

A EXTRA JUDICIAL EXECUTION VICTIM FAMILIES
 ASSOCIATION (EEVFAM) AND ANOTHER

v.

 UNION OF INDIA & ANOTHER
 (Writ Petition (Criminal) No. 129 of 2012)

B

JANUARY 4, 2013

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

C *Constitution of India, 1950 – Article 32 – Unlawful killings*
– *Extra Judicial Execution – Writ petitions raising disquieting*
issues pertaining to the State of Manipur – Statement made
that, over the years, large number of Indian citizens, have
been killed by the Manipur Police and other security forces
while they were in custody or in stage-managed encounters
D *or in ways broadly termed as ‘extra-judicial executions’ and*
that for a very long time, the State of Manipur is declared as
“disturbed area” and is put under the Armed Forces (Special
Powers) Act, 1958, subverting the civil rights of the citizens
of the State and making it possible for the security forces to
E *kill innocent persons with impunity – Three member high*
powered commission appointed by Supreme Court to make
thorough enquiry in the first six cases filed by the petitioners
and record a finding regarding the past antecedents of the
victims and the circumstances in which they were killed –
F *State Government and all other concerned agencies directed*
to hand over to the Commission, without any delay, all
records, materials and evidences relating to the cases, as
directed above, for holding enquiry – It will be open to the
Commission to take statements of witnesses in connection
with the enquiry conducted by it and it will be free to devise
G *its own procedure for holding the enquiry – In light of the*
enquiries made by it, the Commission to also address the
larger question of the role of the State Police and the security
forces in Manipur – Commission to also make a report

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regarding the functioning of the State Police and security forces in the State of Manipur and in case it finds that the actions of the police and/or the security forces transgress the legal bounds, the Commission shall make recommendations for keeping the police and the security forces within the legal bounds without compromising the fight against insurgency – Commission to give its report within twelve weeks – Central Government and the Government of the State of Manipur to extend full facilities, including manpower support and secretarial assistance as may be desired by the Commission to effectively and expeditiously carry out the task assigned to it by the Court – Matter to be put up on receipt of the report by the Commission – Armed Forces (Special Powers) Act, 1958.

People's Union for Civil Liberties v. Union of India and another (1997) 3 SCC 433 – referred to.

Case Law Reference:

(1997) 3 SCC 433 referred to Para 8

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 129 of 2012.

Under Article 32 of the Constitution of India.

WITH

Writ Petition (C) No. 445 of 2012.

Menaka Guruswamy (Amicus Curiae), Paras Kuhad, ASG, Colin Gonsalves, Jaideep Gupta, Ranjit Kumar, V. Giri, Bipin Aspatwar, Surabhi Shukla, Raeesa Vakil, Jubli, Jyoti Mendiratta, Sapam Biswajit Meitei, Ashok Kumar Singh, Neeraj K. Sharma, Ashok Dhamija, B.K. Prasad, Khwairakpam Nobin Singh, Shobha, Mehak for the appearing parties.

The following Order of the Court was delivered

A ORDER

1. These two writ petitions, each filed under Article 32 of the Constitution of India, raise some disquieting issues pertaining to the State of Manipur. In writ petition (criminal) No.129 of 2012, it is stated that, over the years, a large number of people, Indian citizens, have been killed by the Manipur Police and other security forces while they were in custody or in stage-managed encounters or in ways broadly termed as 'extra-judicial executions'. In writ petition (civil) No.445 of 2012, it is stated that for a very long time, the State of Manipur is declared as "disturbed area" and is put under the Armed Forces (Special Powers) Act, 1958, subverting the civil rights of the citizens of the State and making it possible for the security forces to kill innocent persons with impunity.

2. In this order, we deal with the first writ petition, i.e., writ petition (criminal) No.129/2012.

3. In this writ petition it is stated that during the period May, 1979 to May, 2012, 1528 people were killed in Manipur in extra-judicial execution. The statement is mainly based on a memorandum prepared by 'Civil Society Coalition on Human Rights in Manipur and the UN' and submitted to one Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to India, 19-30 March, 2012. The Memorandum compiles the list of 1528 people allegedly killed unlawfully by the State Police or the security forces. The writ petitioners later on filed "Compilation 1" and "Compilation 2". In "Compilation 1" details are given of ten (10) cases relating to the killings of eleven (11) persons (out of the list of 1528); in "Compilation 2", similarly details are given of thirteen (13) cases in which altogether seventeen (17) persons (out of the list of 1528) are alleged to have been killed in extra judicial executions.

4. A counter affidavit is filed on behalf of the State of Manipur. In the counter affidavit there is not only a complete

denial of the allegations made in the writ petition but there also seems to be an attempt to forestall any examination of the matter by this Court. The plea is taken that the National Human Rights Commission (NHRC) is the proper authority to monitor the cases referred to in the writ petition. It is stated that in regard to all the ten (10) cases highlighted in "Compilation 1" filed by the petitioners, reports have been submitted to it and in none of those cases the NHRC has recorded any finding of violation of human rights. It is stated that the occasion for this Court to examine those cases would arise only if it holds that the NHRC had failed to perform its statutory functions in safeguarding the human rights of the people in the State. This Court should not examine this matter directly but should only ask the NHRC to indicate the status of the cases listed and highlighted in the writ petition. We are unable even to follow such a plea. The course suggested by the State will completely dissipate the vigour and vitality of Article 32 of the Constitution. Article 21 coupled with Article 32 of the Constitution provides the finest guarantee and the most effective protection for the most precious of all rights, namely, the right to life and personal liberty of every person. Any indication of the violation of the right to life or personal liberty would put all the faculties of this Court at high alert to find out the truth and in case the Court finds that there has, in fact, been violation of the right to life and personal liberty of any person, it would be the Court's bounden duty to step-in to protect those rights against the unlawful onslaught by the State. We, therefore, see no reason not to examine the matter directly but only vicariously and second-hand, through the agency of the NHRC.

5. A reference is next made in the counter affidavit to an appeal pending before this Court against the judgment of the Bombay High Court and a writ petition, also pending before this Court, filed by the State of Gujarat on the subject of fake encounters and it is stated that this case should be tagged with those other two cases to be heard together. We fail to see any relevance of the two cases referred to in the counter affidavit and, in our view, the plea that these two writ petitions should

A only be heard along with those two cases is meant to detract from consideration the grave issues raised in the writ petition.

B 6. It is thirdly stated in the counter affidavit that the State of Manipur is faced with the menace of insurgency for many years and details are given of policemen and civilians killed and injured by the insurgents. There are about 30 extremist organizations in the State out of which six are very powerful and they are armed with sophisticated weapons. Their aim and object is to secede from the Republic of India and to form an independent State of Manipur. For realization of their objective C they have been indulging in violent activities, including killing of civilians and members of security forces. It is stated in the counter affidavit that during the period 2000 to October, 2012, 105 policemen, 260 security forces personnel, and 1214 D civilians were killed; the number of injured during the same period is 178 for the policemen, 466 for members of security forces and 1173 for civilians.

E 7. There is no denying that Manipur is facing the grave threat of insurgency. It is also clear that a number of the insurgent groups are operating there, some of which are heavily armed. These groups indulge in heinous crimes like extortion and killing of people to establish their hegemony. It is also evident from the counter affidavit filed by the State that a number of police personnel and members of security forces F have laid down their lives or received serious injuries in fighting against insurgency. But, citing the number of the policemen and the security forces personnel and the civilians killed and injured at the hands of the insurgents does not really answer the issues raised by the writ petitioners.

G 8. In *People's Union for Civil Liberties v. Union of India and another*¹, this Court earlier dealt with a similar issue from Manipur itself. In that case, it was alleged that two persons along with others were seized by the police and taken in a truck to a

H ¹. (1977) 3 SCC 433.

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distant place and shot there. In an inquiry by the District and Sessions Judge, Manipur (West), held on the direction of this Court, the allegation was found to be correct. In that case, dealing with question of the right to life in a situation where the State was infested with terrorism and insurgency, this Court in paragraphs 5 and 6 of the judgment observed as follows:

“5. It is submitted by Ms S. Janani, the learned counsel for the State of Manipur, that Manipur is a disturbed area, that there are several terrorist groups operating in the State, that Hamar Peoples’ Convention is one of such terrorist organizations, that they have been indulging in a number of crimes affecting the public order — indeed, affecting the security of the State. It is submitted that there have been regular encounters and exchange of fire between police and terrorists on a number of occasions. A number of citizens have suffered at the hands of terrorists and many people have been killed. The situation is not a normal one. Information was received by the police that terrorists were gathering in the house on that night and on the basis of that information, police conducted the raid. The raiding party was fortunate that the people inside the house including the deceased did not notice the police, in which case the police would have suffered serious casualties. The police party was successful in surprising the terrorists. There was exchange of fire resulting in the death of the terrorists.

6. In view of the fact that we have accepted the finding recorded by the learned District and Sessions Judge, it is not possible to accede to the contention of Ms Janani insofar as the manner in which the incident had taken place. It is true that Manipur is a disturbed area, that there appears to be a good amount of terrorist activity affecting public order and, may be, even security of that State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal

A with terrorism. It may be necessary to fight terrorism with
a strong hand which may involve vesting of good amount
of discretion in the police officers or other paramilitary
forces engaged in fighting them. If the version of the police
with respect to the incident in question were true, there
B could have been no question of any interference by the
court. Nobody can say that the police should wait till they
are shot at. It is for the force on the spot to decide when
to act, how to act and where to act. It is not for the court to
say how the terrorists should be fought. We cannot be blind
C to the fact that even after fifty years of our independence,
our territorial integrity is not fully secure. There are several
types of separatist and terrorist activities in several parts
of the country. They have to be subdued. Whether they
should be fought politically or be dealt with by force is a
D matter of policy for the Government to determine. The
courts may not be the appropriate forum to determine
those questions. **All this is beyond dispute. But the
present case appears to be one where two persons
along with some others were just seized from a hut,
taken to a long distance away in a truck and shot
E there. This type of activity cannot certainly be
countenanced by the courts even in the case of
disturbed areas.** If the police had information that
terrorists were gathering at a particular place and if they
had surprised them and arrested them, the proper course
F for them was to deal with them according to law.
“Administrative liquidation” was certainly not a course open
to them.”

(emphasis added)

G 9. We respectfully reiterate what was earlier said by the
Court in *People’s Union for Civil Liberties*.

H 10. In 1997, in the *Peoples’ Union for Civil Liberties* this
Court, dealing with the case of killing of two persons in Manipur
had cautioned the State against “Administrative liquidation”.

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But, after 15 years in this case, we are faced with similar A
allegations on a much larger scale.

11. For this Court, the life of a policeman or a member of
the security forces is no less precious and valuable than any
other person. The lives lost in the fight against terrorism and B
insurgency are indeed the most grievous loss. But to the State
it is not open to cite the numbers of policemen and security
forces killed to justify custodial death, fake encounter or what
this Court had called "Administrative liquidation". It is simply not
permitted by the Constitution. And in a situation where the Court C
finds a person's rights, specially the right to life under assault
by the State or the agencies of the State, it must step-in and
stand with the individual and prohibit the State or its agencies
from violating the rights guaranteed under the Constitution. That
is the role of this Court and it would perform it under all D
circumstances. We, thus, find that the third plea raised in the
counter affidavit is equally without substance.

12. Lastly, the counter affidavit, and the Supplementary
Counter Affidavit filed by the State give the State's version of
the 10 cases highlighted in the Compilation 1, filed by the E
petitioners. But on that we would not like to make any comment
at this stage.

13. The Union of India has also filed a separate counter
affidavit. It is a more responsible affidavit in that it does not
evade the issues nor does it try to dissuade the Court from F
examining the cases of alleged extra-judicial executions brought
to its notice by the writ petitioners. In the counter affidavit filed
by the Union, first a reference is made to different legal
provisions (Section 146 and Sections 129 to 132 of the
Criminal Procedure Code, Sections 99 to 106 in Chapter IV G
of the Indian Penal Code and Section 4 of the Armed Forces
(Special Powers) Act, 1959) and it is contended that subject
to the conditions stipulated in those provisions, killing of a
person by a police officer or a member of the armed forces H

A may not amount to an offence and may be justified in law. It is
 stated in the counter affidavit that all the cases listed and/or
 highlighted in the writ petition and described as extra-judicial
 B executions are cases of persons who died during counter-
 insurgency operations or in performance of other lawful duties
 by the police and the personnel of the armed forces. It is
 emphasized that in most of the cases the so-called victims might
 have been killed in the lawful exercise of the powers and/or in
 discharge of official duties by the police and the armed forces
 C personnel. It is further said that “public order” and, by
 implication, the maintenance of “law and order” are primarily
 State subjects and the role of the Central Government in
 deploying the armed forces personnel in the State is only
 supportive in aid of the law and order machinery of the State.
 D The State of Manipur has the primary duty to deal with the issue
 of investigation in relevant cases, except where provided to the
 contrary in any other law for the time being in force. It is stated
 that the “very gloomy picture” of the State of Manipur sought to
 be presented by the writ petitioners is incorrect and misleading.
 E It is asserted that Manipur is fully and completely integrated with
 the rest of the country and it is pointed out that in the 1990
 elections the voting turnout for the 60 assembly seats in the
 State was 89.95%. Similarly, during the recent 2012 assembly
 F elections, the voting turnout was 83.24%. It is added that the
 voting percentage in Manipur is amongst the highest in the
 country as a whole and it clearly shows that the people of
 Manipur have taken active participation in the elections
 showing their full faith in the Constitution and the constitutional
 process.

G 14. Coming to the issue of insurgency, it is stated in the
 counter affidavit as under:

H “It is only a handful of disgruntled elements who have
 formed associations/ groups that indulge in militant and
 unlawful activities in order to retain their influence and
 hegemony in the society. These groups also challenge the

sovereignty and integrity of the country by following aims and objectives which are secessionist in nature. It is emphasized that only around 1500 militants are holding a population of 23 lakhs in Manipur to ransom and keeping the people in constant fear. The root cause of militancy in Manipur is the constant endeavour of these insurgent groups so that they can continue to extort money and the leaders of such groups can continue to lead luxurious life in foreign countries. The tribal divide and factions in the society and the unemployed youth are being exploited by these militant outfits to fuel tension in the society.”

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15. It is further stated in paragraph 13 of the counter affidavit as under:

“It may also be submitted that the ethnic rivalries amongst the different tribal groups viz. Meities, Kukis and Nagas are deep-rooted and the militant groups fervently advance their ideologies by taking advantage of the porous international border with Myanmar which is 256 km long, heavily forested and contains some of the most difficult terrain. The border area is inhabited by the same tribes on either side. These tribes have family relations and for social interactions a free movement regime for the locals to move up to 16 kms on both sides is permitted. Taking advantage of this situation the militant outfits utilize the other side of the border (which is beyond the jurisdiction of the Indian Armed Forces) for conveniently conducting their operations of extortions/ kidnapping/ killing/ looting and ambushing the security forces.”

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16. The counter affidavit goes on to explain that the operations of not only the State Police but the different security forces under the control of the Central Government are being strictly monitored and kept within the parameters set out by the different laws under which those forces operate. It is stated that different statutory agencies acting as watchdog ensure that the

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A armed forces do not overstep the Constitutional or the legal limits in carrying out the anti-insurgency operations.

B 17. Ms. Guruswamy, the learned *amicus* has, on the other hand, presented before us tables and charts showing the inconsistencies in the materials produced by the State of
 C Manipur itself concerning the 10 cases highlighted in "Compilation 1" filed by the petitioners. She also submitted that though enquiries were purported to be held by an Executive Magistrate in the 10 cases described in "Compilation 1", in
 D none of those cases the kin of the victims came before the Magistrate to give their statements even though they were approaching the court, complaining that the victims were killed in fake encounters. She further pointed out that in some of the cases even the police/security forces personnel who were engaged in the killings did not turn up, despite summons issued
 E by the Magistrate, to give their version of the occurrence and the Magistrate closed the enquiry, recording that there was nothing to indicate that the victims were killed unlawfully. In some cases the Magistrate, even while recording the finding that the case did not appear to be one of fake encounter made the concluding observation that it would be helpful to sensitize the police/armed forces in human rights. She submitted that the so-called enquiries held by the Magistrate were wholly unsatisfactory and no reliance could be placed on the findings recorded in those enquiries.

F 18. Apart from the criticisms made by the *amicus* against the Magisterial enquiries held in the 10 cases of "Compilation 1" it is important to note that a number of cases cited by the
 G petitioners had gone to the Gauhati High Court and on the direction of the High Court, inquires, of a judicial nature, were made into the killings of (1) Azad Khan, age 12 years (according to the State, 15 years) (from "Compilation 1"), (2) Nongmaithem Michael Singh, age 32 years, (3) Ningombam Gopal Singh, age 39 years, (4) (i) Salam Gurung alias Jingo, age 24 years, (ii) Soubam Baocha alias Shachinta, age 24
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years (5) (i) Mutum Herojit Singh, age 28 years (ii) Mutum Rajen, age 22 years (6) Ngangbam Naoba alias Phulchand Singh, age 27 years (7) Sapam Gitachandra Singh, age 22 years (8) (i) Kabrambam Premjit Singh, (ii) Elangbam Kanto Singh (9) Longjam Uttamkumar Singh, age 34 years (10) Loitongbam Satish @ Tomba Singh, age 34 years (11) Thockhom Inao @ Herojit Singh, age 31 years, (12) Khumallambam Debeshower Singh (13) (i) Km. Yumnam Robita Devi (ii) Angom Romajitn Singh (14) Thoudem Shantikumar Singh (all from "Compilation 2").

19. In all those cases the judicial inquiry found that the victims were not members of any insurgent or unlawful groups and they were killed by the police or security forces in cold blood and stage-managed encounters.

20. It is stated on behalf of the petitioners that though it was established in the judicial enquiry that those persons were victims of extra-judicial executions, the High Court simply directed for payment of monetary compensation to the kins of the victims. Learned Counsel for the petitioners submitted that payment of rupees two to four lakhs for killing a person from funds that are not subjected to any audit, instead of any accountability for cold blooded murder, perfectly suits the security forces and they only get encouraged to carry out further killings with impunity.

21. On a careful consideration of the averments made in the writ petition and the counter affidavits filed by the respondents and on hearing Ms Guruswamy, the *amicus*, Mr. Gonsalves the learned counsel appearing for the writ petitioners, Mr. Kuhad, the Additional Solicitor General appearing for the Union of India, Mr. Ranjit Kumar, senior advocate appearing for the State of Manipur and Ms. Shobha, advocate appearing for the NHRC, we find it impossible to overlook the matter without further investigation. We are clearly of the view that this matter requires further careful and deeper consideration.

A 22. The writ petitioners make the prayer to constitute a
 B Special Investigation Team comprising police officers from
 C outside Manipur to investigate the cases of unlawful killings
 D listed in the writ petition and to prosecute the alleged offenders
 E but at this stage we are not inclined to appoint any Special
 F investigation Team or to direct any investigation under the Code
 G of Criminal Procedure. Instead, we would first like to be fully
 H satisfied about the truth of the allegations concerning the cases
 cited by the writ petitioners. To that end, we propose to appoint
 a high powered commission that would tell us the correct facts
 in regard to the killings of victims in the cases cited by the
 petitioners. We, accordingly, constitute a three-member
 commission as under:

1. Mr. Justice N. Santosh Hegde, a former Judge of
 the Supreme Court of India, as Chairperson
2. Mr. J. M. Lyngdoh, former Chief Election
 Commissioner, as Member
3. Mr. Ajay Kumar Singh, former DGP and IGP,
 Karnataka.

23. We request the Commission to make a thorough
 enquiry in the first six cases as detailed in "Compilation 1", filed
 by the petitioners and record a finding regarding the past
 antecedents of the victims and the circumstances in which they
 were killed. The State Government and all other concerned
 agencies are directed to hand over to the Commission, without
 any delay, all records, materials and evidences relating to the
 cases, as directed above, for holding the enquiry. It will be open
 to the Commission to take statements of witnesses in
 connection with the enquiry conducted by it and it will, of course,
 be free to devise its own procedure for holding the enquiry. In
 light of the enquiries made by it, the Commission will also
 address the larger question of the role of the State Police and
 the security forces in Manipur. The Commission will also make
 a report regarding the functioning of the State Police and

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security forces in the State of Manipur and in case it finds that the actions of the police and/or the security forces transgress the legal bounds the Commission shall make its recommendations for keeping the police and the security forces within the legal bounds without compromising the fight against insurgency. A B

24. The Commission is requested to give its report within twelve weeks from today.

25. The Central Government and the Government of the State of Manipur are directed to extend full facilities, including manpower support and secretarial assistance as may be desired by the Commission to effectively and expeditiously carry out the task assigned to it by the Court. C

26. The Registry is directed to furnish a copy of this order and complete sets of briefs in both the writ petitions to each of the members of the Commission forthwith. D

27. Put up on receipt of the report by the Commission.

B.B.B.

Matter pending. E