

POINTS IN CRITIQUE OF JUDGMENT IN AZAD- HEMCHANDRA PANDEY ENCOUNTER WRIT PETITIONS

Supreme Court's order dated 03.05.2012 dismissing the writ petitions of Hem Chandra Pandey's widow Bineeta Pandey and Swami Agnivesh should be criticised on the following grounds:

1. The court failed to appreciate that the Petitioners had from the beginning prayed for an independent judicial enquiry and had opposed the entrustment of the enquiry to the CBI.
2. Azad was the spokesperson of CPI(Maoist) and was engaged in peace talks with the Home Minister through Swami Agnivesh. Thus, if the alleged encounter was fake then it couldn't have been carried out without the knowledge and consent of the Home Minister. Ministry of Home Affairs is the cadre controlling authority of IPS officers deputed to CBI therefore it has factual control over the functioning of CBI and can manipulate investigations as has been seen in numerous cases.
3. When the court entrusted the investigation of the encounter to the CBI it had decided to monitor the investigation. That is the reason the Petitioners did not press further for judicial enquiry at that stage. However, when the CBI filed its final report the court accepted the said report even though the Counsel for the Petitioner pointed out many glaring lacunae in the investigation:-
 - i. The blackening and burnt edges at the entry wound on Azad's body and the blackening around all the 3 entry wounds on body of Pandey has been explained by an explanation given by the junior doctor Chandraiah who had merely noted down the P.M. report as dictated by Dr. Neelkantheshwar Rao. Dr. Chandraiah explains away the blackening and the burnt edges as due to abrasion/contusion collar. Interestingly, this was the opinion relied upon by the State of Andhra Pradesh in their Counter Affidavit dated 24.03.2011. Neither the Andhra Police, nor the C.B.I. deemed it fit to furnish the opinion of Dr. Neelkantheshwar Rao who had been in charge of the post-mortem examination.

The AIIMS team led by Dr. T.G. Dogra explains the blackening and the burnt edges on the dead bodies as due to "hot bullet" and "friction of spin".

The burnt edges on the shirt at the entry hole has been explained as “hot bullet” by the CFSL Hyderabad only on the basis of lack of gun powder residue. It may be noted that the lack of gun powder on the shirts after 18 months of the alleged encounter cannot be made a basis as they could easily have been washed and gunpowder residue removed during this time.

The view of the AIIMS team that the burnt edges and blackening in the shirt and the entry wound could have been caused by friction/ hot bullet is belied every standard textbook of medical jurisprudence. There is no text book of medical jurisprudence which says that burnt edges and blackening can happen in a long range bullet wound of 25 meters as claimed in this case. If “hot bullet” or “friction due to spin” could cause burnt edges in a shirt or skin then surely some standard textbook would have mentioned it. The encounter team used standard self-loading rifle or AK-47. All textbooks say that burnt edges or blackening cannot happen at a distance of more than 4.5 feet i.e. 1.37 metres.

- ii. It is pertinent to mention here that Dr. T.G. Dogra who was the head of the team from AIIMS which gave the expert opinion to the C.B.I. which is markedly divergent from any standard textbook on forensic science has earlier also given many such controversial reports for example in the Shopian, Ishrat Jahan and Batla House encounter cases. In Shopian case the expert opinion went beyond the post mortem report and plain logic and in Ishrat Jahan case the SIT pointed out that his team “misinterpreted the parameters”, “disregarded the recorded positions of the police officers while firing and relied on the improved position that the police officers showed to the board” and went against the standard texts on mechanical engineering “However, despite SIT's request to them for revisiting their earlier opinion, they evaded the issue.”

- iii. When the Petitioner objected to Dr. Neelkantheshwar Rao's statement not being taken by CBI even though he had been in charge of the post-mortem examination the CBI produced an alleged statement under Sec 161 of Dr. Neelkantheshwar Rao in which the first two pages just stated that it was the statement of Dr. Neelkantheshwar Rao, that he had conducted the post mortem examination and dictated the Report to Dr. Chandraiah and described the injuries on the bodies of the two deceased persons. The last page contains the opinion on the injuries beginning with "Dr. Neelkantheshwara Rao and I" and gives the exact same opinion that had earlier been taken from Dr. Chandraiah. It is clear from a bare reading of the said statement that the third and last page has been taken from Dr. Chandraiah's statement and it is a clear case of forgery. The court did not accept the Petitioner's counsel's plea to summon Dr. Rao or at least to view the videotapes of the statements of Dr. Rao and Dr. Chandraiah.
- iv. CBI has noted that deceased Hem Chandra Pandey had sent an SMS to his boss Avishek Ranjan at 10:03 a.m. on 01.07.2010. This SMS was retrieved from his boss's mobile set but strangely, IPandey's mobile phone location disappears after Faridabad on 30th evening at 06:05 p.m.. No call records are available. CBI had no answer as to why if Pandey's boss received the SMS it was not shown on his call records when SMSs sent prior 06:05 p.m. were being shown. CBI's counsel merely stated that they had asked for the call records of the later period but Vodafone had refused. This is an untenable argument and understably the court was not satisfied with it during the hearing. It is clear that the some calls or SMS sent or from Pandey's phone after 06:05 p.m. on 30.06.2010 would have not gone

well with the story of a genuine encounter and that is why all the data after then was raised along with the SMS to Pandey's boss.

v. How did the S.P. learn about the presence of Maoists in the Sarkapally Reserve Forest?

A) The F.I.R says that the S.P. received information from the Special Intelligence Bureau. However, DIG (SIB) denied that S.I.B. provided any such information the CBI also has gone with the story that the intelligence regarding the Maoist party was provided by local intelligence termed as Special Intelligence Police (S.I.P.) and not from S.I.B. Yet, the call records of the S.P. show that in fact 7 calls were made between the S.I.B headquarter in Hyderabad and the S.P's cell phone in 24 hours and four of these calls were made before any information regarding the Maoist party had allegedly been received by the S.P. What does this furious telephonic activity indicate? The petitioner's counsel could unearth the identity of only two numbers from these records in one evening and both belonged to S.I.B. There might have been many other calls from S.I.B. and other important agencies if these records had been properly analysed by the CBI.

B) It is established that late Hem Chandra Pandey travelled by Gondvana Express to Nagpur which reached Nagpur at 10:00 a.m. on 01.07.2010. The forest/place of incident is minimum 4 hours by road i.e. 235 k.m. plus 8 k.m. by foot from Nagpur station, therefore Pandey could not have reached there before 4 p.m. However, the S.P. claims to have been informed by 2:00 p.m. about the exact location. The co-ordinates were mentioned in the operation sheet. Raghunandan Rao, team leader of the team which undertook this operation received phone call from the S.P. at 2:30 p.m. This would also mean that the Maoist party remained at the same place from 2:00 p.m. till 11:00 p.m.

- VI. The three vehicles drop the police part at Lakhimpur near Sarkapally forest and go back. Even after the encounter, no vehicles or reinforcements are sent and the police party is supposed to have spent the night in the forest without even venturing near the site of the dead Maoists. In fact, the S.P. did not even ask the OSD to go to the site immediately but told him to go the next day.
- VII. Cell phone records of S.P., Circle Inspector (C.I.) and OSD had been examined for only after 2:30 p.m. on 01.07.2010 and not before that. It was only after when the Counsel for the Petitioner objected to this after inspection of the report that the CBI produced the Cell phone records of the S.P for the whole of 01.07.2010 and 02.07.2010. Records of C.I. Rao show that he reached the site of the alleged encounter by 7:23 p.m. and there are no phone calls made to and from this phone between 7:51 p.m. and 11:31 p.m. which is strange since the S.P. claims to have kept in constant touch with him. Curiously, the S.P. calls Rao at 11:31 p.m. immediately after the alleged encounter and not vice-versa.
- VIII. Manzoor Ahmad(police officer) called C.I. Rao late at night on 01.07.2010 but Rao did not inform him about the firing and just asked him to stay alert.

Instead of appreciating the gravity of this case, Home Ministry's possible complicity and the glaring lacunae in C.B.I's investigation which were unearthed by the petitioner's counsel after just a few hours of investigation the court made a grave judgment of error in closing the case and asking the C.B.I. to submit its closure report before the Magistrate. This was a fit case for an independent judicial enquiry or an investigation by S.I.T.