culprits. There is no such allegation in the writ petition. On the contrary, the statements made in IA (Crl) 78/2022 would clearly go to show that the petitioner did not have the relevant documents including the copies of the FIRs etc, to satisfy himself as to whether, there has been any lacunae on the part of the department, either in registration of FIR or in conducting proper investigation in the matter. Situated thus, we find force in the submission of Mr. Saikia, learned AG, Assam, that this PIL is premature.

26. In so far as the fourth prayer in the petition regarding setting up of Human Rights Courts in Assam is concerned, as noticed above, it appears from the affidavit filed by the respondent No 1 that 12 (twelve) such courts have already been set up in different districts in Assam. Nothing has been pointed out to convince this court that there was any reluctance on the part of the State to make these courts functional or that the State was not open to setting up more such Human Rights Courts in future, as and when deemed necessary. In view of the above, we are of the view that no further direction in this regard is warranted for the present.

27. For the reasons stated here-in-above, we are not inclined to entertain this PIL on the basis of the materials placed before us. It is, however, provided that the respondents shall provide all legally permissible documents to the Writ Petitioner including copies of FIRs/Final Report in connection with all the 171 cases of Police action, if the same is applied for by following the procedure

prescribed by law. In doing so, it will be open for the concerned authorities to furnish soft copies of such FIRs/ FRs and/or other legally permissible information/ documents to the petitioner, through e-mail, if so desired.

28. With the above observations, this PIL as well as the IA stand closed.