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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 13<sup>th</sup> December, 2024**Date of decision: 28<sup>th</sup> January, 2025*

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W.P.(CRL) 2475/2015 &amp; CRL.M.A. 33269/2024

KIRAN SINGH

.....Petitioner

Through: Mr. Saurabh Prakash, Mr. Utsav Jain  
and Mr. Anant Aditya Patro Advs.

versus

NATIONAL HUMAN RIGHTS  
COMMISSION & ORS.

.....Respondents

Through: Mr. Dayan Krishnan, Sr. Adv. with  
Mr. Rajesh Mahajan, SPP for R-3 with  
Insp. Chandan, Anil Soni for MHA**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

**Background**

2. The present case relates to an alleged fake encounter by the Special Cell of the Delhi Police that took place on the night of 5<sup>th</sup> May, 2006, where five members of the *Ayub/Aslam* gang died and the 6<sup>th</sup> member is stated to have escaped into the darkness. It is averred that the gang was involved in more than 70 cases of murder, attempt to murder, dacoity, robbery, rape *etc.* The name of the five members are Ayub, Sanjay, Shehzad/Babu, Aslam and Manoj.



### **Brief Facts**

3. The present petition has been filed by the Petitioner-Kiran Singh, father of Late Manoj, who lost his life in the alleged fake encounter. According to the petition, the deceased Manoj used to run a provision store called M K Provisions Store which is now being run by the Petitioner. It is claimed that he did not have prior criminal antecedents. He was made accused in two FIRs *i.e.*, **FIR No.70/2002** PS Farsh Bazar u/s 397/34 IPC and **FIR No.160/2002** PS Shahdara u/s 395/34 IPC. According to the petition, in both these cases he was acquitted.

4. The deceased Manoj who was a resident of Meerut, was 31 years of age in the year 2006 and is now survived by his wife and two daughters as also his parents. It is stated that his wife had abandoned the family sometime in the year 2008 and his two daughters have been brought up by their paternal grandparents *i.e.*, *dada* (Petitioner in the present case) and *dadi*. Both the daughters are studying - one is pursuing B.A. and the other one is in 10<sup>th</sup> standard. The Petitioner and his wife who are also parents of the deceased, are also more than 75 years of age. The affidavit in support of the writ petition has thus been sworn by Mr. Virender Singh, who is the son of Mr. Kiran Singh.

5. Therefore, the Petitioner in the present case seeks directions to Respondent Nos. 2 and 3 to give concurrence for an impartial CBI inquiry into the alleged killings, and give compensation of Rs. 5 lakhs to the legal heirs of all the deceased gang members including the legal heirs of Mr. Praveen, who is stated to be missing. The compensation be given with interest @18% from 17<sup>th</sup> April, 2014. The Respondents in the present case are as under:



S. No.	Particulars	Party
1.	National Human Rights Commission (NHRC)	Respondent No.1
2.	Ministry of Home Affairs (MHA)	Respondent No.2
3.	Delhi Police	Respondent No.3
4.	GNCTD	Respondent No.4

6. Immediately after the alleged encounter on 5<sup>th</sup> May, 2006, a complaint - **Crime No.189/2006** P.S.-Khajoori Khas was filed on 6<sup>th</sup> May, 2006 u/s 186/353/307/34 IPC and Sections 25/27/54-59 Arms Act by Manoj Dixit, Insp. Spl. Cell/NDR.

#### **Proceedings before the NHRC**

7. As per the petition, complaints were filed before the NHRC sometime in May or June, 2006, by the family members of some of the deceased, namely Sanjay Kumar and Aslam, claiming that they have been taken away from their respective houses by the Police and subsequently killed in the fake encounter. The NHRC then, vide its order dated 14th June, 2006 directed the Commissioner of Police to take action in terms of its guidelines dated 2nd December, 2003. Pursuant thereto, a notice was sent to the Commissioner of Police, Delhi on 15th June, 2006. A reply to the said notice was received by the NHRC on 22nd February, 2007 from the ACP- Vigilance, Delhi Police. With the said reply, a report of the DCP, Special Cell, Delhi dated 6<sup>th</sup> May, 2006 was attached, as per which it was claimed that certain secret information was received on 5<sup>th</sup> May, 2006 at 08:00 P.M. and a secret raiding team of police officials was organized. Around 10:45 P.M. a Tata Sumo with six



occupants was intercepted. It was claimed that the occupants of the said vehicle fired at the police and the police had returned the fire. According to the police, five persons, who were initially injured and, thereafter died, were involved in more than 70 cases. Aslam, who was one of the occupants, was alleged to have been involved in 20 cases *i.e.*, cases of murder, attempt of murder, rape, dacoity, robbery, etc. The allegations made by Aslam's father were denied by the police. The NHRC was not satisfied with the reply as it felt that the guidelines dated 2<sup>nd</sup> December, 2003 given by the Commission had not been complied with and further directions were issued for submitting a Magisterial Inquiry Report.

8. A response was then received by the NHRC from the Additional DCP of Delhi Police dated 24th December, 2007 wherein it was stated that in the ***FIR No.189/06*** PS Khajuri Khas, registered - post the encounter, a final report dated 16<sup>th</sup> October, 2007 was prepared. The said report had been filed by the S.H.O, Khajoori Khas, North East District, Delhi describing the details of the encounter including the site plan, the location of the hand grenades, pistols and the bodies of the deceased gang members. The NHRC in its order dated 25th February, 2008 considered the said report and was of the opinion that no Magisterial Inquiry was held in this alleged encounter case and sought an explanation from the Commissioner of Police.

9. On 27th January, 2010, the NHRC directed the clubbing of the cases relating to the above stated persons, who died in the alleged encounter. On 1<sup>st</sup> April, 2010, the NHRC directed the Investigation Division to consider the post-mortem report, ballistic reports and statements recorded by the police and submit a report. The NHRC then notes in its proceedings on 3rd June, 2010 that various records including charge sheet, post mortem report, ballistic



report, statements recorded by the police etc., were not forwarded to it. Accordingly, it issued notice to the DCP to remain present before it.

10. Pursuant to the said order, the concerned documents were submitted by the Delhi Police, which revealed to the NHRC that no Magisterial inquiry was held on the instructions of the Hon'ble Lt. Governor and no forensic evidence was filed. The NHRC then, vide its order dated 15th July, 2010, directed as under:

*“After considerable difficulty, and only on the issuance of conditional summons, the Commission has at last extracted from the Delhi Police copies of the PMRs, several of which are barely legible.*

*It still does not have a Magisterial Enquiry Report, though this was so serious an incident that it was absolutely essential to have an impartial inquiry conducted. The Commission has noted in other proceedings that it is the practice of the Government of NCT of Delhi not to have Magisterial Enquiries conducted. The Commission has been told in response by the Government of NCT of Delhi that it has reservations about holding the enquiries on encounters. It would appear that the Government fears what an impartial inquiry might unearth and is anxious to have the truth suppressed. In this particular incident, a Magisterial Enquiry would have examined independent witnesses and the relatives of the deceased, two of whom have made allegations which, if proven, would immediately have destroyed the credibility of the account given by the police.*

*This repeated refusal of the Government of NCT of Delhi to conduct Magisterial Enquiries is in clear breach of the guidelines issued by the Commission to all the State Governments under which **"a Magisterial inquiry must invariably be held in all cases of death which occur in the course of police action. The next of***



*kin of the deceased must invariably be associated in such inquiry*". These guidelines were sent to all the Chief Ministers by the Commission, and no reservations or objections were received from the Government of NCT of Delhi, which is, therefore, bound to follow them, though it has, in fact, chosen to violate them.

*Neither can the police investigation be considered efficient. The Commission has been sent a report of the ballistic tests done, which confirms that the weapons sent to the laboratory were in working order and had fired the cartridges which were also sent for examination. However, no finger prints were taken from the weapons, nor any swabs from the fingers of the deceased. There is no forensic evidence, therefore, to establish that they had handled these guns or had fired them.*

*In normal circumstances, it might have been thought that all this was evidence of incompetence. However, the Commission believes that the conduct of the Government of the NCT of Delhi, in the aftermath of these alleged encounters, reflects cunning rather than inefficiency. The intention clearly is to withhold or delay the production of documents that might bring the truth to light, and not conduct inquiries that might help either this Commission or any other agency to unearth the truth. The Commission cannot permit this, when there are suspicions that human rights have been so grievously violated.*

*In exercise of its powers u/s 13 (1) (e) of the Protection of Human Rights Act, 1993, which authorizes the Commission to 'issue commissions for the examination of witnesses or documents', it directs the District Magistrate, North East Delhi to examine the witnesses and other documents germane to an inquiry into this incident. The DM shall conduct this inquiry speedily, so much time having already been lost. He shall, in particular, ensure that the relatives of the deceased are examined. He should also examine the*





*Medical Officers who conducted the autopsy. A report should be sent to the Commission on or before the 28<sup>th</sup> October, 2010”*

11. As can be seen from the above order, the NHRC directed the District Magistrate, North East to examine all the documents and witnesses, and conduct an inquiry into the incident. The Lieutenant Governor on 7<sup>th</sup> September, 2010 considered the reference of the National Human Rights Commission for a magisterial inquiry, where the family members of the deceased as also the doctor who conducted the autopsy are examined. The Hon’ble Lt. Governor thereafter appointed the Divisional Commissioner, Delhi who is also the Principal Secretary (Revenue)/District Magistrate (hereinafter referred as ‘DM’) to conduct the magisterial inquiry and directed the Commissioner of Police to extend full cooperation with respect to providing documents and any other information.

12. The inquiry which was to be conducted by the District Magistrate consumed considerable time. On 5<sup>th</sup> January, 2011, the Commission was informed that the DM, Delhi has been entrusted with the magisterial inquiry and a report of the said inquiry was directed to be submitted by 16<sup>th</sup> February, 2011. Subsequent to this, as per the NHRC orders, various issues were raised by the DM with respect to compliance by the witnesses and the difficulties faced in collecting the documents that were to be received from the Special Cell of the Delhi Police.

13. Finally, on 2<sup>nd</sup> November, 2011 and 7<sup>th</sup> March, 2012, summons were issued to the DM, Delhi to appear before the Commission and explain the reasons why the inquiry was not completed. The DM finally concluded the Inquiry and submitted report dated 29<sup>th</sup> June, 2012.



**Report of the Divisional Commissioner/ Principal Secretary, Revenue/  
District Magistrate**

14. The Report of the DM dated 29<sup>th</sup> June, 2012, considered the statements of the relatives of the deceased, response of the officials, response of the raid team, response of the police officers of the District North East and P.S. Khajuri Khas, response of the Meerut Police and response of the Medical Officer who conducted the post- mortem.

15. The Commissioner thereafter observed that the details of the informer were not disclosed, cotton swab samples weren't taken from the hands of the deceased, bodies of the deceased had blunt force injuries and there were repeated statements of the relatives of the deceased, that they met the police officials, however the same were denied. The DM thereafter came to a conclusion that there is ample doubt on the genuineness of the encounter by the Special Cell, Delhi Police and recommended a CBI inquiry. The concluding observations of the DM's report are extracted below:

**“7. Conclusion:-**

*There is ample material on record which creates reasonable doubt about the genuineness of the encounter by the special cell of Delhi Police. There is even more record to prove the farce of the investigation which was conducted by the District Police of the North East District. This enquiry has been handicapped in firmly disproving the story of the special cell of the Delhi Police due to following reasons:-*

- i) Inordinate and fatal delay in starting the magisterial enquiry, almost six years after the incident due to various reasons, well known to the Hon'ble NHRC.*
- ii) Failure to conduct examination of the informer(s) engaged by special cell of the Delhi Police who refused*





*to disclose the details of the informer. This is important because the entire complaint of the families of the deceased is based upon Praveen being the informer.*

*iii) Failure to obtain old call details of the relevant period of Pawan, the brother of the Praveen whereby link between Praveen and special cell of Delhi Police could not be established.*

*There are substantial evidences against the story of real police encounter put forth by the Special Cell of the Delhi Police particularly in view of the following:-*

*i) Non-disclosure of the details of informer can be justifiable in normal circumstances in order to protect the source of information. However, when the factum of informer is at the heart of the complaint of the families of the deceased killed in the police encounter, Special Cell of the Delhi Police could have disproved the theory of the complaints by coming out with the details, which could have been kept confidential. As this has not been done, the theory of Praveen, the alleged absconder being police informer and having eliminated the gang members particularly Sanjay in collusion with the Delhi Police cannot be ruled out.*

*ii) Cotton swab samples were not taken from the hand of all deceased for forensic examination. The reason for that has not been clearly spelt out.*

*iii) The injuries on the body of the deceased which are suggestive of blunt force injuries by Lathi, dragging against the ground while they were resisting etc. as elaborated in the statement of Dr N. K. Aggarwal, other than the bullet injuries make a strong case in favour of the accusation that the deceased were caught and beaten by Police before the encounter and bullet injuries.*

*iv) It is also not reasonably justified by the officials of the Special Ceil of Delhi Police that in the scheme of the encounter put forth by them why there was no deployment on the Khadar side of the road if real*



*intention was to catch the gang members and not to kill them.*

*v) There are repeated statements of the relatives of the deceased that they met with the members of the encounter team of the Special cell and the I.O. of the P. S. Khajuri Khas, Delhi. But, the same has been bluntly denied by the police officials. However, there seems no truth behind this denial other than hiding certain facts on that perspective as family members of a person who has absconded shall surely visit the concerned places and officials.*

*As reasonable suspicion on the story of the special cell of Delhi Police has been established, it would be in the fitness of things if the case is entrusted to CBI, under Delhi special police establishment act for thorough investigation.*

*The role of the District Police, North East District especially the I.O. Sh Satender Pal Singh Tomar, the SHO, Sh. M. S. Shekhawat and the then A.C.P. Gokul Puri, Sh. R. P. Gautam has been clearly established to be full of premeditated intent to just corroborate the story of the special cell of the Delhi Police with no effort on their part to unearth the truth. Non investigation of the vehicle used in the offence, not sending the Bullet Proof Jackets for forensic examination etc. were fatal injuries inflicted by the investigating team on the whole truth finding exercise. Therefore, these officers are liable for criminal prosecution.”*

16. On 26<sup>th</sup> September, 2012, as per the NHRC proceedings it is recorded that the DM conducted the inquiry and recommended vide report dated 29<sup>th</sup> June, 2012, that a CBI inquiry be conducted. The Commission accepted this recommendation and asked the Ministry of Home Affairs to issue appropriate directions. Relevant portion of the said order is set out below:



*“The Principal Secretary (Revenue), who conducted this enquiry, has sent his report, which the Commission has examined, it finds, that after a detailed enquiry, the Magistrate recommends that a CBI enquiry be conducted.*

*The Commission accepts this recommendation and asks the CBI to urgently conduct an enquiry into this incident. The Ministry of Home Affairs, Government of India, is asked to issue appropriate directions to the CBI. The Commission expects the Government of NCT of Delhi to give its consent to this enquiry, so that it can be held urgently.*

*A response will be expected both from the Ministry of Home Affairs, Government of India and from the Government of NCT of Delhi by the 13<sup>th</sup> December, 2012.”*

**Action on the Divisional Commissioner’s (DM) report by the Hon’ble Lt. Governor**

17. The Hon’ble Lt. Governor considered two reports – the first report of the police dated 16<sup>th</sup> October 2007 and the DM’s report dated 29<sup>th</sup> June 2012, and observed that there were a lot of lacunae and inconsistencies in the statements of the relatives of the deceased. Also, the fact that the inquiry was conducted more than 4 years after the event, the Hon’ble LG was of the opinion that there is lack of corroboration and therefore did not recommend a CBI inquiry. However, appreciation was accorded to the effort of the DM in conducting a detailed inquiry even though it was conducted 4 years after the incident. The conclusion in the Hon’ble Lt Governor’s decision dated 31<sup>st</sup> December, 2012, is extracted below:

*“I have gone through the Report of the Magisterial Enquiry. At the outset, I would like to appreciate the hard work put in by the Divisional Commissioner in conducting the enquiry even though he was severely*



*hampered by the fact that he was asked to conduct the enquiry more than 4 years after the event. The enquiry relates to an event which occurred on 05.05.2006 and the enquiry was assigned to the Divisional Commissioner only on 07.09.2010. Due to the delay, lot of important material could not be verified. Many witnesses were not available. This delay also restricted the ability of the Divisional Commissioner to verify certain facts.*

*A perusal of the report of the Divisional Commissioner points out that due to these limitation, he has put greater reliance on the observations made by the family members of the deceased during the interaction with him. In the process, he has made certain assumptions which are not based on hard facts and, therefore, lack corroboration. The important observations made by him are based on the informer theory i.e. as narrated by Smt. Prabha Devi, wife of Sanjay. There is a presumption that Praveen Kumar, the alleged absconder, was a police informer and he, in collaboration with the police, arranged an encounter where the deceased were gunned down. I would like to draw attention to the observation of the Enquiry Officer on page-110 of the report:-*

*"Non-disclosure of the details of informer can be justifiable in normal circumstances in order to protect the source of information. However, when the factum of informer is at the heart of the complaint of the families of the deceased killed in the police encounter, Special Cell of the Delhi Police could have disproved the theory of the complaints by coming out with the details, which could have been kept confidential. As this has not been done, the theory of Praveen, the alleged-absconder being police informer and having eliminated the gang members particularly Sanjay in collusion with the Delhi Police cannot be ruled out."*





*However, if we look into the report annexed to the Police Commissioner's letter, we find that Smt. Prabha Devi, wife of Sanjay, had complained to NHRC, SC/ST Commission and Hon'ble Supreme Court a few days after the encounter. In her complaint, she made allegation that her husband Sanjay was taken away by a Constable on 05.05.2006 at 7:30 PM. In this complaint, she has not mentioned that it was Shri Praveen Kumar who took away her husband. It appears that she has changed her statement before the Enquiry Officer that her husband was taken by Shri Praveen Kumar and thereby introduced the informer theory. Since she gave a statement a few days after the encounter in which she did not mention the name of Shri Praveen Kumar, however, after almost 5 years of the incident, she decided to mention the name of Shri Praveen Kumar, it is difficult to establish that the second statement given 5 years after the incident is more authentic. In the report given by the Enquiry Officer, it has been mentioned that there were rumours / statements by various people creating an impression that the death occurred due to encounter involving Delhi Police. It cannot be ruled out that the witness, who has suffered the loss of her husband, would be influenced by the statements of various people and, therefore, come to a conclusion that Shri Praveen Kumar, who is still untraceable, was the culprit and the informer of the police. In my opinion, the statement given by her just after the incident carries more weight and is more reliable than the subsequent statement given before the Enquiry Officer after 5 years of the incident, which appears to be an afterthought.*

*The report forwarded by the Commissioner of Police (page-11 to 13) has clearly brought out glaring contradictions in the statements of other complainants. It establishes that the family members have changed their statements over a period of time, and, therefore, reliance on them cannot be foolproof. The matter was*





*also taken to the Hon'ble High Court of Allahabad through a Habeas corpus petition filed by Smt. Mahesh Devi regarding missing of her son Shri Praveen on the grounds' that Meerut Police and Delhi Police had picked up her son Praveen on 05.05.2006 at about 1:00 PM. The petition was dismissed by the Hon'ble High Court on 12.09.2006.*

*The Enquiry Officer's reliance on the informer theory is not sustainable in view of glaring contradictions in the statements of various relatives of the deceased.*

*The Enquiry Officer has expressed dissatisfaction caused by the stereotype responses of the officials of the Special Cell. He has observed that responses of all team members are purely mechanical and fixed without any individual differences. He has also observed that surprisingly no police official was injured during the encounter. Quote -*

*"Surprisingly, police personnel were first fired upon by the gangsters who were in advantageous position at this time and firing lasted for more than 5 minutes but no one from police team sustained any injury and rather one gangster was the only to sustain critical injuries."*

*He has further observed that - "It is very surprising that there were firings allegedly for more than 20 minutes between the gang and the police team, 5 members of the gang got injured critically but no vehicle, no police personnel sustained any bullet injury and even the scene also did not had any bullet hit marks except for the few bullet hit marks exactly at the Bullet Proof Jacket of the two members of the alleged raid team and the same was also not sent for forensic examination for establishing the injury marks to be result of aimed fire from short distance or from long distance and the angle of hit by projectile."*







*The observation of the Enquiry Officer that the responses of the Special Cell officers were stereotyped, only corroborates the fact that the police officials were narrating a sequence of events in a manner which was based on the occurrence of events and was, therefore, consistent.*

*Another issue cited by the Enquiry Officer for creating a reasonable doubt on the intention of the Special Cell of the Delhi Police to catch the gang members alive relates to non-deployment towards Khadar side. The explanation of the police that the police team was deployed on the road as their intention was to intercept the gangsters and apprehend them and it was only when gangsters got down from the vehicle and started firing at the police team and moved towards Khadar side that the police team also moved towards Khadar side. It is always possible in hind sight to come to certain conclusions. I am inclined to accept the view of the police that since they did not have any intention to fire at the deceased as they only wanted to intercept and apprehend the gangsters, they did not feel the need of deploying police on the Khadar side.*

*A perusal of the police report also establishes that the deceased had criminal background. The report states that the gang had been involved in 741 cases of murder, attempt to murder, robbery, dacoity, assault on police personnel. Arms Act and Gangs Act of UP and Delhi. The list of FIRs lodged by the police has also been clearly stated. This clearly establishes that deceased were dreaded criminals and the police tried .to strike and apprehend them. Therefore, it is not an unreasonable, assumption that the police, having got information of the movement of the gang, made the sincere effort to apprehend them and subsequent firing and death of the deceased were not premeditated acts.*

*The Enquiry Officer has pointed out that - "Cotton swab samples were not taken from the hand of all deceased*



*for forensic examination. The reason for that has not been clearly spelt out." A perusal of the report clearly establishes that cotton swab samples were taken from the hands of Sanjay, Manoj and Ayub. The result of forensics certifies the presence of gun powder residue in the swabs. The failure to take the cotton swab samples from the hands of other two deceased does not take the fact away that forensic report clearly establishes presence of gun powder residue in the cotton swab samples of other deceased. The Ballistic report submitted by FSL, Rohini shows that fired cartridges, which were recovered from the spot, matched with the weapons recovered from the possession of the deceased persons. The police report also establishes that police officers were wearing Bullet Proof Jackets and two police officers were hit on the bullet proof vests worn by them and there could have been casualties if all the police officials were not wearing bullet proof vests."*

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*In view of the inconsistencies in the statements of relatives of the deceased, the track record of the deceased establishing that they were dreaded criminals and the lacunas mentioned in my observations above, I am constrained to recommend that a case for order of inquiry by the CBI does not appear to be justified. It is proposed that the MHA may be informed that the need for granting permission to a further inquiry by CBI is not called for."*

18. Thus, after considering the detailed report submitted by the DM, the Hon'ble Lt. Governor arrived at the following conclusions in his decision dated 31<sup>st</sup> December, 2012:

- That the stand of Smt. Prabha Devi, who was the wife of Sanjay, was contradictory in nature. She had taken a different stand a few days



after the alleged encounter. However, in her statement, which was given five years later, she had changed her stand.

- The report also highlighted various contradictions in the statements of the family members of the deceased;
- The deceased had criminal background and there were 74 cases of murder, attempt of murder, dacoity, assault on police personnel etc.,
- The intention of the police was to strike and apprehend them;
- The shooting by the police was not a pre-meditative act;
- Cotton swab samples were taken from the hands of the three of the deceased, which showed the existence of gun residue;
- FSL, Rohini's ballistic report showed that the fire cartridges were recovered from the spot, which matched with the weapons being carried by the deceased;
- Three of the police officials were hit and shot at through bullet proof vests;

19. Thus, the Hon'ble LG was of the opinion that further inquiry by the CBI was not required. This decision of the Hon'ble LG was approved by the Ministry of Home Affairs on 22<sup>nd</sup> February 2013.

**Consideration of the DM's report and the decisions of the Hon'ble LG and the MHA, by the NHRC**

20. On 29<sup>th</sup> May, 2013, the Commission considered the report dated 6<sup>th</sup> May, 2006, by DCP Special Cell, Delhi and report dated 29<sup>th</sup> June, 2012 of the District Magistrate which was forwarded on 18th December, 2018 to the Delhi Police by the Home Department of the GNCTD.

21. After a perusal of the said reports, the Commission observed that there were 47 police personnel out of which 2 were inspectors, 12 sub-inspectors,



6 ASI and remaining were Head Constable and Constables. It was further recorded that the police might have tampered with the evidence as the fingerprints on the weapons were not taken to match. Moreover, there was a specific complaint about picking up of Praveen and Pinku from their residence on 5<sup>th</sup> May, 2006. The Commission also observed that the DM recorded the statements of police personnel and the medical officer who stated that there were three injuries by a blunt force object on the deceased Sanjay. The relevant portion of the order dated 29<sup>th</sup> May, 2013 has been extracted below for perusal:

*“The Divisional Commissioner recorded the statements of police personnel and the medical officer who conducted the postmortem. Initially Dr. N.K. Aggarwal came out with the version that there were no other marks of physical violence on the person of the deceased except the different wounds produced by the firearms. On the repeated occasions also he denied about existence of other injuries. However, when his statement-was recorded, it seems that when his attention was drawn to the postmortem reports, he admitted that on the person of the deceased Sanjay, there were three injuries produced by the blunt force object by a lathi or a stone. On the person of Aslam, injury no. 7 was described as sign of resistance. Injuries no. 6 and 7 on his person could have been produced by dragging him against the ground before his death. Injury no. 7 on the person of Manoj was caused due to impact of blunt force as a result of either fall over the hard ground or impact of lathi. Two injuries on the person of the deceased Shehzad @ Babu would have been caused on account of dragging on the hard object like stone ground by holding his leg or falling over stoned ground. On the person of Ayub, injury no. 8 could have been caused by, blunt force both by impact of lathi or stone or falling over the floor. Thus, it is clear that all the*



*victims were assaulted before they were hit and killed by the bullets of the police. Nowhere it is the case of the police that the victims, after getting down from the vehicle ran and fell on the hard ground. The non-explanation of the injuries on the person of all the deceased that could have been caused by hard blunt object makes it clear that they were beaten before death. There are so many other aspects in the matter such as.*

- i) Who was the owner of the vehicle Tata Sumo?*
- ii) If there was no number plate on the front side, how, police doubted the vehicle being the same as informed by the informer?*
- iii) According to the police, though it was a dark night and there were 47 police personnel with weapons, how could one person easily escape? Apart from this, how could the police make out in the darkness and that too from a distance that there were 5-6 persons sitting in the moving vehicle? The real question is whether the vehicle was also planted?*

*There is no mention of recovery of empty cartridges in any of the documents forwarded to the Commission. The report from the DCP, Vigilance, does not indicate recovery of empty cartridges, which was prepared after three months from the date of occurrence and, therefore, the story pleaded by the police about the firing is false and belies the story. If 47 persons were there, there was darkness and when a signal was given to them from a distance to stop the vehicle, how the person in the car could have seen the said signal. It is not said that the signal was given with the aid of a battery or torch 'or red light. Only two persons were in the uniform and, therefore, the victims could not have identified from a distance that they are the police personnel. The police has come out with the version that the bullet fired by one of the victims hit the bulletproof jackets of ACP Sanjeev Yadav and Inspector S.K. Giri. No other police personnel got injured. There is no report from the expert to indicate that there were bullet marks on the*



*bulletproof jackets. In the absence of such evidence, the say of the police cannot be accepted.”*

22. The NHRC therefore arrived at the following conclusions:

- Non-explanation of injuries on the person of all the deceased could have been caused by blunt object which makes it clear that they were beaten before death;
- No mention of recovery of empty cartridges, shows that the story of the police firing is false;
- Since only two persons were in the uniform, victim could not have identified from a distance that they are police personnel;
- The story of firing taking place in two rounds, is contrary to the report submitted by the DCP;
- There is no question of a victim running away as the victims and the police were opposing each other;
- If the persons were fired as soon as they got down from the vehicle, it is difficult that they would be away from vehicle. Therefore, story of the police cannot be believed;
- The Commission also raised certain questions like:-
  - (a) If there was heavy firing by the victims, how come the policemen did not sustain any injuries and the movable and immovable objects also did not get damaged;
  - (b) If there was no number plate on the front side, how did the police ascertain that it was the same vehicle as informed by the informer;
  - (c) How did the police figure out in the darkness that there were 5-6 persons sitting in that moving vehicle;





- It is further observed that the police officials are not telling the truth as there was no gunshot residue in the hands of the two out of three persons who used their weapons;
- The Commission, therefore, came at a conclusion that this is a case of fake encounter.

23. After, analysing the report of the DM, the NHRC felt that since the police had not disclosed the correct facts. It issued notice to the Secretary, MHA as to why, in these facts, monetary relief should not be recommended for payment to the next of kin. The observation of the Commission in its order dated 29<sup>th</sup> May 2013, is set out below:

*“In view of what, is stated herein above. Registry to issue a notice to the Secretary, Ministry of Home Affairs, Government of India, to show-cause as to why monetary relief should not be recommended to be paid to the next of kin of the deceased. Secretary, Ministry of Home Affairs, Government of India, to submit his response within a period of six weeks without fail.”*

24. The MHA thereafter on 7<sup>th</sup> November, 2013, observed that all the deceased persons are involved in more than 74 criminal cases and that the Delhi Police have proved that the encounter is genuine. Moreover, providing relief to the next of kin of such dreaded criminals would amount to providing incentives for such criminal activities. The relevant portion has been extracted below:

*“The matter was got re-examined in detail by the GNCTD and Delhi Police. From the reports received in the MHA, it transpires that all the persons who died in the encounter were involved in more than 74 heinous criminal cases including murder, attempt to murder,*



dacoity, rape while committing robbery and attack on police party. Further, Delhi Police have amply proved that the encounter was genuine and there is no need to provide any monetary relief to the next of kin of the deceased. It is felt that providing relief to the next of kin to such dreaded criminals would amount to providing incentive for such criminal activities and would send a wrong signal.

3. While there are reasons to believe that the encounter in question was genuine and since Delhi Police had acted in a bonafide manner in the incident there seems to be no ground whatsoever to grant any monetary relief to the next of kin of the deceased.

4. It is, therefore, humbly requested that Hon'ble NHRC may kindly take into account the above facts and circumstances while simultaneously considering this letter as a reply to the SCN issued by the Hon'ble Commission vide their letter dated 14th June, 2013 to this Ministry.”

25. Finally, the Commission vide its order dated 5th February, 2014, observed that the MHA has not given any justification as to why monetary relief ought not to be given. The NHRC expressed surprise and as to how the MHA considered the encounter to be authentic. The Commission also questioned the MHA as to how monetary compensation will act as an incentive to the criminals. The Commission then directed payments of sum of Rs.5 lakhs to the next of kin of Ayoob, Babu, Sanjay, Aslam and Manoj. The said order dated 5<sup>th</sup> February, 2014 is relevant and is set out below:

*“ In response to the Commission’s proceedings of the 30th October 2013, it has been informed by the Ministry of Home Affairs that it agrees with the view of the Lieutenant Governor of Delhi that there is no need for a CBI enquiry in this case. Given this intransigence of the authorities concerned, which it deploras, the*



*Commission reluctantly accepts that a CBI enquiry, which was essential, will not be held.*

*The Commission had also asked the Ministry of Home Affairs to show cause why it should not recommend relief for the next of kin of the late Ayub, Babu, Sanjay, Aslam and Manoj, who were killed in this incident. The Ministry of Home Affairs has responded that the "Delhi Police have amply proved that the encounter was genuine", and there was therefore no justification for the relief. The Commission considers this an extraordinary assertion, made without any mooring in facts. It is unable to understand how the Ministry of Home Affairs claims that the Delhi Police has managed to prove that the encounter was genuine.*

*The Ministry has put forward the absurd argument that "providing relief to the next of kin of such dreaded criminals would amount to providing incentive for such criminal activities and send a wrong signal". The Commission reminds the Ministry that the only criminal activity that has been plausibly established in this case is the murder of five men by policemen appointed to uphold the law, not to break it.*

*Secondly, the relief being provided, as the Ministry acknowledges, is to the next of kin of men who were killed. The Commission fails to understand how this would be an incentive to criminals. If the relief is an incentive, from the Ministry's argument it would follow that more criminals would allow themselves to be executed by the police, in the hope that their families might receive some relief thereafter, The Commission is therefore unable to accept the specious arguments put forward by the Ministry of Home Affairs. It maintains that a grievous violation of human rights was committed, for which the Government of India should make reparations. It therefore recommends that Rs. 5 lakhs each be paid to the next of kin of the late Ayub, Babu, Sanjay, Aslam and Manoj.*





*Proof of payment will be expected by the 17th April, 2014.”*

26. In the present petition the stand of the Petitioner is that no CBI inquiry has been conducted till date and neither compensation has been given to the legal heirs of the deceased person, as directed by the NHRC vide its order dated 5<sup>th</sup> February, 2014. The prayers in the petition read as under:

*“i) directing Respondent nos. 2 and 3 to forthwith give their concurrence to a CBI enquiry into the alleged encounter killing of six / five persons on 5 May 2006 as aforesaid;*

*ii) directing Respondent no. 2 to forthwith order a CBI enquiry into the alleged encounter killing of six / five persons on 5 May 2006 as aforesaid;*

xxx

*vi) directing the respondents to forthwith pay the compensation of Rs.5 lakh to the legal heirs of Mr. Manoj (as well as to each the legal heirs of the other deceased persons) as already ordered by the NHRC as well as to the legal heir of Mr. Praveen who has been missing since the said alleged encounter along with interest thereon @18% pa with effect from 17th April 2014 when the payment was so ordered by the NHRC;”*

27. On 30<sup>th</sup> October, 2015 notice was issued and accepted by Respondent No.2 and Respondent No.3. However, Respondent No.1 i.e., NHRC was not issued notice. On 4<sup>th</sup> November, 2015, after considering that the presence of Govt of NCT of Delhi would be proper and necessary to adjudicate the present petition, Govt of NCT of Delhi was impleaded as Respondent No.4.

28. On 20<sup>th</sup> September, 2018, ld. Counsel for Respondent No.2 stated on instructions that the Ministry of Home Affairs do not oppose an investigation by the CBI. The counsel for Respondent No.2 further stated that the Ministry



of Home Affairs itself recommended a CBI inquiry be conducted. The relevant portion of the said order is extracted below:

*“Apropos prayer nos. 1 to 5, the learned counsel for respondent no.2/Ministry of Home Affairs has no objection. He states, upon instructions, that the Ministry of Home Affairs does not oppose the aforesaid reliefs i.e. an investigation by the CBI into the alleged encounter deaths of certain persons. The proceedings dated 05.02.2014 before the NHRC reads as under:-*

xxxx

*The learned counsel for respondent no. 2 states, upon instructions, that indeed the Ministry of Home Affairs itself recommended that the CBI inquiry be conducted and that even today they stand by the said recommendation.”*

29. The above statement of the Id. Counsel for Respondent No.2 was then sought to be withdrawn on 19<sup>th</sup> September, 2024, by highlighting an affidavit which was filed by the MHA on 30<sup>th</sup> November, 2015 as per which a CBI inquiry is not required in the present matter as all the deceased persons were involved in more than 70 cases. The Id. Counsel also submitted that the above stated submission was not upon instructions of the MHA and that Id. Counsel has made a wrong submission.

*“8. The Ministry had already conveyed the stand to NHRC that there is no need for granting permission to a further enquiry by CBI and also opposed for granting of Rs. 5 lakh to the NOK of the deceased as the encounter made by Delhi Police was genuine as all the persons who had died in the encounter were involved in more than 74 heinous criminal cases against them including murder, attempt to murder, dacoity, rape, while committing robbery and attack on Police Party.”*



30. Meanwhile an *SLP bearing no. 12350/2022* was moved by the Petitioner before the Hon'ble Supreme Court initially for hearing the matter. The Supreme Court vide order dated 2<sup>nd</sup> January, 2023 observed that since the matter is being considered by High Court, the Hon'ble Court would not like to intervene and the matter be disposed of in accordance with law in a time bound manner. The relevant portion of the Hon'ble Supreme Court order is extracted below:

*“Having heard the learned counsel for the petitioner, we do not propose to intervene in the matter at this juncture, since the Writ Petition is pending before the High Court.*

*However, we take note of the grievance put forth by the petitioner that the Writ Petition is of the year 2015 whereunder he has sought for the relief. In that view, we request the High Court to take up the writ petition for consideration on an early date-and dispose of the same in accordance with law.”*

31. Thereafter, on 10<sup>th</sup> April, 2023, an application for early hearing of the matter was again listed before the Supreme Court. The Supreme Court again reiterated the direction to decide the matter expeditiously in accordance with law. Thereafter, on 8<sup>th</sup> July, 2024, submissions commenced in the matter before the present bench.

### **Submissions**

32. Submissions on behalf of the Petitioner have been addressed by Id. counsel Mr. Saurabh Prakash:

- i. The first and foremost submission is that the NHRC has given guidelines on 29<sup>th</sup> March, 1997 as to the manner in which the Union of India has to deal with fake encounters. This has further been





modified on 02<sup>nd</sup> December, 2003, wherein it is categorically directed in the guidelines that a magisterial inquiry ought to be held in all cases of death during police action.

- ii. According to Mr. Prakash, the incident has been repeatedly brushed under the carpet by not ordering an independent and impartial inquiry. Initially the NHRC had recommended an independent CBI inquiry which was opposed by the Delhi Police. The said recommendation dated 26<sup>th</sup> September, 2012 is relied upon by him. Thereafter, on final recommendation dated 05<sup>th</sup> February, 2014, the NHRC orders that it does not have the power under the Act and only compensation of Rs. 5,00,000/- was awarded.
- iii. The submission of ld. counsel is that initially, an FIR was registered and the matter proceeded before the concerned Magistrate. In the said FIR, it is said that the deceased belonged to a criminal gang - Ayub and Aslam gang and some information was received about their travel in Delhi. The deceased were driving a Tata Sumo and were allegedly carrying sophisticated weapons. A large number of police persons were also present. The allegations in the FIR were that the persons who were present in the vehicle started firing resulting in cross-firing which led to the death of 5 persons and one absconder.
- iv. Learned counsel relies upon the document, which was obtained from the NHRC which captured all the proceedings before the NHRC. Reference is made to order dated 25<sup>th</sup> February, 2008, wherein the commission records the inception of the proceedings before the NHRC due to complaint sent by one Shri Jamil, stating



that his son Aslam was picked up by police in Bulanshahr and was killed in fake encounter in Delhi. The said order also records that a communication was received on 24<sup>th</sup> December, 2007 from the Delhi Police where it was claimed that the final report has been filed before the Court and in the said letter it was also communicated that there was no Magisterial inquiry needs to be conducted in the encounter.

- v. The NHRC asked the Delhi police to explain as to why guidelines in the communication dated 02<sup>nd</sup> December, 2003 were not complied. The matter thus continued to proceed before the NHRC. At this stage, the Hon'ble Lt. Governor is stated to have taken a position that magisterial inquiry would serve no purpose as captured in the letter dated 23<sup>rd</sup> January, 2009 issued by Deputy Secretary (Home) GNCTD. This letter was then placed before the Magistrate. According to Id. counsel, police official who was appearing before the Magistrate did not place true facts and mislead the court.
- vi. It is also argued that as recorded on 4th April, 2009, the Police took a position before the Magistrate that NHRC has finally disposed of the matter. Thereafter, however, the Magistrate directed the letter of the Hon'ble LG to be placed on record, vide order dated 27th October, 2009. Finally, on 25th March, 2010, the Magistrate put the following questions to the Police Official - Inspector Manoj Dixit:

- “1. What is response of NHRC to letter dt. 23.01.09 written by Dy Secretary Home.  
2. What ATR has been filed on behalf of CP, Delhi in terms of letter dt. 30.04.09 written by Assistance Registrar Law to NHRC.*



3. Whether investigation in the present case was conducted by independent investigation agency as per guidelines of NHRC.

4. Whether any complaint was filed on behalf of relatives of deceased and if yes then their result (in terms of guidelines of NHRC).

5. Whether officials of Delhi Police have been exonerated by Hon'ble High Court of Allahabad in Habeous Corpus Petition filed by Smt. Mahesh.”

vii. In the meantime, the NHRC also passed its order dated 15th July, 2010 giving scalding findings against the Police and directing an inquiry by the District Magistrate, North East Delhi. The DM's report is thereafter placed by the Id. Counsel and various findings are highlighted therein;

viii. The conclusion of the Magistrate is at page 125 which clearly records that the Magistrate was of the opinion that there is a sufficient doubt about the genuineness of the encounter. Various observations were also made by the Magistrate in respect of the delay in conduct of the inquiry. The Magistrate also came to the conclusion that the Police was not clearly coming out with the true facts and the officials of the Delhi Police were liable for criminal prosecution. Some of the observations made by the Magistrate were that the entire incident was itself puzzling as there was no injury to the Police personnel. The bulletproof jackets which are claimed to have suffered bullets from the firing by the deceased were also not submitted for forensic examination. Inspector Manoj Dixit thereafter furnished his reply to the queries put by the Magistrate on 27th August, 2012. The same are set out below:



*“1. The letter Dt. 23/01/09 written by Deputy Secretary Home on behalf of worthy LG, Delhi has been accepted by the commission and there is no further query on behalf of NHRC in this regard.*

*2. As per the commission there are two references i.e. Case no. 3718/24/2006-2007 and Case no. 637/30/2006-2007 pertaining to the encounter in the present case. The Case no 3718 relates to the missing of Parveen, son of the complainant Smt. Mahesh w/o Gangaram r/o Meerut, UP. Whereas Case no. 637/30/2006-2007 relates to the encounter of Ayub and others. A letter was written to NHRC regarding the outcome of enquiry pertaining to both the references. The reply of the commission is attached herewith for your kind perusal please. The references no. 3718 does not relate to encounter. The matter was directed to Chief Secretary, UP and DGP, UP to submit reply to the show cause notice dt. 22/07/08 further the commission has asked the DGP, UP to take action against the concerned police officers who had not registered the missing report of the complainant which amounted to omission from the duty along with supervisory failure of the then SSP,*

*Meerut. With regard to the reference no. 637/30/2006-2007 relating to the encounter the commission had directed the Commissioner of Police, Delhi regarding the Magisterial enquiry to be conducted to which the letter dt. 23/01/09 written by Dy. Secy. Home was sent to NHRC on behalf of worthy LG, Delhi. All the relevant documents i.e. inquest, PM reports and final untraced report have been sent to the commission as demanded.*

*3. The investigation in the present case has been conducted by independent investigation agency i.e. by Police Station Khajuri Khas as per the*



*guidelines of NHRC and the local police have no connection with Special Cell whatsoever.*

*4. The wife of deceased Sanjay i.e. Smt Prabha Jatav and father of deceased Aslam had filed complaints in NHRC regarding the encounter but they had filed their complaints after the incident appeared in the electronic and the print media i.e. on 07/05/06 the reply to the complaints has been submitted to the commission and there is no further query in this regard.*

*5. The official of Delhi Police have been exonerated by the High Court, Allahabad in the Habeas Corpus Petition No. 30454 of 2006, Smt Mahesh Vs State of UP and others, filed by Smt Mahesh and the Hon'ble Court was pleased to dismiss the writ petition. Copy attached.”*

- ix. The NHRC, vide its report and order dated 26th September, 2012 directed that the matter ought to be referred to the CBI for proper and impartial investigation.
- x. However, despite this position, the Commissioner of Police, on 3rd November, 2012 recommends that the matter deserves to be closed. The relevant portion of the order passed by the extant Commissioner at that time is extracted below:

*“In the meantime, NHRC passed an order for magisterial enquiry on 26.7.2010 on the complaint of Shri Jamil and the same was entrusted to Shri Vijay Dev, the then Divisional Commissioner of Delhi. The enquiry was conducted after four years of the incident and a report submitted after two years of enquiry. The magistrate has cast doubt on the police action by finding faults in the investigation of the case. For instance, failure to examine call data record can not be construed to cast doubts on the police operation. Further, the*



police is not bound to disclose the identity of the informer u/s 125 Indian Evidence Act. Without any disrespect to the Magistrate, who conducted the enquiry, it has to be said that the enquiry report has inaccuracies in his report which mentions killing of 6 persons namely Ayub, Babu, Sanjay, Aslam, Shahzad and Manoj on the cover page as well as in the second paragraph on page 2 of the report. Actually, only 5 persons had died in the police operation

I am enclosing a report from Shri Sanjiv Kumar Yadav, DCP/Special Cell, which is self-explanatory. It rebuts the various the conclusions arrived at by the magisterial enquiry ad-seriatim. I have considered the report carefully and am satisfied with the bona fides of the police action. I recommend that the matter deserves to be closed. No useful purpose would be served by dragging it any further thereby demoralizing the police officers, who were only performing their lawful duty in taking on dangerous criminals.”

- xi. Ld. Counsel points that the Commissioner proceeds on the basis that the deceased were dangerous criminals.
- xii. Subsequent, to the report of the Commissioner directing closure, the National Human Rights Commission (NHRC) again considered the matter. In its order dated 29th May, 2013, the NHRC records that initially it had directed the CBI to urgently conduct an inquiry into the incident and Ministry of Home Affairs (MHA) was also asked to issue appropriate directions to the CBI. At that stage, the NHRC was expecting the GNCTD to give its consent to the inquiry, however, it noted that the Government did not express desire to get the matter inquired by the CBI. It expressed surprise on the said





issue as there was according to the NHRC ample material on record on the basis of which it could be said that the encounter by the Special Cell of the Delhi Police was fake. The relevant paragraphs of the NHRC's observations reads as under:

*“Considering the inquiry report, the Commission asked the CBI to urgently conduct an inquiry into the incident. The Ministry of Home Affairs, Government of India, was asked to issue appropriate directions to the CBI. The Commission was expecting that the Government of NCT of Delhi will give its consent to the inquiry. However, it is surprising that the Government has no desire to get the matter thoroughly inquired by the CBI. Why such attitude is being adopted? Though, there is ample material on record on the basis of which it can be said that the encounter by the Special Cell of the Delhi Police is fake. There is even more record to prove the farce of the investigation which was conducted by the District Police of North-East district. There are substantial evidences against the story of real police encounter put forth by the Special Cell of the Delhi Police.”*

xiii. The NHRC then analysed the various physical injuries suffered by the deceased in terms of the post mortem report which was accepted by the doctor (Dr. M.K. Aggarwal) whose statement was recorded. The NHRC also analysed other aspects, for which the Delhi Police did not have sufficient proof, relating to the presence of 47 police personnels with weapons despite which one gang member escaped, the aspect is as to whether the vehicle Tata Sumo was itself planted, no evidence of shooting by the accused, no marks or impression on the bulletproof jackets. After considering these



facts, the NHRC came to the conclusion that the police was not revealing the truth and a declaration was given that it is a case of fake encounter. The relevant paragraph of the order dated 29<sup>th</sup> May, 2013 is set out below:

*“ The story narrated by the police is that all the six persons alighted from the vehicle and opened fire indiscriminately and the police opened fire in self-defence. Later on police has changed the story. Three persons were killed first and after some passage of time another two persons were killed and one managed to flee. The three persons must not be a party to this encounter. They must have left the vehicle from the left side door. This can be said that they did not open fire at the police and, therefore, the gunshot residue is absent on the hands of two persons. This story is again required to be examined in view of the fact that all the five sustained bodily injuries on account of force. Therefore, police is not telling the truth I about the manner in which the incident took place. It is out of question that three persons used their weapons as on the hands of two there was no gunshot residue and the one ran away. From all this, it appears that the police is not telling the truth about the manner in which the incident commenced and ended. Under these circumstances, the theory propounded by the police, cannot be accepted and it is a case of fake encounter.*

*In view of what, is stated herein above. Registry to issue a notice to the Secretary, Ministry of Home Affairs, Government of India, to show-cause as to why monetary relief should be recommended to be paid to the next of kin of the deceased. Secretary, Ministry of Home Affairs, Government of India, to submit his response within a period of six weeks without fail.”*



xiv. As can be seen from the above order after concluding that the entire incidence is a fake encounter the NHRC issued a notice to the Secretary, MHA as to why monetary relief ought not to be granted to the deceased after some proceedings, the NHRC vide its order dated 5th February, 2014 awarded compensation of Rs.5 lakhs to the next of kin. The relevant portion of the said order is set out below:

*“In response to the Commission's proceedings of the 30th October 2013, it has been informed by the Ministry of Home Affairs that it agrees with the view of the Lieutenant Governor of Delhi that there is no need for a CBI enquiry in this case. Given this intransigence of the authorities concerned, which it deplors, the Commission reluctantly accepts that a CBI enquiry, which was essential, will not be held.*

*The Commission had also asked the Ministry of Home Affairs to show cause why it should not recommend relief for the next of kin of the late Ayub, Babu, Sanjay, Aslam and Manoj, who were killed in this incident. The Ministry of Home Affairs has responded that the "Delhi Police have amply proved that the encounter was genuine", and there was therefore no justification for the relief. The Commission considers this an extraordinary assertion, made without any mooring in facts. It is unable to understand how the Ministry of Home Affairs claims that the Delhi Police has managed to prove that the encounter was genuine.*

*In 2003, the Commission issued guidelines to all States to hold magisterial enquiries in the aftermath of any encounter in which there was a loss of life. All State Governments have accepted these guidelines and act on them. The egregious exception is in the National Capital Territory, where the Delhi Police, which appears to be deeply*





*apprehensive of any impartial scrutiny of its actions, opposes magisterial enquiries and has an extraordinary veto on these decisions.*

*This self-serving evasiveness of the Delhi Police is supported by the Union Ministry of Home Affairs, though it is the nodal Ministry for the protection of human rights in India. This is a sad reflection on the Delhi Police and on the Ministry's understanding of its responsibilities on human rights.*

*In this case, as usual, no magisterial enquiry was held. The Commission therefore had to use its powers u/s 13(1)(e) of the Protection of Human Rights Act to direct the District Magistrate, North East Delhi, to conduct an enquiry. This enquiry, diligently conducted by a senior officer of the Government of the National Capital Territory of Delhi, recommended that a CBI enquiry be carried out, having come to the conclusion that*

*"There is ample material on record which creates reasonable doubt about the genuineness of the encounter by the special cell of the Delhi Police. There is even more record to prove the farce of the investigation which was conducted by the District Police of the North East District."*

*Neither has the Delhi Police answered any of the points raised by the Commission. It is a travesty, therefore, for the Delhi Police and the Ministry of Home Affairs to claim that it has been proven that the encounter was genuine.*

*The other claim made by the Ministry of Home Affairs is that the persons who were killed had serious criminal records. The Commission reminds the Ministry that, under the law, criminals cannot be summarily executed. It was for the police to establish that these men were killed in the exercise of the right of self-defense. This they failed to do.*



The Ministry-has put forward the absurd argument that "providing relief to the next of kin of such dreaded criminals would amount to providing incentive for such criminal activities and send a wrong signal". The Commission reminds the Ministry that the only criminal activity that has been plausibly established in this case is the murder of five men by policemen appointed to uphold the law, not to break it.

Secondly, the relief being provided, as the Ministry acknowledges, is to the next of kin of men who were killed. The Commission fails to understand how this would be an incentive to criminals. If the relief is an incentive, from the Ministry's argument it would follow that more criminals would allow themselves to be executed by the police, in the hope that their families might receive some relief thereafter.

The Commission is therefore unable to accept the specious arguments put forward by the Ministry of Home Affairs. It maintains that a grievous violation of human rights was committed, for which the Government of India should make reparations. It therefore recommends that Rs. 5 lakhs each be paid to the next of kin of the late Ayub, Babu, Sanjay, Aslam and Manoj.

Proof of payment will be expected by the **17<sup>th</sup> April, 2014.**

xv.Ld. Counsel for the Petitioner submits that even this amount has not been paid till date. He makes reference to Section 18 of the Protection of Human Rights Act, 1993 as per which the steps prescribed during and after inquiry to be taken by the NHRC are set out. He relies upon an extract from the website which is titled as "from the editor's desk" which would show that the NHRC is



functioning with various challenges. Thus, the final prayer on behalf of the Petitioner is two-pronged:

- a. One that a CBI inquiry ought to be conducted in the matter despite the delay since the time of incident.
  - b. Secondly, that compensation ought to be awarded.
- xvi. He also highlights the fact that the DM's report was not placed before the Id.MM and the police have sought to give a mistaken impression to the Magistrate that the NHRC proceedings have been concluded while they are clearly pending.
- xvii. Mr. Saurabh Prakash, Id. Counsel also highlights order of this Court dated 20th September, 2018 wherein the MHA has made a categorical assertion before the Court that it does not oppose an investigation by the CBI. However, this position having been taken in Court as recorded in the order, the MHA has thereafter chosen to resile from the same and file an affidavit to the contrary.

33. **Submissions on behalf of the Ministry of Home Affairs:**

- i. Mr. Anil Soni, Id. Counsel appearing for the MHA has relied upon the counter affidavit which was filed by him dated 30th November, 2015 as per which the statement recorded on 20th September, 2018 is without any instructions. In the affidavit of 30th September, 2015, the first stand of the MHA is that the petition needs to be treated like a PIL.
- ii. It is also stated in the said counter affidavit which is deposed by the then Under Secretary, MHA that when the NHRC directed the CBI inquiry, the Hon'ble Lieutenant Governor, Delhi at that time had observed that there was no need for granting permission to a further





inquiry by the CBI as there are no ample evidence for corroboration as per the DM's report.

iii. Finally the matter was to be put before the competent authority in the MHA who had then decided to accept the view of the Hon'ble Lieutenant Governor which was communicated to the NHRC. Thus in effect, the Ministry had taken a position that there was no further inquiry required by the CBI and hence according to the Ministry, the statement recorded on 20th September, 2018 in Court is contrary to its affidavit. Subsequently, a further affidavit has been placed on record by the MHA dated 27th October, 2022 which is again deposed by the Under Secretary, MHA wherein it is stated as under:

*“4. That the Ministry has not issued any such instructions recommending that CBI inquiry be conducted in the said case as pleaded by the then Ld. Counsel for the respondent No. 2 (Ministry of Home Affairs) and that has been recorded in the order dated 20.09.2018 of Hon'ble High Court of Delhi. It is further stated that the stand of this Ministry has already been made clear in the affidavit since filed by the Ministry and this Ministry stands by the same.*

*5. That since no arguments had taken placed in this matter for some time and also no affidavit from the side of the Ministry of Home Affairs explaining its view point of in the matter.”*

34. Thus, the MHA's position is that it supports the Delhi Police, however, on a query it has been clearly submitted that the NHRC's order dated 29th May, 2013 has not been challenged either by the MHA or by the Delhi Police.

**Submissions on behalf of Delhi Police**

35. Submissions on behalf of Mr. Dayan Krishnan, Id. Senior Counsel appearing on behalf of Respondent No.3-Delhi Police, are as under:



- i. Firstly, Id. Senior Counsel submits that the scope of this petition ought to be looked at in the context of the order passed by the NHRC. He has referred to the prayers to argue that in prayer 1 and 2, consent is being sought for referring the matter to the CBI. In prayer 3, 4 and 5, a general direction is sought as to how Central and State Governments ought to treat the orders passed by the NHRC. Prayer 6 and 7 relate to non-payment of the compensation already awarded by the NHRC and for payment of further compensation.
- ii. It is highlighted by Id. Senior Counsel that in the final order of the NHRC, though reluctantly, the NHRC has not directed a CBI inquiry. In earlier orders it sought to do so. The NHRC having itself not found it favorable in the final order to direct a CBI inquiry, the question of issuance of consent does not arise in the present case.
- iii. It is further highlighted that under Section 18 of the Protection of Human Rights Act, if the NHRC issues a direction which is not complied with, the NHRC is fully empowered to approach the Supreme Court or the High Court for appropriate directions, orders or even writ petitions.
- iv. Id. Senior Counsel states that it is common knowledge that the NHRC does approach Courts seeking such directions whereas none has been sought in the present case. Under Section 12(a), the NHRC has vast powers which include inquiry *suo-moto* into any complaint or any incident, intervening in any proceedings involving violation of human rights and various other powers listed from (a) to (j) of Section 10, which shows that the powers of the NHRC are vast and wide.



v. Since the NHRC exercises powers like a Civil Court under Section 13, what is important is the operative portion of the NHRC order and not any other observations which may have been made in an order. The NHRC's directions were duly complied with and two levels of considerations were awarded to this incident, which are as under:

- (a) The Commissioner of Police looked into the matter and the said report of the Commissioner was then sent to the Home Ministry. The Commissioner's report was then accepted by the competent authority.
- (b) In the second level, the matter travelled through the LG till the Home Ministry.

36. Therefore, on both occasions, there has been adequate consideration, which has been afforded to the incident and to the observations of the NHRC.

vi. After these two levels of consideration were done, while NHRC expressed its disappointment, it merely awarded compensation of Rs. 5 lakhs each. Thus, even a petition by the NHRC would not be liable in this case as the final order does not contemplate a CBI inquiry.

vii. It is conceded that neither the Delhi Police nor the Union of India had challenged the award of compensation in the present case. Since, the NHRC itself has stated that no CBI inquiry is to be held. The prayer for referring to the CBI or giving consent for referring to the CBI does not arise.

viii. The NHRC has neither sought any reference to the CBI nor has sought enforcement of the order of compensation which has been passed.



- ix. Mr. Krishnan, Id. Sr. Counsel points out that under Section 13(i)(e), the NHRC has powers to issue commissions like Civil Courts. He gave reference to the DM for submitting a report was therefore in the nature of an order under Section 13(i)(e). The said report having been submitted by the DM could only be a fact-finding report insofar as the NHRC is concerned. The DM's report does not have any binding force on the NHRC and neither could the DM have given any conclusions or findings.
- x. Thereafter, the report of the Commissioner of Police dated 3rd November, 2012, in fact, sets out the entire incident which has taken place and concludes that the Commission is fully satisfied with the *bona fides* of the police action and that the matter deserved to be closed. In the background of this report, the recovery of a substantial quantum of weapons is recorded. The dismissal of the *habeas corpus* petition has been noted as also the magisterial inquiry which was conducted four years after the incident and the report was submitted two years after the said inquiry.
- xi. The Police had, in fact, filed its incident report before the NHRC vide its communication dated 6th May, 2006 wherein details have been given as to the manner in which the incident took place. In the said report, the total number of cases which were pending against various members of the Aslam Gang have been recorded which would show that there are four cases of murder, 11 cases of attempt to murder, 14 dacoits, 17 robbery, 3 NDPS Act, 3 housebreaking and theft cases and 18 under the Arms Act. This, in fact, justified the attempt by the Police to nab the accused as they were well



armed. The NHRC, after the incident report had on 29th May, 2013 asked the MHA to reconsider the decision as to why monetary relief should not be awarded.

xii. Mr. Dayan Krishnan, Id. Sr. Counsel has highlighted that there is no inadvertence in the grounds or in the prayer filed by the Petitioner setting aside the impugned order, wherein the prayer is sought by the Petitioner. In fact a perusal of grounds also reveal that the same proceed on the presumption that the direction for CBI inquiry has been approved by the NHRC which it has not.

He further submits that if the Petitioner was aggrieved by the impugned order of the NHRC, the prayer ought to have been for setting it aside and for seeking a proper inquiry. The NHRC has not recommended any inquiry under Section 18B. In fact, initially the NHRC gave a *prima facie* view pursuant to which various authorities including the Delhi Police, the Chief Secretary, GNCTD, the Lieutenant Governor and the MHA have looked into the matter.

xiii. The NHRC thereafter considered the stand of the MHA. In the impugned order, the NHRC expresses displeasure against the stand of the authorities but does not in fact disagree with the same. It changed its recommendation from initial *prima facie* recommendations and thus there is no order for an inquiry as on today. The NHRC is not exercising powers under Section 156(3) of the Cr.P.C. and since there are factual aspects involved, the same ought not to be gone into in writ jurisdiction. The perusal of the Chief Secretary's opinion at Page 325 would show that the authority has actually considered in detail various facts and has also given the



reasoning as to why no inquiry would be required. Reliance is placed upon the report of the Inquiry Officer, which records the fact that there were 74 cases pending against the deceased persons.

xiv. Further, it is noted that the doctor's report confirms that there was gun powder on some of the hands of the deceased. The doctor's report also shows that the deceased were walking on uneven terrain while simultaneously shooting at the Police. Three Police Officials who were wearing bulletproof vests were hit on the said vests and there was a possibility of police officials themselves succumbing if they were not wearing the said vests.

xv. The Chief Secretary also notes that the deceased were part of a gang and there were several FIRs against the said deceased persons. Under Section 18, the NHRC is duly empowered to either:

- a) order compensation,
- b) initiate proceeding for prosecution or also direct any other action which it deemed appropriate.

37. The closure of the case could have been challenged which has not been challenged by the Petitioner. The Petitioner's version of facts cannot be accepted in writ jurisdiction. The inquiry having been done by the NHRC, it was an independent inquiry, which ought not to be faulted.

38. Mr. Dayan Krishnan, Id. Sr. Counsel was trying to contrast the observations of the NHRC in the initial order dated 29th May, 2013 and in the final order. In the initial order, the NHRC clearly observes that there is difficulty in accepting the case of the Police that it was a fake encounter. The reply to the reconsideration letter was given by the Delhi Police on 7th November, 2013. The same is duly considered and thereafter the NHRC has





changed its recommendation. In the said letter, the stand of the Delhi Police is that it was a genuine encounter. Once the NHRC accepted that there was to be no CBI inquiry, the said aspect having not been challenged it has attained finality.

39. Moreover, the NHRC itself is of the opinion that under Section 13(1)(e), it had directed the District Magistrate, North East Delhi to conduct an inquiry and an independent agency having looked into the whole matter, no useful purpose is served if the CBI investigation is directed at this stage.

40. The impugned order dated 5th February, 2014 is then referred to, in order to argue that the proceedings have attained finality and only compensation has been awarded. Under such circumstances, the Petitioner lacks any standing to seek at this stage any inquiry let alone a CBI.

41. **Rejoinder submissions made by the Petitioner:**

- i. Mr. Saurabh Prakash, Id. Counsel for the Petitioner has made his rejoinder submissions. It is his case that the prayers in the writ petition are sufficient to even order a CBI inquiry. At this stage, Id. Counsel for the Petitioner submits that the essence of the writ petition though not worded aptly is for the reference of the incident to the CBI for an independent inquiry.
- ii. Reliance is placed upon the paragraphs 12 & 13 and the writ petition's prayers 1 and 2. He further submits that the Madras High Court in its decision in *Abdul Sathar v. The Principal Secretary to Government & Ors., [W.P.Nos.4179/2006 & connected, decided on 05th February, 2021]* has held that the recommendations of the NHRC are binding upon the Central Government. In fact, the Madras High Court has answered various questions relating to



powers to NHRC. The SLP against the said judgment is pending. It is Mr. Prakash's submission that both the prayers *i.e.*, for CBI inquiry and for compensation are liable to be allowed.

- iii. Ld. Counsel also highlights the fact that after the NHRC's order, the Hon'ble Lt. Governor has also directed that a magisterial inquiry shall be conducted by the DM, Delhi. This was not merely an inquiry made under the Human Rights Act but was a broader inquiry directed by the Competent authority. The findings of the said inquiry, therefore, be considered by this Court.
- iv. Further, the direction to pay compensation ought to have been complied by MHA/Delhi Police. However, no compliance has been recorded. In fact, the NHRC has gone to the extent of closing the case vide order dated 1st November, 2016 after the writ petition was filed. Thus, on both counts, the Petitioner has been deprived of any justice.
- v. An additional affidavit on behalf of the Petitioner is relied upon by Id. Counsel to argue that the parents of the deceased are still alive and both the daughters are being taken care of by the paternal grandparents. The wife of the deceased has already left the family. Both the daughters are studying. One is studying B.A. in IGNOU and the second daughter is studying in 10th standard. The compensation ought to, therefore, be divided in favor of both the daughters and mother of the deceased equally.
- vi. The compensation payable should also be paid along with 18% interest, inasmuch the family has been deprived of proper living conditions and as the only bread earner has passed away. The prayer



also includes directions for CBI inquiry and for grant of further compensation.

42. Reliance is also placed upon the judgment of the Supreme Court in *PUCL v. State of Maharashtra, 2014 (10) SCC 635* which prescribes the procedure for holding inquiry. Paragraph 31 is relied upon.

### **Analysis and Findings**

43. As can be seen from the above narration and events, the NHRC though initially directed a CBI inquiry into the matter, thereafter, however, finally vide order dated 5<sup>th</sup> February, 2014, directed payment of compensation of Rs.5 lakhs each to the next of kin of the deceased.

44. There can be no doubt that the allegation of a fake encounter is a very serious allegation. The incident in the present case took place in 2006, almost 20 years ago. Several complaints came to be filed before the NHRC, which led to multiple authorities looking into the matter. The DM initially found various lacunae in the investigation conducted by the police and recommended a CBI inquiry, which was accepted by the NHRC in its order dated 26th December, 2012.

45. However, thereafter, the DM's report which was conducted, was put up before the Hon'ble Lt. Governor. The reasoning given in the decision taken by the Hon'ble Lt. Governor on 31st December, 2012 has been considered by the Court. The said decision has looked into the assessment in the report by the Delhi Police as also the DM's Inquiry and has not accepted the report of the Magisterial Inquiry based upon the evidence including the contradictions in the statements of the family members, forensic evidence, ballistic reports etc. There can be no doubt that the NHRC is duly empowered under the Act to direct the proper inquiry into the matter whenever it finds that there is



severe abrogation of human rights. Specifically, certain guidelines have been issued by the NHRC to be followed in the police encounter as set out in the communication written by the then Chairman Justice M.N. Venkatachaliah on 29th March, 1997 along with revised guidelines of 2nd December, 2003. The said guidelines are detailed in nature and have been reiterated from time to time including certain recommendations made on 12th May, 2010.

46. As per the scheme of NHRC Act, the NHRC has both *suo motu* power to initiate inquiries and also to inquire into complaints or petitions filed before it. Section 12 of the Protection of Human Rights Act, 1993 (hereinafter '*HR Act*') sets out in detail the functions of the Commission. Section 13 also vests in the NHRC power of a Civil Court while conducting inquiries. Section 14 empowers the NHRC to utilize services of any officer or investigation agency of the Central or State Government for the purpose of conducting investigation. The relevant sections are extracted hereinbelow:

### **Section 12. Functions of the Commission**

*“The Commission shall perform all or any of the following functions, namely:—*

*(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf<sup>1</sup> [or on a direction or order of any court], into complaint of—*

*(i) violation of human rights or abetment thereof; or*

*(ii) negligence in the prevention of such violation, by a public servant;*

*(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;*

*<sup>2</sup> [(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State*



*Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]*

*(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;*

*(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;*

*(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;*

*(g) undertake and promote research in the field of human rights;*

*(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;*

*(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;*

*(j) such other functions as it may consider necessary for the promotion of human rights.”*

### **Section 13. Powers relating to inquiries**

*(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of witnesses and examining them on oath;*



- (b) discovery and production of any document;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any court or office;*
- (e) issuing commissions for the examination of witnesses or documents;*
- (f) any other matter which may be prescribed.*

*(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).*

*(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), in so far as it may be applicable.*

*(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974), forward the case to a Magistrate having jurisdiction to try the*





*same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.*

*(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*

<sup>1</sup> *[(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:*

*Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.*

*(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.]*

#### **Section 14. Investigation**

*“(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.*

*(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—*



- (a) *summon and enforce the attendance of any person and examine him;*
- (b) *require the discovery and production of any document; and*
- (c) *requisition any public record or copy thereof from any office.*
- (3) *The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.*
- (4) *The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.*
- (5) *The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.”*

47. NHRC can also seek information and reports from the Central Government or State Government under Section 17 for inquiry of complaints. Section 18 was amended in 2006 and provides that the NHRC can recommend payment of compensation or damages, as also can direct proceedings for prosecution and other action as it may deem fit against the public servant. The NHRC can also recommend grant of interim relief. It can also approach the Supreme Court or High Court for such action as may be necessary including



issuance of writs. Any inquiry conducted by the NHRC can also be presented as part of a report and the said report along with its recommendation can be sent to the concerned government authority. The NHRC can also publish the said report along with its recommendation.

48. The powers of the NHRC have also been considered by various High Courts. In *State of U.P. and 2 Others v. NHRC and 3 Others., 2016 SCC OnLine All 239*, the Division Bench of the Allahabad High Court considered the scheme of the Protection of Human Rights Act, 1993 and in particular use of the expression ‘*recommend*’ under Section 18 of the Protection of Human Rights Act, 1993. The Court observed as under:

*“15. These provisions emphasize three aspects. First, the enactment of the Protection of Human Rights Act, 1993 is an intrinsic part of the enforcement of the fundamental right to life and personal liberty under Article 21 of the Constitution. Equally, by enacting the legislation, Parliament has evinced an intention to enact legislation in compliance with India's obligations under the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations. Secondly, the Commission is a high powered body which has been vested with exhaustive powers to order an investigation, conduct enquiries and for which it is vested with all the powers of a civil court. Clauses (a) to (f) of Section 18 are not evidently an exhaustive enumeration of the powers of the Commission since the use of the expression “and in particular” would indicate that the powers which are enumerated are illustrative in nature. The Commission follows a procedure which is governed by Section 17 for the purpose of making inquiries upon which it has to take steps in conformity with Section 18.*”





*16. The basic question is whether the use of the expression “recommend” in Section 18(a) can be treated by the State Government or by an authority as merely an opinion or a suggestion which can be ignored with impunity. In our view, to place such a construction on the expression “recommend” would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority or a government which is aggrieved by the order of the Commission is entitled to challenge the order. Since no appeal is provided by the Act against an order of the Commission, the power of judicial review is available when an order of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under Article 14 and of the basic principles of equality, it would not be possible to accept the construction that the State Government can ignore the recommendations of the Commission under Section 18 at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the*





Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise, the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected.”

49. In the said case, there was custodial death of an under-trial prisoner, which had taken place in the custody of the District Jail, Muzaffarnagar, wherein the NHRC had directed payment of Rs.2 lakhs as compensation. The stand of the government, that the NHRC can only ask compliance of its order, was held to be contrary to law and was rejected by the Court. Thus, it was held by the Allahabad High Court that the recommendations of the NHRC would be binding on the government otherwise it would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body.

50. A Full bench of the Madras High Court in *Abdul Sathar v. Principal Secretary to the Government* in *W.P.No.41791/2006* was resolving issues raised by two conflicting single judge decisions. The question raised was whether recommendations made by the Human Rights Commission are merely recommendatory or fully enforceable and binding. The Full Bench of the Madras High Court considered the earlier Division Bench decisions in *W.P.No.25614/2010* titled *Sankar v. The Member, State Human Rights Commission, Tamil Nadu* and *W.P.No.47861/2006* titled *T. Loganathan v. State Human Rights Commission* where the Division Bench had directed the



government to implement recommendations of the State Human Rights Commission. The Court observed that no purpose would be served if the Commission needs to engage other agencies of the State in adversarial litigation to secure enforcement of its recommendation.

51. The full bench came to a conclusion that there was no conflict of views between the Division bench judgments rather there is a conflict of view in the decisions of two single judges namely: -

- i. ***Rajesh Das v. Tamil Nadu State Human Rights Commission and Others, 2010 (5)CTC 589*** and,
- ii. ***T. Vijayakumar v. State Human Rights Commission, Tamil Nadu and Ors. in W.P.(MD) No.12316/2010.***

52. In ***Rajesh Das(supra)*** after comparing the similar provisions of the H.R. Act and Commissions of Inquiry Act, 1952, (hereinafter 'C.I. Act') the Court came at a conclusion that the recommendations made by the Human Rights Commission are recommendatory in nature. The said conclusion was based on the Statement of Objects and Reasons of H.R. Act, wherein the Court observed that the Commission will be a fact-finding body with powers to conduct inquiry into the complaints of violation of human rights. The Court, thereafter came to a conclusion that the reports/recommendations to the Government are not binding in nature since the provisions of H.R. Act are *pari materia* to the provisions of the C.I. Act, and therefore the recommendations of Human Rights Commission cannot be enforced.

53. However, in ***T. Vijayakumar(Supra)***, the Id. Single Judge relied on the decision of the Hon'ble Supreme Court of India, in ***D.K. Basu v. State of West Bengal (1997) 1 SCC 416***, where the Court relied upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966, which states that





any victim of unlawful arrest or detention shall have enforceable rights of compensation. The Supreme Court observed that unconstitutional deprivation of fundamental right to life and liberty, protection of which is guaranteed under the Constitution is based on strict liability, and to the operation of private law for damages for tortuous acts of the public servants. The relevant portions of the Supreme Court judgment are extracted hereinbelow:

*“40. Ubi jus, ibi remedium.—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.*

.....

*42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] ; Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407] ; Bhim Singh v. State of J&K [1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri)*



47] ; *Saheli, A Women's Resources Centre v. Commr. of Police [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] .) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See *Nilabati Behera v. State [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899]* )*

.....

**44.** *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.*

**45.** *The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and*



*expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the inalienable right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.*

.....

**54.** *Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation*





*will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”*

54. After perusing the above stated decisions, the Full Bench was of the opinion that the said divergent views expressed by two Single Bench judges presented conflict of views but not the Division Bench judgments. Thereafter, the Full Bench came to the following conclusions.

*“435. The Commission, when it is satisfied even during the course of the inquiry, is empowered and recommend for grant of immediate interim relief to the victim. When the Commission is vested with the power of making recommendations for grant of immediate relief, such provision would have to be construed on a natural corollary construct that the recommendation granting immediate relief is binding on the concerned Government for payment of interim relief as recommended by the Commission. The word ‘immediate’ used in the provision would have to be understood as ‘immediate compliance’. The attributes of the word ‘immediate’ as per the Dictionaries, is ‘done at once’ ‘instant’, ‘right now’. If the recommendations of the Commission are treated to be only ‘recommendatory’ and the implementation of the same ought to depend upon the discretionary response of the concerned Government or Authority, such expression would be stripped off its natural meaning and loses its relevance in the context. Therefore, the word*



'immediate' in the provision defines the recommendation of the Commission as to its binding nature. The only option for the Government is to move the appropriate legal forum against the immediate relief granted by the Commission.

436. Likewise, when the Commission finds that there was commission of violation of human rights in terms of Sub Clause (a)(i) & (ii), it can recommend for making payment of compensation or damages or to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit. The word 'recommendation' in the context of these provisions, ought not to be given its ordinary or literal sense of the meaning. Merely because the framers used the word 'recommendation', the binding decision of the Commission cannot be whittled down to mere recommendation as it understood in common parlance. When the recommendation as contemplated under Section 18 is made, after following the elaborate procedure laid down in terms of the other provisions of the Act, namely, Sections 13 to 17, such recommendation assumes the character of adjudicatory order which shall be binding on the concerned Government or Authority.

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442. Unlike the other Commissions, H.R. Commission retained its lien over its report and recommendation as stated in Sub Clause (e) of Section 18. The concerned Government or Authority is bound to revert to the Commission with its comments and if the framers had intended to make the recommendations of the Commission as only recommendatory in nature, without enforceable consequence, the provisions would have been drafted more clearly and lucidly, giving expression to the intendment of the framers. The expression 'reasons for non-acceptance' could have been simply made part of Section 18 also. The deliberate and conscious omission was in fact the expression of the







*legislative intent to classify the recommendation as (i) complaint specific, when the Commission goes through the rigmarole of inquiry, investigation and trial and (ii) not related to complaint specific, but related to the policy matter of the Government on human rights. Therefore, any constricted sense of understanding of Section 18(e) or comparison to Sub Clauses (2) of Sections 20 and 28 would be self defeating and make the Commission a lame duck judicial body.*

Xxxxx

*450. Likewise, the Commission which has been assigned a constitutional role with statutory backing, its recommendations are not liable to be slighted or ignored. If the recommendations are open to be ignored or the concerned Government in its discretion, can refuse to accept the recommendation and provide reasons for non-acceptance of the recommendation, the remedial action contemplated in the Act would be a empty promise and a mirage, betraying its core purpose. It is needless to mention that any act done by the agents/officials of the Government in violation of the human rights, is purported to be at the behest of the Government. In that view, the Government either directly or vicariously liable for the transgressions of its officials/agents. The violation of human rights is too serious sacrosanct a matter to be left to the Government's discretion towards redressal of the grievances of the victims.*

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*490. In the conspectus of the above discourse, the following is our summation to the terms of the Reference:*

*(i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise*





**Ans:** The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R. Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.

(ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances?

**Ans:** As our answer is in the affirmative in respect of the first point of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in



case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation?

**Ans:** Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the



*Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?'*

***Ans:** As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.*

*As far as imposition of minor penalty is concerned, a mere show cause notice is fair enough, as the existing Service Rules of all services specifically contemplate only show cause notice in any minor penalty proceedings.*

*(v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent?*



*Ans: As we have held that the recommendation of the Commission under Section 18 of the Act is binding and enforceable, the Officers/employees of the State who have been found responsible for causing violation of human rights by the Commission, are entitled to assail such orders passed by the Commission by taking recourse to remedies of judicial review provided under the Constitution of India. It is open to the aggrieved officers/employees to approach the competent Court to challenge the findings as well as recommendations of the Commission.*”

55. In *Chhattisgarh Electricity Board v. Chhattisgarh Human Rights Commission, 2017 SCC OnLine Chh 1415* the State Human Rights Commission had directed the payment of compensation of Rs.6.22 lakhs under Section 18 of the Act. Chhattisgarh High Court followed the decision in *Rajesh Das(Supra)* to hold that under Section 18, the State Human Rights Commission’s powers are only recommendatory in nature.

56. A similar view was taken by Chhattisgarh Human Rights Commission in *Dr. Girdhari Lal Chandarka v. State of Chhattisgarh, 2021 SCC On Line Chh 2706* where the Id. Single Judge again followed the decision in *Rajesh Das (supra)* and the Id. Single Judge had set aside the compensation awarded by the State Human Rights Commission. It is to be noted that in *Abdul Sattar (Supra)* decision, *Rajesh Das (Supra)* case was considered by the Full Bench of Madras High Court and the Full Bench held that recommendation would be binding in nature. Thus, the decision in *Rajesh Das (Supra)* stands overruled.

57. A perusal of the above decisions would show that the Full Bench of Madras High Court was rightly of the opinion that the recommendations of



the Human Rights Commissions either at the State level or National level would be binding in nature and if the Government is aggrieved by any of the recommendations made by the Human Rights Commission, it can seek judicial review of the same. The Court also observed that if the recommendations of the Commission are to be treated only 'recommendatory' in nature and the implementation of the same is left to depend upon the discretionary response of the concerned Government or Authority, such expression would be stripped off its natural meaning and lose its relevance in the context. The Court further went on to interpret the intention of the legislature behind creating the HR Act and observed that if the intention was only to make it a recommendatory body then, the provisions would have been drafted more clearly and lucidly, giving expression to the intendment of the framers. Thus, both Allahabad High Court and Madras High Court have taken a view that the recommendations of the NHRC would be binding in nature. The Delhi Police has, however, argued that the government, can differ with the NHRC recommendations, and the same would not be binding.

58. The above exercise of analyzing various decisions has been undertaken by the Court as counsels have argued vehemently on the question as to whether the decision of the State or National Human Rights Commissions would be binding. The conflicting rulings also presented a divergence of opinion amongst various High Courts which could further confound the issues.

59. After having considered the reasoning in both the Allahabad High Court and Madras High Court judgments, this Court fully agrees with the reasoning in the said two decisions - whether in the case of compensation or



in the case of inquiry being directed. The purpose of the Human Rights Act and the reasons for its enactment would be nullified if the Commissions are rendered powerless and are held to be mere recommendatory bodies. The recommendations are binding in nature. The concerned authority/government, however, is not without remedy and can always seek judicial review of the recommendations. Any view to the contrary, that the Human Rights Commissions can only make recommendations, which are not binding, would render the said Commissions completely toothless and nullify the object of India ratifying the Universal Declaration of Human Rights. The Court does not agree with the stand of the Delhi Police that in each and every case, the NHRC ought to be forced to approach the Court for implementation of its own decisions. The NHRC is not meant to become a litigant before Courts.

60. In the opinion of this Court, human rights are not ordinary rights. These rights are integral to Article 21 which recognizes the Right to Life. Commissions under the Human rights Act are meant to look into any infractions and exercise powers under the Act. Reports and Recommendations of Human Rights Commissions need to be treated with seriousness and not rendered edentulous or pointless. If Governments are aggrieved, they are free to challenge the orders of State Commissions and NHRC. But such inquiries and reports cannot be simply ignored. Human Rights Commissions are not to be 'toothless tigers' but have to be 'fierce defenders' safeguarding the most basic right of humans i.e., the right to live without fear and to live with dignity.

61. The above reasoning does not, in any manner, contradict the findings of the Supreme Court in *N.C. Dhoundial v. Union of India (2004) 2 SCC 579* which observed that the Commission does not have unlimited jurisdiction and is bound by the duties and functions as defined in the Act and should





necessarily act within the parameters prescribed by the Act. The Commissions, while making recommendations, are thus bound to act within the powers conferred under the Act.

62. For the purpose of the present case, on facts, it deserves to be noted that though initially the NHRC had directed a CBI inquiry into the matter, but vide the final order dated 5<sup>th</sup> February, 2014, the NHRC did not reiterate the said direction and accepted the decision of the Hon'ble LG. The NHRC may have proceeded under a wrong impression on the basis of the extant legal position at the relevant point in time. However, this Court has, independently considered the matter and the prayers in the writ petition. The broad two prayers are for directions to order a CBI inquiry and also payment of compensation. Reliefs sought in the writ petition are as under:

*“i) directing Respondent nos. 2 and 3 to forthwith give their concurrence to a CBI enquiry into the alleged encounter killing of six / five persons on 5 May 2006 as aforesaid;*

*ii) directing the Central Government and the State Government that in the event that in future any request is received from the NHRC seeking their concurrence under Section 14 of the Protection of Human Rights Act, 1993 to "utilise the services of any officer or investigation agency of the Central Government or any State Government" then such a request is to be deemed to be a mandatory direction that requires to be complied with immediately in a time bound manner and that in the event that either the Central Government or the State Government has any objection thereto, then such Central Government / State Government must approach either the Supreme Court or this Hon'ble Court for such direction as they may deem necessary and in a time bound manner and failing which their consent to such*



*request for concurrence would be deemed to have been granted;*

*iv) directing Respondent no. 1 that in cases where it is of the view that an enquiry needs to be conducted by some person or agency but that either the Central Government or any State Government is not giving its concurrence thereto and it is therefore unable to ensure that such an enquiry is conducted then it must mandatorily approach either the "Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary" as prescribed under Section 18 of the Protection of Human Rights Act, 1993;*

*v) directing Respondent no. 1 that in cases where it is of the view that an enquiry needs to be conducted by some person or agency but that either the Central Government or any State Government is not giving its concurrence and it is therefore unable to ensure that such an enquiry is conducted then it must mandatorily also impose punitive costs on the concerned officers of the Central Government or State Government as the case may be and to continue to levy progressively more onerous costs until they give their concurrence thereto;*

*vi) directing the respondents to forthwith pay the compensation of Rs.5 lakh to the legal heirs of Mr. Manoj [as well as to each the legal heirs of the other deceased persons) as already ordered by the NHRC as well as to the legal heir of Mr Praveen who has been missing since the said alleged encounter along with interest thereon @18% pa with effect from 17th April 2014 when the payment was so ordered by the NHRC;*

*vii) direct the respondents to pay such further amount of compensation as this Hon'ble Court may deem fit in the facts of this case;*

*viii) To pass such other and/or further orders as may be deemed necessary or proper on the facts and in the circumstances of the case."*





63. The Delhi Police has placed on record a detailed list of all FIRs, which were registered against the accused in different cases and also showing *inter se* link between the accused persons. The said charts are reproduced herein below:

**ANNEXURE-A**

INVOLVEMENTS OF ACCUSED AYUB @ LAMBARDAR @ AZAM @ MASTERJI S/O AKHTAR R/O MOHALLA GULARIYA, SARDHANA, MEERUT, U.P.

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	66/2004	394/397/34 IPC	Bhajanpura	North-East	Delhi
2.	268/2004	457/380/392 IPC	Jhinhana	Shamli	U.P.
3.	563/1999	380 IPC	Mawana	Meerut	U.P.
4.	12/1996	25 Arms Act	Sihani Gate	Ghaziabad	U.P.
5.	154/2000	302/120B IPC	Sardhana	Meerut	U.P.
6.	302/1995	398/401 IPC	Sardhana	Meerut	U.P.
7.	364/1995	452/393 IPC	Sardhana	Meerut	U.P.
8.	252/1995	457/380 IPC	Sardhana	Meerut	U.P.
9.	276/1995	457/380 IPC	Sardhana	Meerut	U.P.
10.	415/1995	147/148/452/324/506/427 IPC	Sardhana	Meerut	U.P.
11.	270/1995	382 IPC	Sardhana	Meerut	U.P.
12.	283/2002	307 IPC	Sardhana	Meerut	U.P.
13.	147/1996	395/376 IPC	Sardhana	Meerut	U.P.
14.	299/2002	2/3 Gangster Act	Sardhana	Meerut	U.P.
15.	251/2002	395/397/412 IPC	Sardhana	Meerut	U.P.
16.	286/2002	25 Arms Act	Sardhana	Meerut	U.P.
17.	28/2003	395 IPC	Saroorpur	Meerut	U.P.
18.	142/2004	21 NDPS Act	Seemapuri	North-East	Delhi
19.	06/2004	394/397/34 IPC	Shahdra	North-East	Delhi
20.	49/2004	392/397/34 IPC	Shahdra	North-East	Delhi
21.	90/2005	457/380 IPC	Budhana	Muzaffarnaga	U.P.
22.	82/2006	392 IPC	Sadar Bazar	Meerut	U.P.
23.	229/2003	395/412 IPC	Lisari Gate	Meerut	U.P.
24.	343/1999	395/412/120 B IPC	Lisari Gate	Meerut	U.P.
25.	271/1999	394/411 IPC	Lisari Gate	Meerut	U.P.
26.	39/2004	392/397/34 IPC	Welcome	North-East	Delhi
27.	06/2004	394/397/34 IPC	Shahdara	North-East	Delhi



**ANNEXURE-C**

INVOLVEMENTS OF ACCUSED SANJAY @ AJAY S/O ROHTASH R/O VILLAGE & PS KANKAR KHERA, MOHALLA-CHOWK, MEERUT, U.P.

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	599/2004	307 IPC	Modi Nagar	Ghaziabad	U.P.
2.	600/2004	25 Arms Act	Modi Nagar	Ghaziabad	U.P.
3.	333/1993	307 IPC	Kankar Khera	Meerut	U.P.
4.	475/1995	307 IPC & 27 Arms Act	Kankar Khera	Meerut	U.P.
5.	347/1994	504/506 IPC	Kankar Khera	Meerut	U.P.
6.	137/1997	3/4 Gunda Act	Kankar Khera	Meerut	U.P.
7.	3 /1997	25 Arms Act	Kankar Khera	Meerut	U.P.
8.	607/2001	302/201 IPC	Kankar Khera	Meerut	U.P.
9.	355/2003	110G Cr.P.C.	Kankar Khera	Meerut	U.P.
10.	204/2005	307 IPC & 25 Arms Act	Kankar Khera	Meerut	U.P.
11.	151/2005	395/397/412 IPC	Kankar Khera	Meerut	U.P.
12.	241/2004	399/402/186/353/307 IPC & 25/27 Arms Act	Nand Nagri	East	Delhi
13.	62/2001	307 IPC	Kotwali	Meerut	U.P.
14.	86/1999	392 IPC	Kotwali	Meerut	U.P.
15.	82/2006	392 IPC	Sadar Bazar	Meerut	U.P.
16.	343/1999	395/412/120 B IPC	Lisari Gate	Meerut	U.P.
17.	360/1999	147/148/149/307 IPC	Lisari Gate	Meerut	U.P.
18.	363/1999	25 Arms Act	Lisari Gate	Meerut	U.P.
19.	271/1999	394/411 IPC	Lisari Gate	Meerut	U.P.

**ANNEXURE-D**

INVOLVEMENTS OF ACCUSED MANOJ @ ANKIT S/O KIRAN SINGH @ KARAN SINGH R/O MOHAMMADPUR, PS BAHSUMA, MEERUT, U.P.

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	254/2000	395/397 IPC & 25/27 Arms Act	Farsh Bazar	East	Delhi
2.	70/2002	392/34 IPC	Farsh Bazar	East	Delhi
3.	15/1996	392/411 IPC	Ram Raj	Muzaffarnagar	U.P.
4.	07/2000	294 IPC	Bahsuma	Meerut	U.P.
5.	15/2000	3/4 Gunda Act	Bahsuma	Meerut	U.P.
6.	56/1996	394/302 IPC	Bahsuma	Meerut	U.P.
7.	434/2004	186/353/307/411 IPC	Nand Nagri	North-East	Delhi
8.	160/2002	395 IPC	Shahdra	North-East	Delhi
9.	38/2004	392/34 IPC	Welcome	North-East	Delhi
10.	436/2004	25 Arms Act	Nand Nagri	North-East	Delhi
11.	344/2004	341/394/397/34 IPC	Nand Nagri	North-East	Delhi
12.	115/2003	457/380 IPC	Sadar Bazar	Meerut	U.P.



**ANNEXURE-E**

INVOLVEMENTS OF ACCUSED SHAHZAD @ BABU S/O IQBAL @ BALU R/O MOHALLA-SHEKHAN, SARDHANA, MEERUT, U.P.

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	253/2005	110G Cr.P.C.	Sardhana	Meerut	U.P.
2.	168/2004	302/34 IPC	Sardhana	Meerut	U.P.
3.	170/2004	4/25 Arms Act	Sardhana	Meerut	U.P.
4.	191/2004	2/3 Gunda Act	Sardhana	Meerut	U.P.

**ANNEXURE-F**

CROSS LINKAGES CASES OF ACCUSED AYUB S/O AKHTAR AND ASLAM S/O ZAMEEL

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	66/2004	394/397/34 IPC	Bhajanpura	North-East	Delhi
2.	283/2002	307 IPC	Sardhana	Meerut	U.P.
3.	251/2002	395/397/412 IPC	Sardhana	Meerut	U.P.
4.	49/2004	392/397/34 IPC	Shahdra	North-East	Delhi
5.	229/2003	395/412 IPC	Lisari Gate	Meerut	U.P.
6.	39/2004	392/397/34 IPC	Welcome	North-East	Delhi
7.	06/2004	394/397/34 IPC	Shahdara	North-East	Delhi

CROSS LINKAGES CASES OF ACCUSED SANJAY S/O ROHTAS AND ASLAM S/O ZAMEEL

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	62/2001	307 IPC	Kotwali	Meerut	U.P.

CROSS LINKAGES CASES OF ACCUSED SANJAY S/O ROHTAS AND AYUB S/O AKHTAR

Sl. No.	FIR No.	U/s	P.S.	Distt.	State
1.	82/2006	392 IPC	Sadar Bazar	Meerut	U.P.
2.	343/1999	395/412/120 B IPC	Lisari Gate	Meerut	U.P.
3.	271/1999	394/411 IPC	Lisari Gate	Meerut	U.P.

64. A perusal of the above charts would show that there were multiple cases pending against all the deceased and the allegation of the Delhi Police that they had criminal antecedents cannot be brushed aside.



65. The NHRC's proposal for conducting of a CBI inquiry was examined at various levels – by the Delhi Police, by the Hon'ble LG and the MHA, which in its letter dated 7th November, 2013 had communicated that the reports received by it had shown that the deceased have involvement in more than 74 cases including murder, attempt to murder, dacoity, rape, robbery, attack on police party *etc.*, as extracted above and that the Delhi Police had acted upon in a *bona fide* manner during the concerned incident. The same is fully captured in the letter dated 7<sup>th</sup> November 2013, written by MHA to NHRC. Relevant extract of the said letter is set out herein below:

*“2. The NHRC had proposed a CBI enquiry in the matter. This proposal was examined in this Ministry in consultation with the Govt. of NCT of Delhi. The Ministry closed this case agreeing with the views of the Hon'ble Lt. Governor of Delhi that there is no need for a CBI enquiry in the case and the same was conveyed to NHRC vide this Ministry's letter of even number dated 22.02.2013. However, NHRC has been of the view that the theory propounded by Delhi Police cannot be accepted and thinks that the encounter was fake. It also issued notice to MHA to show cause as to why monetary relief should not be recommended to be paid to the next of kin of the deceased.*

*3. The matter was got re-examined in detail by the GNCTD and Delhi Police. From the reports received in the MHA, it transpires that all the persons who died in the encounter were involved in more than 74 heinous criminal cases including murder, attempt to murder, dacoity, rape while committing robbery and attack on police party. Further, Delhi Police have amply proved that the encounter was genuine and there is no need to provide any monetary relief to the next of kin of the deceased. It is felt that providing relief to the next of kin of such dreaded criminals would amount to providing*





*incentive for such criminal activities and would send a wrong signal.*

*3. While there are reasons to believe that the encounter in question was genuine and since Delhi Police had acted in a bona fide manner in the incident there seems to be no ground whatsoever to grant any monetary relief to the next of kin of the deceased.*

*4. It is, therefore, humbly requested that Hon'ble NHRC may kindly take into account the above facts and circumstances while simultaneously considering this letter as a reply to the SCN issued by the Hon'ble Commission vide their letter dated 14<sup>th</sup> June, 2013 to this Ministry."*

### **Conclusion**

66. The Court, after having analyzed the report of the Magisterial Inquiry and consideration accorded to the same by the Hon'ble Lt. Governor, is of the opinion that an Inquiry by CBI is not warranted in the present case. The decision of the Hon'ble Lt. Governor after considering both the Police report and the Report by the DM is a clearly sustainable view, that has been taken. The Hon'ble LG in the consideration noted on 31<sup>st</sup> December, 2012, arrived at the conclusion that the clear intention of the police was to strike and apprehend the persons who were together and had criminal antecedents. Thus, the Court does not wish to substitute its own opinion.

67. The final direction of the NHRC is for payment of Rs.5 lakhs as compensation, which decision has not been challenged by the MHA for all these years. Having held that the recommendations of the Human Rights Commission would be binding in nature, this Court is of the opinion that the compensation, as awarded, deserves to be paid. The deceased has two



daughters, both of whom are studying. They have been brought up by their paternal grand-parents *i.e.*, *dada* and *dadi*.

68. Since there was no challenge to the direction given by the NHRC, which in the opinion of this Court, is binding on the government, it is directed that the compensation shall be released by the MHA for a sum of Rs.5 lakhs along with simple interest @ 18% within a period of three months. In addition, despite recommendations of the NHRC more than a decade ago on 5th February, 2014, the amount has not been paid. Accordingly, litigation costs of Rs.1 lakh are also awarded to the Petitioners. Let the bank account details of the Petitioner be furnished to the Registrar General within two weeks. The amount awarded by the NHRC along with costs be deposited by the MHA with the Registrar General of this Court by 30th April, 2025.

69. List before the Registrar General on 14<sup>th</sup> February, 2025.

70. The petition is allowed and disposed of in the above terms.

71. List for compliance on 9<sup>th</sup> May, 2025.

**PRATHIBA M. SINGH**  
**JUDGE**

**AMIT SHARMA**  
**JUDGE**

**JANUARY 28, 2025/ dk/ks**