

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 21.03.2023
Pronounced on: 28.03.2023

WPA (P) 82 of 2023

Sri Suwendu Adhikari

...Petitioner

-Vs-

The State of West Bengal and Ors.

...Respondents

Present:-

Mr. Soumya Majumder,
Mr. Srijib Chakraborty,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Chiranjib Pal, Advocates
... for the petitioner

Mr. S. N. Mookherjee, learned Advocate General
Mr. Samrat Sen,
Mr. Anirban Ray,
Md. T. M. Siddiqui,
Mr. Nilotpal Chatterjee,
Mr. Debashis Ghosh,
Mr. Yash Singhi,
Ms. A. Pandey, Advocates
... for the State

Mr. Ashok Kumar Chakraborty, learned Additional Solicitor General
Mr. Billwadal Bhattacharyya,
Ms. Susmita Saha Dutta, Advocates
... for the Union of India

Mr. Dhiraj Trivedi,
Mr. Shailendra Kr. Mishra, Advocates
... for the CBI

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAI CHATTOPADHYAY,
JUDGE

Prakash Shrivastava, CJ:

1. The petitioner, who is an elected Member of the West Bengal Legislative Assembly and is also the Leader of Opposition in the West

Bengal Legislative Assembly has filed this public interest petition in respect of the incident of attack on the convoy of the Hon'ble Minister of State (HMoS), Ministry of Home Affairs, Government of India as also an elected Member of Parliament from Dinhata Parliamentary Constituency on 25.02.2023 when he was visiting his constituency. It is alleged in the petition that two persons, whose names have been disclosed in the petition, in a public gathering had instigated the workers belonging to the ruling party of the State to prevent the movement of the HMoS, Ministry of Home Affairs or workers belonging to the principal political opposition party in the State (ruling party in Centre) at Burirhat, a locality in Dinahata Sub-division of Coochbehar district. It has been pleaded that in the afternoon of 25th of February, 2023 when the HMoS, Ministry of Home Affairs, Union of India was visiting Dinhata Constituency, his car and the convoy was attacked and the workers belonging to the ruling party in the State had started pelting stones and hurling bombs at his convoy and also attacked the workers of the principal political opposition party in the State accompanying the Minister. The allegation is that the police personnel present on the spot took no step to stop the perpetrators. Further allegation is that the supporters of the ruling party in the State had thereafter attacked the party office of the principal political opposition party in the State and also the homes of various workers of the principal political opposition party in the State. The video links of the inflammatory statements of the two persons, who had instigated the workers belonging to the ruling party in the State prior to the visit of the Central Minister of State, have been disclosed in the petition. As per the allegation made in the petition, bombs were hurled at the car of the Union Minister which resulted in

the breaking of the car windows as well as certain shrapnel damaging the body of the car which could have resulted in fatalities. The photographs of the damaged car of the Union Minister for State have also been enclosed with the petition. The plea of the petitioner is that the incident was part of larger conspiracy to commit bodily harm upon the Union Minister of State in the Ministry of Home Affairs and the allegation is that the State police is one of the orchestrators behind the incident. In the aforesaid factual background, the prayer of the petitioner is to direct the CBI to cause an investigation into the incident and to deploy adequate Central Paramilitary Forces in the Sub-Division of Dinahata in the District of Coochbehar.

2. On 1st of March, 2023, learned Advocate General representing the State had sought time to file the report and thereafter the report in the form of affidavit on behalf of the respondent No. 4 was filed and exception on behalf of the Union of India and affidavit in reply by the petitioner in response to the report have been filed.

3. Submission of learned Counsel for the petitioner is that the provocative speeches of two persons were uploaded in social media and that there was a delay in registering the FIR by the police authorities and that from the report of the respondent No. 4, it is clear that the police authorities are biased in favour of the ruling dispensation in the State, therefore, fair investigation is not possible. He submits that the incident has been admitted and considering the circumstances of the case, there is no confidence that the proper and fair investigation will be done by the State police in this case. He submits that it is a serious matter when the Union Minister has been attacked.

4. Learned Additional Solicitor General submits that no proper steps were taken by the State Police on the complaint of the CISF personnel. He further submits that the report filed by the State indicates that there is an attempt to save the workers of the ruling party in the State and that the Additional Superintendent of Police who has filed the report, is raising the political issue of election and the stand of the police in the report itself is bias. He submits that some of the allegations in the report are based on personal knowledge whereas respondent no. 4 was not present on the spot.

5. Learned Advocate General opposing the petition has submitted that no relief has been prayed to transfer the investigation to CBI. He has also referred to the verification clause of the petition and has submitted that when the petitioner was not present on the spot, he could not verify certain paragraphs on personal knowledge. He further submits that on the complaint, two FIRs were registered and investigations in those FIRs are in progress. He has referred to paragraph (j) and (k) of the report to show the steps which have been taken after registration of the FIRs.

6. Learned Advocate General has also produced the case diary in Sahebganj PS Case No. 62/23 and 63/23 which have been perused by us.

7. We have heard learned Counsel for the parties and perused the record.

8. It is the settled position of law that the extraordinary power to transfer the investigation to the CBI should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigations or where

the incident has national or international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights, on being satisfied that the material discloses a prima facie case calling for investigation by the CBI. It is also settled that CBI investigation in exercise of writ jurisdiction under Article 226 of the Constitution can be directed without the consent of the State [**State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571**].

9. Hon'ble Supreme Court in the matter of **R. S. Sodhi, Advocate vs. State of U.P. and Others** reported in **1994 Supp (1) SCC 143** in a case of encounter killing has held that since the allegations are against the local police, therefore, however faithfully the local police may carry out the investigation, the same will lack credibility. Hence, in that case, it was found advisable and desirable as well as in the interest of justice to entrust the investigation to the CBI.

10. In the matter of **Rubabbuddin Sheikh vs. State of Gujarat and Others** reported in **(2010) 2 SCC 200**, it has been held that in an appropriate case when the Court feels that investigation by police authorities is not in the proper direction and in order to do proper justice in the case, it is open to hand over the investigation to independent agency. Though that was a case where in the encounter high police officials were involved, but in the present case also the allegations are against the supporters of the ruling party in the State.

11. In the matter of **Ashok Kumar Todi vs. Kishwar Jahan and Others** reported in **(2011) 3 SCC 758**, in the case of unnatural death of a boy in inter-class marriage where the nexus was alleged between the

police officials and the girl's relatives, the order directing investigation by the CBI was found to be proper. Hon'ble Supreme Court in this regard has held that:

“32. On the legality of the order of the learned Single Judge in directing CBI to investigate and submit a report instead of the State CID, we are of the view that the learned Single Judge assigned acceptable reasons. It was highlighted by the learned Senior Counsel for the mother and brother of the deceased that in spite of Sections 154(3) and 156(1) of the Code and the Police Regulations of Calcutta, the authorities, particularly, the Deputy Commissioner of Police, Detective Department was interested in protraction of the case and was not taking any interest in its investigation. The Deputy Commissioner of Police, Detective Department, and the Additional Deputy Commissioner, Headquarters had unauthorisedly intervened in the matter. Since there was no allegation of abduction against the deceased, the said officers made several attempts to mediate between the deceased and his in-laws. Relevant materials were shown that the officer in charge of Karaya Police Station had visited the residence of the deceased; the intervention by the Deputy Commissioner of Police, Detective Department, in the conjugal life of the deceased was uncalled for. It was also highlighted that without taking into account the earlier decisions of this Court directing the administration/authorities to see that spouses of inter-religious marriages are not harassed or subjected to threats, the Commissioner of Police had made comments, widely reported, that the reaction of the parents to the marriage was natural and death was due to suicide.

33. The learned Senior Counsel has also highlighted unholy nexus between the top brass of the police with the father-in-law of the deceased. By placing such acceptable materials, the

writ petitioners expressed doubt about fair investigation under CID and demonstrated that investigation by CBI under the orders of the court is necessary, since justice should not only be done but seen to be done. Inasmuch as the grievance of the mother and brother of the deceased is acceptable, the learned Single Judge, by interim order dated 16-10-2007, directed CBI to investigate into the cause of unnatural death of Rizwanur Rahman and file a report before it.”

12. Thus, nexus between the police and those who are directly or indirectly involved in the incident and who can influence investigation with the police becomes a relevant ground to transfer investigation to the independent agency.

13. Hon’ble Supreme Court in the matter of **Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary vs. State of Punjab and Ors.** reported in **AIR 1994 SC 1023** in a case of murder of an advocate had directed transfer of investigation to CBI to do complete justice in the matter and to instill confidence in the mind of public.

14. In the matter of **Gudalure M.J. Cherian and Others vs. Union of India and Others** reported in **(1992) 1 SCC 397** in a case where the allegation was relating to unfair police investigation in the incident of rape of nuns of a Christian institution and where the police instead of arresting the real culprits, had asked the victims to identify the arrested persons as culprits, Hon’ble Supreme Court had directed investigation by the CBI by holding that in a given situation to do justice between the parties and to instill confidence Court may ask CBI to investigate.

15. The Division Bench of this Court also **In the matter of: Bar Association, High Court at Kolkata & Anr.** reported in **2011 SCC OnLine Cal 418** had found that CID was not discharging its function fairly and impartially and had directed to hand over the investigation to the CBI.

16. In the present case, the report in the form of affidavit filed by the respondent No.4 Superintendent of Police, Coochbehar reveals that on 25.02.2023 when Hon'ble Minister of State (HMoS), Union of India had arrived at Burirhat, the alleged incident had taken place. The incident is not in dispute. The report also states that there was altercation between the workers of the ruling political party in the State and the principal political opposition party in the State. Though the report has been submitted by Additional Superintendent of Police (HQ), Coochbehar Police District, but a perusal of the report specially paragraph 3(h) and (i) supports the allegation that there is an attempt to shift the responsibilities upon the workers of the principal political opposition party in the State. The report was filed at the initial stage of investigation but averments made therein suggests final conclusion already drawn by the State police authorities. The following averments in the report create a doubt about the impartial nature of investigation and report:

“3. - - - (i) - - - It seemed that the intention of Bhartiya Janta Party supporters was to provoke Trinamool Congress supporters and create law & order issue.

4. - - - It is also evident from paragraph 3 of the petition that the petitioner's intent to target the upcoming Gram Panchayat Elections and the entire incident recorded in the petition is only a stepping stone to allege that there is an attempt to suppress the opposition in the upcoming Gram Panchayat

Elections. The interest of the petitioner is not the incident at Burirhat but is to target the upcoming Gram Panchayat Elections.

5. - - - It is, however, denied that the convoy of Nisith Pramanick was attacked by workers belonging to All India Trinamool Congress or on the instigation of Udayan Guha, as alleged or at all. - - - It is denied that the said Udayan Guha had instigated any of his workers to prevent the movement of Nisith Pramanik or that no worker belonging to Bharatiya Janata Party should be allowed to roam free or come out of their houses at Burirhat. - - - It is denied that the situation at Dinjata had become explosive when Nisith Pramanik arrived at such place or the workers belonging to the All India Trinamool Congress started pelting stones and hurling bombs. - - - People heard high bursting sound, which may be that of stun grenades thrown by police to disperse crowd. I state that there was altercation between the workers of two parties. - - - It is denied that the bombs were hurled at the car of Nisith Pramanik or the same resulted in breaking of the car windows or damage to the body of the car. - - - It is denied that the incident was instigated by All India Trinamool Congress or its workers or bombs were hurled or there is any conspiracy to commit any bombing attack upon the Minister of State.

6. - - - It is denied that the bombs were exploded by the workers belonging to All India Trinamool Congress or there was any conspiracy to terrorise the opposition political party.”

17. It is worth mentioning that the incident took place on 25th of February, 2023. As per the report, the cases were registered on 26th and 27th of February, 2023 and the above report in the form of affidavit is dated 3rd of March, 2023 when even the investigation was at the preliminary stage. Thus, the report itself supports the petitioner’s plea that the State police authorities are not likely to conduct the fair investigation in the matter.

18. It is also worth noting that the incident took place on 25th of February, 2023 but the FIR at the instance of CISF was registered on 27.02.2023 in PS Case No. 63/23. In the exception filed on behalf of the Union of India, it is stated that K. V. Raman, Sub-Inspector, Security Officer (CISF) went to lodge a complaint on 26.02.2023, but the police personnel of Coochbehar district had refused and the same could not be registered on 26.02.2023. The incident is admitted and is of serious nature relating to the attack on car and convoy of HMoS Union of India. Therefore, non-registration of complaint promptly supports the apprehension in the mind of the petitioner. That apart, the complaint mentions the names of as many as 30 offenders, but no prompt action against them is reflected. There is also allegation of throwing of bombs and causing of damage to the body of the car by certain shrapnel and the photo thereof has also been enclosed with the petition, but there is no proper investigation in this direction. The allegations are against the workers of the ruling party in the State, therefore, the possibility that State Police may not fairly carry out the investigation cannot be denied, especially when the other side are the workers of principal political opposition party in the State. The report in the form of affidavit reveals only two FIRs registered on 26th and 27th of February, 2023 being PS Case No. 62/23 and 63/23, but during the course of argument, it has been pointed out that the police had registered another FIR being FIR pertaining to Sahebganj P.S. Case No. 71/2023 and different yardsticks have been applied by the State Police to take action against the workers of two different political parties. A perusal of the case diaries also reveals that investigation is not heading in the right direction.

19. Thus, in the above circumstances of the case and considering the fact that the attack is on the convoy of Union Minister of State and the allegation is in respect of larger conspiracy to cause bodily harm to him, we are of the view that to ensure fair, unbiased and neutral investigation, it is necessary that the investigation is carried out by an independent agency.

20. Hence, the petition is allowed and the investigation in Sahebganj P.S. Case Nos. 62/23 dated 26th of February, 2023 and 63/23 dated 27th of February, 2023 is transferred to the CBI forthwith.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAI CHATTOPADHYAY)
JUDGE

Later:

After the judgment was pronounced, a prayer has been made by learned Counsel for the State seeking stay of the judgment.

Having regard to the nature of the case and reasons assigned in the judgment, we do not find any ground to accept the prayer, which is accordingly rejected.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAI CHATTOPADHYAY)
JUDGE