

IN THE HIGH COURT OF MANIPURAT IMPHAL

WP(C) No. 155 of 2015

Smt. Thangjam Ongbi Apabi Devi, aged about 47 years, W/O Thangjam Sharat Singh, a resident of Thangmeiband Sinam Leikai, P.O. & P.S. Imphal West District, Manipur.

..... *Petitioner*

-Versus-

1. The Union of India through the Defence Secretary, Government of India, Central Secretariat, South Block, New Delhi- 110001.

2. The Commanding Officer, 18 Sikh Regiment, C/O 99 APO

3. The State of Manipur through the principal Secretary (Home), Government of Manipur, Manipur Secretariat, South Block, P.O & P.S. Imphal, Imphal West District, Manipur.

4. The Director General of Police, Manipur Police Headquarter, P.O. & P.S. Imphal, Imphal West District, Manipur.

5. The Superintendent of Police, Imphal West District, Manipur, P.O & P.S. Imphal, Imphal West District.

.....*Respondents*

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE MR. N.KOTISWAR SINGH
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the Petitioner	::	Mr. M. Rakesh, Advocate.
For the Respondents	::	Mr. S. Samarjeet, CGC. Mr. R.S Reisang, Senior GA.
Date of Hearing & Judgment and Order	::	19.12.2017

**JUDGMENT AND ORDER
(ORAL)**

Heard Mr. M. Rakesh, learned counsel for the petitioner as well as Mr. R.S Reisang, learned senior GA for the State and Mr. S. Samarjeet, learned CGC for the Union of India.

[2] In the present petition, the petitioner has alleged the killing of the petitioner's son in a fake encounter with security forces which has been denied by the respondents. In view of the disputed versions of the cause of death of the petitioner's son, this Court had directed an enquiry to be conducted by the Court of District & Sessions Judge, Imphal West which was accordingly held, and the court below has submitted the report dated 11-08-2017.

[3] The fact that the petitioner's son died at the hands of the security forces is not in dispute but the circumstances in which he died were. According to the respondents, the State Police personnel along with the army personnel belonging to the 18 Sikh Regiment on getting some information of movement of underground activists/workers had organised a mobile checking/frisking at certain junctions near the place of occurrence. It has been stated that while doing the frisking duty at around 7:30 pm on the fateful day, a two wheeler rider along with a person on pillion were coming towards the frisking party, who were asked to stop for verification. However, instead of stopping, one of them fired towards the security personnel and thereafter, sped towards another side. The two wheeler riders were then chased by the security

personnel who then ran towards the paddy fields and an encounter ensued, which lasted for about 6 – 7 minutes. On further search in the vicinity after the encounter, one Kinetic Honda with a bullet ridden body along with a 9 mm pistol were found. The said deceased person was later identified as the son of the petitioner.

[4] In course of the enquiry conducted by the Learned District & Sessions Judge, Imphal West, the petitioner as well as the respondents reiterated their respective versions of the incident through the witnesses produced by them. The Learned District & Sessions Judge, Imphal West on consideration of the materials on evidence came to the conclusion that there was no encounter as alleged by the combined forces of the Manipur Police and the Army personnel and that there was no exchange of firing as alleged by the security forces and that the petitioner's son was killed by the said combined force as can be seen from para 25 of the enquiry report which is reproduced herein below:

“25 In the light of the foregoing observation, I have decided that the son of the petitioner, Thangjam Thoithoi @ Anilkumar Singh was killed in coldblooded manner/ fake encounter by the personnel of Manipur Police Commando, Imphal West led by Laitonjam Babekananda Singh, R.W No.4, Manipur Police Commando, Imphal East led by one Jamadar, A. Sunder and personnel of 18th Sikh Regiment led by Major Kamal Sajgotra on 14/01/2012 at about 7:30 – 7:45 pm at the Inter Village Road of Chandranadi leading towards Naran Konjil and not from the exchange offering or retaliation or encounter between the son of the petitioner and the personnel of the Manipur Police Commandos, Imphal West/Imphal East and 18th Sikh Regiment.”

[5] Learned District & Sessions Judge while coming to the aforesaid conclusion referred to the evidences on record, more particularly of the witnesses produced by the State/Army. The standoff the Manipur Police/Army as stated above was that there was an encounter and the said two persons were chased by the Police and the Army and in the retaliatory firing, one of the persons died and the other escaped. However, the Learned District & Sessions Judge noted that, though it was the plea of the security forces that the petitioner's son died in the encounter, the medical evidences clearly showed that the bullet injuries were received by the deceased on the front side of the body. Accordingly, the Learned District & Sessions Judge found it difficult to believe that the petitioner was shot from behind while being chased but the bullets hit him on the front side as mentioned in para No. 22 of the enquiry report, which is reproduced herein below:

“22. Furthermore, R.W. Nos. 3 and 4 have deposed that the two youths drove the Kinetic Honda upto a distance of about 120 metres from the said junction eastward and stopped their vehicle pushing the two wheeler vehicle aside and began to run quickly jumping down to the paddy field lying on the north of the Chandranadi Road and just after jumping down to the paddy field, the two youths again fired to them, they also fired intermittent shots and the two youths trying to escape hurriedly by running towards the hillocks lying on the north-eastern side and the encounter was lasted for about 6/7 minutes. From the above statements of R.W Nos. 3 and 4, it is crystal clear that the said two youths are able to drove their Kinetic Honda about 120 metres even though the security personnel were fired towards them from behind; then the two youths jumped down to the paddy field which is usually low lying area from the road and they are running towards the hillock for escaping but the security personnel are able to gun down one of them. However, all the 6 firearm injuries are found on the front side of the deceased, Thanjam Thoithoi. It is hard to believe by a prudent man that bullets shooting from behind to a running person will hit six bullets on the front side of a person.”

[6] Further, the Learned District & Sessions Judge also found that the alleged gun recovered from the deceased by the State Police was a 9 mm pistol as stated by RW Nos. 3, 4 & 6. On the other hand, the witnesses RW Nos. 1 & 2 produced by the Army had stated that the gun recovered from the deceased was a 7.65 mm pistol. Therefore, there was a clear discrepancy amongst the respondents themselves which indicates serious

doubt on the recovery of the aforesaid pistol. The said finding of the Learned District & Sessions Judge is to be found at para No. 23 of the enquiry report which is reproduced herein below:

“23. More so, R.W Nos. 1 and 2 have stated that the Gun recovered from the deceased was 7.65 mm Pistol but R.W. Nos. 3,4 and 6 have stated that the Gun recovered from the deceased was 9 mm Pistol. So, it clearly shows that the personnel of 18 Sikh Regiment and the personnel of CDO who were conducting the alleged firing encounter and gunning down of one person are not corroborated to each others as regard the recovery of the nature of gun from the deceased. In this regard, Id. Counsel of the respondents have contended that the personnel of 18 Sikh Regiments were not personally involved in examining the said seized Pistol and therefore, there is discrepancy in describing the said recovered Pistol. Such assertions of the Id. counsel for the respondents could not be accepted because, if they were not involved to examine personally the said gun and other recovered items, they will not state about the recovery of items which include the said Pistol in their deposition before the Court.”

[7] Further, the learned District & Sessions Judge also found that PW-5 who is an expert witness stated in his evidence that the pistol was without a firing pin at the time of examination and thus, indicating that it was not serviceable. The expert also did not explain when the firing pin was destroyed. Though it was pointed out by the respondents that nitrate was found in the barrel of the gun as per expert opinion, it has not been stated how old was the nitrate found in the barrel.

[8] The learned District & Sessions Judge also noted that though there was an alleged encounter which lasted for about 6-7minutes, not a single empty cartridge was recovered by the combined force of the State Police and the Army personnel. The Court below further found that though the respondents had claimed that one of the vehicles used by the security personnel was also hit by bullets fired by the two persons, there was no examination of the said vehicle to ascertain whether there were bullet holes in the said vehicle and if so, from which gun the said bullets were fired.

[9] The learned District & Sessions Judge also noted that though the Commando personnel of Imphal East were involved, no Commando personnel of the Imphal East were produced during the enquiry nor Major Kamal Sajgotra who led the Army team also came forward to give his statement before the Court.

[10] In view of the above inconsistencies, deficiencies in the material evidences and improbable circumstances, the learned District & Sessions Judge did not accept the plea of the respondents that there was an encounter in which the petitioner's son died.

[11] We have gone through the pleadings and perused the enquiry report. We do not find the conclusion/finding arrived at by the learned District & Sessions Judge, Imphal West to be suffering from any material discrepancy, lack of evidence or that it was flawed or outlandish. Accordingly, we uphold the conclusion arrived at by the Learned District & Sessions Judge, Imphal West which is based on credible evidences.

[12] We also have noted that the National Human Rights Commission too had earlier considered the said incident and had recommended the Government of Manipur for payment of Rs. 5lakhs to the next kin of the deceased as per the order dated 24thOctober, 2013. This is not denied by the respondents. The National Human Rights Commission also came to a similar conclusion that the claim of the respondents that the petitioner's son died in an encounter was not established and accordingly recommended the State Government to pay Rs. 5 lakhs to the next kin of the deceased. It has been stated at the Bar that the aforesaid amount has not yet been paid by the State Government.

[13] Accordingly, taking note of the recommendation of the National Human Rights Commission and also the independent findings arrived at by the Ld. District & Sessions Judge, Imphal West with which we are in agreement, and in the facts and circumstances of the case as referred to above, we are inclined to allow this petition by directing the respondents to pay a sum of Rs. 7 lakhs to the petitioner, who is the mother of the deceased, Mr. Thangjam Thoithoi, alias, Anilkumar Singh.

[14] Since both the Manipur Police and the 18 Sikh Regiment were jointly involved in the incident of killing of the petitioner's son, we are of the view that the aforesaid amount of Rs. 7 lakhs be shared equally by the State of Manipur as well as the Union of India (Ministry of Defence, Government of India) which we order. The aforesaid amount shall be paid within a period of 5 (five) months from today. In order to make it convenient for the petitioner to receive the amount, the respondent authorities shall deposit the said amount to the Registry of this Court within the aforesaid period, which would in turn be deposited to the individual Bank Account of the petitioner in a Scheduled Bank which may be opened by the petitioner, in the meantime, if not already opened by the petitioner.

Petition stands disposed of accordingly, with the above directions.

**Sd/
Kh. Nobin Singh
JUDGE**

**Sd/-
N. Kotiswar Singh
ACTING CHIEF JUSTICE**