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Court : Supreme Court of India

Decided On : Mar-29-1989

Reported in : AIR1989SC1452; 1989CriLJ1465; 1989(2)Crimes5(SC); JT1989(1)SC711; 1989(1)SCALE711; (1989)2SCC314

Judge : R.S. Pathak, C.J. and; Ranganath Misra, J.

Acts : Constitution of India - Article 32

Appellant : Chaitanya Kalbagh and ors.

Respondent : State of U.P. and ors.

Judgement :

Pathak, CJI.

1. These are three writ petitions invoking the jurisdiction of this Court under Article 32 of the Constitution in respect of the death of various people during what has been described by the police as 'encounters'.

2. Writ Petition No. 55 of 1982 relates to 'encounters' said to have taken place during the year 1981. The massacre of 24 Harijans in Dehuli in the district of Manipuri in the State of Uttar Pradesh led the then Chief Minister of Uttar Pradesh to determine upon eradicating the menace from dacoits in the State, and during the man-hunt which followed a number of persons alleged to be dacoits, were

killed by the police in various 'encounters'. An investigation conducted by the first petitioner, Chaitanya Kalbagh, has been made the basis of this petition, and it is alleged that among the persons killed by the police during such 'encounters' there were as many as 299 innocent persons. It is prayed that an impartial agency should be appointed to investigate into the deaths, with authority to prosecute the Police Officers and personnel found guilty of murder and other offences under the Indian Penal Code.

3. Writ Petition No. 62 of 1982 has been filed by Professor Rajni Kothari, and complains of the killing of a number of people by the police during 'encounters' in the State of Tamil Nadu, in particular in the District of Thirumayam and North Arcot, most of them being young activists engaged in the cause of rural development, specially of Harijans and other landless labourers. The 'encounters' are said to have taken place during the years 1980 and 1981.

4. Similarly, Writ Petition No. 68 of 19.82 is concerned with the killing of a number of persons in 'encounters' with the police in 1980 and 1981 in the State of Andhra Pradesh.

5. When these petitions came on for hearing an objection to their consideration was taken by the Additional Solicitor General of India on the ground that the petitions were not maintainable under Article 32 of the Constitution inasmuch as the question whether the 'encounters' were genuine or staged raised complicated issues of fact, that the questions raised in the writ petitions are of a political nature, that there was no violation of the fundamental rights of any citizen and the relief sought was one which could effectively be considered under the Cr PC, and that in any event it was a matter where the State Governments concerned should be first addressed on the question of constituting a Commission to enquire into the deaths. It is contended that the proper authority to take action in the matter are the respective State Governments and it is only where the State Governments unreasonably decline to entertain the representations that the jurisdiction of this Court should be invoked.

6. Having given the matter careful consideration we think these three writ petitions relate to matters which properly fall within the domain of the State Governments,

and that in the first instance the State Governments should be petitioned. The facts mentioned in the three writ petitions call for a comprehensive review of what has been described as 'eccounters', and in conditions of disturbed law and order of the magnitude reflected in these writ petitions we cannot preclude the possibility of personal feuds and enmities being settled and other motives being satisfied by recourse to the use of force under the guise of maintaining law and order. There is the imperative requirement of ensuring that the guardians of law and order do in fact observe the code of discipline expected of them and that they function strictly as the protectors of innocent citizens. We need say nothing more at this stage, for we are inclined to provide an opportunity to the petitioners to petition the State Governments concerned in the first instance for the relief sought in these writ petitions. The petitioners may make their representations within four weeks and upon such representations being made the State Governments concerned are required to dispose them of within three months thereafter. Liberty is granted to the parties to file further affidavits setting forth the fact of the filing of representations and of the nature of the response of the State Governments concerned and including such other facts as may be considered necessary for the effective disposal of these writ petitions.

7. These writ petitions will be listed for further orders on 8 August, 1989.

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