

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP no. 1118/2015
IA no. 1/2015 [01/2015]

Reserved on 13.07.2022
Pronounced on: 25.07.2022

Abdul Rahim Shalla

.... Petitioner(s)

Through: Mr Rizwan-ul-Zaman, Advocate

V/s

Union of India and others

... Respondent(s)

Through: Mr T. M. Shamsi, ASGI
Ms Asifa Padroo, AAG

CORAM:

Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

JUDGMENT

1. The writ jurisdiction of this Court has been invoked by the petitioner under Article 226 of the Constitution praying therein as follows:

"I) Mandamus thereby commanding, the respondents to pay compensation in favour of the petitioner on account of death of the innocent son of the petitioner at the hands of respondents.

II) Mandamus commanding thereby, the respondents to grant the benefit of compassionate appointment in favour of the eligible member of the petitioners family under SRO 43 of 1994.

III) Mandamus commanding thereby, the respondents to lodge an FIR under section 302 RPC in the case and got the same investigated by an independent Investigating Agency, with respect to the killing of innocent son of the petitioner namely Manzoor Ahmad Shalla.

IV) Mandamus commanding thereby, the respondents to take appropriate action against the erring officials who after investigation, are found to be involved in the killing of the innocent son of the petitioner namely Manzoor Ahmad Shalla.

V) Any other, writ order of direction which the Hon'ble court may deem fit and proper in the facts and circumstances

of the case, may also be passed in favour of the petitioner and against the respondents.”

2. The case of the petitioner is that his son Manzoor Ahmad Shalla, a minor, has been killed by the Indian Army in a staged and fake encounter on 26th October, 1995, and branded him as a militant. A case under FIR No. 393/1995 for the commission of offences punishable in terms of Sections 307-RPC and 3/25 of the Indian Arms Act is stated to have been registered in this connection at Police Station Anantnag, which, however, has been closed as ‘untraced’. The petitioner pleads that since his son has been killed by the Indian Security Forces by falsely labelling him as a militant, therefore, he is required to be compensated for such a huge loss and the matter needs to be investigated by an independent investigating agency. Besides, petitioner’s family member is sought to be appointed on compassionate basis in terms of SRO 43 of 1994. The petitioner has, in support of the innocence of his son, placed on record a photo copy of a ‘*Non Involvement Certificate*’ addressed to the SHO Mattan, in response to a letter No. 49-50/5AM/96 dated 15th February, 96 purportedly issued by Major General Staff Officer Grade 2 for Commander, 1 Sector Rashtriya Rifles C/o 56 APO, wherein, the said Sector has denied to have any knowledge or record about the incident referred to in the letter and as regards the involvement of Manzoor Ahmad Shalla S/o Ab Rahim Shalla R/o Mattipora Nanyil in subversive or militancy related activities directly or indirectly.

3. Upon notice, the respondents appeared and filed their reply. In their reply, the respondents 1 to 3 have refuted the allegation of having killed the son of the petitioner on 26.10.1995. However, it is stated in the reply that an encounter took place on the said date in village Balpura-Kharibug between security forces and the militants in which four terrorists got killed namely, i) Bashir Ahmad Rather @ Abdul Hai resident of Sundpora; ii) @ Amas Khan resident of Mathipora; iii) Shakeel Ahmad Bhat @ Juned resident of Sirhoham; iv) Gulzar Ahmad Sheikh @ Safzar resident of Sheikhpora. It is further stated in the reply that three terrorists were apprehended namely i) Ghulam Hassan Ganai S/o Wali Mohd Ganai @ Jahed resident of Harigol; ii) Bilal Ahmad @ Nasir S/o Ali Mohd Ganai resident of Janglat Mandi, Anantnag; iii) Abdul Rashid Sheikh @ Masof S/o Ghulam Ahmad Sheikh resident of Hogam, Anantnag.

4. On the other hand the respondents 4 to 7 have stated in their reply that petitioner’s son Manzoor Ahmad Shalla had joined militant organization in the year 1995 who was killed by the Army 34-RR on 26th October, 1995, along with

three other militants namely i) Mohammad Jabar Sheikh S/o Khazir Mohd R/o Aukur; 02) Bashir Ahmad Rather S/o Gh Mohd R/o Matipora Mattan; 03) Gh. Mohi-ud-din Rather S/o Ama Rather R/o Sirhama, at Balpora Checki Akoora Mattan. The respondents have also raised preliminary objection regarding the maintainability of the writ petition for having raised disputed questions of facts which cannot be adjudicated upon under writ jurisdiction.

5. Heard learned counsel for the parties and considered the submissions made.

6. It emerges from the pleadings itself, that the alleged death of the petitioner's son, Manzoor Ahmad Shalla, is admitted by the respondents 4 to 7 but denied by respondents 1 to 3 who are actually stated to have neutralized him in an armed encounter. Since the factum about the death of petitioner's son itself is disputed, therefore, the prayers sought for, on account of such assertion, become irrelevant. However, at the same time, the court cannot lose sight of the fact and brush aside entirely the stand of the respondents 4 to 7 backing the allegation of killing of petitioner's son by the respondents 1 to 3. The stand of the respondents 4 to 7 is self-contradictory, for, they categorically state in the reply that the petitioner's son Manzoor Ahmad Shalla, was a militant who was killed in an armed encounter with the security forces on 26th October, 1995, at Balpora Checki Akoora Mattan, and at the same time place on record the copy of the Police Final Report (*Report-e-Ikhtitami*) prepared by the Station House Officer, Police Station Anantnag, endorsed by the Deputy Superintendent of Police, HQS, in case FIR no. 393/1995 P/S Anantnag, (FIR lodged by the police concerned about the incident in question), closing the investigation of the case as 'untraced'.

7. The respondents 4 to 7, therefore, are not clear in their approach. On the one hand they say that the petitioner's son was a militant who was killed by the security forces on 26th October, 1995, which has been denied by the respondents 1 to 3, and on the other hand they place on record a document that reflects the case in question to have been closed as 'untraced'. Either the petitioner's son is untraced or he is killed in an encounter.

8. In view of above, the court is of the considered view that the reliefs sought for by the petitioner by the medium of the instant petition are not available to him for having raised the disputed questions of fact which cannot be gone into by this Court in its writ jurisdiction. However, taking note of the clear ambiguity in the stand of the respondents 4 to 7 as regards the death or otherwise of petitioner's son, and in order to ensure that the picture is unclouded, the matter is required to be enquired into. Accordingly, respondent no. 4, is directed to initiate an enquiry into

the matter to be conducted by an officer not below the rank of Senior Superintendent of Police who shall be bound to complete the enquiry and submit report, in this behalf, before the Registry of the court within a period of two months from today.

9. Writ petition is disposed of on the above lines.

10. Registry to send a copy of this judgment to the respondent no. 4 for compliance.

(Moksha Khajuria Kazmi)
Judge

Srinagar
25.07.2022
Amjad Lone, Secretary

Whether the judgment is reportable: Yes/No

