

ITEM NO.6

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 129/2012

EXTRA JUDICIAL EXECUTION VICTIM AND ANR.

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS. &amp; ORS.

Respondent(s)

(IA No. 3308/2021 - APPLICATION FOR PERMISSION, IA No. 115459/2022 - APPLICATION FOR PERMISSION, IA No. 32786/2022 - APPLICATION FOR PERMISSION, IA No. 3305/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 23994/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 1018/2018 - CLARIFICATION/DIRECTION, IA No. 70299/2018-CLARIFICATION/DIRECTION, IA No. 162067/2021 - CLARIFICATION/DIRECTION, IA No. 37470/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 103807/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 162068/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 37472/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 37471/2021 - PERMISSION TO FILE ADDITIONAL, DOCUMENTS/FACTS/ANNEXURES, IA No. 103806/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 21039/2014 - PERMISSION TO FILE ANNEXURES)

WITH

Diary No(s). 34336/2018 (II)

(FOR ADMISSION and I.R.)

(IA No.151760/2018-CONDONATION OF DELAY IN FILING and IA No.151761/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) JUDGMENT)

Date : 20-10-2022 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE BELA M. TRIVEDI

Amicus Curiae

Ms. Menaka Guruswamy, Sr. Adv.  
Mr. Govind Manoharan, Adv.  
Mr. Yash S. Vijay, Adv.  
Mr. Utkarsh Pratap, Adv.

For Parties

Mr. R Venkataramani, AG  
Mr. Tushar Mehta, ASG  
Mr. Aishwarya Bhati, ASG  
Mr. R.Balasubramanian, Sr.Adv.  
Mr. A.K.Panda, Sr. Adv.  
Ms. V.Mohna, Sr. Adv.  
Ms. Manisha Chava, Adv.  
Mr. Rajat Nair, Adv.

Ms. Shraddha Deshmukh, Adv.  
Mr. Ankur Talwar, Adv.  
Ms. Chinmayee Chandra, Adv.  
Mr. Rajan Kr. Chourasia, Adv  
Ms. Sujatha Bagadhi, Adv.  
Ms. Indira Bhakar, Adv.  
Ms. Mrinal Elker Mujumdar, Adv.  
Ms. Chitragada Rastrawar, Adv.  
Mr. Arvind Kumar Sharma, AOR

Mr. Colin Gonsalves, Sr. Adv.  
Ms. Olivia Bang, Adv.  
Mr. Satya Mitra, AOR

Mr. V. Giri, Sr. Adv.  
Mr. Pukhrambam Ramesh Kumar, AOR  
Mr. Karun Sharma, Adv.  
Ms. Anupam Ngangom, Adv  
Mr. Wahengbam Immanuel Meitei, Adv.

Mr. Anshuman Ashok, AOR

Mr. Sharan Thakur, Adv.  
Mr. Mahesh Thakur, AOR  
Mr. Siddharth Thakur, Adv.  
Mr. Bishwendra Singh, Adv.  
Mr. Ajay Kanojia, Adv.  
Mr. Mustafa Sajad, Adv.  
Ms. Vipasha Singh, Adv.  
Ms. Shivani, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The factual basis and contours which led to passing of various orders in this matter need not be adverted to at this stage. Suffice it to say that this Court dealt with the controversy mainly in its judgment dated 14.07.2017 reported in (2017) 8 SCC 417 (referred to as 'first judgment'), where certain facts were adverted to in paragraph Nos. 3 and 4, which read as under :

"3. The petitioners have been able to gather

information with regard to 655 deaths out of 1528 alleged in the writ petitions. The break-up is as follows:

<i>Sl. No.</i>	<i>Particulars</i>	<i>No. of cases</i>
1.	Commissions of Inquiry cases	35
2.	Judicial inquiry and High Court cases	37
3.	NHRC cases	23
4.	Cases with written complaint	170
5.	Cases with oral complaint	78
6.	Cases with eyewitnesses	134
7.	Family claimed cases	178
	<i>Total number</i>	655

4. We have perused the tabular statement given with regard to cases with written complaints, oral complaints and eyewitness accounts as well as family claimed cases but find that apart from a simple allegation being made, no substantive steps appear to have been taken by either lodging a first information report (FIR) or by filing a writ petition in the High Court concerned or making a complaint to the National Human Rights Commission (NHRC). The allegations being very general in nature, we do not think it appropriate to pass any direction for the time being in regard to the cases concerning these written complaints, oral complaints, cases with eyewitness accounts and family claimed cases. It is not that every single allegation must necessarily be inquired into. It must be remembered that we are not dealing with individual cases but a systemic or institutional response relating to constitutional criminal law."

The judgment then indicates that the cases

referred to in categories at Serial Nos. 1, 2 and 3 were initially directed to be investigated by Special Investigating Team (SIT) comprising of about 12 officers, who were to be assisted by the support staff. The concerned officials and authorities were also directed to file status report from time to time and we have been given to understand that 10 status reports have so far been filed.

It must also be stated that in the further order dated 30.07.2018, reported in (2019) 12 SCC 362 (referred to as 'second judgment'), it was observed in paragraph No.8 as under :

"8. In our judgment and order dated 14-7-2017 (*Extra-Judicial Execution Victim Families Assn. v. Union of India* [*Extra-Judicial Execution Victim Families Assn. v. Union of India*, (2017) 8 SCC 417 : (2017) 3 SCC (Cri) 622] ), we had identified the number of incidents as 52 (in the first instance). During the course of monitoring the progress in the case, the number of incidents has come down to 41 due to the fact that in some cases there was a duplication, in some other cases NHRC did not receive any complaint, etc."

Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that the investigation with regard to cases mentioned at Serial Nos. 1, 2 and 3 is complete and except in four cases, the

charge-sheets/final reports (18 in numbers) have been filed by the police authorities. In four cases, final report was submitted by the police to which protest petition was filed by the concerned complainants and pursuant to directions issued by the competent Courts further investigation is still be conducted with regard to those four cases.

She further submits that subject to the aforesaid directions issued by the Courts, the entire investigation with regard to cases mentioned at Serial Nos.1, 2 and 3 is complete and as such the task entrusted to the SIT is complete in every respect.

It is in this light that two applications are pressed for consideration.

I.A. No.115459/2022 prays that the officer named Shri Letkholam Hangshing, who wishes to proceed on voluntary retirement, be granted appropriate permission. Secondly, Cr1.M.P. No.3308 of 2021 has also been filed to allow the authorities to entrust additional work to the Members of the SIT inasmuch as the investigation entrusted to the SIT, as stated above, is complete in every respect.

The submissions are countered by Ms. Menaka Guruswamy, learned Senior Advocate, who has been assisting this Court as *amicus curiae* and Mr. Colin Gonsalves, learned Senior Advocate. The submissions have also been made in I.A. Nos. 37471/2021 and 162067/2021.

According to them, the investigation with respect to cases in Serial Nos. 1, 2 and 3 is only part of the task entrusted to the SIT, which is clear from paragraph 8 of the second Judgment, as stated above. What was entrusted to them and investigated into by them is only one part while rest of the task still remains unfinished and incomplete.

If paragraph Nos. 3 and 4 of the first judgment are looked into, it is possible to say that apart from case mentioned categories at Serial Nos.1, 2 and 3, there is no material available to enable the Court to pass appropriate directions for carrying out investigation with regard to the cases in question. But, it is equally possible to say that such material may have come on record subsequent to the passing of the first judgment.

The submission advanced by Ms. Guruswamy and

Mr. Gonsalves is also to the effect that the investigation has not been completed in every respect and perhaps the status reports submitted by the authorities may be required to be categorically analyzed.

We are not deciding any of these submissions advanced by the learned counsel for the parties as at this stage we will rest content with considering interim applications preferred on behalf of the authorities.

The first application seeking voluntary retirement is allowed, while the second application is allowed subject to the stipulation that the concerned officials shall continue to be part of the SIT till a final decision in that behalf is taken by this Court. It shall, of course, be open to the authorities to entrust certain additional work till that stage is arrived at by this Court.

The matter shall be gone into principally on two issues, namely, the status report submitted by the authorities and whether certain additional cases must also be enquired into and investigated by the authorities as projected by Ms. Guruswamy and Mr. Gonsalves, learned Senior Advocates.

Mr. Gonsalves, learned Senior Advocate, submits that on the issue of sanction, certain matters are still pending consideration before the High Court.

We request the High Court to dispose of the issues as early as possible and preferably within six months from the receipt of this Order.

List the matters before the appropriate Court for deciding the entirety of the matter on 15<sup>th</sup> November, 2022.

(NEETU KHAJURIA)  
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)  
COURT MASTER