

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

Reserved on: 19.12.2022
Pronounced on: 21.12.2022

WPA (P) 624 of 2022

Badrul Karim

...Petitioner

-Vs-

Union of India and Others

...Respondents

Present:-

Mr. Sabyasachi Chatterjee,
Mr. Sayan Banerjee,
Mr. Pintu Karar,
Mr. Kiron Sk.,
Mr. Sandipan Das, Advocates

... for the petitioner

Mr. S.N. Mookherjee, ld. AG
Mr. Samrat Sen, ld. AAAG
Mr. Anirban Ray, ld. GP
Mr. T.M. Siddhiqui,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee,
Mr. Debraj Shaw,
Ms. Adreeka Pandey, Advocates

... for the State

Mr. Shailendra Kr. Mishra, Advocate

... for the Union of India

Mr. Dhiraj Kr. Trivedi, ld. DSGI

... for the CBI

Mr. Bhaskar Prosad Banerjee,
Mr. D. Tandon, Advocates

... for the NIA

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. In this public interest petition, the main prayer of the petitioner is to appoint a sitting Judge of this Court under the Commissions of Inquiry Act, 1952 to inquire into the incident of unnatural death of Bara Lalan Sk.

2. The plea raised by the petitioner is that on 22nd of March, 2022 at village Bogtui on the outskirts of Rampurhat, Birbhum, incident of arson and bomb blast had taken place, therefore, this Court in WPA (P) 130 of 2022 in “The Court on its own Motion, In re: The Brutal Incident of Bogtui Village, Rampurhat, Birbhum” had handed over the investigation to the CBI by order dated 25th of March, 2022. Bara Lalan Sk., prime accused of the Bogtui incident, arrested by the CBI has suffered unnatural death on 12th of December, 2022 at night while he was in CBI custody. Hence, the present PIL has been filed with several prayers.

3. Submission of learned counsel for the petitioner is that the main incident of Bogtui is being investigated by CBI and there is a conflict between the CID and the CBI, therefore, independent inquiry by a sitting Judge of this Court under the Commission of Inquiry Act, 1952 is necessary. He submits that the State investigating agency is attempting to destroy the evidence and it has implicated even the CBI officers investigating the cattle scam. Alternatively, he has submitted that the investigation should be done by the CBI officers not involved in the incident.

4. Learned Advocate General has submitted that there is no prayer in the petition for transfer of investigation and that the Court should not order inquiry by the Commission and that Judges have a different

duty to perform in the Court. He has further submitted that a writ petition filed by the CBI is already pending before the learned Single Judge wherein the order dated 14th of December, 2022 has been passed.

5. Learned DSGI appearing for the CBI has submitted that a complaint has already been registered by the NHRC which is inquiring in the matter and the officers of the CBI are being unnecessarily harassed, therefore, the investigation should not be permitted by the CID or police investigating agency. He has also submitted that it is a case of suicide in custody and FIR has been lodged maliciously in order to hamper the Bogtui massacre investigation as well as the cattle smuggling investigation. He has also submitted that the case of suicidal death is subject matter of judicial inquiry under Sections 174 and 176 of the Cr.P.C. Learned counsel for the CBI has referred to FIR No. 612 of 2022 dated 13th of December, 2022 and has pointed out that in order to harass the CBI officers, offence has been registered even against SP, CBI and DIG, CBI by designation without mentioning the name of the officer and now on that pretext, 20 SPs and 10 DIGs of the CBI in West Bengal are exposed to harassment.

6. We have heard the learned counsel for the parties and have perused the record. The main thrust of argument of the learned counsel for the petitioner is to appoint a sitting Judge of this Court to inquire into the incident of unnatural death of Bara Lalan Sk. under the Commissions of Inquiry Act, 1952 (for short, 'the Act'). Section 3 of the Act empowers the appropriate Government to appoint a Commission of Inquiry for the purpose of making an inquiry into any

definite matter of public importance and performing such functions and within such time as may be specified in the notification appointing the Commission. Appropriate Government has been defined under Section 2(a) of the Act in relation to Central and State Government.

7. Hon'ble Supreme Court in the matter of **T. Fenn Walter and Others vs. Union of India and Others** reported in **(2002) 6 SCC 184** has opined against the appointment of sitting Judges as President, Chairman, Vice-Chairman, member, etc. of the Commission by observing that if a sitting Judge is appointed, considerable time is lost and Judge would not be in a position to attend to his regular judicial work and that in view of the mounting arrear of cases in superior courts, it would be difficult to lend services of Judges for such Commission work. It is also observed that the report of Commission of Inquiry often has only recommendatory value which are often ignored and not followed. It has been clearly expressed in that judgment that appointment of a sitting Judge as a Commission of Inquiry has to be made only on rare occasions, if it becomes necessary for paramount national interest of the Country. Present is not such a case.

8. So far as judgment in the case of **State of Karnataka vs. Union of India and Another** reported in **(1977) 4 SCC 608** relied upon by Counsel for the petitioner is concerned, that stands on a different footing because in that case, appointment of Commission of Inquiry by the Central Government against the Chief Minister of a State was subject matter of challenge in a suit questioning the power of the Central Government in this regard.

9. The Division Bench of this Court in the matter of **In re: The Court on its own Motion** passed in **WP 9313 (W) of 2019** relied upon by the learned counsel for the petitioner also stands on different footing as in that case, in suo motu exercise of power, this Court had appointed a retired Judge as one member Judicial Inquiry Commission to ascertain the facts relating to untoward incident which occurred in the premises of Howrah District Sadar Complex on 24th of April, 2019.

10. It is also noticed that the CBI has filed WPA No. 27799 of 2022 before the learned Single Judge with the prayer to transfer the investigation in FIR No. 612 of 2022 dated 13th of December, 2022 to any independent investigating agency or body over which the State of West Bengal exercises no control. Learned Single Judge in that petition has passed the order dated 14th of December, 2022 permitting the CID to continue with the investigation until further orders providing the safeguards in that order and further restraining the investigating agency from taking any coercive measure against the officers of the CBI including officers investigating the cattle smuggling case until further order. Learned Single Judge has also directed that no final report will be filed by the investigating agency without the leave of the Court.

11. Hence, CBI has full opportunity to raise all the relevant issues before the learned Single Judge in the pending petition wherein the issue relating to transfer of investigation to the independent agency will be gone into. In the present petition, there is no prayer to transfer the investigation to some other investigating agency.

12. That apart, it has also been brought to our notice that NHRC has registered a case being No. 5386/25/3/2022-PCD on the complaint regarding Lalan Sk. Incident. Under Sections 12 to 15 of the Protection of Human Rights Act, 1993, NHRC has adequate powers to make inquiry and investigation.

13. In the aforesaid circumstances of the case, we are of the opinion that no case is made out to allow the prayer to appoint a sitting Judge of this Court as the Inquiry Commission under the Commissions of Inquiry Act, 1952. The other prayers made in the petition have not been pressed during the course of argument.

14. The public interest petition is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
21.12.2022

PA(RB)

(A.F.R./N.A.F.R.)