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Supreme Court Asks Assam Human Rights Commission To Enquire Into Alleged Fake Encounters In State

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The Supreme Court today directed the Assam Human Rights Commission (Assam HRC) to conduct an independent and expeditious enquiry into allegations of fake police encounters in the State of Assam.

The directions were passed in a petition alleging rampant "fake" encounters in the State as well as non-compliance by state authorities with the directions issued in PUCL v. State of Maharashtra (<https://www.livelaw.in/16-guidelines-issued-supreme-court-matter-investigation-police-encounters>) pertaining to investigation of police encounters. The petitioner, an advocate, had brought as many as 171 instances to the notice of the Court.

A bench of **Justices Kant and N Kotiswar Singh** observed that the role of human rights commissions as protectors of civil liberties was paramount and expressed confidence that the Assam HRC would perform its duties effectively.

"We deem it appropriate to entrust the enquiry for this matter to the State HRC for advancing it to its logical conclusion...the matter is directed to be re-instated on the board of the State HRC for necessary enquiry into the allegations, independently and expeditiously in accordance with law...[It must be ensured] that victims of the alleged incidents or their family members are given fair and meaningful opportunity to participate in the proceedings. To that end, we direct the State HRC to issue public notice inviting all individuals who claim to be aggrieved victims...State HRC to ensure confidentiality with respect to the identity of the victims, their families or other individuals who approach", the Court ordered.

Notably, it was observed that each of the 171 cases highlighted by the petitioner warranted objective scrutiny, but blanket directions on mere compilation of cases were not justified.

"the appellant has placed before the Court as many as 171 individual instances, each warranting objective scrutiny...it must however be borne in mind that a mere compilation or aggregation of cases does not by itself call for omnibus directions...The allegations that some of these incidents may involve fake encounters are indeed serious and if proven, would amount to a grave violation of right to life under Article 21 of the Constitution. It is however equally possible that upon a fair, impartial and independent investigation, some of these cases may turn out to be necessary and legally justified. This distinction is critical...".

In the context of the PUCL judgment, which provides for registration of FIR, magisterial enquiry, compensation and informing the next-of-kin in cases of police encounters, the Court stated, "*They [guidelines issued in PUCL] in a way re-affirm the primacy of rule of law and the [bedrock] of our constitutional democracy...this Court authoritatively held that no individual or institution...is above the law. It cautioned against the emerging culture of glorifying police encounters as indicators of effective policing...*".

As per the judgment, the Assam HRC would be at liberty to initiate further investigations into the allegations and the state authorities shall cooperate fully as well as remove any institutional barriers in the enquiry process.

The Court also instructed the Assam HRC to adopt measures to safeguard identities of the alleged victims/their family members/witnesses and to approach the matter with sensitivity. To ensure that the victims are not disadvantaged, it called on the Assam State Legal Services Authority to provide legal aid to those in need.

After the judgment was dictated, **Solicitor General Tushar Mehta** expressed concerns about liberty given to the petitioner for offering legal assistance to the alleged victims. "*That might encourage blackmailing. This might normalize something, which I don't want to say*", the SG said.

However, Justice Kant refused to alter the judgment. "*Let's have faith in the system...If any individual wants, they can engage him*", the judge said.

On the question of locus standi of the petitioner, the Court observed, "*We have examined the locus of the appellant...we deem it appropriate to acknowledge the role played by the appellant in bringing to the Court's attention a matter that raises grave concern...it is not uncommon in situations involving alleged abuse of power by state actors for the affected individuals to remain silent...*".

It also said that while several instances highlighted by the appellant alleged procedural non-compliance with PUCL guidelines, many could be factually incorrect. *Prima facie*, it was opined that except in a few cases, it was difficult to conclude that there was a violation of the guidelines.

The above observations however ought not to be seen as casting aspersions on investigation by the state authorities, the Court remarked.

*"several instances cited by the appellant to demonstrate procedural non-compliance with PUCL guidelines may be factually incorrect...the appellant has not been able to independently place on record any cogent material to substantiate the allegations. He has merely relied on data furnished by the state itself...after minutely scanning such data, *prima facie* it seems barring a few cases, it is difficult to infer there has been a procedural breakdown or that PUCL guidelines were flagrantly violated...nonetheless, records furnished by the state indicate that some instances may warrant further evaluation to ascertain whether the guidelines have been meticulously complied with...observations should not be seen as casting aspersions on investigation carried out by the state of Assam..."*

Orders were reserved (<https://www.livelaw.in/top-stories/supreme-court-reserves-orders-on-plea-alleging-fake-police-encounters-in-assam-non-compliance-with-pucl-guidelines-284933>) in the matter on February 25.

The petitioner impugned a Gauhati High Court order, whereby his PIL raising the same issue was dismissed, as the High Court was of the view that no separate probe into the alleged incidents was required because state authorities were conducting investigation in each case.

Advocate Prashant Bhushan appeared for the petitioner and argued that in Assam, there had been rampant violation over the past few years with the PUCL guidelines. He pointed out that the guidelines were also made applicable to grievous injury cases in police encounters "*as far as possible*" and argued that the intent behind the PUCL guidelines was that an FIR be registered and independent

investigation conducted on the premise that the accused police officials may have done something wrong. However in many Assam cases, FIRs were registered against the victims.

The counsel further mentioned that when the matter was pending before the High Court, apart from death cases, there were as many as 135 encounter cases involving bullet injuries. Assailing the fact that there had not been any independent investigation into the allegations, he cited specific incidents through affidavits filed by alleged victims of encounters and proposed setting up of an independent investigating committee headed by a retired judge to give a preliminary report.

SG Tushar Mehta, on the other hand, asserted that the PUCL guidelines were binding and stood complied to the teeth. Questioning the motives behind filing of the present petition, he claimed that an investigation as sought by the petitioner would demoralize the security personnel, who put their lives at stake to safeguard the nation from terrorist attacks and militancy (which are more rampant in Assam).

The SG further disputed Bhushan's contention that the idea behind PUCL guidelines was that police officials are to be arrayed as accused. It is the alleged incident that is to be investigated, he asserted. Taking the Court through the PUCL guidelines, the SG also contended that the locus to dispute conclusion of an investigation and/or non-compliance with guidelines was with the victims' families.

Justice Kant concurred with the SG that the PUCL guidelines require investigation of the "*incident*" and not necessarily the "*police officers*". The judge further enquired about any incident where any victim's family had come forward to protest against the chargesheet filed. Ultimately, the orders were reserved.

Background

The plea was filed by one Arif Md Yeasin Jwadder, an advocate from Assam, raising the issue of encounters by police personnel in the state. The petitioner claimed that more than 80 fake encounters took place between Assam police and persons

accused in different cases since May 2021 (when Chief Minister Himanta Biswa Sarma took charge). He sought an enquiry by an independent agency, like the CBI, SIT or a police team from other states.

Notice was issued on the petition on July 17, 2023, calling for the response of the National Human Rights Commission and Assam Human Rights Commission, besides the Assam government.

In April, 2024, the Court suggested that the petitioner place on record some additional information. Pursuant to the same, he statedly filed the affidavits of victims of Tinsukia encounter case, in which 3 persons (Deepjyoti Neog, Biswanath Burgha and Manoj Buragohain) were allegedly injured in police firing.

The petitioner stated that family members of 2 victims of the Tinsukia encounter case viz. Biswanath and Manoj had wanted to lodge a missing persons report. But, the officer-in-charge of the concerned police station refused to lodge the complaint unless they mentioned that the victims were going to join the banned militant organization-ULFA. Rather, an FIR was lodged against the victims after the encounter took place.

It was also alleged that the officer-in-charge of Police Station Dholla (Assam) appointed himself as an Investigating Officer in the case, even though he was present at the scene of the encounter and it was his pistol that was allegedly snatched by victim-Deepjyoti Neog.

When the matter was heard on September 10, the Court expressed (<https://www.livelaw.in/top-stories/supreme-court-plea-against-fake-encounters-in-assam-court-says-not-good-for-rule-of-law-269188>) that accused persons losing their lives "just like that" was not good for the rule of law. It also conveyed its intention to form a commission and asked the parties to suggest names of retired judges for the purpose.

In October, the top Court called for (<https://www.livelaw.in/top-stories/supreme-court-questions-assam-human-rights-commission-over-enquiry-into-alleged-encounter-killings-273264>) data (in the context of Assam) regarding enquiry, if any, initiated by the Assam Human Rights Commission into cases where allegations of 'fake' encounter were levelled. It also stressed on the need for Human Rights Commissions to act pro-actively in civil liberty matters.

In February this year, the Court indicated (<https://www.livelaw.in/top-stories/supreme-court-plea-against-assam-fake-encounters-only-issue-whether-pucl-guidelines-complied-283022>) that the only issue to be considered in the case was whether the guidelines in *PUCL v. State of Maharashtra* were complied with or not.

Case Title: ARIF MD YEASIN JWADDER Versus THE STATE OF ASSAM AND ORS., SLP(Crl) No. 7929/2023

Citation : 2025 LiveLaw (SC) 638

Click here to read the judgment (https://www.livelaw.in/pdf_upload/2025-livelaw-sc-638-arif-md-yeasin-jwadder-v-state-of-assam-28-may-2025-610821.pdf)

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