

March 25, 2022  
Sl. No. 1-6  
Court No.1  
(PA – RB/SS)

WPA (P) 130 of 2022

*The Court on its own Motion  
In re: The Brutal Incident of Bogtui Village,  
Rampurhat, Birbhum*

*With*

WPA (P) 124 of 2022

*Anindya Sundar Das  
vs.  
Union of India and others*

*With*

WPA (P) 125 of 2022

*Tarunjyoti Tewari  
vs.  
Union of India and others*

*With*

WPA (P) 126 of 2022

*Priti Kar  
vs.  
The State of West Bengal and others*

*With*

WPA (P) 129 of 2022

*Sayanti Sengupta  
vs.  
The State of West Bengal and others*

*With*

WPA (P) 133 of 2022

*Priyanka Tibrewal  
vs.  
The State of West Bengal and others*

Mr. Sabyasachi Chatterjee,  
Mr. Pintu Kakar,  
Mr. Akashdeep Mukherjee,  
Ms. Debolina Sarkar,  
Mr. Ranjil Mukherjee,  
Mr. Sayan Banerjee,

Mr. Samim Ahammed,  
 Mr. Arka Maiti,  
 Mr. Aniruddha Singh,  
 Ms. Gulsanwara Pervin, Advocates

... for the intervenor  
 in WPA (P) 130 of 2022

Mr. Phiroze Edulji,  
 Mr. Rajdeep Biswas,  
 Mr. Nilendu Bhattacharya,  
 Mr. A. K. Upadhyay,  
 Mr. Debapriya Samanta,  
 Mr. Dipankar Dandapath,  
 Mr. Idratanu Das Mahapatra,  
 Mr. Mrinal Das,  
 Mr. Raja Adhikari,  
 Mr. Abhijit Roy,  
 Mr. Sanjeeb Sen, Advocates

... for the petitioner  
 in WPA (P) 124 of 2022

Mr. Nilanjan Bhattacharjee,  
 Mr. Kumar Jyoti Tewari,  
 Mr. Brajesh Jha,  
 Mr. Ajit Kumar Mishra,  
 Mr. Uttam Basak,  
 Mr. Rajdeep Mazumdar,  
 Mr. Arijit Majumdar,  
 Mr. Lokenath Chatterjee,  
 Mr. Ayon Paul,  
 Mr. Moyukh Mukherjee,  
 Mr. Aniruddha Tewari,  
 Mr. Saket Sharma,  
 Mr. Sukanta Ghosh, Advocates

... for the petitioner  
 in WPA (P) 125 of 2022

Mr. Koustav Bagchi,  
 Mr. Debayan Ghosh, Advocate

... for the petitioner  
 in WPA (P) 126 of 2022

Mr. Rabi Shankar Chattopadhyay,  
 Mr. Uday Shankar Chattopadhyay,  
 Mr. Santanu Maji,  
 Mr. Jamiruddin Khan,  
 Mr. S. Chattopadhyay,  
 Mr. Imteaz Ahmed, Advocates

... for the petitioner  
 in WPA (P) 129 of 2022

Ms. Priyanka Tibrewal,

... petitioner-in-person  
 in WPA (P) 133 of 2022

Mr. S. N. Mookherjee, Id. AG  
 Mr. Samrat Sen, Id. AAAG  
 Mr. Anirban Ray, Id. GP  
 Mr. Md. T. M. Siddiqui,

Mr. D. Ghosh,  
Mr. N. Chatterjee, Advocates  
... for the State

Mr. Y. J. Dastoor, Id. ASG  
Mr. Vipul Kundalia,  
Ms. Amrita Pandey, Advocate  
... for the Union of India  
in WPA (P) 124 of 2022

Mr. Y. J. Dastoor, Id. ASG  
Mr. Debasish Tandon, Advocate  
... for NIA  
in WPA (P) 124 of 2022

Mr. Dhiraj Trivedi, Id. Asst. Solicitor General  
Mr. Shailendra Kumar Mishra,  
Mr. Rishav Kumar Thakur, Advocates  
... for the CBI  
in WPA (P) 125 of 2022

Mr. Billwadal Bhattacharyya, Id. Asst. Solicitor General  
Mr. Debu Chowdhury, Advocate  
... for the CBI  
in WPA (P) 126 & 129 of 2022

A very shocking and unfortunate incident has taken place at village Bogtui, on the outskirts of Birbhum's Rampurhat. At late night on 21<sup>st</sup> of March, 2022, some miscreants have put on fire 10 houses of the village, in which at least 8 persons which include a child, women, and newly married couple have been burnt alive. Apart from the fact that charred bodies of 8 persons have been found from those houses in the village, some villagers are also injured who have been hospitalized.

The media reports state that Bogtui is a village with over 2000 population and after the incident the residents of the village have left their houses on account of fear and terror. It has been reported that the killings was the result of the outrage amongst the close aids and supporters of Bhadu Sk, the deputy chief of ruling party

run Barishul Gram Panchayat who was killed by assassinator belong to the rival camps, due to bombs hurled on Monday night, and, therefore, the incident is the retaliatory action to Bhadu Sk's killing. Some of the reports also state that the poor villagers became the victim of rivalry between two groups of the ruling party and that incident was caused by goons supported by the political party in power. At this stage, it is not possible to draw any conclusion about truthfulness or falsity of these allegations because investigation is yet to take place but these reports and allegations cannot be completely ignored.

On registering the suo motu petition by this Court as many as 5 PILs have also been filed making serious allegations. It has been alleged that the incident had taken place at the instance of the hooligans associated with the ruling party and that even the fire brigade personnel were stopped from entering the village. Apprehension has been expressed that though SIT has been formed but the investigation will be done only to cover up the issue instead of finding the culprits or to unearth the truth. Serious apprehension has been expressed that the investigation has been camouflaged by the investigating agency and the evidence will be destroyed and that the independent investigation by the local police is not possible on account of the involvement of high profile persons connected to one of the political

party and that in order to cover up the incident one of the leaders of the ruling party has already stated the incident took place due to short circuit as a television had blasted. A strong apprehension has been expressed about likelihood of tampering the evidence and influencing the witnesses by raising the plea that the incident is the result of a political vendetta.

The object of registering this suo motu petition is to ensure fair investigation and to trace out the persons responsible for the incident and to see that they are punished adequately. This Court on 23<sup>rd</sup> of March, 2022 had issued certain directions in this petition to preserve the evidence and had further directed the learned Advocate General to provide the case diary / report of investigation to this Court and the same has been produced.

Submission of learned Counsel for the petitioners is that the investigating agencies are not properly carrying out the investigation and till yesterday no action was taken and only after the intervention by this Court some activity has been shown. It is also submitted that whereabouts of one of the minor witnesses is not known and the police is not recording the statements of the family members of the deceased and that out of fear and terror all the villagers of not only the concerned village but also nearby villages have fled away and it is necessary that justice be done to the victims of the family

and the faith of the society in the system is restored, therefore, an independent agency be appointed to carry out the investigation. In support of their submission they have placed reliance upon various judgments of this Court as well as Hon'ble Supreme Court.

Learned Advocate General has submitted that all the directions which were issued by this Court on 23<sup>rd</sup> of March, 2022 have been complied with and protection to the witnesses has been provided but it will take some time to restore confidence in the villagers so that they can come back to their houses. He has advanced the argument that the writ petitions have been filed without proper verification and that oral arguments without the pleadings have been advanced before this Court and that the investigation is being properly carried out and SIT has been formed and arrests have been made, therefore, at this stage no case is made out for transferring the investigation to the CBI.

We have heard the learned Counsel for the parties and perused the records.

Before entering into the issue, we deem it proper to examine the scope of judicial intervention and consider circumstances when the investigation can be transferred to the CBI.

Hon'ble Supreme Court 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 of alleged

rape of two nuns at Gajraula in Uttar Pradesh where after filing of charge-sheet, a prayer for transfer of investigation to the CBI was made, has held that in a given situation to do justice between the parties and to instill confidence in the public mind, it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency. The Hon'ble Supreme Court in that case had directed the CBI to take up the investigation.

In the matter of **R.S. Sodhi v. State of U.P. and Others** reported in **AIR 1994 SC 38**, in a case where allegations were leveled against the local police and it was held that the investigation by State police would lack credibility and that it would be desirable to entrust the investigation to an independent agency like the CBI 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 investigation credible. In the facts of the case, it was observed that however faithfully the local police may carry out the investigation, the same would lack credibility since the allegations were against them.

In the matter of **Punjab and Haryana High Court Bar Association, Chandigarh vs. State of Punjab and Others** reported in **AIR 1994 SC 1023**, in a case where a practicing lawyer, his wife and child were abducted and murdered and the lawyers' fraternity was not satisfied

with the police investigation though the investigation was already completed, Hon'ble Supreme Court, considering the facts of the case, in order to do complete justice in the matter and to instill confidence in the public mind had directed fresh investigation through specialized agency, i.e., CBI.

In the matter of **State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others** reported in **AIR 2010 SC 1476**, considering the scope of power of the Court to direct investigation by the CBI, it is held that direction to the CBI can be given by the Writ Court even in absence of consent of the State and such direction is not incompatible with federal structure or doctrine of separation of power. It has further been observed that being protectors of civil liberties of the citizens, the Supreme Court and High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. It has been held that such power should be exercised sparingly, cautiously and in exceptional situations. It has been also held that the extraordinary power can be exercised when it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order



may be necessary for doing complete justice and enforcing the fundamental right.

In the matter of **Rubabbuddin Sheikh vs. State of Gujarat and Others** reported in **AIR 2010 SC 3175**, the Hon'ble Supreme Court has held that in order to do complete justice, even after filing of charge-sheet, Court can direct to hand over investigation to the CBI more so, when high profile officials of the State are involved in crime and investigation is not made in proper direction.

In the matter of **Ashok Kumar Todi vs. Kishwar Jahan and Others** reported in **AIR 2011 SC 1254**, in the case of unnatural death, where the mother and brother of the deceased were suspecting murder at the hands of the in-laws of the deceased and the State CID was interested in protracting the investigation, considering the circumstances of the case and the fact that the complainants had expressed doubt about fair investigation under the CID, the Hon'ble Supreme Court had found investigation by CBI to be proper.

In respect of the incident of deaths by police firing in Nandigram, this Court had registered the suo motu petition and in order to ensure fair investigation and avoid possibility of loss/destroying of the relevant evidence, had directed the investigation by the Special Team deputed by the Director of CBI. (**Association for Protection of Domestic Rights vs. State of West Bengal and Others; 2007 SCC OnLine Cal 672**).

Counsel for the petitioners have also brought to the notice of this Court, the Division Bench judgment in the matter of **Bar Association of High Court at Calcutta** reported in **(2011) 4 CHN 736 (Cal)** wherein considering the circumstances of the case and being prima facie satisfied that the local committee of CPI(M) was involved in the incident the Court had directed the investigation by the CBI.

Learned Advocate General has advanced argument to distinguish the cases relied upon by the Counsel for the petitioners by submitting that only in the cases relating to the police firing, etc. where involvement of police is found, the power to transfer the case to the CBI should be exercised but on perusal of the judgments noted above, we find that such power can be also exercised where it becomes necessary to provide credibility to the investigation and instill confidence in society or where the incident may have national ramification or where such an order may be necessary for doing complete justice and enforcing the fundamental right. In this view of the matter, we are of the opinion that the prayer made by the petitioners cannot be turned down on the basis of the judgments in the matter of **K.V. Rajendran vs. Superintendent of Police, CBCID, South Zone, Chennai and Others** reported in **(2013) 12 SCC 480**, in the matter of **Mohd. Haroon and Others vs. Union of India and Another** reported in **(2014) 5 SCC**

**252**, in the matter of **Sujatha Ravi Kiran vs. State of Kerala and Others** reported in **(2016) 7 SCC 597** and in the matter of **Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Another vs. State of Jharkhand and Others** reported in **(2019) 6 SCC 777** relied upon by the learned Advocate General.

Having examined the present case in the light of the aforesaid judicial pronouncement and limited scope of judicial intervention, we find that the undisputed shocking incident of burning of at least 8 persons including a child and as many as 6 women has shaken the conscience of the society. It has a nationwide ramification and all the national media reports are flooded with the news of this unfortunate incident.

We have already taken note of serious apprehension expressed before this Court about fair investigation in the hands of local police or SIT by raising the plea that the incident is the result of political group rivalry and counter-blast of the murder of an Upa-Pradhan belonging to a particular group of the ruling party and submission that the attempt is being made to destroy the evidence and cover up the incident. In the communication dated 22.03.2022, Hon'ble Chief Minister has mentioned the fact that murdered Upa-Pradhan was an important TMC Party functionary. Though after the incident by the order dated 22.03.2022 the Director General and Inspector General of Police, West Bengal has formed three member

Special Investigation Team and this team is headed by Shri Ghyanwant Singh, IPS, Additional Director General of Police, CID, West Bengal but his independence and impartiality has been doubted by submitting that there was an allegation of murder of one Rizwanur Rahaman against him in the year 2007, therefore, he was kept out of work till 2014 and that ED had also summoned him in relation to a coal smuggling scam of rupees one thousand three hundred crores. Though learned Advocate General has submitted that in respect of the allegation of murder no charge sheet was filed against him but it remains undisputed that such an allegation was made against him.

The case diary of the incident has been produced before us. We have minutely examined it. We find that though the SIT was constituted on 22.03.2022 but till now there is no effective contribution of the SIT in the investigation. It has been submitted that in spite of the fact that the police station is very near to the spot of incident, the police did not reach on time and persons trapped inside the houses were kept on burning. Counsel for the petitioners have pointed out the procedure which was required to be followed in investigation by using tower damping technology to ascertain the presence of accused on the spot, manner of collection of samples and seizures, the videography of the collection of sample, recording of the evidence of the witness under Section

161 and 164 of the Cr.P.C., recording of dying declaration, etc. On minute examination of the case diary, we are of the opinion that the investigation as expected, keeping in view the gravity of the offence, has not been done. We are not mentioning the details of lacuna noticed in investigation as it may prejudice the rights of the parties. We also find that this is one such exceptional case where requisite direction is required.

It is pertinent to mention here that expeditious steps are required to be taken to hand over the investigation to an independent investigating agency because there is an allegation of an attempt to wipe off the evidence.

We take note of the fact that learned Additional Solicitor General has stated that CBI has no difficulty in doing the investigation.

Having regard to the aforesaid we are of the opinion that facts and circumstances of the case demand that in the interest of justice and to instill confidence in the society and to have fair investigation to dig out the truth it is necessary to hand over the investigation to the CBI. Accordingly, we direct the State Government to forthwith hand over the investigation of the case to CBI. We also direct the State authorities to extend full cooperation to CBI in carrying out the further investigation.

In view of this order the State police authorities or SIT formed by the State will not carry out any further

investigation in the matter from the time the same is handed over to CBI.

CBI will not only be handed over the case papers but also the accused and suspects who were arrested in the matter and in custody.

Hence, we direct the CBI to forthwith take over the investigation in the case and submit the progress report before us on the next date of hearing.

We make it clear that any factual observation made in this order is only tentative for the purpose of deciding the issue of transfer of investigation to the CBI and will not be treated as binding in any other proceeding.

List on 07<sup>th</sup> of April, 2022.

**[Prakash Shrivastava, C.J.]**

**[Rajarshi Bharadwaj, J.]**

**Later,**

After pronouncement of the order, an oral prayer has been raised by the learned Advocate General to stay of the operation of the order. We find no reason to grant the prayer. Hence, the prayer is rejected.

**[Prakash Shrivastava, C.J.]**

**[Rajarshi Bharadwaj, J.]**