

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 4296 of 2019****Reserved on 02/12/2019****Delivered on 09/12/2019**

State Of Chhattisgarh Through The Deputy Inspector General Of Police, Naxal Operation, Police Headquarters, Atal Nagar, Nawa Raipur Chhattisgarh

---- Petitioner**Versus**

The Special Judicial Enquiry Commission To Enquire The Jheeram Ghati Incident, Headquarter At Jagdalpur (Bastar) Camp At Bilaspur, Chhattisgarh

---- Respondents

For Petitioner/State : Mr. S. C. Verma, Advocate General & Ms. Hamida Siddiqui, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**C. A. V. ORDER**

1. Being aggrieved by the order dated 11.10.2019 Annexure P-1 passed by the Special Judicial Enquiry Commission constituted for enquiry of Jheeram Ghati incident the present writ petition has been filed.
2. The brief facts which led to the filing of the writ petition are that on 25.05.2013, the prominent leaders of the State Congress Committee were on a Parivartan Yatra as a part of the campaigning of the Congress party for the Lok Sabha elections that were held in the year 2018. On the said date, the area for campaigning and Parivartan Yatra was in Bastar. After days long campaigning at Bastar, all the prominent leaders of the State Congress Party including top

leadership at the state level were returning from Bastar in a convoy of vehicles. When the said convoy was crossing “Jheeram Ghati”, they were ambushed by a large group of Maoist Naxalites and there was a sudden outburst of firing of bullets from the guns of Naxalites on the vehicles of Congress Leaders and the convoy. In the course of attack, 11 senior-most Congress party leaders including State Congress Chief Nand Kumar Patel and other top leaders Vidyacharan Shukla, Mahendra Karma etc. got killed. In addition, a large number of security personnel attached to these political leaders were also killed. The Naxalites had also used IED blast in the course of their attack.

3. An FIR in this regard was lodged at the local Police Station Darbha as Crime No.25/2013 and an offence under Sections 341, 347, 148, 149, 302, 307, 427, 396, 120B of IPC along with Sections 25 & 27 of Arms Act and Sections 3 & 5 of Explosive Substance Act and also Section 38 (2) 39(2) of the Unlawful Activities (Prevention) Act, 1967 was registered.
4. Considering the gravity of the incident and also considering the magnitude of the impact of naxalite attack, the State Govt. decided to get a judicial enquiry conducted. The State Govt. thereafter also took a decision for getting the enquiry conducted by a sitting judge of the High Court. The State Govt. in consultation with the Chief Justice of the High Court appointed Hon'ble Justice Prasant Kumar Mishra as the sole member of the Special Judicial Enquiry Commission. Initially when the Commission was constituted the following “Terms of

Reference” were notified by the State govt. for the Commission to submit its report which were:

- i) Under what circumstances did the incident on 25.05.2013 at Jheeram Ghati occurred?
- ii) Whether the incident could have been avoided from occurrence?
- iii) Whether there was adequate security arrangement or there was any lapse in the security arrangement?
- iv) Whether the security agencies had followed all the required standard operating procedures in the course of providing security arrangement?
- v) Whether the organizers of the Rally had followed the standard protocol and necessary arrangements? If yes, how it was complied with and if not then who are responsible for it?
- vi) Whether there was sufficient coordination between the State Police and other armed forces?
- vii) Factual report regarding any other issues related to the incident which occurred before, during or after the occurrence of the incidence.
- viii) Necessary Security administrative steps and remedial measures to be taken up in order to avoid such incidence to occur in future.
- ix) Any other significant relevant points related to the incident.

5. Based upon the notification by the State Govt. the Special Judicial Enquiry Commission started its proceedings on 06.07.2013 and since then the matter is being heard by the said Commission.

6. Initially, the said Judicial Enquiry Commission was to submit its enquiry report within 3 months to the State Govt. However, since the enquiry could not get concluded within the stipulated period, the Govt. have extended the period by notifications issued periodically dated 30.07.13, 20.02.14, 25.02.15, 31.08.15, 23.02.16, 17.08.16, 06.02.17, 31.08.17, 12.02.18, 24.08.18. Vide notification dated 24.08.2018, the tenure of the Commission was extended up till 27.02.2019. All these periods i.e. right from the time of the constitution of the Commission till the last notification dated 24.08.2018 was published, the State was being ruled by the BJP led Govt. In the election that was held in November, 2018, the Govt. changed and since then it is the present Congress Govt. which is in power. After the present Govt. took charge, it extended the tenure of the Commission starting from 28.02.2019 to 31.12.2019 within which the enquiry report is to be submitted. While publishing the notification on 21.01.2019, State Govt. also referred 8 more "Terms of Reference" in addition to the already referred 9 terms of reference vide their notification dated 21.01.2019.

7. The proceedings of the Commission commenced on 06.07.2013 i.e. by now more than six years have lapsed and the report of the Commission is still not finalized. During the period, around 45 witnesses were examined at the behest of the Congress Party, as is evident from the order sheet dated 07.01.2019. In addition, there were around 22 witnesses produced by the State and who were already examined. Among the witnesses a couple of persons examined were also prominent and Senior Congress Leaders and

who were also present at the spot when the incident occurred along with other leaders and were fortunate enough to survive the attack.

8. The Commission had considered the fact that about more than five years having lapsed since the Commission proceeded with the enquiry, finally on 07.01.2019 had closed the proceeding for submission of the report and the parties were directed to submit their written synopsis within a period of two weeks.
9. However, after the present government came into power, they issued another gazette notification on 21.01.2019 extending the period of the Commission up till 31.12.2019 and further added 8 more additional Terms of Reference (in short, TOR) to the Commission for submission of its report. For ready reference, the 8 new TORs are as under :
 - i) Whether, after the attack made on late Shri Mahendra Karma on November, 2012, any review was conducted on the security so provided to late Karma by the Protection Review Group?
 - ii) What were the deliberation and decisions taken on the request made by late Mahendra Karma in November, 2012 after the attack so made upon him and wherein he had sought for additional security ?
 - iii) Whether after the attack on Shri Nand Kumar Patel in Gariyaband District in July, 2011, any additional security was provided to the late Nand Kumar Patel and whether the additional security standards were followed and ensured during the incident at Jheeram Ghati ?
 - iv) Taking into consideration the Naxalite attacks in the State in the past, whether there was any guidelines and directions

issued for providing certain fixed number of Police Personnels or additional forces were issued while travelling on road. If yes, whether it was followed with? If not, whether any decisions were taken after the review of the previous big Naxalite attacks.

v) What was the role played by the uniformed command during anti Naxal operation particularly during TCOC period? What was the duties of the head of the uniformed command and whether the head of the command had discharged his duties properly?

vi) What was the total strength of police personnels present in Bastar District on 25.05.2013? Whether during the “Parivartan Yatra” the forces of district Bastar were deployed to different districts? If yes, for what reasons and on whose order? Whether proper sanction/approval was received for this ?

vii) The Naxalites after kidnapping big personalities bargained with some of their demands for the release of these personalities? Why was this not tried when late Nand Kumar Patel and his son were kidnapped?

Viii) What sort of agreement was made or entered into with the Naxals for the release of then Collector, District Sukma Shri Alex Paul Menon? Whether they had any connection to the security of late Mahendra Karma?

10. Though the Commission had closed the proceedings in the past on 07.01.2019, however, in the light of the notification published by the State, the proceedings again commenced on subsequent dates and as per the requirement of the provisions of the Commission to Inquiry (Central) Rules, 1972, the Commission ordered for making necessary publication of the gazette notification in the daily newspaper having wide circulation. On 27.07.2017, the State as well as the Pradesh

Congress Committee (in short, PCC) who were already represented before the Commission, were directed to file affidavits and documents, if any, within a period of 15 days.

11. Further, from the perusal of order sheet dated 31.08.2019 it would reveal that in pursuance to the order dated 27.07.2019, no fresh affidavit were filed by any individual. Subsequently, on 13.09.2019 the Commission again granted time till 01.10.2019 for submitting affidavits and on 01.10.2019 as per the new TOR, the statement of Shri Deepak Kumar Karma and Vivek Kumar Bajpai from the Congress Committee were recorded and there were additional affidavits also filed by Shri Shailesh Nitin Trivedi and Devendra Kumar from the side of PCC. On behalf of the State, OIC Shri Sunder Raj P and one Shiv Narayan Dwivedi filed their affidavits and the Commission fixed the case for cross examination of these witnesses on 10th and 11th October, 2019. On 10.10.2019, cross examination of Shri Shailesh Nitin Trivedi and Shiv Narayan Dwivedi were recorded. On 11.10.2019 the evidence of OIC Shri Sunder Raj P, Deputy Inspector General of Police was recorded. After the evidence of Shri Sunder Raj P being recorded, he requested for the evidence of five witnesses cited along with his affidavit dated 13.09.2019 and the Nodal Officer insisted that evidence of these five witnesses to be recorded as they are relevant witnesses. In addition, another application was moved by the State for summoning one Shri B.K. Ponwar, Director, Jungle Warfare Training School, Kanker, for recording his evidence as an expert. The Commission vide order dated 11.10.2019 rejected this request of the OIC and have closed

the proceedings for submission of report to the government and directed the parties to submit their written submission within a period of four weeks.

- 12.** Being aggrieved by this order dated 11.10.2019, the present writ petition has been filed by the State on 20.11.2019 i.e. after a lapse of approximately 1 and ½ months from the order dated 11.10.2019.
- 13.** The contention of the State while pressing this petition and requesting for reopening of the case is that, these five witnesses are material witnesses and without recording their evidence, the Commission would not be in a position to submit proper report in respect of the incident that took place on 25.05.2013. It is also the contention of the State that the Commission would rather be more benefited if evidence of these witnesses are recorded. According to the State counsel, rejection of their request by the Commission would amount to depriving the State from bringing the actual facts before the Commission and in the absence of evidence of these material witnesses, the report of the Commission would only be an eyewash and the very purpose and object behind constituting of an enquiry commission, that too a Judicial Enquiry Commission, would get defeated.
- 14.** According to the petitioner, the Commission has rejected the application on hyper technicalities without any justification and strong reasons for not recording their evidence. This would also create a situation where the State is not permitted to bring out the truth by leading evidence of relevant persons and would also defeat the ends

of justice and in the absence of such evidence or statement, the report, if any, submitted by the Commission would amount to travesty of justice.

15. Contention of the learned Advocate General was that the proceedings drawn by the commission reflects as if the commission is in a haste to submit its report whereas in the circumstances there is no such haste required to be shown at this juncture. According to the Learned Advocate General there are still witnesses who were to be examined and who could have given more insight for the commission for submission of a better report covering all the aspects related to the terms of reference made by the State.
16. According to the petitioners, these witnesses who have been cited would have further facilitated the Commission in arriving at a just conclusion for the submission of its report. The further contention was that, the effect of the impugned order dated 11.10.2019 would be that of frustrating the very purpose and object of constitution of the enquiry Commission and it would also demoralize the confidence of the general public at large so far as their faith and belief on the judiciary is concerned. The State counsel relied upon judgments of Supreme Court in cases of **Manju Devi Vs. State of Rajasthan & Another**, 2019(6)SCC203 and in **Union of India & Others Vs. Prakash Kumar Tandon**, 2009(2)SCC 541 in support of its contention.
17. Having heard the contentions put forth by the counsel for the petitioners-State, and on perusal of records, all that this court is

required to see is that, whether the order dated 11.10.2019 passed by the said Judicial Enquiry Commission constituted for enquiry of the incident that took place at Jheeram Ghati on 25.05.2013, is proper and justified or not ?

- 18.** What has to be seen is as to under what circumstances, the Judicial Inquiry Commission was constituted. In the instant case it was constituted in the unfortunate naxalite attack that took place on 25.05.2013 and in which large number of senior leaders of a political party got massacred. The Government realizing the gravity of the incident and also considering the manner in which the incident occurred, wherein large number of naxalites in an organized group with large arms and ammunitions and even explosives could reach the place of incident and carry out their attack. The State Intelligence and also the security system in the State did not even have a clue of such a development in an around that area, particularly when people with high security risk on their life and persons who were given high standards of security were traveling through that area. The Government therefore, thought it fit for getting a judicial inquiry conducted and further thought of getting the inquiry conducted at the level of a sitting High Court Judge and that is how the Hon'ble Judge was appointed as the Special Judicial Inquiry Commission. Initially, it was expected of the commission to submit its report within a period of 3 months, however since the number of witnesses cited by the Congress Party was large and the evidence itself could not be recorded or completed within the stipulated period, the period of 3 months initially fixed by the State Government kept on getting

extended 6 months each till 27.02.2019. By this time, almost about 67 witnesses were examined, 45 witnesses by the Congress Party and 22 witnesses by the State Government and on 07.01.2019 the Commission had closed the proceedings for submission of report. Till this time, there was no further request made by the Congress Party which had been effectively represented before the Commission. Meanwhile, however the State Government again vide notification dated 21.01.2019 extended the tenure of the Commission up till the 31.12.2019. The State Government also with the said notification dated 21.01.2019 notified 8 more terms of reference for the Commission to consider while submitting its report. Subsequent to the issuance of the notification dated 21.01.2019, it appears that the Commission further commenced the proceedings permitting the parties to adduce evidence, if any, in respect of the new terms of reference also. This fact would be evident from the order sheet dated 27.07.2019 wherein the Commission in its order sheet directed as under:

“State as well as the PCC, who are already represented before the Commission shall submit their own affidavits with documents, if any, within a period of 15 days.”

19. Thereafter, matter was ordered to be listed on the 31st of August, 2019. On 31st of August the perusal of the order sheet reveals that in terms of the order dated 27.07.2019, three persons had filed their affidavits, they are:

(a) Awadhesh Singh Goutam,

(b) Chandrabhan Jhadi, and

(c) Saiyyed Sattar Ali.

- 20.** Even at this stage, the Government did not think it fit for filing any further affidavit or calling for any other witnesses. The matter was thereafter ordered to be listed on 06.09.2019. Even, as on 06.09.2019 when the matter was taken up, there has been no evidence, no application or affidavit or list of witnesses submitted by the State to the Commission and the matter was thereafter ordered to be listed on the 13th of September for recording of the evidence of the three persons, who had given their affidavits as per the order sheet dated 31.08.2019. On 13.09.2019, the evidence of the three persons were recorded and on the said date two more persons filed their affidavits namely; (a) Deepak Kumar Verma, and (b) Vivek Bajpai. The Commission accepted these affidavits and fixed the case for their further evidence on 01.10.2019. The order sheet reflects that on 01.10.2019, the witnesses Deepak Kumar Verma and Vivek Bajpai were examined and their evidence was closed. Meanwhile, however a few more affidavits were received on 01.10.2019 that is of (a) Shailesh Nitin Trivedi, (b) Devendra Yadav, and (c) Shivnarayan Dwivedi.
- 21.** In addition, the OIC of the case Mr. Sunder Raj P. also submitted his affidavit on behalf of the State. These were also taken on record and the matter was fixed for the 10th & 11th of October 2019 for recording of evidence of these persons, who have submitted their affidavits. On 10th of October, the State submitted an application for calling for a witness namely Brigadier Shri B.K. Ponwar and on the said date i.e. on 10th of October, 2019 as per schedule, the evidences of Shailesh

Nitin Trivedi, Devendra Yadav and Shivnarayan Dwivedi were recorded and closed and the matter was ordered to be taken up on the next day i.e. on 11.10.2019 for the evidence of Mr. Sunder Raj P. the OIC of the case. Subsequently, on 11.10.2019, the statement of Mr. Sunder Raj P. was also recorded.

- 22.** It is here that the dispute seems to have arisen or the proceedings which has given rise to the grievance of the State. That along with the affidavit that the OIC Sunder Raj P. had submitted a list of 5 witnesses were given and the Commission vide the impugned order has refused to call these 5 persons as witnesses and has closed the proceedings for submission of the report, permitting the parties to submit their written submissions.
- 23.** Once should not forget that the inquiry Commission was constituted as early as in May, 2013 and by now, it is more than 6 years of time have lapsed. Six years period is a considerable long period for any party to take appropriate steps in support of their claims and contentions. What is also to be seen is that the parties have been representing before the Commission effectively all these 6 years period. From perusal of the order sheets of the Inquiry Commission, it is clearly established that each of the parties interested in the inquiry had been given ample opportunity and a considerable period of time spreading over not only for days and months, but years together. This itself clearly establishes the fact that there has been no haste shown by the Commission in the early conclusion of the inquiry and the Commission on the contrary have been liberally granting time to the

parties in support of their contention, therefore the contention of the State that the matter has been abruptly closed by the Commission on 11.10.2019 is not sustainable.

- 24.** From the reference made in the preceding paragraphs, it would reveal that before the present State Government had published a notification on 21.01.2019, the Commission had already examined about 67 witnesses and since there was no further witness left to be examined, it had closed the matter on 07.01.2019. However, at the behest of the State Government certain new terms of reference were also notified for the Commission to submit its report and the tenure of the Commission also was extended up till 31.12.2019. After the publication of the notification dated 21.01.2019, the Commission had further granted opportunity to each of the parties to file their affidavits of all those persons, who were interested. Many of witnesses, whose names have been referred in the preceding paragraphs had filed their affidavits and all of whom have been examined. That for the persons who have been refused to be called as witness, the Commission has given specific reasons why they would not be necessary or are not relevant for the report to be submitted by the Commission.
- 25.** From the aforesaid discussions held in the preceding paragraphs and considering the order sheets that have been maintained by the enquiry commission and which have been discussed in the preceding paragraphs it would clearly reflect that the commission has been liberally considering the request of the parties in the examination of the witnesses even after the Additional terms of reference being

issued by the State Government. The order sheets reflect that all the parties interested including the State were granted sufficient opportunity to adduce evidence by way of affidavits and all those witnesses who had submitted their affidavits, their evidences have been recorded including that of the OIC/ Nodal Officer.

26. Everybody knows that enquiry commissions particularly, the judicial enquiry which are ordered to be conducted is only advisory in nature and which is supposed to collect information and datas including the statement of all those persons interested directly related to the incident and who can throw some light in respect of the incident that occurred. It does not mean that every person connected directly or indirectly to those affected in the incident would become relevant for the purpose of throwing light on the terms of reference.
27. What has to be realized is that the Commission constituted by the State is only a fact finding inquiry. It is not in any manner deciding an adversarial litigation. It is not a case where the Commission has been constituted for resolving or for adjudication of a lis between two parties, nor is there any rights and liabilities to be determined. The object behind constitution of the Committee was to get the terms of reference examined by an independent and impartial authority, who could submit a detailed report on each of the terms of reference. The institution of a Commission of inquiry is purely advisory in character. The Commission functions in accordance with the procedure as is laid down under the Commission of Inquiry Act, 1952. The Commission by the said Act has given wide powers in the course of

conducting the inquiry and which clearly also includes to decide what is relevant and what is not relevant. If we look into the proceedings drawn and the order sheet passed by the Commission it would clearly reflect that all the submissions, contentions put forth by the parties have been duly taken care of. The Commission in addition has also given reasons for not calling upon certain persons as witnesses.

- 28.** What has also to be seen is that there has been no affidavit filed by any of these persons, whom the State wanted to be examined as a witness. All these persons were fully aware of the constitution of the commission and its functioning and also the manner in which the Commission has been functioning. Six years period is a very long period for any person to decide who all are the witnesses to be examined. The Commission has been time and again mentioning in its order sheet that all those persons, who are interested in giving evidence are at liberty to file affidavit and the period for filing of the affidavit has been spread over for years together and during all these period, no efforts were being made by any of these parties, either to be called or to appear before the Commission or making an effort to submit their affidavit to bring their view before the Commission.
- 29.** What is also to be seen is that the tenure of the Commission is coming to an end by the 31.12.2019. In the past, what is seen is that before the Commission witnesses have been submitting their affidavits, and thereafter they were called upon for cross-examination if any. Nothing prevented the State or for that matter the interested

persons and even the Congress Party, who are effectively represented before the Commission in getting the affidavits of these persons filed in advance, if at all, if they were necessary and strong witnesses to bring the factual aspects before the Commission in terms of reference.

30. The proceedings and the period of six years during which the commission held sitting would itself be sufficient to show that the commission at no point of time had shown any haste in conclusion of the proceedings.
31. Under the circumstances, taking into consideration the reasons assigned by the Commission, the period of time already consumed by the Commission, this Court does not find any illegality or irregularity on the part of the Commission in closing the proceedings for the submission of the report. So far as the judgments, which have been referred by the State, both these two judgments have been pronounced under an entirely different contextual background and where the facts of those cases itself are sufficient to hold that the law laid down in the said judgments to be distinguishable.
32. The writ petition therefore fails and is accordingly rejected.

**Sd/-
P. Sam Koshy
Judge**