

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

Reserved on: August 03, 2021

Pronounced on: August 19, 2021

(Through Video Conference)

WPA(P) 142 of 2021

Susmita Saha Dutta

Vs.

The Union of India and Ors.

with

WPA(P) 143 of 2021

Anindya Sundar Das

Vs.

Union of India and Ors.

with

WPA(P) 144 of 2021

Priyanka Tibrewal

Vs.

The State of West Bengal and Ors.

with

WPA(P) 145 of 2021

Pradipta Arjun

Vs.

Union of India and Ors.

with

WPA(P) 146 of 2021

Smt. Aparajita Mitra

Vs.

The Union of India and Ors.

with

WPA(P) 147 of 2021

Kuntal Mojumder

Vs.

Union of India and Ors.

with

WPA(P) 148 of 2021

Susheel Kumar Pandey

Vs.

State of West Bengal and Ors.

with

WPA(P) 149 of 2021

Marufa Bibi and Ors.

Vs.

State of West Bengal and Ors.

with

WPA(P) 167 of 2021

Kashinath Biswas

Vs.

Union of India and Ors.

Present :

Mr. Bikash Ranjan Bhattacharjee, Senior Advocate with
M/s. Uday Sankar Chattopadhyay, Debapriya Samanta
Pronoy Basak and Santanu Maji, Advocates
..for the Petitioner(s) in WPA(P) 143 of 2021

Ms. Priyanka Tibrewal, Advocate
... Petitioner in-person in WPA(P) 144 of 2021

Mr. Mahesh Jethmalani, Senior Advocate with
Mr. Dhiraj Kumar Trivedi, Mr. Ravi Sharma,
Mr. Debu Choudhury, Mr. Shoumendu Mukherjee,
Mr. Praneet Pranav, Mr. Shaurya R. Rai,
Mr. Shailendra Kumar Mishra, Ms. Mugdha Pandey,
Ms. Jayeeta Dhar, Mr. Raja Satyajit Banerjee,
Mr. Abhishek Sarkar, Mr. Tanmoy Majumder and
Mr. Saket Sharma, Advocates
..for the Petitioner(s) in WPA(P) 145 of 2021

Ms. Pinky Anand, Senior Advocate with
Mr. Loknath Chatterjee, Mr. Sukanta Ghosh,
Ms. Saudamini Sharma and Ms. Kirti Dua Advocates
..for the Petitioner(s) in WPA(P) 146 of 2021

Ms. Souri Ghoshal and
Mr. Prasayan Mukherjee, Advocates
..for the Petitioner(s) in WPA(P) 147 of 2021

Mr. J. Sai Deepak and
Mr. Rishav Kumar Singh, Advocates
..for the Petitioner(s) in WPA(P) 148 of 2021

Mr. Bikash Ranjan Bhattacharjee, Senior Advocate with
Mr. Samim Ahmed, Mr. Arka Maiti and
Ms. Saloni Bhattacharya, Advocates
... for the Petitioner(s) in WPA(P) 149 of 2021

Mr. Rabi Sankar Chattopadhyay,
Mr. Uday Sankar Chattopadhyay,
Mr. Sayan Chattopadhyay, Mr. Soumen Banerjee,
Mr. Santanu Maji, Ms. Payel Shome and
Ms. Smriti Das, Advocates
... Petitioner(s) in WPA(P) 167 of 2021

Mr. Y.J. Dastoor, Additional Solicitor General with
Mr. Phiroze Edulji, Mr. Bhaskar Prosad Banerjee,
Mr. Arijit Majumdar and Ms. Amrita Pandey, Advocates
..for the Union of India.

Mr. Kishore Datta, Advocate General with
M/s. Sayan Sinha and Debashish Gosh, Advocates
..for the State.

Dr. Abhishek Manu Singhvi,
Mr. S.N. Mookherjee, Senior Advocates with
Mr. Sanjay Basu, Mr. Samik Kanti Chakraborty,
Mr. Amit Bhandari, Mr. Soumen Mohanty,
Ms. Ranjabati Ray and Ms. Shrivalli Kajaria, Advocates
..for the D.G. West Bengal.

Mr. Kapil Sibal, Senior Advocate with
Mr. Sanjay Basu, Mr. Apoorv Khator,
Mr. Adit S. Pujara, Mr. Soumen Mohanty,
Ms. Shrivalli Kajaria and Ms. Ranjabati Ray, Advocates
..for all Superintendents of Police.

Mr. Subir Sanyal and Ms. Sumouli Sarkar, Advocates
..for the NHRC.

M/s Sidhant Kumar, Manyaa Chandok,
Suvrodal Choudhury and Dipayan Chaudhury, Advocates
..for the ECI.

Mr. Saptangsu Basu, Senior Advocate with
Mr. Soumava Mukherjee, Advocate
..for the Applicant in CAN 4 of 2021
in WPA (P) 142 of 2021

**Coram: THE HON'BLE JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)
THE HON'BLE JUSTICE I.P. MUKERJI
THE HON'BLE JUSTICE HARISH TANDON
THE HON'BLE JUSTICE SOUMEN SEN
THE HON'BLE JUSTICE SUBRATA TALUKDAR**

ORDER

Index of the contents

Sr. Nos.	Particulars	Page No.
1.	Introduction	5
2.	Schedule of State Assembly Elections, 2021	6
3.	Facts	6
4.	Arguments of the petitioners	13
5.	Arguments of the respondents	22
6.	Rejoinder	26
7.	DISCUSSION	
	Brief note of Court Proceedings	27
	Report of the Committee	44
	Exception filed by the State	53
	Suo-Moto FIRs	54
	Other issues in the Exceptions filed by the State	61
	Regarding procedure adopted by the Committee	63
	Regarding Bias	64
	Duration of Post-poll violence	65
	Election Commission's responsibility of law and order	66
	Case law	67
	Analysis	77

	Court Order	80
	Concurring view by I.P. Mukerji, J.	83
	Concurring view by Harish Tandon, J.	89
	Concurring view by Soumen Sen, J.	94
	Concurring by Subrata Talukdar, J.	124

RAJESH BINDAL, CHIEF JUSTICE (ACTING)

1. The extraordinary jurisdiction of this Court has been invoked by the residents of the State seeking to preserve the constitutional values and the democratic set up. Civil liberties and fundamental rights are sought to be protected. The preamble of our Constitution provides for India to be a sovereign, socialist, secular, democratic, republic securing to all its citizens' liberty of thought, expression and political rights. The dignity of the individual, which is spoken of in the Preamble of the Constitution of India is a facet of Article 21, thereof (Ref. **Joseph Shine Vs. Union of India, (2019) 3 SCC 39, Para 107**)

2. The allegations in the petitions are that the people who supported the political parties other than the ruling party in the recently concluded Assembly Elections in the State (year 2021), have been made to suffer at the hands of the supporters/workers of the party, which came in power. The courts have a duty to adjudicate whenever violation of fundamental rights is alleged. The following discussions will make the position clear.

3. SCHEDULE OF ELECTIONS

Elections to the State Assembly were conducted in eight phases, starting from March 27, 2021. Last date of polling was April 29, 2021. Result was declared on May 02, 2021.

4. FACTS OF THE CASES:

WPA(P) 142 of 2021 filed on 04.05.2021

The present writ petition filed was first in the series, inter-alia, praying to combat the post-poll violence and take corrective as well preventive action. Direction was also sought to open Control Room so as to enable the victims to lodge their complaints online or over telephone. As an interim measure direction was sought to the respondents to help the post-poll violence victims. The result of the Assembly polls was declared on May 02, 2021. The present writ petition was filed immediately thereafter. It was mentioned in Court on May 04, 2021. It is alleged in the petition that till the date of filing of the petition there had been 14 victims of post poll violence. The victims were not even able to go to the police stations to lodge their complaints. Even though the incidents occurring across the State were well within the knowledge of the police but there had been no punitive or preventive action.

WPA(P) 143 of 2021 filed on 06.05.2021

The present petition was filed by different set of persons praying for a direction to the respondents to take immediate steps to stop ongoing post-poll violence. The prayer was also made for an independent and impartial investigation of the offences by constitution of a special investigation team. Direction was sought to the Union of

India to deploy adequate central forces in the disturbed areas and to provide compensation to the families of the sufferers. The aforesaid petition was mentioned for immediate listing on May 06, 2021 to appear in the cause list on May 07, 2021. The petitioner in this petition claimed that he is a practising lawyer of this Court. It is alleged in the petition that the situation in the State post Assembly Elections is alarming. 11 persons have died in various incidents. Many had to leave their houses to save their lives. After the declaration of result, the activists of the ruling party ransacked and looted the houses of the supporters of the opposition parties and they were killed and assaulted. It is further pleaded that after the elections, same sort of violence always occurred in West Bengal. The State used to take steps to control the same but this time it was a mute spectator. Number of photographs as appeared in print media along with news of the victims have been annexed.

WPA(P) 144 of 2021 filed on 07.05.2021.

The present petition has been filed by an advocate practising in this Court in public interest raising the issue of post-poll violence. She had contested the election in the recently concluded State Assembly polls from Entally constituency. She also claimed herself to be a social-worker, who had been raising various social issues by filling public interest litigations. She sought to expose the cause of economically weaker sections, who were affected in the post-poll violence in her constituency. It is pleaded that at the instance of the goons belonging to the party in power, the houses of her supporters have been looted and vandalized. She had filed complaints

to the police on May 03, 2021. However, no action was taken by the police. In fact, the complaints filed by her were sent by the police to the goons of the ruling party who in turn harassed the aggrieved persons. They were pressurised to withdraw the complaints. This establishes that the police is hand in glove with the ruling party goons. The prayer was made for a direction to the police to immediately take action and stop the atrocities. Time-bound investigation be made of the offences already committed. Number of photographs of the persons affected were also annexed.

WPA(P) 145 of 2021 filed on 10.05.2021

The present petition, again filed in public interest, raises the issues regarding violence in which number of workers of the opposition parties including the main opposition party suffered physically as well as damage to their properties. It is alleged that properties of number of them were even set on fire. The Office of the Akhil Bharatiya Vidya Parishad was set on fire on May 04, 2021 and the persons present there were assaulted. In the past few days, murder, assault, rape, ransack and vandalism of houses of the workers of the main opposition party had become common in the State. List of nine persons, who were murdered in different areas immediately after the elections, was given. Despite wide reporting of the post-poll violence the State agencies are collectively keeping silence, hence, failing to discharge their constitutional duty. The victims were not even allowed to lodge their complaints as they were threatened with implication in false cases in case they dare to lodge complaints. Even women and children were not spared. The prayer has been made that the

respondents herein be directed to submit the details of the FIR registered, arrest made and the steps taken to control the violence. The prayer has also been made for independent and impartial investigation by constituting a Special Investigation Team. Direction was sought to the official respondents to deploy Central and State forces to enforce law and order. The petitioner also sought protection as he apprehended threat to his life having espoused the cause of the affected persons.

WPA (P) 146 of 2021 filed on 10.05.2021

In another petition filed in public interest raising similar issues, the facts narrated are that assembly polls were held in the State of West Bengal in eight phases starting from March 27, 2021 and the last date of polling being April 29, 2021. On May 02, 2021, the result was declared. The Trinamul Congress was the winning party. The main opposition party was Bharatiya Janata Party. Immediately thereafter, the violence broke. The houses and vehicles of the workers of the opposition parties were attacked and ransacked. Their party offices were set ablaze. Number of persons were killed, beaten up and even sexually assaulted. Number of photographs as appeared in the print media were annexed. Prayer was made to the Central as well as the State government to deploy more forces to maintain law and order, appoint an independent committee to conduct free and fair investigation, to provide protection to the petitioner from retributive action of rioting mob, direction to the police to register FIRs in all cases. Number of photographs of the affected persons were annexed.

WPA (P) 147 of 2021 filed on 10.05.2021

Another petition was filed in the series of petitions raising hue and cry on behalf of the persons who are sufferers in the post poll violence. The petitioner claimed that there were number of murders and damage to the property of the workers of the losing political parties. Besides annexing photographs of the workers, whose house were damaged and who were caused grievous injuries including the weaker sex, the petitioner has also annexed a compact disk containing videos of such violence as collected from various social and digital media. No action was taken by the ruling party or its leaders either to condemn or take corrective steps. Prayer was made to secure life and property of the affected persons, proper judicial investigation of the incidents of political violence. The persons, who had been displaced on account of threat to their life and property, be restored to their own houses.

WPA (P) 148 of 2021 filed on 12.05.2021

In yet another petition filed, similar issues were sought to be raised. In addition, it is pleaded that on account of post-poll violence, thousands of residents of the State living close to the neighbouring State of Assam had to migrate to that State. Their houses and business establishments were damaged. Some of them were raised to the ground. The news was termed to be fake by the party in power. National Commission for Women expressed shock over gang rapes at various places in the State. It was further pleaded that the intent to unleash the violence was to create a fear factor in the mind of the residents of the State, not to spare any other party except one in

power. As a result the democratic setup in the state itself is in danger. The State authorities have failed to discharge their duty despite intimidation. As the State machinery had kept its eyes closed to the large scale violence after the assembly polls, it cannot be trusted for carrying out investigation. The same need to be handed over to some independent agency. Further grievance raised was that the police is not registering the complaints. The prayer was for calling upon the official respondents to show cause as to why they failed to register the complaints. It is pleaded that about 80,000 persons had to migrate from the state to the neighbouring state of Assam because of post poll violence. Steps be taken to reinstate the victims to their native places. Prosecution of the persons involved in the offence, deployment of Central Forces for restoration of law and order in the State, payment of adequate compensation to the victims and the investigation by some independent central agency, are the other reliefs claimed.

WPA(P) 149 of 2021 filed on 12.05.2021

The present petition was being filed by the widow of a person, who was murdered on May 03, 2021 in post-poll violence. Though other petitioners have also joined along with her. The allegations are similar in nature. It states that about 20 persons have died in post-poll violence. Many of the victims are not even in a position to reach out to the Courts or lodge complaints with the police. On May 03, 2021, late husband of the petitioner No. 1 was working in field when some workers of the party in power threw bombs targeting her husband with a view to kill him as he was a worker of the Indian Secular Front. He died on way to hospital. Number of examples were

given, where houses of the workers of different political parties than the party in power were attacked, ransacked, damaged and looted. The pleadings in the case do not pertain only to the main opposition party. Names of the persons who had attacked the victims or damaged their properties have specifically been mentioned in the petition. It further pleads that the Chief Minister had declared compensation for the victims of political violence. However, no such scheme had been published and nothing has been paid. Investigation be got conducted by constituting a Special Investigation Team. The victims should be compensated. The prayer was made for independent investigation of the crime after registration of the FIRs. Police reinforcement in the affected areas and rehabilitation of the affected victims were also prayed for.

WPA (P) 167 of 2021 filed on 03.06.2021

Yet another petition has been filed by none else than a candidate who contested the recently concluded State Assembly election from Beliaghata Constituency with Bharatiya Janata Party ticket and a practicing advocate in Alipore District Court. He also sought to espouse the cause of the persons who were made to suffer in post-poll violence. He pleaded that all his supporters who are mostly belonging to economically and socially weaker sections of the society were terrorised and traumatised. On the day the counting was taking place, he along with some of his supporters had gone to the Netaji Indore Stadium. 10 to 15 motorcycles of his supporters were parked in front of his house. Before he could return, after the result was declared, the goons of the party in power gathered in front of the

house of the petitioner and started abusing. They were involved in stone pelting as well. Though the petitioner was not present, however, his family members were there. At around 03:00 P.M., they broke the CCTV camera, threw bombs in front of his house and started damaging the bikes of his supporters, which were parked outside his house. One of these was set ablaze. As a result, even the petitioner's house also caught fire. Photographs have been annexed. The petitioner called the Beliaghata Police Station but with no response. The petitioner had to take shelter at some other place to save his life. Similarly in the same fashion, the houses and properties of his other supporters were also damaged and looted. The goons were carrying the banners and flags of the party in power. Prayer was made for appropriate protection and deployment of security forces in the area and constitution of a special investigation team for independent investigation of crime.

ARGUMENTS OF THE PETITIONERS:

In WPA(P) 145 of 2021

5. Mr. Mahesh Jethmalani, learned Senior Counsel appearing for the petitioner submitted that the issues under consideration before this Court are quite serious. It is nothing else but attack on the democracy. The residents in this State are being punished for exercising their right of vote in free and fair manner. The material which has come on record clearly suggests that there was post-poll violence, which was well planned. It is not even denied by the State but it has tried to down play the same by diverting its responsibility. The issue is that the victims should get justice and the guilty punished,

in accordance with law. The police had failed to record complaints and wherever these were recorded, after intervention of this Court, the complainants were threatened to withdraw the same. Considering all the facts, which came before this Court a fact-finding committee was constituted. Some of the members were to be nominated by the Chairman of National Human Rights Commission (for short 'NHRC'), whereas 2 were nominated by this Court. It is not a dispute between the NHRC and the State as is sought to be raised by the respondents by giving it a political colour. West Bengal State Legal Services Authority (for short, 'WBSLSA') was also involved for receiving the complaints. The respondents are seeking to allege bias against the members of the Committee as they are unable to come out of the facts, which are writ large in the report submitted by the Committee. Such a practice needs to be deprecated. It is established from the report that there was complicity of the police and the persons in power, in the violence which erupted after polling and also declaration of the result in the recently concluded Assembly Elections. The Committee, in the case in hand, had merely visited some places in the State and collected material, which is part of the report.

6. Referring to certain instances where there were huge gap in recording FIRs by the State for heinous offences, Mr. Mahesh Jethmalani, learned Senior Counsel, submitted that there were 60% gap between the number of death as reported by the Committee and as submitted by the State. The Committee reported 52 murders even though it had not visited the entire State whereas the Director General of Police reported only 29. As per the State, there was no rape

incident, whereas the Committee reported that there were 11 rape cases. In fact, two of the gang rape victims had moved Hon'ble the Supreme Court. The cases are pending there. The aforesaid stand of the State, which is totally contrary to the facts on ground, justifies the case of the petitioner for an independent probe, which could be by CBI only. In a number of cases where FIRs have been registered, the prime accused being supporters of the party in power, are yet to be arrested. In the case of majority of murder victims, the State had either not responded or had tried to misdirect the issue by treating them as deaths on account of depression, family quarrel or alcoholism. It had even manipulated the Medico Legal Reports/Post-Mortem Reports. This is despite the fact that the family of the deceased claimed that it was politically motivated murder. It is alleged that some of the victims were pressurised by the police not to give their statements to the Committee.

7. Further pointing out the facts from the report of the Committee and the response of the State, he submitted that out of 3,384 complaints forwarded by the Committee to the State, there was no response in about 1,000 such complaints. In 135 cases, the State claimed that the cases were found to be not true. However, the same was done without registration of any FIR though cognizable offences were reported. This is totally contrary to the established principle of law. Reference was made to a judgment of Supreme Court **Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1**. The complicity of the police is evident from the fact that without registration of FIR they have treated the cases closed. Meaning thereby, no judicial

intervention. In case FIR is registered and ultimately the closure report is filed, the Court can always review the same and record its satisfaction or can order further investigation. Even the complainant is also to be heard but by adopting a novel procedure, unknown to the criminal law, the police had closed the cases itself. In some cases though complainants and victims are known but still FIRs are stated to be suo moto with a view to close those cases.

8. The inaction by the police is evident from the fact that FIRs for heinous crimes were registered only after these were pointed out in the report of the Committee. This clearly establishes that the complaints made by the victims were not registered. This lead to destruction of evidence. In most of the cases the complaints have been registered only for minor offences. Hardly any arrests were made.

9. Explaining the post-poll violence, Mr. Mahesh Jethmalani, learned Senior Counsel submitted that there cannot be a cut-off date for categorizing an incident as post-poll violence. It is aftermath of declaration of result on May 02, 2021. If the complainants or victims state that the crime committed against them was retributive in nature and had connection with the political allegiance of the family, even if the same is committed much after the declaration of result, it will still fall in the category of 'post-poll violence'. Being in a continuous state of violence, the actual incident may or may not be post poll but if the nature of violence is retributive and aligned to political identities. He further referred to admission made by the State in its reply admitting that after the new government had taken over on May 05, 2021, number of incidents had drastically reduced. The statement is clearly

admission of fact that there was post-poll violence. This fact is even established from the FIRs registered by the State suo-moto. Some of these were immediate whereas some were registered only after the Committee pointed out the incidents. In many of the FIRs, the supporters of the party in power have been shown to be accused and the workers of the opposition parties as victims. Number of them were on the complainants of some police officials.

10. As regards the allegations of bias against the members of the Committee, he submitted that all what the Committee has done is collection of facts. No final finding of convictions has been recorded.

In WPA(P) 144 OF 2021

11. A lady advocate practising in this court, who also contested recently concluded Assembly Elections in the State on a ticket by a party in opposition, submitted that she could not see the plight of her supporters and the party workers, to whom the goons of ruling party starting terrorising immediately after the elections concluded. It was only because they had exercised their right of vote in favour of the candidate of their choice. Their properties were damaged. They were forced to leave their houses to save their lives. In physical violence even women were not spared. All efforts made not only by them but even by her to lodge complaints to the police was met with deaf ears. With no option open she had to approach this court. Initially on her prayer for reinstatement of the victims who had to leave their houses, a three member committee was constituted. All efforts made at that time were temporary, as either because of continued threat the people did not come back to their houses or were

threatened again of dire consequences as they had approached the court.

12. She further argued that to claim that there was no post poll violence, is totally wrong. It is still continuing in the form of threat to the persons who either lodged complaints to the NHRC or WBSLSA. The complainants are either being forced to withdraw their complaints or admit that the issue did not pertain to assembly elections and was a private dispute, which stands settled. In some of the cases, the complainants under threat of the goons of the political party in power had toed to these lines to save their lives. In some cases, the sufferers were allowed to come back to their houses on payment of huge protection money. Social boycott was also resorted to.

13. She has referred to the cases where even FIR for offence of rape has been registered after the report of the Committee was submitted and in some cases, these have still not been registered. In one case after registration of the FIR, the victim was taken to the accused and she was pressurised to withdraw the case. The account of the victims and the facts which she is placing before the court are from her personal visits to many places, where she has seen their plight and helplessness. A long list of crime against women has been furnished by the committee, which was directed to be kept in a sealed cover, otherwise the identity of the victims would have been disclosed. An independent agency be constituted to investigate all the cases so the confidence of the public in rule of law is restored. The matter does not end here as State Machinery is also fully involved in manipulating the Post-Mortem Reports or Medico Legal Reports. In

number of rape cases immediate medical examination was not got done. All have connived to destroy the evidence. She also referred to the statement made by leaders of AITMC that central forces will not remain in the state forever.

In WPA(P) 148 OF 2021

14. Mr. J. Sai Deepak, the learned Counsel for petitioners submitted that the main issue involved in the bunch of petitions is as to whether an independent probe is required in the cases involving post poll violence in the state. He argued that from the report of the committee, which is supported by documents, it is established that the state had failed to discharge its constitutional obligation in maintaining law and order in the State. The State in its exception filed to the report of the committee has not been able to answer any of the specific issues. Rather with representation by four senior counsels, including the Advocate General, it has merely tried to confuse the issue. In the cases of the petitioners herein nothing has been done by the State till date. To save their lives, they were forced to migrate to the neighbouring State of Assam and are still there. Their houses have been damaged and household items and jewellery looted.

15. All the petitions are claimed to be politically motivated as if any worker or a supporter of a political party has no right and he cannot approach the court to seek redressal of his grievances and this right is available only with the political leaders. In fact all what the petitioners have pointed out is the state's blind eye on the lawlessness in the State, post assembly polls.

16. As far as the report of the Committee is concerned, no conviction is being recorded on the basis thereof. The report makes out the case setup by the petitioners that it requires independent probe. Conviction of the accused will be only after the trial. Referring to some part of the report he submitted that the accused are affiliates of ruling party and the sufferers are supporters of various opposition parties. The contents of the report are the tip of an iceberg as the members of the committee because of shortage of time, could not visit the entire State and the people are still afraid to come out into the open to file complaints seeing threat being given by the goons of ruling party to the complainants. Some of them had even withdrawn the complaints later on. He submitted that the system as a whole has failed. Even if the State has resources but it lacks willingness to investigate fairly. Confidence is required to be inspired in the residents of the State so that the people are able to air their grievances, which should be gone into impartially. It was in fact a breakdown of the Constitutional machinery in the State.

17. The learned Counsel has referred to various data furnished by the Committee with its report, which establishes beyond doubt that there was post-poll violence. The State kept a calculated silence as a definite object was to be achieved. Police either did not register FIRs or no investigations were carried out. The accused party threatened the complainants. In many cases, the complainants were forced to withdraw their complaints. It shows total lawlessness.

In WPA(P) 149 of 2021

18. The arguments raised by the petitioner in this petition are that none of his complaints to the NHRC have been addressed. The committee did not even visit the area. The police is threatening the complainants to withdraw the complaints. Cross cases are being threatened. Statements of the widows of deceased have not been recorded under section 164 CrPC. Any delay in registration of cases and investigation thereof leads to destruction of evidence. This Court should not confine itself to investigation of criminal cases only as there are other facets of the crime. The affected people have to be rehabilitated. They have to be paid compensation for the loss of property suffered by them in addition to the victims of crime. He referred to judgment of Supreme Court in **National Human Rights Commission v. State of Arunachal Pradesh,(1996) 1 SCC 742** in support of his arguments regarding duties of court in cases of human rights violation.

In WPA(P) 167 of 2021

19. The petitioner appeared in person. He is a practising advocate in the Alipore District Court and was a candidate in the recently concluded Assembly Elections. He submitted that his own house was set on fire by supporters of the ruling party. Number of vehicles belonging to his supporters, parked outside his house, were also set on fire. No complaints were registered by the police. This clearly shows that even the police was complicit in the crime. It was only then he made a complaint to NHRC. His statement under section

164 CrPC was recorded only after this Court passed the order on June 30, 2021.

ARGUMENTS OF THE RESPONDENTS

20. On the other hand, Mr. Kapil Sibal, learned Senior Counsel appearing for different Superintendents of Police impleaded in various writ petitions submitted that this Court had set up the Committee. The members were to be decided by the NHRC. The report was to be submitted in this Court. There was no direction for any interim report to be filed but still it was filed. The petitioners in their arguments have referred to the report as given by the NHRC. In case that is so, then the provisions of the Protection of Human Rights Act, 1993 (for short 'the 1993 Act') would be applicable. The 1993 Act provides for complete procedure for enquiry and investigation that was required to be followed. In the absence thereof, the report cannot be accepted as such. Section 12 of the 1993 Act provides that the NHRC can hold enquiry even on reference of a complaint to it by the Court. The allegation that all the investigation officers in the State are politically motivated is hard to believe. This is an aspersion on the entire police force. It is State's duty to protect its residents but it can be by following procedure as established in law. In case the grievance of any of the complainant is that his complaint was not registered by the police, he has remedy in Cr.P.C. Section 14 of the 1993 Act provides that even the evidence produced before the Committee or even the Commission has no evidentiary value. If that is so, even FIR cannot be registered on the basis of the statements annexed with the report. The Committee has in fact gone beyond the brief assigned to it as it has not

merely collected the data but has given further recommendations causing aspersion on the police force and certain other persons. It has also commented upon the State's action. But the same should not be accepted. However, all findings of the Committee in the report are not sought to be disputed.

21. Referring to the biasness of the members of the Committee, he submitted that three of the members thereof including the Chairperson of the Committee have close links with BJP. Hence, report falls on that ground as well, as bias is writ large on the fact of it. He did not dispute the fact that there were certain incidents, however, the State is fully competent to take action and it has taken as provided in law. The State will act in terms of any further direction given by the Court.

22. Mr. S.N. Mukherjee, learned Senior Counsel appearing for the Director General of Police submitted that the figures as provided for in the report are self-contradictory. In fact, proper action was taken by the police wherever it was reported. Some incidents are sought to be blown out of proportion. He further submitted that the data given in the report is self-contradictory. Date of incident is not mentioned in about 43% of the cases. 892 cases pertained to the period from May 02-05, 2021. 35 cases were prior to May 02, 2021. Wherever complaints were received by the police directly or through NHRC, action was taken. However there was no response to the issue that why the police had not taken action initially and it was only after the complaints were sent by the NHRC to the police.

23. Dr. A.M. Singhvi, learned Senior Counsel also appearing for Director General of Police, submitted that the report cannot be treated as conclusive and on that basis, no action can be taken. It has been argued that three members of the Committee out of nine were biased. They had conflict of interest. The same is good enough to discard this report. He referred to certain statements or the comments uploaded on Twitter by one of the members of the Committee and also referred to the materials placed on record to show that they have links with BJP. Once there is reasonable or likelihood of bias, the report cannot be acted upon. In support, reliance was placed upon judgments of Hon'ble the Supreme Court in **A.K. Kraipak and others v. Union of India and others, (1969) 2 SCC 262** and **Badrinath v. Government of Tamil Nadu and others, (2000) 8 SCC 395**. Even if one member of the Committee is shown to be biased, the action by the entire body goes. The report of the Committee may bring disrepute to the State so needs to be examined on all parameters. The petition was filed alleging post-poll violence, however, there are certain complaints on record which were pertaining to offence committed prior to the polls. The same is good enough to reject the report. He further submitted that the words 'post poll' are being used in all the petitions filed. It has to have some meaning and also some duration. It cannot include the incidents which may take place even after a month or more thereafter. It could at best be immediately after the polls. The Committee has accepted even some incidents which had taken place towards the end of May 2021 treating them to be the post-poll violence. He further referred to the discrepancies in the report to show

that the translation made by the Committee of various complaints was wrong. There are also other infirmities in the report. The report also suggests that it had issued certain press notes for visit of the Committee to different places, however, the same have not been placed on record. The criteria for choosing the places to be visited is not forthcoming. He further submitted that the State, in the exception filed to the report of the Committee, had properly explained all the issues sought to be raised in the report. Wherever required, FIR was registered and action taken. The complainants had not initially approached the police. Hence, there may be some discrepancies.

24. Mr. Kishore Dutta, learned Advocate General appearing for the State, submitted that even the State was quite serious about the incidents which had taken place after polling in the State. Wherever these came to their notice, FIRs were registered. He referred to the details of 268 FIRs registered by the State suo-moto. He does not dispute the fact that there were certain incidents of post-poll violence, however, the same were controlled immediately the new Government took over. Wherever incidents were reported, immediate actions were taken. The report of the Committee even records the cases where the police had taken the action. There are number of instances referred to in the report which are unrelated to the polling. The report cannot be accepted as such. In any case for the purpose of investigation, the State is duty-bound to conduct the same fairly and abide by all directions issued by the Court.

25. Mr. Dastoor, learned Additional Solicitor General submitted that there are certain important aspects. Firstly, he argued

that there was post-poll violence is a fact not denied by the State. It was unprecedented is again not disputed. Response of the police even after the cases were filed was not adequate and timely. Some action was taken when the Court intervened. In fact drastic steps are required to be taken to establish rule of law and save democracy. This Court should issue appropriate directions. He further submitted that in case assistance of any of the independent agency for investigation or any para-military force is required to maintain law and order in the State, the Government will abide by the order of the Court. It can also provide for special prosecutors. The Special Court can also be set up to try these cases.

REJOINDER

26. On the arguments raised by Mr. Sibal, challenging the constitution of the committee, Ms. Priyanka Tibrewal submitted that it is an afterthought just to misdirect the issue when the report has show the State as a mute spectator. Such an objection was not raised on different occasions immediately after the Committee was constituted, though the State had the opportunity.

27. Mr. Jethmalani, learned Senior Counsel submitted that the argument raised by the State that procedure as provided in the 1993 Act has not been followed, is merely to be noticed and rejected for the reason that it was not a case taken up by the Commission suo-moto or referred to the Commission by the Court. But this Court had merely requested the Chairperson of the NHRC to constitute a committee to examine the issue and report to this court. Two members of the committee, who are officers from the State, were nominated by this

court. Report was to be submitted in the Court. He further submitted that the State does not have any answer to the core issue of post-poll violence and its silence thereon. The report of the committee exposes the entire system as it had personally visited many places and interacted with the sufferers. Even by filing voluminous Exception to the report of the Committee, the State had not been able to answer many issues raised in the report. The procedure followed by police for investigation of cases and stating that finally no case will be made out, even without registering FIR in cases of murder, is unknown to law. Post-Mortem and Medico Legal examination were not got conducted at the right time, just to destroy the evidence.

DISCUSSION

28. The genesis of the present litigation is the Assembly Election held in the State of West Bengal for the assembly polls. Elections were held in eight phases starting from March 27 to April 29, 2021. The result was declared on May 02, 2021. It was argued by the learned Counsel for the petitioners that post-poll violence in the State is a norm even though such extreme and widespread incidents are hardly seen in other States. Any kind of violence either during polling or post-poll directly affects the democratic fabric. Immediately after the result was declared as the violence was unabated, this Court was flooded with writ petitions raising various grievances. First in the series was filed on May 04, 2021. Thereafter, different petitions were filed raising similar issues pertaining to different areas in the State. Considering importance of the issues raised in the writ petitions, the matter was referred to be considered by a Larger Bench consisting of

five Judges. At one point of time, this Court was of the view that multiple petitions raising similar issues are not required to be entertained as the larger issue regarding post-poll violence can be gone into in the petitions already pending. However, seeing the evasive response of the State which is even so recorded in the order passed by this Court, multiple petitions were entertained. As to what transpired during hearing of the cases and the issues touched, a brief account of the Court proceedings from the beginning till the final arguments were heard, are briefly summed up in the succeeding paragraphs.

i) First petition in the series bearing WPA(P) 142 of 2021, filed by Susmita Saha Dutta, was mentioned before this Court on May 04, 2021. Vide order passed on that day, the Registry was directed to register the same and list before the Court taking up the Public Interest Litigation on May 05, 2021. On May 05, 2021, the petitioner who appeared in person sought time to amend the petition. The case was adjourned to May 10, 2021. On that day, the Court recorded that there is already a matter pending before a Special Bench. Hence, it will not be appropriate for the Division Bench to take up the matter.

ii) On May 07, 2021, another petition bearing WPA(P) 143 of 2021 was listed before the Division Bench of this Court. Keeping in view the importance of the matter and the unprecedented issues raised therein, the same was

directed to be placed before a Bench of five Judges. It was to be taken up at 02:00 P.M. on the same day.

iii) Noticing the grievance raised by the petitioners therein, the Larger Bench of this Court directed that copies of the petition be served upon the learned Additional Solicitor General of India, the Advocate General and the Government Pleader. The learned Advocate General sought time to file affidavit of the Home Secretary of the State specifying the areas where the violence had taken place and the steps taken to control the same. The Court was also to be apprised of the latest law and order situation. The matter was directed to be listed on May 10, 2021.

iv) Order passed on May 10, 2021 records that report in the form of affidavit of the Additional Chief Secretary, Home and Hills Affairs Department of the State was filed. The learned Advocate General raised preliminary objection regarding maintainability of the writ petition in public interest. The contention raised by the learned Additional Solicitor General of India was that issue regarding post-poll violence was highlighted not only by the workers/supporters of one political party rather by all different parties, which had contested the assembly elections. This fact was not even denied by the State in the affidavit filed. He further stated that the police was not registering complaints. There was no online mechanism available in the State of West Bengal on which a complaint can be filed. There are number of

complaints received in the offices of National Human Rights Commission, West Bengal State Human Rights Commission, National Commission for Women and also National Commission for Scheduled Caste and Schedule Tribes raising the issue regarding post-poll violence. This Court directed that in case any such complaints have been received by any of the aforesaid Commission, the same may be forwarded to the Director General of Police of the State on his email id so as to enable him to forward the same to the concerned Police Station for appropriate action. The learned Advocate General disputed the fact that any of the complaints filed to the police were not entertained. However, he said that he cannot respond to the allegations as there are no details available. He further highlighted the facts stated in the affidavit that from May 09, 2021 onwards there was no violence reported in the State and assured that all possible steps shall be taken to ensure that no incident takes place in future. He sought time to seek instructions from the Government regarding availability of online mechanism for filing of complaints by aggrieved persons.

v) The order passed by this Court on May 18, 2021 records that the State had responded to some of the petitions whereas in some, affidavits-in-opposition were yet to be filed. The petitioners were also seeking to file their affidavits-in-reply. Time was granted to both the parties to complete the pleadings. While noticing the fact that the

aggrieved persons were not able to lodge their complaints in the police station, some designated email ids were to be provided by the State, for which the learned Advocate General had sought time on the last date of hearing. He sought further time to furnish the same. On the last date of hearing, this Court had directed that the complaints received by various Commissions be forwarded to the Director General of Police, however, the State had not furnished the details of all such complaints received from the various Commissions and the action taken thereon. Time was sought to furnish that information as well. As the Counsel appearing for various parties had again raised a grievance that they have not been able to file their complaints, liberty was granted to file the same before the various Commissions as noticed above, either online or a hard copy thereof. The Commissions in turn were directed to forward these complaints to the Director General of Police, West Bengal for immediate action.

vi) The order passed by this Court on May 28, 2021 records the stand taken by Ms. Priyanka Tibrewal, the petitioner in-person in WPA (P) 144 of 2021. She stated that in the affidavit-in-reply filed by her, affidavits of about 200 persons have been annexed who have not been allowed to go back to their houses after being displaced in post-poll violence. Considering the conduct of the State where time and again issues were sought to be answered with reference

to pleadings in the writ petition and not placing complete facts before the court in general regarding post-poll violence in the State, this Court passed the following order.

“3. We make it clear that leaving aside whatever is stated in the petition or in the affidavit-in-opposition, it shall be the responsibility of the officers concerned to place entire facts before the Court pertaining to any crime or any disturbance which has taken place in that area post State Assembly Elections including the allegations of the petitioners. Failure to their part to state complete and correct facts before the Court, may result in serious consequences.”

(emphasis supplied)

vii) The matter was directed to be taken up on May 31, 2021. It may be out of place if not added here that the response of the State had been lukewarm in furnishing complete information to the Court. Thereby raising the doubt of bonafides.

viii) On May 31, 2021, the learned Advocate General responded to the allegations made by Ms. Priyanka Tibrewal, the petitioner in-person in WPA (P) 142 of 2021, who is also an Advocate practicing in this Court. He stated that some of the persons who were allegedly not allowed to go back to their houses are living at different places on account of their job requirements. Some could not go back because of the lockdown restrictions, whereas 39 persons have already returned back to their houses. Finding that such an issue could not be decided on affidavits, where allegations and counter allegations were there and with a

view to resolve the issue raised regarding displacement of some persons as raised by Ms. Tibrewal, we directed for constitution of a committee of three officers to monitor and coordinate for reinstatement of these persons. The committee was to monitor the situation and report back to this Court. The committee was to consist of an officer each nominated by the Chairperson of the National Human Rights Commission, West Bengal State Human Rights Commission and the third member being the Secretary of the West Bengal State Legal Services Authority. The persons who were allegedly not allowed to go back to their houses were to communicate on the designated email ID of the West Bengal State Legal Services Authority. The committee was to coordinate with the local police and submit a report to this Court. The local police was to ensure that the people who were reinstated back to their houses are allowed to live peacefully. The matter was directed to be taken up on June 04, 2021. The report was submitted by the aforesaid committee giving details of the process carried out by it. The copy thereof was directed to be supplied to the learned Counsel for the parties appearing in different cases. Ms. Tibrewal filed a supplementary affidavit stating that she had received communication from number of persons located in different parts of the State, who are facing similar problems.

ix) Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing in one of the petitions raised an issue that

the persons who were reinstated in view of the Court order are being threatened by the local police that they will not be allowed to live peacefully as they had approached the Court. As regards the contention raised by Ms. Priyanka Tibrewal regarding the displacement of persons in other districts in the State, liberty was given to them to lodge complaints on the email ID provided in the supplementary affidavit filed by the Additional Chief Secretary, Home and Hills Affairs Department, Government of West Bengal and also on the designated email of WBSLSA. The authorities concerned were directed to take immediate steps for reinstatement of those persons after receipt of complaints. It may be appropriate to note here that no data of any such complaints received or the persons reinstated, was furnished by the State till final arguments were heard.

x) On June 18, 2021, this Court, noticed the contention raised by learned Counsel for the petitioners in brief where they alleged threat even after reinstatement to their residences and further that displacement of the persons had resulted in loss of their livelihood and also depriving them of various government schemes. The complaints filed by them to the police are not being acted upon, however, the NHRC had forwarded the complaints to the police, they are being threatened with false cases.

xi) In WPA(P) 145 of 2021, Mr. Dhiraj Kumar Trivedi, learned Counsel stated that the complainants are

even being pressurised to write that they have never filed any complaint. Raising another facet of loss of livelihood of the victims, he submitted that street-vendors licences of a particular group of persons in Kolkata are not being renewed. Even statements of the victims under Section 164 of Cr.P.C. are not being got recorded. The petitioner in-person who appeared in WPA (P) 167 of 2021 submitted that despite his house being set on fire, the police had not taken any action on his complaint. In WPA (P) 148 of 2021, learned Counsel submitted that no action has been taken by the State on any of the issues and the violence had not still stopped and it is continuing. In WPA (P) 149 of 2021, the learned Counsel referred to the photographs attached along with the supplementary affidavit dated June 04, 2021 where entrance of his shop had been blocked by constructing brick wall. No action was taken by the police and when the petitioner approached this Court now he is being threatened by the police

xii) Mr. Kishore Dutta, learned Advocate General, referred to the report submitted by the Member Secretary, WBSLSA dated June 03, 2021 stating that the State is making all efforts to reinstate all the persons who had allegedly been displaced after the State Assembly polls. Efforts are being made to take further steps, wherever any such report is received. He sought time to file response to the affidavit filed by Ms. Priyanka Tibrewal raising some

further allegations. This Court in the aforesaid order noticed another report submitted by the Member Secretary, WBSLSA along with his letter dated June 10, 2021 in which various complaints received by the WBSLSA were tabulated in six different heads. The same was taken on record. Soft copy thereof was directed to be furnished to the office of the Advocate General. This Court further directed that in case any other complaints are received by the WBSLSA, the same may be compiled and placed before the Court. This Court further noticed that to take care of immediate grievances of the persons who were displaced in post-poll violence, a Committee was constituted for their reinstatement. However, subsequent thereto, it was pointed out before the Court that the issue did not pertain to only one constituency. Grievance was also raised regarding inability of the victims to lodge their complaints. The learned Advocate General had provided designated email ID on which the complaints could be submitted. In addition, the same could be submitted on the official email ID of the WBSLSA as well. A compilation of the complaints received by WBSLSA was furnished. These complaints were forwarded to the police, however, the remarks recorded against some of the complaints are that no response was received from the authority concerned. This Court was constrained to pass following order:

“12. ...In a case like where the allegation is that life and property of the residents of the State is in

danger on account of alleged post poll violence, the State cannot be allowed to proceed in the manner it likes. The complaints required immediate action. But somehow from the facts as are available on record and are sought to be projected by the petitioners, such an action is missing. It is the duty of the State to maintain law and order in the State and inspire confidence in the residents of the State.

13. Though action should have been taken by the State but despite matter being pending in Court apparently no concrete steps have been taken.

14. Affidavits after affidavits being filed by the petitioners raising grievances which have briefly been noticed in the arguments of the learned counsel for the petitioners. Where it is alleged that though they have been reinstated back to their houses but are being threatened again with cross cases being filed against them or they are compelled to write that they have not made any complaints or their right to livelihood is sought to be effected in the manner noticed above. In our view, this exercise of filing of affidavit and counter affidavit will continue. It may not lead us anywhere because State from the very beginning had been denying everything but the facts as have been placed on record by the petitioners and also as is evident little bit from the report dated June 3, 2021 filed by the Member Secretary of the West Bengal State Legal Services Authority, are different.”

xiii) Keeping in view the factual matrix and the arguments raised by learned Counsel for the parties and the finding that delay in the process was resulting in violation of

fundamental rights of the victims, as are enshrined in the Constitution of India, this Court vide order dated Jun 18, 2021 requested the Chairperson of the National Human Rights Commission to constitute a committee of which, the Member Secretary of the WBSLSA shall be a member. A representative of the State Human Rights Commission, West Bengal was also to be associated. The relevant part of the order is extracted below:

“15. Under these circumstances and keeping in view the fact that there is infrastructure available with the National Human Rights Commission and the instances sought to be projected by the petitioners are large in number and certainly allege violation of human rights, we request the Chairperson of the National Human Rights Commission to constitute a Committee of which the Member Secretary of State Legal Services Authority shall be a member, to examine all the cases, the complaints of which have already been received by the Commission or which may be received. Soft copy of the compilation of the complaints which have been received by the West Bengal State Legal Services Authority as received vide communication dated June 10, 2021 be also forwarded to the National Human Rights Commission. In addition, if any other complaints are received by the West Bengal State Legal Services Authority, the same may be compiled and sent to this Court with copy to the National Human Rights Commission to be placed before the Committee as we have constituted. The Committee shall examine all the cases and may be

by visiting the affected areas and submit a comprehensive report to this Court about the present situation and also the steps to be taken to ensure confidence of the people that they can peacefully live in their houses and also carry on their occupation or business to earn their livelihood. The persons prima facie responsible for crime and the officers who maintained calculated silence on the issue, be pointed out. A representative from the State Human Rights Commission, West Bengal also be associated by the National Human Rights Commission.

16. Needless to add that the State shall be duty bound to provide all logistic support to the Committee wherever and whenever they wish to visit any place. The State shall ensure there is no obstruction of any kind in this process. Such obstruction shall be viewed seriously, which may entail action under the Contempt of Courts Act besides others.”

xiv) After the aforesaid order was passed by this Court on June 18, 2021, the State filed applications for recalling/modification thereof. The prayer was also made for stay of the aforesaid order. It was only on ground that the State was not given due opportunity to place the complete facts on record. Serious objection was raised by learned Counsel for the writ petitioners. The applications were dismissed on June 21, 2021 with the following observations:

“...All the arguments raised by them were considered. The way the State was proceeding in the matter which required immediate action, did

not inspire confidence. Whatever information the State now wants to produce with reference to the complaints, may be placed before the National Human Rights Commission, which is to examine all the complaints along with the information supplied by the State and submit a report before this Court. There is no prejudice as such caused to the State.”

xv) It may be noted that no other ground was raised, namely nomination of the members of the Committee by the National Human Rights Commission which was notified on June 21, 2021.

xvi) Order dated June 30, 2021 records that an interim report was filed by the Committee. This Court had only opened the report and not the supporting documents, which are voluminous. The case was adjourned to July 02, 2021. On the next date of hearing on a perusal of the interim report submitted by the Committee, it was found that prima-facie the stand taken by the petitioners that there was post-poll violence, stood established. Number of persons were killed, many suffered sexual violence and grievous injuries. Properties of many of them were damaged. Some were forced to leave their houses. It was further noticed that from the very beginning the stand of the State was that they have not received any complaints, however, when opportunity was given for submission of complaints to the State Legal Service Authority or on the portal of the National Human Rights Commission, large number of complaints were filed.

The interim report also noticed that different authorities had failed to respond to the queries raised by them. A member of the Committee was obstructed from discharging its duty. Reference was made to the case of murder of Abhijit Sarkar, whose dead body was lying in the mortuary, as the family was demanding second autopsy, which the police and administration was denying. While noticing the aforesaid facts this Court directed as follows:

“9. But from the report, we feel that following directions need to be issued for the present to enable the committee to discharge the job assigned to it:

- a. The police is directed to register cases in all matters which have either been reported to it or have been placed before the NHRC or any other authority/Commission. Steps be taken to get the statements of the victims recorded under section 164 CrPC immediately, as per law.
- b. The State shall make all arrangements for medical treatment of all who have been injured in the violence, post assembly elections.
- c. Supply of rations be ensured to the persons, even if they have lost their ration cards.
- d. The state is directed to place before the committee complete details of the cases in which the accused were arrested and have

been enlarged on bail by the courts, so as to enable it to place the same before the court.

e. Whatever information has been asked for by the committee from different authorities in the state, be supplied immediately. Any delay may call for adverse inference.

f. Second autopsy of Abhijit Sarkar, Vice President of Bhartiya Mazdoor Trade Union Council in district Kolkata, whose body is lying in hospital be got done from a team of doctors to be constituted by the head of the Hospital at Command Hospital, Kolkata. For the purpose, the Chairperson of the Committee constituted by the National Human Rights Commission shall coordinate with the hospital concerned where the body of the deceased is lying and also the Head of the Command Hospital. The body shall be shifted to the Command Hospital for carrying out the second autopsy. The report shall specifically mention about the condition of the body as to whether it was properly preserved in the hospital where it was.

g. Let a notice be issued to Rashid Munir Khan, Deputy Commissioner of Police, South Suburban Division, Kolkata to show cause as to why proceedings for contempt be not initiated against him for violation of the order passed by this court on June 18, 2021.

h. All the central agencies and service providers of various services to assist the

committee and provide the requisite information wherever required, to the extent permissible in law.

i. The Chief Secretary of the State is directed to ensure preservation of the correspondence of the Special Branch/ Intelligence Branch of the State Police. Logs of different control rooms should also be preserved. The entire material from May 02, 2021 till date be kept in a sealed cover duly signed by the members of the committee, immediately. Any lapse or delay in the matter will invite adverse inference.

10. The request made by the Committee for further time to carry out investigation is accepted. Early action in the matter is expected as the delay may result in destruction of evidence.

11. We may make it clear here that we are not making the interim report public as of now as the matter is still being investigated by the Committee and only interim report has been filed. Before passing any final order, due opportunity shall be granted to all the concerned parties to place their cases before the court, in view of final report to be submitted by the Committee.”

xvii) On the next date of hearing i.e. July 13, 2021, the Committee submitted its report in sealed cover. This Court directed that soft copies thereof be supplied to the learned Counsel appearing for the parties. The learned Counsel appearing for the State sought time to respond.

xviii) When the matter was taken up for hearing on July 22, 2021, request was made by the learned Counsel for the State for further time to file response to the report given by the Committee. Time was granted. The case was adjourned to July 28, 2021. The DNA test report of Abhijit Sarkar was submitted by learned Additional Solicitor General in a sealed cover. Another envelope containing certificate under Section 65-B of the Evidence Act with reference to the video recording of autopsy of the aforesaid deceased was also submitted. Both were directed to be kept in safe custody with the Registrar General. Exception to the report of the Committee was filed by the State. Learned Advocate General sought further time to file supplementary affidavit. While noticing that on July 22, 2021 last opportunity was granted but still as a matter of indulgence another opportunity was granted to file the same on or before July 31, 2021. The case was adjourned to August 02, 2021 for arguments. However, the facts remains that no further affidavit was filed.

xix) The arguments in the bunch of petitions were heard on August 02 - 03, 2021.

**REPORT OF THE ENQUIRY COMMITTEE AS
CONSTITUTED BY THIS COURT**

29. The Committee as was directed to be constituted by this Court consisted of the following members:

- 1) Shri Rajiv Jain, Member, NHRC-to head the Committee
- 2) Shri Atif Rasheed, Vice Chairperson, National Commission for Minorities
- 3) Smt. (Dr.) Rajulben L. Desai, Member National Commission for Women
- 4) Shri Santosh Mehra, Director General (Investigation), NHRC
- 5) Shri Pradip Kumar Panja, Registrar, West Bengal State Human Rights Commission
- 6) Shri Raju Mukherjee, Member Secretary, West Bengal State Legal Services Authority
- 7) Smt. Manzil Saini, DIG (Investigation), NHRC

30. The same was constituted as per directions of the Court by the Chairman of the National Human Rights Commission, vide order dated June 21, 2021. Though initially interim report was submitted by the Committee, however, the same being interim, copy thereof was not furnished to either of the parties. It was only the final report submitted by the Committee which was supplied to all the Counsel and on the basis of which, arguments were also heard and the written responses permitted. The report has mentioned the modalities followed by the Committee by constituting different teams. It mentions that on its designated email ID the NHRC received approximately 1,650 complaints mentioning about 5,000 victims. From the West Bengal State Human Rights Commission, only 188 were received. It is mentioned that rest of the complaints received by the Commission were disposed of at their own level. 315 complaints were received from the WBSLSA. 578 were received from National Commission for Women. Large number of cases relating to murder,

rape, molestation, vandalism were reported, when the teams constituted by the Committee visited different areas. Overall, it is claimed that the Committee received around 1,979 complaints covering about 15,000 victims.

31. In paragraph 5 of the report, the Committee records that certain data was sought from the Chief Secretary and the Director General of Police, West Bengal which is to the following effect:

“A) Details of cases reported under various heads of crime, district wise from 02/05/2021 to 20/06/2021 and the details of PCR calls, P.S. wise DD entries, MLCs of injured, preventive detention action, details of losses/property damaged, orders under 144 Cr.P.C., CCTV recordings, intelligence inputs etc. Vide NHRC’s letter No.PS/DIG/NHRD/2021-23 dated 23/06/2021.

B) Details of number of people displaced, total monetary loss, details of relief camp, people reinstated, compensation provided, employment given on compassionate grounds, confidence building measures taken etc. vide letter of even no. Dated 27/06/2021.

C) Details of Police Officers transferred in/out from their place of posting vide letter No. PS/DIG/NHRC/2021 dated 27/06/2021.

D) Details of cross cases registered in various incidents in prescribed format vide letter No. PS/DIG/NHRC/2021 dated 06/07/2021.

E) Details of FIRs registered after the Hon. High Court’s order dated 02/07/2021 on the various complaints forwarded by NHRC to the DGP of the

West Bengal vide letter No. PS/DIG/DGWB-Comp/L-1/2021 dated 078/07/2021.”

32. The Committee reports that the response of the State was piecemeal and complete information was not furnished. The information on point ‘B’ had not been furnished despite reminders. It may be apt to mention here only that even in paragraph 57 of the Exceptions filed by the State to the report of the Committee, the Home Secretary has stated that the report regarding preventive action taken in the matter is awaited from the DGP. Even though two senior Counsel appeared and argued on behalf of the DGP as well without filing any affidavit but still this information was not furnished even in Court. It goes without saying that even during the course of hearing of the petitions as well the conduct of the State has been quite evasive in furnishing information though thousands of documents have been placed on record.

33. The data as furnished by the DGP to the Committee has been tabulated in paragraph 8 of the report. The same reads as under:

Sl. No.	Type of crime	No. of complaints lodged in all Police stations of West Bengal	No. Of FIRs registered on these complaints	No. of accused cited in FIRs	No. of accused arrested so far	No. of accused arrested but now on bail	Percentage of accused arrested out of cited (approx)	Percentage of accused who are still in custody
1.	Murder/ Homicide	29	29	379	134	2	35%	35%
2.	Attempt to rape/Sexual assault Molestation	12	12	53	11	9	21%	4%
3.	Grievous hurt/ incapacitation	391	388	3780	590	492	16%	2.5%
4.	Arson/ vandalism/ loot/damage to public or	940	609	4324	540	460	12%	1.8%

	private property							
5.	Threats/ criminal intimidation	562	130	768	79	123	10%	123 are on bail whereas only 79 arrested which is contradictory
	Grand Total	1934	1168	9304	1345	1086	2.88%	

34. The Committee further reports that the In-charge of the Police Stations have not even visited the places of occurrence to collect evidence and record statements, let alone registering FIRs.

35. In paragraph 9 of the report, the Committee has mentioned that in terms of the directions issued by the Court, the police were to register FIRs on the complaints being forwarded by the Commission or by any other authority and steps were to be taken for recording statements of the victims under Section 164 of Cr.P.C. Initially 582 complaints were sent by the Commission to the DGP, however, adding the complaints forwarded later on, the total number was 1,893. Compliance was sought from the DGP. In reply to the Committee, it was revealed that only 137 FIRs were registered. It may be added here that these are in addition to the FIRs registered by the police and number of them are stated to be suo-moto. These FIRs included 1 for attempt to rape, 4 for grievous injury, 104 for arson/vandalism, 24 for criminal intimidation and 4 for other offences.

36. Brief account of the spot visit by the Enquiry Committee has been given in Para 10 of the report. The result has been tabulated, which reads as under:

Sl. No.	TEAM	Total no. of places visited	Places where FIR not registered	Places where FIR not registered (in %)	Places where minimization/dilution of crime	Places where minimization/dilution of crime (in %)	No.ofvictims/complainants who approached the teams but their statement could not be recorded by our team due to paucity of time/prior commitment
1.	A	95	61	64%	15	44%	73
2.	B	42	26	62%	4	25%	--
3.	C	51	40	78%	-	-	158
4.	D	35	18	51%	10	58%	1665
5.	E	36	17	47%	2	11%	900
6.	F	32	25	78%	2	29%	23
7.	G	20	01	5%	-	-	50
	Total	311	188	60%	33	27%	2869

37. The aforesaid table gives an astonishing figure. In 60 % of the cases, FIRs were not registered. This is despite the fact that on account of shortage of time, the Committee could not record the statements of number of complainant/victims as is mentioned in the aforesaid table. In addition to that, details have also been furnished regarding other sufferings of the victims.

38. From the report of the Committee, sample data can be culled out which shows that in 20 cases murder, where the complaints were referred to by the Committee to the police for registration of FIRs but lukewarm response from the State. In the Master Data furnished by the Committee there are otherwise 60 cases of murder. In one case of murder of Abhijit Sarkar, his brother had to approach this Court for conducting second autopsy, which was allowed and it was got conducted from Command Hospital, Kolkata as the victim was not having faith in the Government machinery. The details thereof are as under:

Sl. No.	Name of complainant/ victim	Committee Report Ref. No.	Allegation
1.	Durbala Bag	Annex. H, Vol. 4, P. 2288	Murder
2.	Anwasha Bera	Master Data, Annex. C, Sr. No. 910, page-46	Murder
3.	Marutha Bibi	Master Data, Annex. C, Sr. No. 1182, page- 60	Murder
4.	Alok Lata Barman	Master Data, Annex. C, Sr. No. 359, page-73	Murder
5.	Purnima Mondal	Master Data, Annex. C, Sr. No. 1074 Page-55	Murder
6.	Bipul Roy	Master Data, Annex. C, Page- 24, Sr. No. 450	Murder
7.	Sangita Chakraborty	Master Data, Annex. C, Page- 26, Sr. No. 501	Murder
8.	Bikash Chandra Barman	Master Data, Annex. C, Page- 30, Sr. No. 580,	Murder
9.	Birendra Nath Roy	Master Data, Annex. C, Page- 30, Sl. No. 581	Murder
10.	Akash Jadav	Master Data, Annex. C, Page- 62, Sr. No. 1214	Murder
11.		Master Data, Annexure C, Page-62, Sr. No. 1213	Murder
12.		Master Data, Annex. C, Page- 62, Sr. No. 1211	Murder
13.	Shom Hansda	Master Data, Annex. C, Page- 78, Sr. No. 1527	Murder
14.	Bhadhu Das	Master Data, Annex. C, Page- 78 , Sr. No. 1528	Murder
15.	Nirmal Mondal	Master Data, Annex. C, Page- 88, Sr.	Murder

		No. 1726	
16.	Pradip Baidya	Master Data, Annex. C, Page- 88, Sr. No. 1728	Murder
17.	Piyush Many	Master Data, Annex. C, Page- 53, Sr. No. 1038	Murder
18.	Arindam Midde	Master Data, Annex. C, Page- 88, Sr. No. 1730	Murder
19.	Rakibul Molla & Sirajul Molla	Master Data, Annex. C, Page- 92, Sl. No. 1802	Murder
20.	Madan Rajak	Master Data, Annex. C, Page- 98, Sr. No. 1916	Murder
21.	Jyotsna Mallick	Master Data, Annex. C, Page- 63, Sr. No. 1232	Murder

39. Another glaring example of inaction by the State is evident from the data furnished in the report of the Committee where for heinous crime against women, such as rape or attempt to rape, made in the complaints presented by the complainants before the Committee, which were referred to the police, but proper steps have not been taken to investigate the heinous crime, which could inspire confidence in the law enforcing agencies. In the Master Data furnished by the Committee there are 13 cases of rape. In one of the case the victim has even approached Hon'ble the Supreme Court for intervention and the matter is pending. The names of the victims or the complainants are not being mentioned for the purpose of confidentiality. The details thereof are as under:

Sl. No.	Committee Report Reference No.	Allegation
1.	Master Data, Annex. C, Page- 6, Sr. No. 110	Rape
2.	Master Data, Annex. C, Page- 54, Sr. No. 1065	Rape
3.	Master Data, Annexure C, Sr. No. 65, Page 4	Attempt to rape
4.	Master Data, Annex. C, Page- 97, Sr. No. 1894	Rape
5.	Master Data, Annex. C, Page- 53, Sr. No. 1041	Rape
6.	Master Data, Annex. C, Page- 53, Sl. No. 1046	Rape
7.	Master Data, Annexure C, page No. 84, Sr. No. 1649	Rape
8.	Master Data, Annexure C, page No. 79, Sr. No. 1542	Rape
9.	Master Data, Annexure C, page No. 77, Sr. No. 1510	Rape

40. In paragraph 16, brief details of rape cases have been made. The details are contained in a separate booklet, Annexure-I'. It was submitted to the Court in a sealed envelope as the identity of the victims could not be disclosed. This Court had not supplied the copy thereof to either of the parties to which lot of hue and cry was raised by the State. However, we thought it appropriate at that stage not to divulge their identity. The post-poll violence, in the opinion of the Committee, is said to be well planned with definite motive. It has also resulted in destruction of property, loss of livelihood of many persons. Many of the victims complained that their identity and other cards, were taken away by the goons and destroyed. This deprived them from availing the benefits of various government schemes. Fear was still evident on the face of the victims who had lost faith in the police machinery as it had failed to respond to their calls when required. FIRs were not registered even where cognizable offences were made

out. Besides this, certain other issues have been touched and recommendations have been made but we are not touching those issues for the present.

**EXCEPTION FILED BY THE STATE TO THE REPORT
FILED BY THE COMMITTEE**

41. Exception filed by the State to the report of the Committee runs into 17 volumes containing 9,692 pages. It may be added that some of the documents annexed to the exception are not even legible. The primary issue which the petitioners have been raising and the Court was called upon is as to whether there was post-poll violence or not and if yes, as to whether investigation into the offences is required by an independent agency. With voluminous documents placed on record by the State, it had not been able to make out the case that there was no post-poll violence rather it was admitted. It is further pleaded that the State had taken immediate preventive and corrective actions.

42. Briefly what could be gathered from the Exception filed by the State is that copy of Annexure-I which contains the details regarding crime against women has not been supplied; sufficient time was not granted to the State to file its response; it has sought cross-examination of the members of the Committee; the procedure as provided under the provisions of the 1993 Act has not been followed; entire litigation is politically motivated; the police had responded to the complaints wherever and whenever required; bias has been alleged against the members of the Committee; statements under Section 164 of Cr.P.C. were recorded wherever required; the duration of the period for post-poll violence need to be defined; how the Committee had chosen the locations to visit different places is not defined; certain

recommendations have been made by the Committee which were beyond the job assigned to it. It is mentioned that in 268 matters, FIRs were registered by the police suo-moto. We deem it appropriate to deal with the suo-moto FIRs registered by the State, on which much reliance has been placed to show whether the State had or not been proactive in taking care of incidents of post poll violence.

SUO MOTO FIRs

43. Before we proceed further, it would be appropriate to deal with briefly the FIRs registered by the State suo-moto.

44. In para 39 of the Exception file by the State to the report of the Committee, reference has been made to the fact that the police had registered 268 FIRs suo-moto. The details thereof are at Letter "J". (page 7487). However, the details of all the FIRs are not forthcoming.

45. Further, if the aforesaid information is analyzed, these cases pertaining to 13 districts in the State. Upto 04.05.2021 only 37 FIRs were registered. In the FIR registered on 03.05.2021 in Purba Medinapore, it has specifically been recorded by the police officials that there was unlawful assembly of 150-200 Trinamul Congress workers against whom FIR was registered under various provisions of IPC and the National Disaster Management Act.

46. FIR No. 194/21 dated May 04, 2021 registered at Nandigram Police Station, District Purba Midnapore on the complaints made by the police officials. It is recorded that 100-150 unknown persons had gathered at Tengua Morh under Nandigram Police Station. They were protesting against the incident which occurred on May 03, 2021 at Nandigram Bazar and the surrounding

areas where shops, houses of the members of the non-ruling party were attacked by burning tyres, throwing wooden logs. However, there is nothing on record to show that any FIR was registered of the incident which took place on May 03, 2021. The FIR only pertains to the protest which took place later on.

47. In FIR No. 193/21 dated May 04, 2021 registered at Nandigram Police Station, the report by the police officials is that one grocery shop in Swarasati Bazar under Nandigram Police Station was looted and the shop was set on fire.

48. In 5 such cases pertaining to district Paschim Medinapore, it was reported by the police officials that the offices of the main opposition party in the State were burnt by some miscreants. The allegations in one of the FIRs bearing No. 200/21 dated May 4, 2021 are quite serious. It specifically records that the supporters of the party in area of Garberia, Kishorepur, Rajbalabpur and Dewan had looted ornaments, household articles and ransacked the houses of the supporters of the party in opposition in village Kishorepur, Laumara, Garberia and other adjoining areas. Besides, they had also assaulted number of persons, some of whose names are mentioned in the FIRs.
(page 7968)

49. Even a perusal of the some of the other FIRs registered on the complaint made by the police official the allegations are regarding damage to the property and also causing injuries at a large scale. Some persons have been named whereas in some cases the FIRs have been registered against unknown persons.

50. Though it was claimed by the learned Advocate General that ever since the ruling party came to power officially on May 5, 2021 the violence, if any, was put under control. The claim is found to be contrary with the record produced by the State itself. In North 24 Parganas, FIR No. 87 of 2021 dated 09.05.2021 was registered on a complaint made by the police official against unknown workers of the party in power where they damaged certain houses, raised slogans, terrorized the people. Four more FIRs were registered at Sandeshkhali P.S. bearing Nos. 78 of 2021 dated May, 05, 2021, 83 of 2021 dated May 04, 2021, 85 of 2021 dated May 09, 2021 and 86 of 2021 dated May 09, 2021 at the same police station. (pages 7590, 7588, 7586)

51. Other important facts which come out of in Exception filed by the State and expose the hollowness of the claim made by it are that out of the total FIRs claimed to be registered by the State suo-moto, 58 have been registered after the present government had taken over on May 05, 2021. Out of those 58 cases, 22 FIRs have been registered much after the incident shown therein. It was only because the matter was pending in this Court and was being monitored and further the Committee had been constituted by this Court.

52. It is further strange to notice that though the name of the victim/complainant is known but still the police officials are shown as the complainants. It is mentioned in the complaints that all of a sudden, he had gone to the residence of the victim on July 17, 2021. He also records that the victims did not inform the police earlier as they were afraid of the accused. This development has taken place only after this Court had taken cognizance of the matter and the

Committee had also been constituted. FIR No. 135/21 dated June 05, 2021 at Nazat Police Station, (page 7614) also records that the reason of violence was the result of the election where the house of the victim was damaged. In this case also the police official, all of a sudden, went there. The incident was about a month old. There are similar FIRs registered suo-moto almost at the same time.

53. Similar is the position with reference to FIRs registered in 24 Parganas (South). There also number of FIRs have been registered for the occurrence which took place much earlier and in number of them the perpetrators are shown to be the workers of the political party in power. The victims are not belonging to only one opposition party, rather workers/supporters of different political parties.

54. As far as district Cooch Behar is concerned, copies of the FIRs have been placed on record by the State along with its exception to the report of the Committee which were registered suo moto. In 20 cases workers/supporters of the ruling party are shown to be the aggressors and the victims are shown as the members/supporters of the opposition parties in 21 cases. In 9 cases the members/supporters of the opposition parties are shown to be the aggressors and in 8 cases the supporters of the ruling party were shown to be the victims.

55. Some of the glaring cases of murder and rape have been tried to be downplayed by the State. These have been referred to in the written submissions filed by the petitioner in WPA(P) 145 of 2021.

- (i) Arup Ruidas is the complainant. The date of incident is May 05, 2021 (Annexure – H/Volume – 1, Page 867). Specific allegations are that the mob of TMC workers had

attacked their house with deadly weapons and taken away his father who was subsequently killed. The FIR was registered 36 days after the Court order under Section 156(3) Cr.P.C. No arrest was made though 21 accused in the FIR. The response of the State is that it is not a post-poll violence. The murder could not be established. (Page 8075/Annexure – L)

(ii) Kush Khetrapal, mother of the deceased, is the complainant. Specific allegation is against the TMC workers as her son was a BJP polling booth agent. Date of incident is stated to be 06.05.2021/08.05.2021. (Annexure – H/Volume – 1, Page 881). FIR was registered 60 days after the incident. No arrests have been made till date. The police reported that no case was made out and the case will end in final report as false.

(iii) Gobindo Mondal (Scheduled Caste), the complainant made specific allegations against several TMC workers that multiple attempts were made to kill him and he was abused in the name of his caste. FIR was registered 64 days after the incident on 05.07.2021. (Annexure – H/Volume – V, Page 2765-2768). No arrest has been made. The police report is that it is not a case of post-poll violence.

56. The following instances are also in similar line in some of the cases where even FIRs have not been registered.

Name of the Complainant	Report page No.	Offence	Whether FIR registered
Durgabala Bagh	(Annexure – H/Volume – IV, Page 2288).	Murder	No
Raju Samanta	(Annexure – H/Point 6(1), Page 207).	Murder	No
Ajay Dutta	(Annexure – H/Volume – V, Page 2692-93).	Vandalism, Molestation	No
Santu Mondal	(Annexure – H/Volume – IV, Page 2160-62).	Murder	No
Ranjit Das	(Annexure – H/Volume – IV, Page 2148).	Murder	No
Anil Barman	(Annexure – H/Volume – II, Page 1428).	Murder	No
Anwasha Bera		Rape and Murder	No
Sangita Chakraborty/ Sefali Mondal	(Annexure – H/Volume – II, Page 1885).	Murder	No
Purnima Mondal	(Annexure – H/Volume – II, Page 1882).	Attempt to Rape	No

57. From the facts as are available from the complaints on the basis of which the police had registered suo moto FIRs, it is evident that proper provisions of law for which crime was committed have not been invoked. In fact, the allegations have been diluted to the benefit of the accused. Some of the instances are as under:

1. On 5.5.2021 at around 100.00 hrs. shutter of a grocery shop of Selim Mondal was broken and huge quantity of grocery articles were looted in presence of police by a group of 100-150 unknown miscreants. But the case was registered only under sections 143, 447, 379, 427 IPC. [Ref. page- 7525, Annex. J. of Exception]

2. It is stated that 50-60 unknown TMC supporters invaded the shop/houses of a victims, named in the FIR and their shops were damaged. On such premises Bhangar P.S. case No.219 dated 5.5.2021 was initiated under sections 143, 341, 147, 148, 427, 379 against unknown miscreants. [Ref. page no. 7549, Annexure J]
3. A suo-moto case was initiated by Samuktala P.S. case No.211/2021 dt. 11.7.2021 on complaint that some TMC goons armed with sharpened weapon and fire arms entered into house of the victim and damaged all the properties and also snatched some valuables. Proper provisions of law were not invoked. [Ref. page- 7505, Annex. J. of Exception]
4. A suto-moto case was initiated by Falakata P.S. stating that 10 named accused entered into the house of the victim armed with iron daa, ballam, axe, iron rod and broke tin fence and they also entered into the bedroom of the complainant to damage all household articles including one scooty and also took Rs.42,000/- from the Almirah. The victims were also assaulted. On such premises Falakata P.S. case No 293/21 dated 17.6.2021 was initiated only under sections 448, 323, 427, 324. 379. 506, 34 IPC. [Ref. page 7505, Annexure J].

58. Out of 268 FIRs claimed to be registered by the police suo-moto, copies of only 219 could be found. It is evident that 62 FIRs were registered up to May 05, 2021 whereas, 157 FIRs were registered from May 06, 2021 onwards. Some of these were registered immediately after the offence was committed whereas in many of these, FIRs were registered belatedly. The aforesaid figure submitted by the State itself belies the stand taken by it that the post-poll violence was controlled the moment the new government had taken

over on May 05, 2021 and secondly, number of cases were registered much after the violence had already taken place, only because this Court was monitoring the cases and a Committee had also been constituted.

OTHER ISSUES IN THE EXCEPTION FILED BY THE STATE

59. In paragraph 36 of the Exceptions, it is admitted that the State had received 3,384 complaints from different Commissions, out of which 651 FIRs were registered. In 405 cases, non-cognizable reports (for short NCRs) have been submitted in Court whereas 1,356 complaints were found to be untrue. This very paragraph mentions that copies of only 312 NCRs have been annexed and not all of them.

60. Though in some FIRs have been registered or some other action has been shown to be taken by the State but there is nothing stated about the balance 972 complaints forwarded by various Commissions to the police. In paragraph 56 of the Exception, strange contentions has been raised that the Committee was to submit the medical reports in cases of crime against women as if it was not the duty of the police to carry out that exercise immediately when the offence was reported. In fact this shows that a calculated silence was maintained to let the evidence be destroyed.

61. In paragraph 57 of the Exception, it is stated that as regards, the preventive steps taken by the Government, the information was awaited from the DGP headquarters but was not furnished till the arguments finished.

62. Huge exercise was carried out by the State in filing thousands of papers in the Exceptions filed to the report of the

Committee. The idea seems to be to side track or confuse the issue, for which efforts were made repeatedly. Written submissions were filed by the State running into 532 pages including Annexures. Apparently, certain more documents have been furnished there is no reference to the page number of the document already on record.

63. Certain irrelevant issues are sought to be highlighted more instead of sticking to the core issue. As if the State was not satisfied by filing two volumes running into more than 500 pages of written information, another note was filed giving lot of information running into 125 pages. However, filing of voluminous records with number of documents will not detain this Court from deciding the core issue raised in the present bunch of petitions. It was made clear at the beginning when the report of the Committee was taken on record that the copy of Annexure-I' will not be given as it contains identity and details victims of crime against women.

64. As regards, grievance of sufficient time is concerned, the contention is double edged. The report of the Committee was taken on record on July 13, 2021. The copy thereof was directed to be supplied to all the parties. On July 22, 2021 request was made for grant of further time to file response to the report. The request was accepted. Thereafter, the exception running into about 10,000 pages was filed. On July 28, 2021, still more time was requested, which was acceded to but no further affidavit was filed. Hence, such a grievance is totally uncalled for.

65. Similar is the argument regarding request for cross-examination of the members of the Committee. It was clear to all the

parties that this Court is not investigating the criminal cases and holding any accused guilty. The Committee was only constituted for collection of the facts on the ground. Idea was to see whether there was post poll violence and the response of the police to the distress call of the victims. The facts clearly speak for themselves in the case in hand. These cannot be brushed aside on the argument especially when the entire issue revolves around politics as the contentions raised by the petitioners are that they were assaulted and their properties were damaged. Besides there being cases of murder and rape, only on account of the fact that in the recently concluded Assembly Elections, they had supported the political parties other than the ruling party in the State.

REGARDING PROCEDURE TO BE FOLLOWED BY THE COMMITTEE AS PRESCRIBED IN THE 1993 ACT

66. Much stress was laid by the learned Counsel appearing for the State, DGP and the police officers on the argument that the report of the Committee cannot be accepted for the reason that it had failed to follow the procedure as laid down in various provisions of the 1993 Act. The argument needs to be rejected at the threshold. It is clear from the various orders passed by this Court that the matter was not referred to the National Human Rights Commission for enquiry or investigation. The Chairman of the Commission was merely requested to constitute a Committee considering the fact that there was blatant violation of human rights besides violation of other rights of the victims. This Court had directed that two officers from the State namely the Member Secretary, WBSLSA and the Registrar of the West Bengal State Human Rights Commission shall be members of

that Committee. The modalities were briefly mentioned in the order passed by this Court. The report which was to be submitted to this Court. The Committee visited number of places to ascertain the facts stated in the complaints received by it and found them to be prima facie correct. No action was to be taken by the NHRC on the basis of the report. Hence, the argument that the report cannot be accepted as the Committee had not followed the procedure as stated down in the 1993 Act deserves to be rejected.

BIAS

67. Though issue of bias of three members of the committee was sought to be raised. The argument just needs to be noticed and rejected. In fact the entire effort seems to be to misdirect the issue and delay the proceedings. It seems to be an argument in frustration, where on the core issue the State has been found on a wrong foot. This court had directed constitution of the Committee vide order dated June 18, 2021. The members were nominated by the Chairperson of NHRC on June 21, 2021. No objection was raised by any one. An application was filed by the State for recalling of order dated June 18, 2021 vide which Committee was directed to be constituted. The application was dismissed on June 21, 2021 but no such argument was raised. It was not raised even when the committee started working on field. The Committee filed interim report in Court on June 30, 2021 and order was passed by the Court. No issue was raised. The same was sought to be raised only when final report was filed and it revealed the conduct of the state and the pleas raised by the State were found to be false.

68. Another reason for which the objection deserves rejection is that the members of the committee had only collected information from the field, collated the same and presented before the Court. Three members against whom allegations are sought to be made were not the only members in the exercise of collection of facts from the field. The committee consisted of nine members, having wide experience in different fields. Two were from the State, namely Member Secretary of the WBSLA and the Registrar of the WBSHRC. Besides this there were different sub-committees constituted for visits to different places in the State. The judgments relied upon by the counsel for the state do not come to their rescue for the reason that here the issue is not of selection of any candidate for service where recommendation may be final. Here committee was constituted for collection of information from the ground as the allegation against the State was that the police was not recording the FIRs for the crime and no action was being taken. In fact the stand taken by the State was found to be wrong from the material collected by the Committee, which could not be dislodged by the State even by filing voluminous response, which apparently was with a view to confuse the issue.

DURATION OF POST POLL VIOLENCE

69. One of the argument raised by the State was to fix the period of the crime reported during which can be considered as post poll violence. But we do not wish to enter into that area for the reason that if any aggressor party commits an offence on account of some one's participation in the election process and supporting a particular political party, the same shall be considered as post poll violence and

no time limit as such can be fixed. Further, polling in the State was in eight phases starting from March 27, 2021 and ending on April 29, 2021. In every phase of polling some of the persons who support or work for a particular party are well known. If any offence is committed even before declaration of result and has connection with election process, even that can also be considered as part of the post poll violence. Any threat to a victim or a complainant afterwards is also continuation of offence related to the polls. It will be for the investigating agency to find out from the facts of each case. The investigating agency shall also find out as to whether the police had registered FIRs under proper sections or not.

ELECTION COMMISSION'S DUTY ON LAW AND ORDER

70. Strong argument was sought to be raised by the learned Advocate General time and again that till such time election code was in force, entire police was under the control and supervision of the Election Commission of India, hence, it is responsible for any violence till May 03, 2021, when the code was lifted.

71. No provision of law rules or instructions to that effect have been referred in support of the argument. The argument deserves to be rejected outrightly. Civil or police administration is under the control of the Election Commission during the process of elections only to ensure free and fair elections. That does not mean that the police stop discharging its normal duties to control law and order. This arguments runs contrary to even the stand of the State where it claimed that number of FIRs were registered upto May 03, 2021 for post poll violence and otherwise also for normal crime in state the police was

duty bound to maintain law and order and register FIRs and not the Election Commission. The State cannot be allowed to blow hot and cold at the same breath. There is nothing placed on record by the state that even normal law and order, and registration of criminal cases comes within the purview of EC. Constitutional obligations of the State do not get vested in the Election Commission during the process of elections.

CASE LAW

72. In the aforesaid factual matrix and in the cases where exceptional issues have been raised, we have been guided by the following judgments of Hon'ble the Supreme Court to reach to a conclusion. Duties of the Court in such circumstances have also been defined. Observations made by Hon'ble the Supreme Court regarding human rights and personal liberties in **National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742**, are quite apt in the facts of the case. The same reads as under:

“20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of

persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India.”

(Emphasis supplied)

73. In **Rubabbuddin Sheikh v. State of Gujarat and others**, (2010) 2 SCC 200, Hon’ble the Supreme Court taking cognizance of a letter written by a person alleging killing of his brother and sister-in-law in fake encounter, and being not satisfied the way the State was carrying out the investigation, referred the matter to be investigated by CBI, as allegations was found against the State police. It was in order to make sure that justice is not only done but also is seen to be done, the CBI was directed to investigate the matter.

74. An important issue arising from the State was considered by a Constitution Bench of Hon’ble the Supreme Court in **State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal and Others**, reported as (2010) 3 SCC 571. It was a case where in an alleged political violence 11 persons died and many suffered injuries. This Court had referred the matter for investigation by the CBI without the consent of the State, The facts in that case are noticed in paras 3 to 5 of the judgment of Hon’ble Supreme Court, which read as under:

“3. These are: one Abdul Rahaman Mondal (hereinafter referred to as “the complainant”) along with a large number of workers of a political party had been staying in several camps of that party at Garbeta, District Midnapore, in the State of West Bengal. On 4-1-2001 the complainant and few others decided to return to their homes from one such camp. When they reached the complainant's house, some miscreants, numbering 50-60, attacked them with firearms and other explosives, which resulted in a number of casualties. The complainant managed to escape from the place of occurrence, hid himself and witnessed the carnage. He lodged a written complaint with Garbeta Police Station on 4-1-2001 itself but the first information report (“the FIR”, for short) for offences under Sections 148/149/448/436/364/302/201 of the Penal Code, 1860 (for short “IPC”) read with Sections 25/27 of the Arms Act, 1959 and Section 9-B of the Explosives Act, 1884 was registered only on 5-1-2001.

4. On 8-1-2001 the Director General of Police, West Bengal directed CID to take over the investigations in the case. A writ petition under Article 226 of the Constitution was filed in the High Court of Judicature at Calcutta by the Committee for Protection of Democratic Rights, West Bengal in public interest, inter alia, alleging that although in the said incident 11 persons had died on 4-1-2001 and more than three months had elapsed since the incident had taken place yet except two persons, no other person named in the FIR had been arrested; no serious attempt had been made to get the victims identified and so far the police had not been able to come to a definite conclusion whether the missing persons were dead or alive. It was alleged that since the police administration in the State was under the influence of the ruling party which was trying to hide the incident to save the image, the

investigations in the incident may be handed over to CBI, an independent agency.

5. Upon consideration of the affidavit filed in opposition by the State Government, the High Court felt that in the background of the case it had strong reservations about the impartiality and fairness in the investigation by the State police because of the political fallout, therefore, no useful purpose would be served in continuing with the investigation by the State investigating agency. Moreover, even if the investigation was conducted fairly and truthfully by the State police, it would still be viewed with suspicion because of the allegation that all the assailants were members of the ruling party. Having regard to all these circumstances, the High Court deemed it appropriate to hand over the investigation into the said incident to CBI.” *(emphasis supplied)*

75. The Director General of Police had directed the CID to take over the investigation. A writ petition was filed in this Court alleging that in the incident, 11 persons had died and more than 3 months had elapsed but still no effective steps were taken by the police for investigation or arrest of the accused. It was further alleged therein that police administration was under the influence of the ruling party, which was trying to hide the incident. Prayer was for handing over the investigation to the CBI. This Court directed that the investigation of the case be handed over to CBI. It was with the observation that this Court has strong reservations about the impartiality and fairness of the investigation by the State Police because of political fallout. Moreover, even if the investigation was conducted fairly and truthfully by the State police, it would still be viewed with suspicion because of the allegations that all the assailants

were members of the ruling party. The order was upheld by Hon'ble the Supreme Court. It was observed that being protectors of civil liberties of the citizens, this Court not only has power and jurisdiction but an obligation to protect the fundamental rights of the citizens. The findings recorded are extracted below:

“68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) x x x

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

x x x

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge

upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the 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.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil 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 rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.” *(emphasis supplied)*

76. In **Narmada Bai v. State of Gujarat and others, (2011) 5 SCC 79**, Hon'ble the Supreme Court while referring to the earlier judgments dealing with the issue, observed that the matter is referred to be investigated by an independent agency like CBI so that it may bear credibility. The Court felt that no matter how faithfully and honestly the local police may carry out the investigation, the same will lack credibility as allegations were directed against them. By reference of such matter for investigation by CBI no reflection either on the local police or the State was intended. It was in larger public interest.

77. Following observations of Hon'ble the Supreme Court regarding Constitutional values and duties of each organ of State, as made in **(2011) 7 SCC 547, Nandini Sunder and others v. State of Chhattisgarh**, are quite relevant in the facts of the present case. It dealt with a gap between the promised principled exercise of power in a Constitutional democracy and the reality of the situation in Chhattisgarh, where gross violation of human rights was alleged against the State. Modes of State action were found to be seriously undermining the Constitutional values, which may cause grievous harm to the national interest. Incidents of violence were directed to be investigated by CBI. Relevant paras thereof are extracted below:

“1. We, the people as a nation, constituted ourselves as a sovereign democratic republic to conduct our affairs within the four corners of the Constitution, its goals and values. We expect the benefits of democratic participation to flow to us – all of us – so that we can take our rightful place, in the League of Nations, befitting our heritage and collective genius. Consequently, we must also

bear the discipline, and the rigour of constitutionalism, the essence of which is accountability of power, whereby the power of the people vested in any organ of the State, and its agents, can only be used for promotion of constitutional values and vision.

2. This case represents a yawning gap between the promise of principled exercise of power in a constitutional democracy, and the reality of the situation in Chhattisgarh, where the respondent, the State of Chhattisgarh, claims that it has a constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights in a manner, and by adopting the same modes, as done by Maoist/Naxalite extremists. The State of Chhattisgarh also claims that it has the powers to arm, with guns, thousands of mostly illiterate or barely literate young men of the tribal tracts, who are appointed as temporary police officers, with little or no training, and even lesser clarity about the chain of command to control the activities of such a force, to fight the battles against alleged Maoist extremists.

3. x x x

4. As we heard more and more about the situation in Chhattisgarh, and the justifications being sought to be pressed upon us by the respondents, it began to become clear to us that the respondents were envisioning modes of State action that would seriously undermine constitutional values. This may cause grievous harm to national interests, particularly its goals of assuring human dignity, with fraternity amongst groups, and the nation's unity and integrity...

x x x

92. We now turn our attention to the allegations made by Swami Agnivesh, with regard to the incidents of violence perpetrated against and in the villages of

Morpalli, Tadmetla and Timmapuram, as well as incidents of violence allegedly perpetrated by people, including SPOs, Koya Commandos, and/or members of Salwa Judum, against Swami Agnivesh and others travelling with him in March 2011 to provide humanitarian aid to victims of violence in the said villages.

93. In this regard we note the affidavit filed by the State of Chhattisgarh in response to the above. We note with dismay that the affidavit appears to be nothing more than an attempt at self-justification and rationalisation, rather than an acknowledgment of the constitutional responsibility to take such instances of violence seriously. The affidavit of the State of Chhattisgarh is itself an admission that violent incidents had occurred in the above named three villages, and also that incidents of violence had been perpetrated by various people against Swami Agnivesh and his companions.

94. We note that the State of Chhattisgarh has offered to constitute an Inquiry Commission, headed by a sitting or a retired Judge of the High Court. However, we are of the opinion that these measures are inadequate, and given the situation in Chhattisgarh, as extensively discussed by us, unlikely to lead to any satisfactory result under the law. This Court had previously noted that Inquiry Commissions, such as the one offered by the State of Chhattisgarh, may at best lead to prevention of such incidents in the future. They however do not fulfil the requirement of the law: that crimes against citizens be fully investigated and those engaging in criminal activities be punished by law. (See Sanjiv Kumar v. State of Haryana [(2005) 5 SCC 517] .) Consequently, we are constrained to order as below.

Order

95. We order the Central Bureau of Investigation to immediately take over the investigation of, and taking

appropriate legal actions against all individuals responsible for:

- (i) the incidents of violence alleged to have occurred in March 2011, in the three villages, Morpalli, Tadmethla and Timmapuram, all located in Dantewada District or its neighbouring areas;

- (iii) the incidents of violence alleged to have been committed against Swami Agnivesh, and his companions, during their visit to State of Chhattisgarh in March 2011.”

(Emphasis supplied)

78. Duty of the Constitutional courts, where violation of fundamental rights is alleged, has been well defined in Constitution Bench judgment of Hon’ble the Supreme Court in **(2018) 10 SCC 1, Navtej Singh Johar v. Union of India**. It laid down that the Constitutional Courts are under an obligation to protect the fundamental rights of every citizen without waiting for catastrophic situation. Relevant paras 182-183 are extracted below:

“182. The Constitution Framers could have never intended that the protection of fundamental rights was only for the majority population. If such had been the intention, then all provisions in Part III of the Constitution would have contained qualifying words such as “majority persons” or “majority citizens”. Instead, the provisions have employed the words “any person” and “any citizen” making it manifest that the constitutional courts are under an obligation to protect the fundamental rights of every single citizen without waiting for the catastrophic situation when the fundamental rights of the majority of citizens get violated.

183. Such a view is well supported on two counts, namely, one that the constitutional courts have to embody in their approach a telescopic vision wherein they inculcate the ability to be futuristic and do not procrastinate till the day when the number of citizens whose fundamental rights are affected and violated grow in figures...”

79. In the case in hand, the facts, as have been discussed in the preceding paragraphs are even more glaring as the incidents are not isolated to one place in the State. Rather the violence which erupted after polls and declaration of results was state-wide. Number of persons had died. The women were raped. The house of certain persons who had not supported the party in power were demolished. Their other properties were damaged. Their belongings were looted including the chattels. Allegations are also that the complainants are being threatened to withdraw their cases. Number of cases of murder are sought to be claimed as natural death without recording FIRs and the investigations of cases as per procedure established by law. Number of persons are alleging that they were forced to leave their houses and villages and had not been able to come back because of threat. Social boycott and closure of their business establishments are the other allegations. The matters are pending in this Court and are being taken up on regular basis but still in spite of the fact that three months have lapsed no concrete action has been taken by the State, which could inspire confidence except filing affidavits and placing on record thousands of papers. In number of cases pertaining to murder, rape and other crime against women, the cases are sought to be closed without registration of FIRs or no response given to the committee. Apparently to favour the accused, FIRs have not been registered under

proper provisions of law. Accused in number of FIRs have been named as workers/supporters of ruling party in the State. The allegations of the petitioners are that in registration of cases and investigation thereof of the police is slow as main allegations are against the supporters and workers of the ruling party. In number of cases FIRs were registered only after the committee pointed out those. There are some FIRs registered against the supporters/workers of political parties not in power. These are claimed by them as false cross cases. Even they will not be able to allege bias against the State if investigation of their cases is also held by an independent agency or monitored by SIT. It should and will inspire confidence of the people in rule of law. The allegation is of police inaction. Report submitted by the Committee throws some light on this and the police having not properly responded to all the issues raised and trying to downplay the same, it certainly needs investigation by an independent agency. Even comparison of data pertaining to crime during previous corresponding period will also not come to the rescue of the State as the pattern of the crime can change and the period thereof. Further there are definite and proved allegations that complaints filed by the victims of post poll violence were not registered. Such types of incidents, even if isolated are not good for healthy democracy.

80. In our opinion, the heinous crime such as murder and rape deserve to be investigated by an independent agency which in circumstances can only be Central Bureau of Investigation. It is for the reason that in number of cases, the State had failed to register the FIRs and opined the same to be not the cases of murder. In some cases,

even after registration of FIR, the observation by the State is that these may result in 'no case'. This shows pre-determined mind to take investigation into a particular direction. Under such circumstances investigation by independent agency will inspire confidence to all concerned. Only the cases which have been mentioned in the report of the Committee pertaining to murder and rape shall be referred to CBI. We have chosen this option because as the from the facts of the cases, which have been briefly discussed above, these fall in the category of rare cases and the reasons for which this large scale violence has occurred in State.

81. As far as other cases are concerned, there are allegations that the police had not registered number of cases initially and some were registered only after the Court had intervened or the Committee was constituted. These allegations were found to be true on the basis of the material placed on record. A number of FIRs were registered by the State suo-moto after the Court had intervened. In some the allegations pertained to the incidents which had taken place immediately after the result of the State Assembly Elections was declared whereas, in some, FIRs were registered belatedly for the incidents which had taken place about a month ago. The petitioners apprehend that seeing the conduct of the police, there may not be fair investigation. To install faith of the people in rule of law and considering the extraordinary circumstances with which the State and the Court is faced with, we propose to constitute a Special Investigation Team headed by Suman Bala Sahoo and Soumen Mitra and Ranveer Kumar, all IPS officers of West Bengal cadre, as the

members thereof. The working of the SIT shall be overviewed by a retired Hon'ble Judge of Hon'ble the Supreme Court, who shall be requested to take up the assignment after taking his/her consent. He will be required to only review the working of the SIT and ensure that it is moving on a right track. Any report(s), pleadings or applications shall be filed in court only by and under the signatures of the Head of SIT. The idea being to inspire confidence regarding the independence of system being followed for investigation of cases.

ORDER

82. In view of our aforesaid discussions, we direct as follows:

- i) All the cases where, as per the report of the Committee, the allegations are about murder of a person and crime against women regarding rape/attempt to rape, shall be referred to CBI for investigation. The Committee, NHRC, any other Commission or Authority and the State shall immediately hand over entire record of the cases entrusted to the CBI for investigation. It is made clear that it shall be the Court monitored investigation. Any obstruction in the course of investigation by anyone shall be viewed seriously.
- ii) For other cases, as have been referred to in the report of the Committee, Special Investigation Team is constituted for monitoring the investigation. The team shall be headed by Suman Bala Sahoo, and Soumen Mitra and Ranveer Kumar, all IPS officers of the West Bengal cadre, shall be its members. The SIT shall be entitled to take assistance of

any other officer/police officer or any institution or agency for carrying out fair investigation of the cases. It is made clear that it shall be Court monitored investigation. The State shall spare their services for the purpose, as and when required and shall not take any adverse action against them without specific permission of the Court. The working of the SIT shall be overviewed by a retired Hon'ble Judge of Hon'ble the Supreme Court, for which separate order shall be passed after taking his/her consent. His/her terms of appointment shall be decided later on.

- iii) Notice issued to Rashid Munir Khan, Deputy Commissioner of Police, South Suburban Division, Kolkata vide order dated July 13, 2021, to show-cause as to why proceedings for contempt be not initiated against him, shall be dealt with later.
- iv) As the core issue regarding the post-poll violence and the action required to be taken thereon has been resolved with the directions for proper investigation of cases by the CBI and the SIT as referred to above, the matters now shall be placed before the Division Bench for dealing with other issues in the report and further proceedings.
- v) The application bearing CAN No 4/2021 in WPA(P) 142 of 2021 filed by the Partha Bhowmick and Jyotipriya Mallick for impleading as parties to the proceedings, is rejected as they are neither necessary nor proper parties to

the proceedings for the issues being dealt with by this Court.

- vi) The sealed cover (Annexure – I) submitted by the Committee along with its report, second autopsy report of Abhijit Sarkar, DNA analysis report as submitted by the Director Command Hospital, Kolkata and any other sealed cover pertaining to the case, lying with the Registrar General of this Court shall be handed over to the authorised officer of the CBI against proper receipt. Any documents/material therein, which is not relevant to the cases to be investigated by the CBI shall be handed over by it to the head of the SIT.
- vii) Immediate action shall be taken by the State to pay compensation to the victims of crime as per the policy of the State, after due verification. It shall be direct bank transfer in their accounts. The same will not debar them to claim further compensation under any law or scheme of the Government, for which the victims shall be at liberty to avail of their appropriate remedies.
- viii) We direct the CBI and the SIT to submit its status report in Court within six weeks from today.
- ix) The CBI or the officer heading the SIT shall be entitled to file application for any further direction to enable them to carry out investigation expeditiously and in a fair manner.

Such an application shall be listed before the Division Bench, as per roster.

- x) All the authorities in the State or any other agency, if requested, are directed to cooperate with the CBI and the SIT in conducting fair investigation of cases.
- xi) It is further directed that in case CBI or SIT finds any case to be not related to post poll violence, the same shall be transferred to the officer incharge of the concerned police station for further proceedings. Entire record pertaining to the same shall be handed over to the concerned officer against proper receipt.
- xii) It is made clear that any observation made in this order is only for the limited purpose of deciding the issue whether investigation is to be handed over to CBI and Special Investigation Team. Nothing observed shall be construed as an expression of opinion on the merits of the cases.

83. Adjourned to October 04, 2021. To be placed before the Division Bench, as per roster.

I. P. Mukerji, J.

84. I have had the privilege of going through the draft judgement prepared by my brother the Hon'ble the Chief Justice (Acting). I agree with the ultimate order proposed to be passed by his lordship. My reasons for concurring with that conclusion and my own observations are given below.

85. If a crime is suspected to have been committed, it is the duty of the State to investigate into it, apprehend the offender and prosecute him. An ordinary citizen has a right against the State to expect that the alleged offender is brought to justice.

86. The jurisdiction we have assumed in this litigation is in relation to those incidents of violence which occurred immediately after or contemporaneously to announcement of the West Bengal assembly poll results, 2021 on 2nd May, 2021. It is not sufficient that those incidents of violence occurred contemporaneously to announcement of the poll results but also that, it should have been a direct consequence of the reaction of a person or a body of persons to the result and that reaction was towards another person or body of persons which resulted in commission or attempt towards commission of an offence. Hence, any investigation into post poll violence should be across party boards.

87. The Committee constituted by the National Human Rights Commission is not to be treated as a Tribunal or a Commission. It is to be equated with a team of Special Officers appointed on the direction of this court. The data, other information and documents that have been submitted in their report are only to be taken as an exercise of fact finding by them. This fact finding is to be treated as prima facie by the court and to be considered together with data, other information, documents etc. brought on record by the State respondents, the petitioners and other parties. The allegation of bias against the Committee is not material because this court has

considered not only the report of the Committee but other materials as well and arguments of learned Counsel based thereon.

88. The said Committee constituted by the National Human Rights Commission had only power under our order to report on facts as gathered by them on investigation. They had no jurisdiction to make any recommendation or to express any opinion. We did not vest them with that power. Before proceeding to make any recommendation or express any opinion, they had to observe the procedure prescribed by the Protection of Human Rights Act, 1993. Before making any recommendation the Commission had an obligation of complying with certain procedures mentioned in that Act, inter alia with regard to giving notice to and hearing a person against whom a recommendation is proposed to be made. Even if we assume that the Committee was making a recommendation under the said Act, the view expressed by it was without compliance with that procedure. Therefore the part of the report expressing opinion, making recommendations etc. is non-est in the eye of law.

89. Maintenance of law and order and discharge of police functions is with the state under entries 1 and 2 of list II of the seventh schedule corresponding to Article 246 of the Constitution of India. It follows that normally investigation of and prosecution for a crime committed within the state is within the purview of the state. Ordinarily no other agency has the power to make the investigation. However the Supreme Court and the High Court have, in the exercise of their powers, ordered other agencies, like the CBI to make investigation in cases where the court was convinced that the accused

were powerful enough to influence the state machinery or those in power were directing the state machinery to shield the accused and the machinery was acting according to such dictate or there was failure of the investigation process or the interest of justice demanded enquiry by the CBI.

90. In this case, it is alleged that the police did not receive complaints of crimes related to post poll violence or after receipt of complaints did not take any action or took action which was insufficient or charged the persons accused with offences getting lesser punishment or declared certain complaints to be without merit for inadequate reasons.

91. I observe that under Section 154(3) of the Code of Criminal Procedure, 1973 on the refusal on the part of the officer-in-charge of a police station to record the FIR a person aggrieved had the right of sending the substance of the information to the Superintendent of police who would register it and investigate the case himself or send it to any police officer for investigation. That any such attempt was made by any of the complainants under Section 154(3) is not disclosed. Neither any written complaint to any other authority is on record.

92. Allegations have been made by the petitioners that the police officials have forced the victims to withdraw their complaints. If the police officials forces a complainant to withdraw a complaint, that is also an offence. Communication by the victim to any authority complaining of such conduct has not been brought on record. Ms. Priyanka Tibrewal, learned Advocate states that the victims are

uneducated and do not have the required resources. While hearing this matter, the court had given leave to learned Advocate to make complaints on behalf of such victims but still no complaint that the police was forcing people to withdraw them had been registered.

93. It is an accepted position that in total 1979 cases involving 15000 victims were received by the Committee. The State says that the number of cases where no dates of incidents have been mentioned are 864 which is 43.65% of the total cases. 892 incidents have occurred between 2nd May, 2021 and 5th May, 2021 which is 45.07% of the total cases. Incidents after 5th May, 2021 are 188 which is 9.4% of the total cases.

94. The submission of the Election Commission is absolutely right that conduct of elections was with the Election Commission but the administration was with the government. The government says that the Election Commission was in charge upto 5thMay, 2021. The Election Commission, in my opinion, is theoretically correct. But, it is also true that the Election Commission had directed the administration to transfer officials with administrative duties and post them according to its direction at the time when it was in charge of the election. If offences had occurred as a consequence of the polls, it was also the duty of the Election Commission at least to direct or advise the administration to register the complaints which it did not. Furthermore, between the polls and assumption of office by the new government the Election Commission should have played a more positive role in directing the administration to register the complaints. It was also not out of place on their part to have instructed the

administration to take steps so that crimes were not committed or checked. The records show that the incident of crime declined after 5th May, 2021. If not anything else, it does not show any intention on the part of the ruling party to promote political violence.

95. The state has admitted in their written submissions that after and further to our order 3384 complaints were received by them. 1356 complaints have been found to be baseless. 2877 action taken reports were sent by the police directly to “the various Commissions”. Action taken reports of 1338 cases were forwarded to the Committee.

96. In my opinion, it is not established that the state has shown apathy to action on the information regarding crimes involving post poll violence or that there is failure on its part in the investigation thereof or that there is interference with the same by the state. The investigation process, in my opinion, is at the initial stage. A more concrete view can be found after some time is given to the investigation to progress.

97. What is very serious is that the state has not responded to the alleged offences of murder and rape tabulated as referred to in the judgment of the Hon’ble the Chief Justice (Acting). The offences are grievous, serious and heinous. It may be as a result of post poll violence. It may well be in the usual course of affairs. The fact remains that each of these offences needs serious investigation. That is the expectation of the people of this state. If this expectation is fulfilled, their faith in the rule of law and in the justice delivery system will be maintained and enhanced. Allegations have been made against the state alleging apathy towards investigation of these crimes. To

dispel any doubt in the mind of the general people regarding fairness of the state machinery, the CBI should be entrusted with investigation of those specified offences regarding murder and rape under the supervision of the court. In this type of cases, it does not matter, in my opinion, which agency makes the investigation, the state or the CBI. If the offence is established, the wrong doers have to be brought to justice. Only then will the entire system be seen as fair, just and transparent by the ordinary people.

98. The interest of justice would be sub-served if investigation into these specific cases of murder and rape enumerated in the said judgment of the Hon'ble the Chief Justice (Acting) is made by the Central Bureau of Investigation. Of course, if the said agency acts illegally or irregularly or unfairly, it is always open to a person aggrieved to approach us.

99. Once again, to promote the confidence of the ordinary people, in the rule of law, investigation into all other offences may be done in accordance with law under the supervision of the Special Investigation Team constituted by this court.

Harish Tandon, J.

100. I have been forwarded with a copy of the judgment authored by Justice Rajesh Bindal, Chief Justice (Acting) adumbrating the facts in lucid and explicit manner and I have no dissent so far as conclusion arrived thereat. Without making any observations to the findings made on the merits and the reasons given therein, I take privilege to pen few words.

101. The tyranny of the Princely States and the rule of law in the hands of a king have caused deprivation of the liberty, rights and the privileges of the citizenry. The age old adage 'king can do no wrong' has evaporated by passage of time and the rule by the people of the country or the State was felt by several philosophers, thinkers and the wise man which gradually transformed into the concept of democracy. The citizenry has faced several prejudices with the functioning of the king and the administration in establishing the rule of law which he pleases. The voice of the common man was suppressed, manifold which led to a struggle for freedom. Our country is not an exception and the freedom fighters adopted Non-violent Agitation to get freedom and the voice of the people of the country was unanimous and echoed in one voice by their collective and collaborative efforts during the British Raj. The Non-violent Movement was considered to be the biggest tool in achieving the freedom as no orderly society can grow by suppression of their voices. The struggle for freedom in the Non-violent Agitation throughout the country forced the British to declare freedom and hand over the administration of the country into the hands of the people of India. The Constituent Assembly was constituted for making of the Constitution of India by the people of India. Several discourses and debates raged in the Constituent Assembly but the Constituent Assembly was unanimous on one issue that Democracy is the foundational stone and it is the people of India who would give and adopt the Constitution establishing the democracy.

102. Jurisprudentially, the State in a democratic society derives its strength and powers from the co-operative and dispassionate will of its free and equal citizens. The social and economic freedom is the foundation of the political democracy being the foundation on a way of life in Indian polity. The preamble of the Constitution envisaged the collaborative efforts of the people of India and imbibed within itself the word 'democratic republic' to secure its citizens. Our Constitution is a living and breathing document, the longest of its kind envisioning political, economical and social ideas and aspiration of the people of India, which would not have been achieved unless there had been immense sacrifices by the freedom fighters. The idea behind the word 'Republic' before word 'democracy' used in the Preamble of the Constitution connotes unity in diversity to be considered as One. The aforesaid expression conveys mandate of all citizens in securing justice, liberty, equality and the fraternity without any distinction.

103. The first Article of the Constitution naming the country manifests the federal character as the Union of States and reserved the freedom distinct from the Union yet inter-woven with the common thread in preserving the rights of the citizenry uniformly. The first and paramount duty of the State is to establish the rule of law and to avoid the discrimination, suppression and/or deprivation of the citizen of the country.

104. The expression 'to secure' conveys the idea of assurance and confidence into the Government chosen by the citizens of the country. Unless the justice and equality are secured, the other facets of

the constitutionally guaranteed rights would be rendered meaningless and the perception of the framers of the Constitution would be totally shattered. In order to achieve the constitutional aspiration for the governance of the country in collaboration with the three organs/pillars envisaged in the Constitution i.e. the legislature, executive and judiciary, the rule of law is the bedwork and its maintenance is sine qua non to the constitutional scheme. The Constitution further engulfed within itself the election of the person to represent in the federal system to protect their fundamental rights guaranteed under the Constitution. Electing the people to represent the majoritarian mandate is the main pillar of the democracy and peaceful election is the need of the hour.

105. At the advent of the emerging modern democracy, the basic right of the people in exercising their voting rights and choosing the candidate is eminently ubiquitous. The democratic India will never grow unless it protects the basic principles behind the fundamental rights guaranteed under the Constitution. The Ruling Government chosen by the majority has no relevance nor can act in a discriminatory manner so as to suppress the minority. The equality is the hallmark of the Constitution schemes and the aspiration reposed by the people of India. The discriminatory act has been seriously viewed under the judicial jolt.

106. It is no gain saying that to achieve the goals of justice and equality evidently present in the preamble of the Constitution, the State and its instrumentality have to function through political entities at different levels. The exercise of power by the political entities in

juxtaposition with the larger public interest and for public good leaves no exception and the maintenance of the rule of law is the primary duty of the State as opposed to anarchy. Any violation during the poll or after and the partition attitude of the chosen Government offends the basic fabric of the constitution and the rights guaranteed therein. Our country never propagates violent movements as the freedom was achieved due to the Non-violent Movements inculcating a sense in the mind of rulers that the suppression of the rights of the people and the aspiration for the freedom is inalienable.

107. In the prospective of the findings returned herein above, we embark our journey on a different terrain by assimilating the facts, data and the disclosure being made by the respective parties including the State in several facts files in course of proceedings.

108. The voluminous documents formed part of the record reflects the cry of the deprived persons and it is a salutary function of the Court to protect their rights guaranteed under the constitution. The Court cannot be a mute spectator nor should be apathetic to the voices of the persons who felt aggrieved but must rise to an occasion to protect such rights. There may be cases which are not relatable to post-poll violence but the persons have been deprived of their rights being not addressed through a well-recognised system in place and therefore there is no fetter on the part of the Court to entrust investigation to impartial, independent agency constituted for the purpose of rendering justice to deprived persons.

SOUMEN SEN, J.

109. I have the benefit of reading the draft judgment prepared by the esteemed Hon'ble the Acting Chief Justice and my esteemed brother Judges. I concur with the conclusions. However, I propose to indicate briefly my reasoning in favour of the conclusions.

110. The necessity to appoint an external agency in supersession of the State machinery to investigate the post poll violence is the core issue before us.

111. The very essence of constitutionalism is the submission of politics to law. The state is required to preserve and protect "imprescriptible rights of man." People are born free with equal rights.

112. The majority's lack of willingness to exercise oversight and lack of tolerance to accept the different views in a democracy often lead to oppression on minority and shake the foundation of good governance. The dominance of parties in the choice of persons and functionaries chosen in the process may not behave in a manner which places their party loyalties above the objective logic of respective remits and in such a situation constitutional means can be used to at least establish parameters to ensure that justice and rule of law prevails.

113. The constitution seeks to achieve equality through the protection of a party neutral civil service, the binding legal obligations on the administration and independence of the judiciary. However problem arises when neutrality of civil service is compromised and when the state machineries failed to behave and function honestly, fairly and impartially. Distrust in a particular government should not

be confused with and not to be mistaken for distrust in the constitution. In the book “The Constitution of Freedom An Introduction to Legal Constitutionalism” by Andras Sajó and Renata Uitz published by the Oxford University Press, the learned authors have very lucidly brings out this trust factor in the following words:

“Distrust in government may be a creative force. In a democratic constitution distrust makes government responsible and responsive, and, as such, ultimately, enables self-government. Tools of political accountability (including freedom of speech, freedom of information, freedom of assembly) are driven by an impulse to contribute to the public discourse through criticizing the government. Distrust and outrage are the muse of the dissenter: those who ask questions about what the government did and why, usually do not mean to flatter, they mean to offer informed criticism through rational debate, or at least wish to express disagreement. Such active and critical engagement with public affairs is a promising sign for constitutional system, increasing the costs of coordination. In the absence of voluntary cooperation and popular trust in government, the costs of monitoring and policing increase. Dissatisfied people taking to the streets constitute a serious security risk and create a demand for policing. Oppression is costly: it relies on running an oppressive machinery. But here again, one cannot trust oneself: democracy as self-government is in need of constitutional restrictions. Constitutional constraints follow from the dictates of the rightful distrust of people in their own selves.”

114. In a democracy as Bainbridge Colby has said “An Intelligent and conscientious opposition is a part of loyalty to country.”

115. In a democracy voice of dissent has to be heard and respected.

116. The role of the state has been beautifully captured in the following words by one of the most eminent jurists of India Nani Palkhivala in his book “India’s Priceless Heritage”:

“It would be hard to improve upon the sense of values which made ancient India so great. Our old sages judged the greatness of a State not by the extent of its empire or by the size of its wealth, but by the degree of righteousness and justice which marked the public administration and the private lives of the citizens.”

117. The concept of Dharma in the modern sense would mean equality before law and equality for all. Righteousness and justice are the two essential pillars of Dharma. In ancient India even the monarch was not above the law. The monarchy was required to perform Raj Dharma.

118. In a cooperative federalism the Constitution ordains that it is the responsibility of the State to maintain law and order within its territory. A high degree of confidence faith and expectations are attached to the State machinery for being fair, honest and impartial in its approach in dealing with its citizens and most importantly in ensuring equality before the law and equal protection of the laws.

119. The Criminal Procedure Code elaborately discusses the duties and responsibilities of police officers in matters of investigation

and trial. In the Code provisions have been made to secure fair trial. The ultimate aim of investigations is to ensure that those who have committed crime are prosecuted and those who have not are not arraigned to stand trial. Fair and impartial investigation is non-negotiable and a clear mandate which emanates from Article 21 of the Constitution of India. The Criminal Procedure Code also takes into consideration the remedies available to the complainant in case of non-registration of FIR. It balances the presumption of innocence of the accused with the finding of guilt through a procedure established by law, the court, acting as fulcrum delivering even handed justice in a cautious and careful manner to ensure that a culprit does not go unpunished.

120. However, over a period of time the courts are faced with situations where there are apprehensions about Justice becoming a victim because of manipulative, partisan and shabby investigation. The instances of complete abdication of power by the State enforcing law machinery in favour of the party in dispensation raises serious apprehension of bias. The failure to conduct a fair investigation or an attempt to shield culprits has undermined the prestige, honesty, impartiality and dignity of institutions created and entrusted for maintaining law and order and ensure safety and security of citizens.

121. Will Durant in his celebrated book “The Pleasures of Philosophy” made a very pertinent observation in the following words:

“The Thrasymachus of [Plato’s] Republic proclaimed to the world that ‘might is right’, and justice merely the interest of the stronger; the “unjust” is lord over the truly

simple and just, and the 'just' is always loser by comparison."

122. The malevolent becomes the benefactor of an intentionally and motivated State managed manipulated and questionable investigation and the victim remains as a victim with no one to wipe his tears with complaints unattended and destiny sealed as a fait accompli. The pernicious and polluted investigation thereby deprived the victim of his basic human rights of a free and fair investigation and trial. This equally applies to an innocent victim of circumstances who by reason of illegal and manipulative investigation becomes an accused. Here comes the role of the Constitutional Courts as the protector of Human Rights. We as Judges are required to constantly remind ourselves of sentinel on the qui vive if the call of the constitutional conscience is to retain its meaning. The right to life guaranteed to every person under Article 21 of the Constitution embraces a right to have fair investigation and speedy trial. It is the duty of the Judiciary to secure liberty of citizens when it is in danger.

123. The epoch making statement in **Romesh Thappar vs. State of Madras** reported at **AIR 1950 SC 124** : "This court is thus constituted the protector and guarantor of fundamental rights" obliges and cast a duty upon the constitutional courts to secure, preserve and protect the fundamental rights of every citizen guaranteed under the Constitution of India.

124. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof.

125. The expression “fair and proper investigation” in criminal jurisprudence has a twin purpose:

Firstly, the investigation must be unbiased, honest, just and in accordance with law;

Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these two conditions of fair investigations are satisfied, there will be least interference by the court with the investigation, much less quash the same. Fair investigation is opposed to an unfair, tainted investigation or cases of false implication. In *Samaj Parivartana Samudaya & Ors. v State of Karnataka & Ors.*, reported in (2012) 7 SCC 407, in same vein, it has been reiterated that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty is punished and that the jurisdiction of a court to ensure fair and proper investigation is of a higher degree than in an inquisitorial system and it has to take precaution that interested and influential persons are not able to misdirect, or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law.

(emphasis supplied)

126. The Court seized with the matter cannot reduce itself to be resigned and helpless spectator, on the face of a faulty investigation or when it appears that initiation of investigation and its completion by the investigating agency may not lead to a fair trial, in view of the

attendant facts. A fair, impartial, effective and efficient investigation is what expected from an investigating agency.

127. In *Babubhai v State of Gujarat & Ors.*, reported in (2010) 12 SCC 254, the Hon'ble Supreme Court has held that the right to fair investigation is a fundamental right of an accused guaranteed under Article 21 of the Constitution of India in the following words:

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

44. The charge sheets filed by the investigating agency in both the cases are against the same set of accused. A charge sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge sheet. Such investigation would ultimately prove to be precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjunctures as the

whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and accused got injured.

45. Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non- interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”

(emphasis supplied)

128. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. It is not only the responsibility of the investigating agency but as well that of the Courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of bias mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and

influence in the society. In Kashmeri Dev v. Delhi Administration and Anrs. [JT 1988 (2) SC 293] it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The Courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of criminal investigation and jurisprudence. Contra veritatem lex nunquam a liquid permit it: implies a duty on the Court to accept and accord its approval only to a report which is result of faithful and fruitful investigation. The Court is not to accept the report which is contra legem but to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the Court and the guilty is punished in accordance with law. (See. *Sidharta Vashisht @ Manu Sharma vs. State (NCT of Delhi)*; AIR 2010 SC 2352; 2010 (6) SCC 1).

129. The role of the investigating officer to bring out the real unvarnished truth for the courts to reach a right conclusion. The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. The sole object

of every trial is to conduct a fair trial in search of a ultimate truth viz whether the accused is an actual perpetrator of the crime or is an innocent person. To find out the ultimate truth in a criminal case, the court is not dependent merely on the evidence placed on record by the police. The effect of any criminal proceedings cannot always be left entirely in the hands of the parties as ultimately, it is the duty of the court to leave no stone unturned to bring out the truth for doing complete justice between the parties and to protect the interest of the society as well. [See. **Jamuna Chaudhary and Ors.vs. State of Bihar; (AIR 1974 SC 1822)** and **Pawan @ Diggi v. State; Manu/DE/0255/2014 decided on 24th January, 2014 (Delhi)**].

130. In dealing with the concept of fair trial in relation to any criminal proceedings, the Apex Court in **Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors.** reported in **(2006) 3 SCC 374** held as under:-

“The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: The Judge was biased.’ (Per Lord Denning, M.R. in Metropolitan Properties Co. Ltd. v. Lannon, All ER p. 310 A.) The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife should be above

suspicion (Per Bowen, L.J. in Leeson v. General Council of Medical Education.). It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker). Increasingly, people are believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away Jonathan Swift, in his Essay on the Faculties of the Mind said in similar lines: Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences." (emphasis supplied)

131. In **Mohan Lal vs. State of Punjab** reported at **(2018) 17 SCC 627**, the right to fair trial has been reiterated in paragraph 17 where it has been observed that:-

“17. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing

any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.”

132. In the context of a prayer for investigation by CBI, the Hon’ble Supreme Court in ***Pooja Pal vs. Union of India and Ors.***; **AIR 2016 SC 1345** had reiterated the need for a fair, honest and impartial investigation. The issue before the Hon’ble Supreme Court was the necessity or otherwise of further investigation or re-investigation by the CBI in view of overall conspectus of facts and the state of law. In *Pooja Pal* (supra) admittedly faced with such situation the Hon’ble Supreme Court passed a landmark judgment. Justice Roy while delivering the judgment on behalf of the Bench in His Lordship’s inimitable style has highlighted the court’s duties to ensure a free and fair investigation in the following words given in paragraphs 72, 74, 76 and 77 as stated below:-

“72. The precedential ordainment against absolute prohibition for assignment of investigation to any

impartial agency like the CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure however can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.

74. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like the CBI, whether or not the probe into a criminal offence by the local/state police is pending or completed, irrespective of as well, the pendency of the resultant trial have concretized over the years, applicability whereof however is contingent on the factual setting involved and the desideratum for vigilant, sensitised and even handed justice to the parties.

76. A “speedy trial”, albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in “fair trial”, both being in alienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to

have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the state police notwithstanding, has to be essentially invoked if the statutory agency already in-charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

77. *As every social order is governed by the rule of law, the justice dispensing system cannot afford any compromise in the discharge of its sanctified role of administering justice on the basis of the real facts and in accordance with law. This is indispensable, in order to retain and stabilize the faith and confidence of the public*

in general in the justice delivery institutions as envisioned by the Constitution.”

(emphasis supplied)

133. Since a trial is based on the charges framed by the investigating agency on the basis of materials collected during investigation it is imperative to ensure that a fair trial must entail a fair and impartial investigation. A fair investigation is the foundation and backbone of a fair trial. *Mithilesh Kumar Singh v State of Rajasthan* reported in **(2015) 9 SCC 795** has underlined the importance of fairness in investigation in paragraph 12 in the following words:

“12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court’s satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency

does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.”

(emphasis supplied)

134. In *Sasi Thomas v State & Ors* reported in (2006) 12 SCC 421 it is stated that free and fair investigation on the part of the investigating officer is the backbone of rule of law.

135. The issue whether a police officer is duty bound to register an FIR upon receiving any information relating to commission of cognizable offence as provided under Section 154 of the Cr.P.C., 1973 and whether a police officer has power to conduct an enquiry in order to test veracity of such complaint before registering FIR was considered by a larger Bench of the Hon'ble Supreme Court in *Lalita Kumari v Govt. of U.P & others* reported in (2014) 2 SCC 1. The Hon'ble Supreme Court disposed of the reference in the following words:-

“31. As such, a significant change that took place by way of the 1898 Code was with respect to the placement of [Section 154](#), i.e., the provision imposing requirement of recording the first information regarding commission of a cognizable offence in the special book prior to [Section 156](#), i.e., the provision empowering the police officer to investigate a cognizable offence. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. In the interest of expediency of investigation since there was no safeguard of obtaining permission from the Magistrate to commence an investigation, the said procedure of recording first information in their books along with the signature/seal of the informant, would act as an “extremely valuable safeguard” against the excessive, mala fide and illegal exercise of investigative powers by the police.

40. The use of the word “shall” in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

48.The First Information Report is in fact the “information” that is received first in point of time, which is either given in writing or is reduced to writing. It is not the “substance” of it, which is to be entered in the diary prescribed by the State Government.

64.The non qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information.....

73. *In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence.....*

76. *Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the “procedure established by law” and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.*

83. *The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.*

88) *The registration of FIR either on the basis of the information furnished by the informant under Section*

154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory.

98) While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory.....

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.”

136. The court is caught between the scylla and charibdis in view of the nature of the complainants concerning the political party in dispensation in the state by the opposition parties. The prayer for impartial investigation based on data collected by the court appointed fact finding committee on behalf of the petitioners is opposed by the State. The State in its affidavit and in the exception to the report filed by the fact finding committee tried to pick holes in the report and project that the State machineries have been geared to the fullest extent possible to maintain law and order in the State soon after the present government has assumed office on 5th May, 2021. For all instances of violence during the election between 27th March, 2021 till 2nd May, 2021 the contention of the State is that the Election Commission must take the responsibility as the entire police

machinery was under the supervision of the Election Commission and the police officers were transferred at the behest and at the dictates of the Election Commission. The State was ready and willing to maintain the law and order however, the State machineries were unable to take appropriate measures as the movements of the police personnel all over the State were being monitored and controlled by the Election Commission without consulting the State.

137. However, after the present government assumed office the instances of post poll violence has reduced drastically. The learned Advocate General has gone on record to contend that after 9th April, 2021 there has been no violence at all. The pleadings filed by the petitioners read with the fact finding committee report, however, has belied such claim of the State. The state was given ample opportunities and scope to register complaints and take appropriate measures in accordance with law. The State was on a denial mode. The instances of the failure of the State to take prompt and effective action and steps after 2nd May, 2021 or 5th May, 2021 have been meticulously stated and analysed in the judgment delivered by the Acting Chief Justice and I fully concur with the narration of events and findings based on analysis of such events made by the Chief Justice (Acting) in His Lordship's judgment. Even if, we discard the scathing remark and recommendations of the fact finding committee the data forming part of the report of the fact finding committee with regard to the nature of the offences, the lukewarm response of the State in dealing with such complaint cannot be countenanced. While I appreciate the anxiety expressed on behalf of the State with regard to

the sudden surge in undated complaints during the pendency of the proceeding and few discrepancies in the language of the FIR and its translated version produced by the fact finding committee, however, such incidents per se does not dilute the apprehension expressed by the writ petitioners with regard to the non-registration of FIRs and/or closure of investigation in cognizable offence or dilution of sections to shield the culprits.

138. The fact finding committee in terms of our order examined all the cases and even visited the affected areas and submitted a comprehensive report about the situation prevailing thereat and the steps to be taken to ensure confidence of the people so that they can live peacefully in their houses and carry on their business to earn their livelihood. Moreover, the persons prima facie responsible for the crime and the officers who maintained calculated silence on the same was also required to be pointed out by the committee.

139. The final report in paragraph 9 clearly mentions that despite specific directions of the Hon'ble High Court, only 137 FIR's were registered on 1893 complaints sent by the Committee to the DGP (West Bengal). It is also pertinent to mention that the details related to the registration of the cases and counter cases (where original victims/complainants were implicated in false cases) were not furnished by the DGP, West Bengal despite sending letter by the Committee dated 6th July, 2021 and reminder dated 10th July, 2021.

140. The Final Report clearly indicates that hardly 14% of the accused named in the FIRs lodged by West Bengal police were

arrested and out of those arrested, 80% were released on bail. Effectively speaking, only 3% of the accused named are in jail.

141. The petitioners contended that Judicial precedents mandate the view that when accusations are directed against the local police personnel, it is desirable to entrust the investigation to an independent agency like the CBI so that all concerned including relatives of the deceased feel assured that since an independent agency is looking into the matter which would lend credibility to the final outcome of the investigation as observed in –*RS Sodhi Adv v State of UP & Ors. 1994 Supp (1) SCC 143 at paragraph 2*. Fair and impartial investigation by an independent agency, not involved in the controversy is the demand of public interest and in this regard reliance is placed on – *Md. Anis v Union of India & Ors. 1994 Supp (1) SCC 145*. In the interest of victims of post poll violence in West Bengal, justice must not only be done but seen to be done. Hence an independent investigating agency must be entrusted with the investigation in the light of allegations of complicity of police officials in the commission of the crimes.

142. SITs have been constituted in the past on occasions when investigation was not being carried out satisfactorily in the Court's view or when the nature of cases was sensitive, such as the 1984 riots case and upon placing reliance on (*S. Gurlad Singh Kahlon v Union of India & Ors. Writ petition (Criminal) No.9/2016 dt. of judgment 11.1.2018*) or the Gujrat riots case in *NHRC v State of Gujarat & Ors. (2009) 6 SCC 342*, or on recovery of black money in *Ram*

Jethmalani & Ors.v Union of India & Ors. (2011) 8 SCC 1. Similar directions have been prayed for in the instant matters.

143. The petitioners have defended the composition of the fact finding committee and submitted that the accusation of biasness against the fact finding committee was to malign the committee rather than dispelling the findings arrived at by the committee. The State has miserably failed to remove the glaring discrepancies between the complaints registered by the Committee and the State Police Authority.

144. This argument is articulated on the basis that there is a gap of 60% between the number of political murders reported by the Committee and that by the DGP West Bengal. Whereas the Committee reports 52 murders committed from 2nd May, 2021 onwards, the DGP West Bengal on the other hand has reported 29 such cases during that period. The situation with rape cases is even more stark. The State at page 169 of the Report which is based on information obtained from DGP WB says no rape had occurred and all offences merely relates to attempt to rape or sexual molestation, whereas as per the Committee's spot visits, 11 rape cases have come to light.

145. This certainly raises an important issue with regard the fairness of the investigation as the State has specifically contended that no rape has occurred during post poll violence. In cases where FIRs have been registered, the allegation is that the prime accused being party functionaries of the ruling dispensation are yet to be

apprehended. For a majority of the murder victims, the allegation is that police has either offered no response in their reply or attempted to downplay the political angle by showing them to be deaths due to family quarrel, alcoholism, depression etc despite clear allegations by the family that the murders were politically motivated. There are also instances where family members claimed that they were pressurized by the local political functionaries of the ruling dispensation not to give statements to the Committee.

146. In the State's reply at Paragraph 36 of the exceptions, out of the 3384 complaints which were received from the Committee, there are more than 1000 such complaints where there is no response by the State. Further 1356 complaints have been found to be not true. It is submitted on behalf of the Petitioners that in terms of the mandate contained under Chapter XII of the CrPC (Sections 154 to 173) that Police has no discretion to declare a version of a victim untrue without registering an FIR and carrying out an investigation. The law is well settled in *Lalita Kumari v Govt. of UP (2014) 2 SCC 1* that once a complaint discloses a cognizable offence it is mandatory for the Police to register an FIR. It is only after registration of an FIR that the veracity of the complainant's version can be questioned. It is submitted that it is not the contention of the Petitioners that every investigation or every complaint has to result in a final report under Section 173 CrPC, but a closure report can only be filed post the registration of FIR in terms of Section 157 CrPC or under Section 173. A mere perusal of Section 154 read with Sections 157, 158 and

159 CrPC makes it amply clear that in case the Police after the registration of an FIR chooses not to investigate a case it is obliged in law to forward a report detailing the reasons to justify its decision not to investigate to the Magistrate subsequent to which the Magistrate can either direct investigation by the police or depute any subordinate Magistrate to hold a preliminary enquiry. In this regard reliance is placed on *SN Sharma v Bipin Bihari Tiwari AIR 1970 SC 786-Paragraphs 2 and 3*).

147. I find considerable merit in the aforesaid argument in the light of the data disclosed in the report of the fact finding committee read with the disclosures made by the State.

148. I am not going into further facts and figures of omission and commission or the arguments in detail made by the respective parties in advancing their cause or in defence on their actions but what transpires from the report and the stand taken by the Government, there are good number of cases where the complaints prima facie disclose commission of offence many of which had remained unattended or the cases were closed after the investigation by the police is over. There are many instances where the complainants have withdrawn the complaints. The cases of rape and murder have also been reported by the commission and in many cases the State has not given any response although sufficient opportunities were given to the State to explain its stand in relation to those cases.

149. The purpose of all investigation is to reveal the unvarnished truth. The constitutional courts are duty bound to ensure that the truth is revealed. The allegations of the State are that there are false complaints and in many cases private disputes have been given colours of the post poll violence. The State respondents are critical about annexure-H of the report of the fact finding committee as according to the State respondents, such reports are tainted, manipulated and premeditated – the whole approach was casual and premeditated almost as if complaints were kept ready. It is true that when it concerns rival political groups it is possible that some of the complaints may be motivated, harrassive and vexatious. It may be equally true that some are genuine. The bench was constituted to ensure that persons suffered in the post poll violence irrespective of political affiliation, religion, caste and creed get justice. The post poll violence in my view must refer to only those incidents that have taken place on immediate aftermath of the election results and the complaints must have a direct nexus to the election results. I agree with the submission of Dr. Singvi that there must be temporal and spatial limits imposed while taking note of complaints and it cannot be open ended. I have also come across few instances where boundary disputes or snatching or other kind of offences completely unrelated to post poll violence found place in the report filed by the fact finding committee. However, such instances are not significant in number and given the time constraints I think it would be unfair to impute biasness against the members of the fact finding committee who

otherwise have done a commendable job in collecting and compiling complaints.

150. Although the fact finding committee has made scathing remarks and made recommendations against politicians and police officers I am of the view that such remarks and recommendations were uncalled for and to that extent the committee has transgressed its limits. Inclusion of Rajulben L. Desai, Atif Rashid and Rajib Jain in the fact finding committee in my view does not vitiate the report of the fact finding committee although I felt that having regard to the antecedents of Rajulben Desai and Atif Rashid the inclusion of the said two members could have been avoided as it might raise reasonable likelihood of bias. However, having regard to the fact that the decision of the committee is unanimous and we are accepting the said report only for the purpose of relying upon data disclosed in the report and the information gathered by the member of the committee during spot visits the inclusion of the said two persons in my view cannot be considered to be one single drop to taint the whole glass.

151. I accept the argument of Mr. Kapil Sibbal that unless the procedure under the Protection of Human Rights Act 1993 are followed with regard to the enquires, investigations and persons like to be prejudicially affected are not heard by the commission in exercise of its power under the Protection of Human Rights Act, 1993, the recommendations cannot be accepted by this court. I think heading of the report has given an impression that it is the report of

the National Human Rights Commission but in reality the report is of a fact finding committee constituted in terms of the order passed by this court. The imputations against the politicians and the police officers are not acceptable as there has been no appropriate enquiry or investigation against the persons responsible for the acts alleged following the procedure laid down in the PHR Act, 1993 and I do not consider the said report as NHRC report. However, this finding in no way belittle the efforts of the committee members in collating and compiling the datas which are now to be looked into by the investigating agencies appointed by the court in terms of the order passed by the Chief Justice (Acting).

152. I am aware of the fact that the power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases and in the contingencies 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.

153. At this stage it is impossible for this court to assess the veracity of the complaints. It is neither possible nor desirable for this court at this stage to express any view on the merits of complaints and assistance of specialised agency is required for the unvarnished truth to surface. The petitioners have attributed bias and lack of apathy of the state police administration and the report filed by the fact finding committee prima facie shows that the apprehension expressed by the

writ petitioners have substance. However, the prime concern and endeavour of the court of law is to secure justice on the basis of true fact which ought to be unearthed through an upright, honest, resolute, impartial and competent investigating agency under the supervision of the constitutional court. The purpose and object of monitoring the investigation is essential when transfer of investigation is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State police investigates matters of some significance to allay any fear of being tardy or being influenced by persons or authorities who may stand to gain from the result of the investigation. A watchful eye is required to monitor the investigation in order to instil faith in the public at large in the administration of justice.

154. Judiciary as the last hope of the victims in discharge of its constitutional duties and obligations strike upon the party-political coercion of the holders of public office and use of state machinery for party purposes in order to restore faith in the constitution- the sacred parchment. In this way constitution endows those who wish to act appropriately in their role and resist any pressure with a strong legal position.

155. The Saga Of post poll violence, culture of intolerance and reluctance to accept dissenting views reminds me of the prophetic words of Nani Palkivala in his book “Democracy and Freedom”:

“Will freedom itself survive in the world or will the free way of life yield to totalitarianism? I believe that liberty

will not die before man. The invincible soul will find a way of triumphing over any repression, however ruthless. Man's unconquerable mind will always crave and hunger for freedom despite all the deficiencies and inefficiencies of the democratic set up – in preference to the efficient monolithic state with its inhuman sacrifice of human values. The spirit of liberty will always be the Eternal Flame.”

156. It would be the duty and the responsibility of the investigating agencies to consider the cases where no FIR was registered or dilution of charges have been made and or complaints have been withdrawn and complaints of rape, murder and other heinous crimes. The purpose is to ensure that the truth is discovered and no person is falsely implicated.

157. If the attending circumstances create a reasonable doubt in the minds of the court that a fair investigation may not be possible with the state machinery being manipulative or tardy or partial, it is always desirable that an external Investigative Agency may be constituted to revisit and re-examine the complaints and the steps taken by the investigating agency of the state to be monitored by the Court. It is only on the basis of an impartial assessment of all the complainants and reports, a fair conclusion should be reached, keeping in mind that no person should be unnecessarily harassed and prosecuted irrespective of his position, power and status.

158. I hope and trust that the investigating agency constituted by the court and the CBI would maintain integrity, impartiality, honesty and good faith. The institutional independence of the agencies should be of paramount consideration and should be maintained throughout at costs.

Subrata Talukdar, J.

159. I respectfully concur with the conclusions arrived at by the Chief Justice (Acting), as have been respectfully concurred by Brothers Mukerji, Tandon and Sen.

Rajesh Bindal, C.J.(A)

I.P. Mukerji, J.

Harish Tandon, J.

Soumen Sen, J.

Subrata Talukdar, J.

KOLKATA
August 19, 2021