IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:-

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

WPA 20733 of 2018
With
CAN 1 of 2021
Nilkamal Sarkar
-Versus-
State of West Bengal & Ors.

With
WPA 20734 of 2018
With
CAN 1 of 2021
Sri Badal Barman
-Versus-
State of West Bengal & Ors.

With
WPA 20938 of 2018
Subhash Sarkar
-Versus-
The State of West Bengal & Ors.

Mr. Partha Ghosh,
Mr. Ajay Chaubey,
Mr. Amal Kumar Datta,
Ms. Simran Sureka,
Mr. Debashis Das,
Mr. Rahul Agarwala.

....For the petitioners

Mr. Subhabrata Datta,
Mr. Debasish Sarkar,
Ms.AranyaSaha.

...For the State

Mr. Subir Sanyal,
Ms. Sumouli Sarkar,
Mr. Sagnik Roy Chowdhury.

... For the NHRC.

Mr. Arindam Jana.

… For the WBHRC.

Mr. Bhudeb Chatterjee.

…For the UOI.

Mr. Ashok Chakraborty, Sr. Advocate & ASG,
Mr. Dhiraj Trivedi, DSGI,
Mr. Arun Kumar Maiti.

…For the CBI.

Hearing Concluded On : 01.05.2023

Judgment On : 10.05.2023

Rajasekhar Mantha, J.

FACTS OF THE CASE

1. The writ petitioners seek a transfer of investigation into FIR No.611 of 2018 dated 20th September, 2018, registered by the Islampur Police Station, to the CBI. The said FIR was registered in connection with an incident of firing and bombing at Darivit High School in the Islampur block of Uttar Dinajpur district in West Bengal.
2. On the 20th September, 2018, the students and parents of the said school began to protest against the appointment of two teachers in Sanskrit and Urdu in the school. A large number of posts in various core subjects like Bengali, Mathematics, History, and English, were lying vacant. The two teachers came to join the school on the date. A large number of students had gathered outside the gate of the school after locking it. They were preventing the new teachers and the staff of the school from leaving the place.
3. The gist of the FIR, registered by the Islampur P.S., is that the police received information at 2.05 pm about an agitation started by the

students of the Darivit High School. A large number of curious bystanders and outsiders also assembled thereat. GD entry No. 875 was made by the police. Upon receiving information, Inspector-in-Charge (Rajen Chettri), Islampur P.S., along with a contingent of additional officers and police force, reached the school and found a large number of students and about 1000 other persons agitating against the appointment of the Urdu and Sanskrit teachers in the school. The students restrained the police from entering the school. Repeated appeals to the students were not heeded. It was reported to the police that at around 3.10 pm, one of the teachers confined in the school fell unconscious and required medical help.

4. The police requested the students to allow them to enter the school to arrange medical assistance for the teacher, but the students refused. The police force was suddenly attacked by an unruly mob with bricks, lathi, bombs, and firearms. Several police personnel are stated to have been injured. The police too fired tear gas and rubber bullets. Three persons, namely, Tapas Barman, Rajesh Sarkar, Biplab Sarkar, and one police officer received bullet injuries. Several police vehicles were damaged. Tapas Barman and Rajesh Sarkar succumbed to their injuries. Biplab Sarkar survived.

5. Asuo moto FIR No. 611 of 2018 dated 20th September, 2018 was registered by the Islampur Police Station under Sections 147/148/149/186/353/333/326/307/302 of IPC read with Sections 3/5 of Explosive Substance Act, Section 25/27 of the Arms Act (as indicated in the status report of CID, West Bengal dated 08.11.2022) and

Section 9 of The West Bengal Maintenance of Public Order (WBMPO) Act, 1972 against 14 persons and 1500 other unnamed persons. The CID, West Bengal, took over the investigation on 25th September, 2018 from the Islampur P.S. Investigation continued over 4 years thereafter by eight successive investigating officers of the CID. Charge sheet no. 860 of 2022 dated 7th November, 2022 was finally submitted. Leave was reserved to file a supplementary charge sheet. The original FIR was registered by the I.C. himself.

6. On the victim's side, on the 21st of September, 2018, Nilkamal Sarkar, father of Rajesh Sarkar, filed a complaint without naming any persons asking the police to investigate. Rajesh Sarkar was playing football at a nearby field at the time he received information about the agitation in the school. He reached the spot as he was concerned about his sister who was a student present inside the school.

7. However, Sumit Kumar, S.P., Uttar Dinajpur; Rajen Chettri, I.C., Islampur; Golam Rabbani, MLA Islampur constituency, and one Kanailal Agarwal, Chairman Islampur Municipality, were named as responsible for the incident in a further complaint dated 23rd September, 2018 by the said Nilkamal Sarkar. The Islampur Police Station refused to register the complaint. Thereafter Nilkamal Sarkar sent complaints to the Chief Secretary to the Government of West Bengal by email.

8. Another writ petitioner Badal Barmal, the father of the victim Tapas Barman, also filed a complaint dated 21st September, 2018 with the Islampur P.S. He said that while the victims of the firing were being taken to the local hospital at Islampur they were waylaid at Golapara

village, severely thrashed and assaulted by a mob belonging to another community.

9. The three writ petitions were filed on 4th October, 2018.

10. The report of the CID, West Bengal, filed in Court, states that 12 police personnel and 3 civilians were injured in the incident. One Parimal Adhikari, a Constable, allegedly received a gunshot wound. The post-mortem of the deceased was conducted. Statements of 82 persons were recorded under Section 161 of the Cr.P.C. 24 persons have been accused in the charge-sheet. Two are absconding as on date. The rest are all on bail.

11. The I.Os sent several notices under Section 161 of the Cr.P.C. to the petitioners, but they did not respond or participate in the investigation. Efforts are on to still trace out the accused persons.

12. The National Human Rights Commission (NHRC) received complaints from one Sreerupa Mitra Choudhury dated 28th September, 2018, and Badal Barman and Nilkamal Sarkar dated 3rd October, 2018. The complainants alleged that the two boys Rajesh Sarkar and Tapas Barman died due to gunshot injuries as a consequence of firing by the police. Excessive force was used by the police. The girl students who were protesting at the gate were allegedly molested by the police. Rajesh Sarkar and Tapas Barman, while being taken to the local hospital at Islampur in a van by their families, were alive even after being shot in the incident. They died after the brutal assault and beating during the second incident at Golapara village while they were being taken to the Islampur Hospital.

13. The petitioners had several other grievances. A second post-mortem was requested. The writ petitioners alleged that the incident was communal. The victims died due to unnecessary police firing. It was also requested that the CBI should investigate the matter.

14. A team of the NHRC headed by a D.I.G. (DIG of Police) visited Islampur and stayed there from 8th October, 2018 to 15th October, 2018 and conducted a spot enquiry. In the meantime, the West Bengal Human Rights Commission (SHRC) is stated to have taken cognizance of the incident on 25th September, 2018 after it was reported in a local vernacular newspaper called 'Ei Samay'.

15. The SHRC called for a detailed report from the S.P., Uttar Dinajpur. The SHRC has been calling for reports from the SDPO, Islampur, the ADG, CID, West Bengal, the S.P., Uttar Dinajpur, The D.M., Uttar Dinajpur, and DSP, Malda. On the 28th of November, 2022, the SHRC received a report and documents from the NHRC.

16. The NHRC submitted in Court that the SHRC has taken cognizance of the matter first i.e. on 25th September, 2018. In view of Section 36(1) of the Protection of Human Rights Act of 1993, any enquiry by NHRC, after the SHRC has taken cognizance of the incident, is not permitted.

17. The NHRC's report of spot enquiry, along with all supporting documents, was therefore sent to the SHRC for appropriate action from their end. The SHRC even as on date is continuing to call for reports. The SHRC last received a report from D.M., Uttar Dinajpur on 6th February, 2023.

18. The CID, West Bengal has filed a detailed report before this Court, in addition to the affidavit in opposition by the State. The writ petitioners have filed an exception to the report.

SUBMISSIONS OF THE COUNSEL FOR THE PETITIONERS:-

19. Mr. Partha Ghosh, Ld. Counsel for the writ petitioners has taken several exceptions to the investigation and report of the CID, West Bengal, which are as follows:

a) A further complaint of the writ petitioners, dated 25th September 2018 against two police officers and two MLAs, has not been taken into consideration or investigated by the CID. The said second complaint was annexed to the writ petition filed on October 2018, despite whereof, has been ignored by the CID.

b) The recommendations of the NHRC have not been considered by the CID.

c) The actual wrongdoers have not been identified by the CID.

d) The cartridges of the bullets fired at the incident have not been analysed by the CID even though they were available and collected by the Islampur police, as seen by the local villagers.

e) The Post-mortem of the victims was done without the family members present.

f) A second post-mortem was never conducted despite requests.

g) The purpose of the investigation of the CID was only to frame the innocent villagers.

h) It is necessary to ensure and instil confidence of the public in the investigation that it is handed over to and conducted by, an agency outside the State. This would ensure an impartial and fair investigation and only then the truth would emerge. Only the CBI can investigate the role of influential political persons in the incident and the role of the State police in the death of the two boys.

20. Counsel for the petitioners relied upon the following decisions asking for the investigation to be transferred to the CBI to be conducted afresh. Counsel for the Petitioner has placed reliance on the following decisions:-

a) **Pooja Pal v. Union of India and Ors.** reported in **(2016) 3 SCC 135.**

b) **Rubabbuddin Sheikh v. State of Gujarat and Ors** reported in **(2010) 2 SCC 200.**

c) **Brajesh Jha v. Union of India and Ors.** reported in **(2017) Scc Online 899.**

d) **Protima Dutta Vs. State reported in 2022 SCC OnLine Cal 1459**.

SUBMISSIONS OF THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC):-

21. Mr. Subir Sanyal, Ld. Counsel appearing for the NHRC submits that his client has annexed a very detailed report to its affidavit in opposition. Based on the said report, it is argued that the investigation by the CID, West Bengal, is perfunctory. The investigation by the CBI is necessary and warranted in the facts of the case. The facts and circumstances, leading to the incident, and the events that occurred in the course of the

incident and thereafter, have been suppressed and deliberately ignored by the CID, West Bengal. Mr. Sanyal argued that his submissions are supported both in the facts and law as detailed in the report of the NHRC.

22. On the question of the legality of the enquiry of the NHRC, it is submitted by Mr. Sanyal that given a fair reading of sections 12, 14, 17, and 36 of the Protection of Human Rights Act of 1993 the report of the NHRC is legal and sustainable and must be taken into consideration by this Court.

23. The State Human Rights Commission has abdicated its responsibility. The failure of the State Human Rights Commission to come to any conclusion or findings, even after 4 years, is only aimed at protecting the State administration and police. The SHRC, according to Mr. Sanyal, is hand in glove with the State and has refused to address the human rights violations that have occurred in the facts of the case in the incident.

24. According to Mr. Sanyal, the report of the NHRC that has been filed is to give effect to the real objects and purpose of the PHR Act, 1993. The bar on the NHRC under Section 36(1) must be read down and ignored in the context of the failure of the SHRC and in the peculiar facts of the case. The NHRC report must be taken into cognizance by this Court and must be accepted since the SHRC has not taken any steps even as on date. Alternatively, it is argued that the findings of the NHRC may be taken into consideration by this Court and its recommendation must be given effect in the exercise of the powers under Article 226 of the Constitution

of India. Reliance is placed on an unreported decision of a Special Bench of Madras High Court dated 5th February, 2021 in **WP 41791 of 2006** in **Abdul Sathar Vs. Principal Secretary to the Government**, particularly paragraph 490 onwards. The findings of the Madras High Court, according to Mr. Sanyal, indicate that the role and importance of the Commissions is protection against human rights violations. Since the SHRC has completely failed to discharge its duties, the report of the NHRC must be taken as a statutory report/recommendation within the meaning of the PHR Act of 1993.

25. The conclusions of the NHRC in their report are as follows:-

> *"10. Conclusion:-*
> *The circumstances observed during the spot enquiry, from the statements of victim families/public persons and in absence of complete version of administration of the State of West Bengal seems to indicate the following points:-*
>
> *i. Insistence on appointment of Urdu and Sanskrit teachers in a school where there are no student for these languages raises suspicion. The local administration appeared to be in a hurry to appoint Urdu and Sanskrit teachers in violation of the resolution passed on 18.09.2018 by the school management committee, which indicates some pressure from exogenous sources. The unusual hurry shown in up-gradation of the post of Urdu and Sanskrit teachers, which was processed and sanctioned in single day i.e. on 19.09.2018, smacks of some vested interest.*
>
> *ii. The district administration was fully aware about the issues of Darivit School, therefore during the meeting dated 18.09.2018, it was decided to withdraw the decision of posting of PG teachers of Urdu and Sanskrit to Darivit High School after which the students withdrew the agitation. Next day i.e. on 20.09.2018, for reasons best known to them, the district education department took a total u-turn by again sending the Urdu teacher to join Darivit High School without involving the School Management Committee, students and their parents.*

iii. This led to a sudden agitation by the students who locked the main gate of the school in protest and restrained some of the school staff including the new teacher inside the school compound. The police received the information at about 1405 hours regarding fresh agitation which eventually turned violent. Initially, the police was ill equipped to handle the agitation as it had no information about the fresh decisions taken by the education department. Reinforcements were later called by the police. The police action seems to have used excessive force (lathi charge, tear gas, rubber bullets) without any warning and landed up beating students, misbehavior with girl students and rescued the teachers. Though unverified but it seems that the police party retreated at about 4 PM and just as they were leaving, the villagers heard gunshot and three by- standing young boys received bullet injuries. All villagers, eye witnesses, complainants and victim, especially Biplab Sarkar who had been hit on the thigh unambiguously alleged that the last police vehicle had fired. Keeping in view the crowd that had gathered there as can be seen in the videos also, it seems unlikely that a public person (outsider or otherwise) could have shot at the children and got away without being lynched by the crowd.

iv. In support of the version that firing may have come from the last police vehicle, the autopsy report and its analysis by the expert on the panel of NHRC brought out the facts like rifling effect "abrasion collar", "presence of singeing of associated hairs and tattooing" and "track of the wound is backwards and medially downwards are all suggestive of use of "rifled weapon" fired from a short range and may be from a slight height (may be aboard a vehicle as alleged). Even the site and height of the entry wound i.e. frontal portion of the body facing the retreating vehicles and direction of shot fired which is in the opposite direction of the movement of vehicles, are indicative of the fact that victims of gunshot injury were all watching the retreating police vehicles.

v. The most ghastly and inhuman act was when the villagers who were carrying the victims of gunshot injuries to Islampur Sub-Division Hospital were waylaid and beaten up indiscriminately (even the injured victims) without any provocation and thereby delayed their access to the hospital despite the relatives of the victims' imploring the assaulters to give way. The police had neither anticipated this as no preventive picketing was done nor any case registered separately for this particular incident as if the police wanted to be oblivious of this incident. Moreover, when the police party returned to pick Constable Parimal Adhikari they could have taken the stock of situation then and at least assisted the victims in getting proper treatment (assuming they were sure that they had not fired).

vi. Assuming the police had not resorted to any firing and they had received the information just as they reached PS Islampur after handling the student agitation, the normal response would have been to visit the spot afresh and should have registered a separate case on receiving information with respect to firing and gunshot injury to three students. If they had done this they would have taken the complaint from the family members of the victims and hence incorporated their version. The police also miserably failed in registering a proper case in this matter. Instead they merged the two issues as if it has taken place simultaneously or as a continuing offence which casts doubt on the theory given by the police in the FIR No. 611/2018 dated 20.09.2018 u/s 147/148/149/186/ 353/332/333/326/307/302 IPC r/w Sec. 3/5 of ES Act, Sec. 25/27 Arms Act and 09 MPO Act PS Islampur.

vii. The NHRC team had visited the Darivit Village on 11/10/2018 and till that time not a single police officer had entered the village either for investigation or for collecting evidence except arresting some named accused in the night of 20.09.2018. The local police was being alleged and the case had been transferred to CB-CID on 27/09/2018, but even the new IOS also never visited the Darivit Village to conduct investigation. If the local investigating agencies were so scared of visiting the scene of crime, why the district administration did not interfere in assuaging the situation and making attempts to convince the villagers to participate in the investigation and inspire confidence in the system. Despite the fact that the mortal remains of Rajesh Sarkar and Tapas Barman had not been cremated but buried by their families in the hope of better investigation and may be requiring a second post-mortem, no one from the administration showed any empathy or concern towards the grieving families. Instead the villagers continued to be in perpetual fear of the police and district administration due to their past experience of apathy and abject disregard of their interests.

viii. Even the senior police and administrative echelons could have considered the allegations of the villagers and ordered an impartial enquiry by a senior officer of another range or a magistrate to look into the aspect of firing by police. If nothing else, it would not only have inspired confidence but also may have removed the communication barrier and help to unearth the actual facts relating to that incident by incorporating the version of villagers in the enquiry. It is learnt that police officers ab initio denied firing by police before the media, without proper enquiry and visit to the scene or getting a fair enquiry into the

matter, which further eroded the faith of villagers on the police and administration.

ix. Though the DM and SP of Uttar Dinajpur were courteous towards the NHRC team and provided local support regarding stay and transportation but did not provide the ***public witnesses/ civilian persons and documents*** *despite repeated requests by the enquiry team of NHRC which could have established the sequence of events and corroborated the veracity of various versions:*

Public witnesses/civilians*:-*

i. Office bearer of parents-teachers association of Darivit High School (H.S). Islampur, District North Dinajpur, West Bengal.

ii. Independent witnesses, if any

Police/other Govt. Officials*:-*

i.The District Magistrate and Supdt. of Police, District Uttar Dinajpur, WB.
ii.The then and present District Education Officer and other officials.

iii. The then and present Head Master and other school staff of Dharivita High School (H.S), Islampur including newly appointed Urdu and Sanskrit teachers.
iv. The then and present SHOS of the affected areas.
v. The then IOs of the cases, registered regarding the incident of violence including present IO of CID.
vi. The supervisory officer of CID who is supervising the investigation of the cases.
vii. Concerned CMO(s) and other doctors who had treated the injured.
viii. Doctor(s) who conducted the autopsies of both deceased.
ix. Any other official associated with the matter.

Documents sought by the NHRC team*-*

i.Detailed report of District Magistrate and Superintendent of Police, District Uttar Dinajpur, WB regarding this incident.
ii. Copy of the FIRS registered regarding the incidents of violence dated 20.09.2018 and afterward.
iii. Present status of investigation of cases, registered after the incident alongwithcopies of case dairies, seizure memo, FSL reports including ballistic examination report etc.

iv. Copies of relevant GD extracts of concerned police stations pertaining to the incident.

v. Copies of PCR log and movement log of local police as well as CPMF personnel who arrived on the spot.

vi. Copies of arms & ammunition issued/ deposit register on dated 20.09.2018.

vii. Copy of post-mortem reports of the deceased students and video CD of the autopsy.

viii. MLCs of the injured persons including police personnel.

ix List of injured students/persons, their residential addresses and contact number.

x. Medical treatment record of Biplab Sarkar and other injured persons.

xi. Photographs and videos pertaining to the incidents of violence and police action.

xii. Copies of prohibitory orders issued by the District administration before/after the incidents of violence.

xiii. Copy of intelligence input received prior to the incidents of violence, if any.

xiv. Correspondence made by the school authorities with Education department to fill up the vacant posts of teachers of core subjects.

xv.Minutes of meeting held by the Education department to fill up the vacant postsof teachers in the school.

xvi. Details of preventive measures taken by the District administration for ensuring maintenance of law and order.

xvii. Details of the steps taken by the District authorities to restore normalcy in theaffected area.

xviii. Total damage/destruction of private/Govt. property reported during riots/incident.

xix. Sanctioned and posted strength of the teaching staff of Dharivita High School (H.S), Islampur for the last two years (subject wise).

xx. List of approved subjects prescribed in the curriculum of the school by theeducation department.

xxi. The number of students, class and subject wise including students of Urdu and Sanskrit language.

xxii. State policy in regard to recruitment of teachers in schools.

xxiii. Duty deployment chart of police personnel, deployed during said incident with supporting documents. A separate list of female police personnel may also be provided

However, on the ground that West Bengal State Human Rights Commission has already taken cognizance of this matter prior to NHRC they did not give any of

the above mentioned documents to the NHRC team. Hence, the NHRC team does not have the version of police and administration of District Uttar Dinajpur."

26. In support of the argument for the transfer of the investigation to the CBI, Mr. Sanyal relies upon the following decisions: -

    a) **R.S. Sodhi, Advocate v State of U.P and Ors.** reported in **1994 Supp (1) SCC 143**

    b) **Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Ors v. Sahngoo Ram Arya and Anr.** Reported in **(2002) 5 SCC 521**, in paragraphs 5-7.

    c) **State of West Bengal and Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.** reported in **(2010) 3 SCC 571**.

    d) **Rashmi Behl v. State of Uttar Pradesh and Ors.** reported in **(2015) 12 SCC 531**, paragraphs 15, 16, and 17.

SUBMISSIONS OF THE STATE:-

27. Counsel for the State Mr. Subhabrata Datta has made elaborate submissions by placing reliance upon the report of the CID West Bengal. He has produced the case diary. He submits that the CID, West Bengal took over the investigation given the gravity of the incident. The CID has conducted a fair and comprehensive investigation and a charge sheet has been filed albeit after more than four years of the incident. The second complaint of Nilkamal Sarkar dated 23rd September, 2018 was never sent to or received by either the Islampur P.S. or the CID, West Bengal.

28. The incident as narrated in the report of the CID is the actual sequence of events. The police were not responsible for the firing.

29. Mr. Datta, Ld. Counsel for the State has submitted that the report of the NHRC should not be given any credence and must be ignored in its totality by this Court. He has argued that the enquiry was commenced by the NHRC based on the complaint of Badal Barman and Nilkamal Sarkar and also one Sreerupa Mitra Choudhury on the 28th of September, 2018. The petitioners have not mentioned of any complaint to the NHRC in the writ petition. Sreerupa Mitra Choudhury is stated to be a resident of Delhi. The circumstances under which the NHRC took cognizance of the incident, therefore, remain mysterious.

30. The enquiry was not suo moto. While commencing enquiry every statement and purported finding of the NHRC is required to be based on evidence and witnesses and based on the documentary evidence to be received, inter alia, in terms of Section 13 of the PHR Act. Not a single person appears to have been summoned nor had any evidence been recorded. None of the photographs or video footage collected by the NHRC have been produced along with its report.

31. He has next argued that wild allegations have been made against the State police, particularly, the I.C., the S.P., the District Administration, and the SDPO, without the said persons having been heard. Reference in this regard was made to the decision of the Supreme Court in the case of **Kiran Bedi Vs. Committee of Inquiry and Anr**. Reported in **(1989) 1 SCC 494**, particularly paragraphs 17 and 45 thereof.

32. The CID has not been served with a copy of any of the findings of the NHRC to enable them to deal with it in the investigation. CID recorded statements of 82 persons under Section 161 Cr.PC, 44 of whom were police personnel.

33. It is further argued that the affidavit of one Lal Bahar claiming to be a member of the team of the NHRC that made the spot visit is equally unacceptable and is liable to be rejected. Except for statements in para 1 and 2, all other statements in the affidavit of NHRC have been affirmed as information derived from records. No such records have been produced along with the affidavit. Reference in this regard is made to the decision of **Bharat Singh &Ors vs State Of Haryana & Ors.** reported in **(1988) 4 SCC 534** Para 13 thereof.

34. Reliance is also placed on other decisions in support of the same argument, namely, **State of Bihar Vs. Lal Krishna Advani & Ors.** reported in **(2003) 8 SCC 361,** particularly paragraphs 8, 9, and 11 thereof; **Sohan Lal Gupta v. Asha Devi Gupta** reported in**(2003) 7 SCC 492** paragraph 23 thereof; **Manohar v. State of Maharashtra and Anr.** reported in**(2012) 13 SCC 14** paragraph 17 thereof.

35. It is next argued by the State that since the NHRC knew that the SHRC had taken cognizance of the matter before them on 25th September 2018, in terms of Section 36 (1) of the Protection of Human Rights Act, they should not have at all proceeded to take cognizance of the incident or conduct any enquiry thereat.

36. It is also argued that if the NHRC felt it was entitled to enquire into the matter, the entire procedure under Sections 12 to 18 of the PHR Act

ought to have been followed. Prosecution and all other measures ought to have been ordered against the State and the police. The alleged findings of the NHRC are therefore not in terms of the PHR Act.

37. The Commission has not on its own approached the Court for enforcement of any of its orders under the PHR Act. The purported findings of the commission against the State police and the CID, West Bengal and all and every observation can at best be termed as wild allegations. This Court should not take cognizance of the same. Reliance in this regard is placed on the decision of **N.C. Dhoundial Vs. Union of India and Ors.** reported in **(2004) 2 SCC 579** particularly paragraph 14 thereof.

38. On the question of transfer of investigation to the CBI, reliance has been placed on paragraphs 70 and 71 of the decision of the Supreme Court in the case of **State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights, West Bengal & Ors.** reported in **(2010) 3 SCC 571** and a decision of a Division Bench of this Court in the case of **DG of Police Vs. Gopal Kumar Agarwal and Anr.** reported in **2020 SCC OnLine Cal 775** particularly paragraphs 70 and 71.

39. It is also argued that since the CID, West Bengal, has filed a charge sheet in the matter, there must be substantial material for the transfer of investigation to another agency. The report of the NHRC does not constitute any material record in the eye of the law. Reliance is placed in the case of **Sudipta Lenka Vs. State of Orissa and Ors.** reported in **(2014) 11 SCC 527**.

40. Reliance is also made to the decision of **Bimal Gurung Vs. Union of India and Ors.** reported in **(2018) 15 SCC 480**.

41. It is submitted by Mr. Datta that to date the CID, West Bengal, could not arrive at any conclusion as regards the firing of the bullets and the weapon used therefor.

42. Mr. Datta has further argued that none of the complainants or writ petitioners had stated in their complaint that any girl students were molested by the police personnel. The said complainants did not come forward despite repeated requests to depose or record any statements of allegation against the police or any person.

SUBMISSIONS OF THE STATE HUMAN RIGHTS COMMISSION:-

43. The SHRC, represented by Mr. Arindam Jana, Ld. Advocate, has stated that the allegations made by the NHRC against them are incorrect. They have been continuously pursuing with the SDPO, the SP, the DM, the DGP, and the CID, West Bengal in the matter.

44. It is however submitted across the bar by the Ld. Counsel for the SHRC that since the NHRC has filed a report in the matter they will abide by any order passed by the Court to enforce the recommendation of the NHRC.

THE COURT'S ANALYSIS AND FINDINGS:-

45. This Court has carefully considered the arguments advanced by counsels for the petitioners, the NHRC, the SHRC, and the State.

46. Indeed the State Human Rights Commission had taken cognizance of the incident on 25th September, 2018 i.e. 3 days before the NHRC swung into

the matter. A plain reading of Section 36 of the PHR Act could not clearly indicate that there was a clear bar of NHRC in enquiring into the incident after the SHRC had taken cognizance of the same. The dicta of the Supreme Court in the **N. C. Dhoundial case (supra)** relied upon by the State must be noticed and referred to:-

> "**14.** We cannot endorse the view of the Commission. The Commission which is a "unique expert body" is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.
>
> **15.** Now let us look at Section 36 of the Protection of Human Rights Act, which reads thus:
>
> "36. *Matters not subject to jurisdiction of the Commission*.—(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force.
>
> (2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."
>
> Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *S.S. Gadgil* v. *Lal & Co.* [AIR 1965 SC

171] may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus: (AIR p. 176, para 10)

"*10*. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income."

The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide *Uttam Das Chela Sunder Das* v. *Shiromani Gurdwara Parbandhak Committee* [(1996) 5 SCC 71] and *Bhinka* v. *Charan Singh* [AIR 1959 SC 960 : 1959 Cri LJ 1223]).

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged "act" constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression "continuing offence" in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by

> law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(*a*) *inter alia* lays down that "ordinarily" a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable."

47. Applying the above dicta to the facts of the case it appears that the NHRC may have acted in excess of jurisdiction in conducting spot enquiries with the locals, seeking medical reports, and interviewing anyone whatsoever. The actions of the NHRC could be deemed as void. The report of the NHRC consequently may therefore be without jurisdiction and cannot technically or legally be called a statutory report. The said report of the NHRC however assumes some relevance and importance from a completely different standpoint before this Court, given the conduct of the SHRC.

48. The power, role, and importance of the Commissions under the PHR Act, 1993, particularly the SHRC can be morefully appreciated by reference to the answers to the questions framed by a three-Judge Bench of the Madras High Court in the case of **Abdul Sathar (supra).**

> "490. In the conspectus of the above discourse, the following is our summation to the terms of the Reference:
>
> **(1) Whether the decision made by the State HumanRights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?**
>
> **Ans**: The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R.Commission under Section 18 is an adjudicatory order

which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.

(ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances?

Ans: As our answer is in the affirmative in respect of the first point of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation?

Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(1) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?"

Ans: As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.

As far as imposition of minor penalty is concerned, a mere show cause notice is fair enough, as the existing Service Rules of all services specifically contemplate only show cause notice in any minor penalty proceedings.

(v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent?

Ans: As we have held that the recommendation of the Commission under Section 18 of the Act is binding and enforceable, the Officers/employees of the State who have been found responsible for causing violation of human rights by the Commission, are entitled to assail such orders passed by the Commission by taking recourse to remedies of judicial review provided under the Constitution of India. It is open to the aggrieved officers/employees to approach the competent Court to challenge the findings as well as recommendations of the Commission."

49. From the 21st of September, 2018 till date, the SHRC has been guilty of complete inaction. They have neither sent a team for spot enquiry nor have they chosen to enquire into the matter despite specific powers

conferred on them under Sections 12, 13, 14, 15, 16, 17, and 18 of the Act of 1993. The SHRC only sought reports from the DM, the DG, the CID, the SDO, and the SP for nearly 5 years. The last of such reports were received by the SHRC in November 2022. There has therefore been an abject failure and complete abdication of statutory responsibilities by the SHRC.

50. The lame defense for such inaction of the SHRC, advanced on affidavit and argued by counsel on their behalf, to say the least, is ridiculous. There was no functional Chairman of the NHRC from 2020 onwards until 2022. This would ipso facto mean that the SHRC was fully functional having coram from 2018 to 2022. As to why the SHRC was reluctant to send a team to the spot and has remained absolutely inactive, even as on date, despite a statutory mandate under Section 36 of the Act of 1993 remains unexplained. Counsel for the SHRC argued that the NHRC was already in the field and taking steps. They did not want to interfere with or interrupt the enquiry of the NHRC team.

51. This Court is therefore left with no other options than to consider and entertain the report of the NHRC filed along with their affidavit for the limited purpose of considering whether it is a plausible second opinion or view of the actual turn of events in respect of the incident at Darivit High School.

52. The object and purpose of the PHR Act, 1993 is to put in place, at the National and State level, an appropriate and effective body to specifically address Human Rights violations in the country. The statute is based on the mandate contained in the Universal Declaration of Human Rights

and various treaties and other international covenants, to which India is a signatory. The NHRC and SHRC have been conferred with wide powers akin to that of a Civil Court to inquire, investigate, recommend compensation and prosecution of any person or persons. Such powers are, inter alia, evident from Sections 12 to 18 of the Act of 1993. The role and responsibility of the NHRC and the SHRC cannot, therefore, be overemphasized.

53. In the backdrop of such wide powers and huge responsibility, the silence and inaction of the SHRC in the facts of the case is shocking. Indeed the NHRC has powers under Section 18 of the Act to have approached this Court or the Supreme Court on their own to seek implementation of its recommendations and report. However, since they have been impleaded in this writ petition and have filed their report, and have prayed for its implementation, this Court is not inclined to ignore the report of the NHRC or in any way deem it as void by reason of Section 36 of the said Act. A provision of a Statute cannot be interpreted or applied to defeat the main object and purpose of the PHR Act. To accept the arguments of the State under Section 36 of the Act to hold that the report of the NHRC is void, would without any doubt defeat the object and purpose of the Act of 1993.

54. It is equally well settled that judgments cannot be read as statutes. The dicta of the Supreme Court in the **N. C. Dhoundial decision (supra)** may not be strictly applicable in the peculiar facts of this case.

55. Useful reference may be made to the principles of interpretation by reference to Kelsen, Maxwell, and the Mimansa by the Supreme Court in

the case **Ispat Industries Ltd. Vs. Commissioner of Customs, Mumbai** reported in **(2006) 12 SCC 583**. At paragraph 26, 27, 29, 30, 32, and 36 it was held as follows:

> **"26.** In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act.
>
> **27.** In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (the pure theory of law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail (see *Kelsen's The General Theory of Law and State*).
>
> **29.** The Customs Act falls in the second layer in this hierarchy whereas the Rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can only be possible if the Rules can be interpreted in a manner so as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the rule could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the rule in conformity with the provisions of the Act. This is because it is a well-settled principle of interpretation that if there are two interpretations possible of a rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.
>
> **30.** In this connection we may also refer to the Gunapradhan Axiom of the Mimansa principles of interpretation, which is our indigenous system of interpretation (see *K.L. Sarkar's Mimansa Rules of Interpretation*, 2nd Edn., p. 71).
>
> **32.** It may be mentioned that the Mimansa rules of interpretation were our traditional principles of interpretation laid down by *Jaimini* in the 5th century BC whose Sutras were explained by *Shabar*, *Kumarila Bhatta*, *Prabhakar*, etc. The Mimansa rules of interpretation were used in our country for at least 2500 years, whereas Maxwell's first edition was published only in 1875. These Mimansa principles are very rational and logical and they were regularly used by our great jurists like *Vijnaneshwara* (author of *Mitakshara*), *Jimutvahana* (author of *Dayabhaga*), *Nanda Pandit*, etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein. There is no reason why we cannot use these principles on appropriate occasions even today. However, it is a matter of deep regret that these principles have rarely been used in

our law courts. It is nowhere mentioned in our Constitution or any other law that only *Maxwell's Principles of Interpretation* can be used by the court. We can use any system of interpretation which helps us to solve a difficulty. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. One of the Mimansa principles is the Gunapradhan Axiom, and since we are utilising it in this judgment we may describe it in some detail. "Guna" means subordinate or accessory, while "pradhan" means principal. The Gunapradhan Axiom states:

"If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether."

This principle is also expressed by the popular maxim known as "*matsya nyaya*" i.e. "the bigger fish eats the smaller fish". According to *Jaimini*, acts are of two kinds, principal and subordinate. In Sutra 3 : 3 : 9 *Jaimini* states:

"गुणमुख्यव्यतिक्रमे तदर्थत्वान्मुख्येन वेदसंयोगः

Gunamukhyavyatikramey tadarthatvanmukhyen vedasanyogah"

Kumarila Bhatta, in his *Tantravartika* (see *Ganganath Jha's English Translation*, Vol. 3, p. 1141) explains this Sutra as follows:

"When the primary and the accessory belong to two different *Vedas*, the Vedic characteristic of the accessory is determined by the primary, as the accessory is subservient to the purpose of the primary."

36. The Gunapradhan Axiom can also be deducted from Jaimini 6 : 3 : 9 which states:

"When there is a conflict between the purpose and the material, the purpose is to prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose. To give an example, the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Yupa can be made of Kadar wood which is strong. Now this substitution is being made despite the fact that the prescribed wood is Khadir, but this prescription is only subordinate or accessory to the performance of the ceremony, which is the main object. Hence if it comes in the way of the ceremony being performed, it can be modified or substituted."

56. In **Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.** the Supreme Court reported in **(2008) 4 SCC 755** at paragraphs 47 and 48 it was held as follows:

> **"47.** One of the Mimansa principles is the gunapradhan axiom, and since we are utilising it in this judgment (apart from the badha and samanjasya principles) we may describe it in some detail.
>
> **48.** "Guna" means subordinate or accessory, while "pradhan" means principal. The gunapradhan axiom states:
>
> "If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether."
>
> This principle is also expressed by the popular maxim known as matsya nyaya i.e. "the bigger fish eats the smaller fish"."

57. It is therefore evident from the principles of statutory interpretation, both under Common Law and Mimansa principles, that a higher rule and/or object of a statute must prevail over a section, that may, in the given facts and circumstances, especially in the application of a section, strictly, lead to defeating the main object and purpose of the statute itself.

58. The power of this Court under Article 226 is wide enough to accept the report of the NHRC as a preliminary inquiry finding. The grievance of the State that their police and administration have been indicted without being heard (if correct) may now be misplaced. The concerned police and officials of the State Administration would be heard in accordance with law in the event any formal prosecution is launched against them. There cannot, therefore, be any prejudice to them as of now.

59. This Court is conscious of the view that under Article 226 of the Constitution of India, interference is not resorted to merely because another view of the incident or conclusion is possible in respect of a set of events. However, some of the findings of the NHRC mentioned

hereinbelow, are sufficient to raise some questions on the hypothesis of the CID, West Bengal. The findings of the NHRC are as follows:

a) Suspicious hurry and insistence on the appointment of vernacular teachers, to the extent that the local administration even violated the resolution of the school management committee, passed after the students and their parents first agitated.

b) Despite being aware of the situation at the Darivit High School, the District Education Department, for reasons unknown, decided to ignore the resolution of the School Managing Committee.

c) The sudden change in decision led to an aggressive reaction from the students. They locked the main gate of the school and confined the teachers and staff, including the new teachers, thereat. The police reached the location on receiving information about the agitation. Initially, they were ill-equipped to handle the agitation, so they called for reinforcements and force. Once adequate reinforcement arrived, they may have used excessive force to break through the students and enter the school to rescue the teachers. Once they rescued the school staff, the police retreated back and on the way out in their vehicles shot into the crowd, as alleged by the villagers, especially one of the gunshot victims, Biplab Sarkar. Even the autopsy report of the deceased Rajesh Sarkar supports the version of the witnesses.

d) As the families of the victims were on their way to the hospital for the treatment of the victims, they were faced with an inhuman act at Golapara, where they were waylaid and beaten up

indiscriminately, to the extent that one of the injured victims died on the spot. The police had not anticipated this as there was no preventive picketing, nor was a separate case registered for this incident. Even when they returned to rescue Constable Parimal Adhikari, they should've taken stock of the situation and at least assisted the victims.

e) Even if the police did not fire the bullets, their general response after receiving information about the same would have been to visit the spot again and register a case. Instead, they registered a single case, merging both incidents.

f) The NHRC visited the spot of the incident on 11th October, 2018 and nobody from the police had visited till then for investigation or even to collect any evidence. The case had been transferred to the CID, West Bengal, but then the new I.O had not visited the village to conduct an investigation.

g) If the local investigation agencies were so scared to visit the scene of the crime, the district administration could have interfered to make the investigation procedure less complicated, by convincing the villagers to participate and help the police and the CID. Nobody even sympathized with the families of the deceased when they buried the bodies instead of cremating them, just in the hope of a better investigation, and maybe a second post-mortem.

h) The senior police and administrative echelons could have considered the allegations of the villagers and ordered an impartial investigation based on that. At least it would inspire the

confidence of the public and probably could have unearthed actual facts related to the incident. The police had already denied the allegations of firing before the media, no enquiry or visit to the scene only further eroded the faith of the villagers in the police and administration.

60. The aforesaid findings cannot be brushed aside. The NHRC team comprises of senior ex-policemen, forensic experts, legal personnel, medical personnel etc. They are men and women with experience and expertise.

61. Let us now turn to the investigation conducted by the CID, West Bengal. This Court had occasion to very carefully scrutinize the entire case diary, statements under Section 161 of the Cr.PC, their findings, and the reports of the CID, West Bengal. The following acts and omissions are noticed by this Court:-

OMMISSIONS OF THE CID, WEST BENGAL:-

a) While the charge sheet refers to deadly weapons and firearms used by the mob present outside the school, not a single weapon appears to have been seized. The seizure list of the Islampur police and the CID only lists sticks and stones.

b) Although the Islampur police, CID, and the NHRC have found that bombs were hurled during the incident, reports under the Explosive Substances Act, 1908, have not been sent to the Central Government.

c) The versions of 44 police personnel in their 161 statements appear to be identical.

d) The injury report of Parimal Adhikary does not indicate any injury from any bullet or firearm. It is at best an abrasion on the scalp inflicted.

e) The injury report of Rajesh Sarkar, the deceased, in the case diary, suggests a bullet injury sustained from a rifle-like weapon.

f) The theory of the CID that a person from the mob has fired the weapon is incredible since a rifle-like weapon being fired by a person in a mob would be easily noticeable. The mob would have caught and lynched the shooter.

g) The injury report clearly points out that the bullet travelled from a height and was moving in a lower direction towards the back of the body. This would clearly mean that the weapon was fired from an elevated position and not from the ground level where the mob was located. The shooter, using a rifle from an elevated position must have had an escape route to move away fast from the place of occurrence. The bullet was moving in a circular motion as would clearly be evident in the injury report at the entry of the body of the deceased, Rajesh Sarkar. The bullet prima facie appears to be a professionally made factory bullet.

h) Biplab Sarkar had stated to the NHRC that gunshots or firearms were heard when the last of the police vehicles were leaving the place of occurrence. There was a strong possibility that bullets had

been fired from the last police vehicle leaving the place of occurrence.

The aforesaid omissions cast serious doubts in the direction of the investigation and conclusion of the CID, West Bengal.

62. The other glaring omissions noticed with the CID are as follows:-

a) The complaint as regards the second incident of assault by the villagers at Golapara, filed by Badal Barman on 23rd September 2018 available in the writ petition being WPA No.20734 filed on 04/10/2018 has been completely ignored by the CID, West Bengal.

b) In terms of the dicta of the Supreme Court in the case of **Lalita Kumari v. Government of Uttar Pradesh and Ors.** reported in **(2008) 7 SCC 164** the complaint disclosed cognizable offense and an independent FIR ought to have been registered against the villagers at Golapara, who attacked the auto van in which Rajesh Sarkar and Tapas Barman were being taken to the Islampur Hospital. They were waylaid and brutally beaten and the auto van was also badly damaged.

c) The second complaint of Nilkamal Sarkar dated 23rd September, 2018 was sent by email to the Chief Secretary of the State. The defense of counsel for the State that the same was never forwarded to the CID, West Bengal cannot be accepted as the complaint itself was annexed to the writ petition of Nilkamal Sarkar in **W.P. No. 20733**filed on 04/10/2018.

d) CID, West Bengal, has completely failed to notice any conspiracy angle in the incident, the theory that there could have been two groups, one supporting the teachers and the other agitating against them, could not have been summarily ruled out by the CID, West Bengal.

e) Nilkamal Sarkar stated in his writ petition that the IC, Islampur had refused to accept the complaint dated 23rd September 2018. In paragraph 6 of page 19 of the affidavit in opposition, the State has not denied the same and, on the contrary, has admitted knowledge thereof.

f) The FIR no. 611 of 2018 dated 20th September 2018 was registered under Sections 147/148/186/302/307/326/332/333/353 of the IPC read with Sections 3/5 of the E.S. Act, 1908, Section 25/27 of the Arms Act and Section 9 of MPO Act, 1972. Despite the provisions of the E.S. Act and the Arms Act being attracted, no report has been sent to the Central Government, Ministry of Home Affairs, for possible invocation of the provisions of the NIA Act, 2008.

63. The aforesaid facts according to this Court are sufficient to question the investigation by the CID, West Bengal. The aforesaid findings of the Court are based on the case diary, the CID reports and the charge sheet, and the statements of the witnesses recorded by the CID, West Benga ldo not come under the category of wild allegations. The circumstances indicated in paragraph 29 of the **Bimal Gurung decision (supra)** referred to by the State are clearly attracted in the facts of the case.

> "**29.** The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In *K.V. Rajendran* v. *Supt. of Police* [*K.V. Rajendran* v. *Supt. of Police*, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] , this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (*i*) where high officials of State authorities are involved, or (*ii*) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (*iii*) where investigation prima facie is found to be tainted/biased."

64. Indeed in the **Sudipta Lenka decision (supra),** the Supreme Court had declined the transfer of investigation after the charge sheet was filed. However, in the facts of the instant case, this Court noticed that CID, West Bengal, had taken nearly 5 years to investigate the case under 8 different investigating officers. The direction of the investigation may have been lost on as many as 8 occasions. Vital loopholes were found in the investigation have already been indicated hereinabove.

65. At paragraph 101 of the decision of the Supreme Court in the case of **Pooja Pal (supra)** set out hereinbelow one of the principal reasons for the transfer of investigation from the State to another agency is to instill faith in the public at large.

> "**101.** Judged in these perspectives, we are of the firm opinion that notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, CBI ought to be directed to undertake a de novo investigation in the incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case

wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding far-seeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance."

66. In the case of **Rubabbuddin Sheikh v. State of Gujarat and Ors (supra)** the Supreme Court at para 60, 80 and 81 held as follows:-

"60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr Rohatgi, learned Senior Counsel appearing for the State of Gujarat that after the charge-sheet is submitted in the court in the criminal proceeding it was not open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

80. We have already discussed the decisions cited from the Bar on the question that after the charge-sheet being filed whether the investigation could be handed over to the CBI Authorities or to any other independent agency from the State police authorities. We have already distinguished the decisions cited by the State that they related to the power of the court to monitor the investigation after the charge-sheet was filed. The scope of this order, however, cannot deal with the power of this Court to monitor the investigation, but on the other hand in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to investigate into the matter. Since the high police officials of the State of Gujarat are involved and some of them had already been in custody, we are also of the view that it would not be sufficient to instil confidence in the minds of the victims as well as of the public that still the State police authorities would be allowed to continue with the investigation when allegations and offences were mostly against them.

> **81.** In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State police authorities to continue with the investigation and the charge-sheet and for a proper and fair investigation, we also feel that CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them."

67. In para 83 of the decision of this Court in **Protima Dutta Vs. State (supra)** it was stated as follows:-

> "**83**. In light of the omissions on the part of the CID, West Bengal recorded by the trial judge and as found by the Division Bench of this Court, referred to hereinabove, it is quite clear that investigation in the instant case by the CID, West Bengal, has been perfunctory. The petitioner's contentions and apprehensions have thus been vindicated. The State agencies have clearly failed to effectively investigate the crime and bring the actual culprits to book. There is thus, an urgent and immediate need to instil public faith in the investigation and trial, which provides sufficient impetus for the change in the investigation agency."

68. In the **R.S Sodhi case (supra)** the Supreme Court held as follows:-

> **"2.** We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the

credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order."

69. In **Rashmi Behl (supra)** the Supreme Court held as follows.

"16. A perusal of the counter-affidavit filed on behalf of Respondents 1 to 4 State of Uttar Pradesh, Director General of Police, Deputy General of Police and Senior Superintendent of Police would show that after the case was registered being Crime Case No. 31 of 2013, one Rajbir Singh, SI, Lisadi Gate Police Station, Meerut, was entrusted with the case for investigation. So far as the serious allegations made by the petitioner against the respondents including the police officials are concerned, it is stated in the counter-affidavit that those allegations are subject-matter of the investigation. Admittedly, no action was taken against the persons who have allegedly committed crime. On the basis of the complaint, in March 2013, the investigation was entrusted to another SI Janak Singh Pundir, SIS Cell, Meerut. Two months thereafter, the said Investigating Officer Janak Singh was transferred and in his place one Pramod Kumar Singh, Sub-Inspector, Crime Branch, Meerut was entrusted with the case for investigation in June 2013. Again in August 2013, the investigation was entrusted to another Sub-Inspector Yogender Dikshit, Crime Branch, Meerut. It is stated in the counter-affidavit that the investigating officer was transferred from Crime Branch to Police Station Durala, District Meerut. This itself shows that the allegations made by the petitioner in the FIR followed by several complaints was never taken seriously by the police authorities and in a routine manner the investigation was entrusted to SI Police one after another. Moreover, the respondents in the counter-affidavit tried to justify the reason for not taking steps for the purpose of recording the statement of the petitioner victim under Section 164 CrPC and also failure in medically examining the petitioner as required under Section 164-A of the Code of Criminal Procedure.

18. Having regard to the facts, sequence of events and inordinate delay in the investigation of the case, it would show that the investigation by the State police authorities is not being conducted in a proper direction. More than two years have passed but the police failed to conclude the investigation, which itself goes to show that police have not acted in a forthright manner in investigating the case. Prima facie the police has acted in a partisan manner to shield the real culprits and the investigation of the case is not being conducted in a proper and objective manner. Since local police is allegedly involved as per the statement of the petitioner recorded under Section 164 CrPC, there may not be fair investigation. In *R.S. Sodhi* v. *State of U.P.* [*R.S. Sodhi* v. *State of U.P.*, 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] , this Court in such a case observed that (SCC p. 144, para 2) however faithfully the local police may carry out the investigation, the same may lack credibility since the allegations are against them."

70. In the facts and circumstances of the aforesaid, this Court is of the view that the investigation of the CID, West Bengal, to say the least, is inadequate and could be otherwise within the expression, “perfunctory”.

71. The CID, West Bengal, may have had serious inhibitions in having to investigate any conspiracy angle that may have led to blaming any police officials for having fired any weapon, or any higher police official ordering such firing into a mob without provocation, at the instance of any person or persons in power. The allegations in the complaint dated 23rd September, 2018 have not even been slightly addressed by the CID, West Bengal, or even negated for that matter.

72. Given the fact that the police mentioned in the chargesheet about the mobs attacking with bombs during the agitation, the first and foremost action from their end would have been to inform the Central Government, Ministry of Home Affairs about the same, so that the matter could be considered or be sent to the National Investigation Agency (NIA).

CONCLUSIONS AND DIRECTIONS:-

73. For the reasons stated hereinabove and applying the dicta of the decisions set out above and the omissions in the investigations of the CID, West Bengal, this Court directs that the investigation into the subject FIR no. 611 of 2018 dated 20th September 2018 be transferred to the National Investigation Agency constituted under the provisions of the National Investigation Agency Act, 2008. The charge sheet no. 879 of 2022 dated 25.11.2022 filed by the CID, WB, shall be kept in abeyance. The NIA may in its discretion register further and other FIRs in

connection with the incidents on 20th September 2018 and all other related incidents.

74. Although the petitioners have prayed for the transfer of investigation to the CBI, in view of the findings recorded above, this Court is of the view that the NIA would be the proper authority to investigate into the matter. A Writ Court under Article 226 can mould relief based on the facts and findings of a case.

75. The entire Case Diary is returned to the CID, West Bengal

76. This Court directs CID, West Bengal, to transfer the entire Case Diary and all records, evidence, and files to NIA, forthwith.

77. The State shall pay compensation to the families of the victims both killed and injured in the incident within a period of two months from date.

78. With the aforesaid directions, the three writ petitions are disposed of. All interim applications shall also stand disposed of.

79. There shall be no order as to costs.

80. All parties are directed to act on a server copy of this Judgment duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)