

13.08.2024
Item Nos.1 to 5
&
Supple 1
PG/KS/gd/ssd
Ct. No.1

W.P.A.(P) 339 of 2024

**XXXXXX (Parents of Victim)
Vs.
The State of West Bengal & Ors.
+**

W.P.A.(P) 332 of 2024

**Suwendu Adhikari & Ors.
Versus
The State of West Bengal & Ors.
+**

W.P.A.(P) 331 of 2024

**Mr. Koustav Bagchi
Versus
The State of West Bengal & Ors.
+**

W.P.A.(P) 333 of 2024

**Vijay Kumar Singhal
Versus
Union of India & Ors.
+**

W.P.A.(P) 334 of 2024

**Sumitra Bhattacharyya (Neogi)
Versus
The State of West Bengal & Ors.
+**

W.P.A.(P) 335 of 2024

**Souma Subhra Ray
Versus
The Union of India & Ors.**

Mr. Koustav Bagchi

.....Petitioner (In Person)
(W.P.A.(P) 331 of 2024)

Mr. Billwadal Bhattacharyya
Mr. Anish Kumar Mukherjee
Mr. Suryaneel Das
Mr. Chiranjeet Pal
Mr. Tamoghna Pramanick

.....For the Petitioner
(W.P.A.(P) 332 of 2024)

Mr. Phiroze Edulji
Mr. Rajdeep Biswas
Ms. Anamika Pandey
Ms. Amrita Pandey
Mr. Gyanashyam Pandey
Ms. Sneha Singh
Ms. Bipasa Jaiswal
Ms. Priyanka Bhattacharya
Ms. Roustavi Mukherjee

.....For the Petitioner
(W.P.A.(P) 333 of 2024)

Sk. A. Ali

Mr. Jayanta Das
Mr. Pratip Kumar Chatterjee
Mr. Manojit Bhattacharya
Mr. Amalendu Bikash Dutta

.....For the Petitioner
(W.P.A.(P) 334 of 2024)

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Ms. Santi Das Bhowmick
Mr. Samim Ahmed
Mr. Malay Bhattacharya
Mr. Tapas Maity
Mr. Amitabha Ghosh
Mr. Siddhartha Sankar ondal
Mr. Rajit Lal Mitra
Mr. Arnab Sinha
Mr. Rohan Dwaipayan Bhowmick
Mr. Arka Maiti
Ms. Saloni Bhattacharya
Mr. Arka Ranjan Bhattacharja
Ms. Gulswanwara Pervin
Ms. Sohini Adhikary

.....For the Petitioner
(W.P.A.(P) 339 of 2024)

Mr. Amitesh Banerjee, Ld. Senior Standing Counsel
Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddiqui

Mr. Tarak Karan
Mr. Debraj Sahu
Mr. Debangshu Dinda
.....For the State

Mr. Suman Sengupta
Ms. Amrita Panja Moulick
.....For the R.G. Kar Hospital

Mr. Ashok Chakraborty, Ld. A.S.G.
Mr. Amajit De, Special P.P., C.B.I.
.....For the C.B.I.

Mr. Dhiraj Trivedi, Ld. D.S.G.I.
Mr. Rajdeep Majumder, Ld. D.S.G.I.
Mr. Arijit Majumdar
Mr. Mayukh Mukherjee
Ms. Rashmi Bothra
.....For the Union of India

1. All these writ petitions have been filed as public interest litigations, wherein the common prayer is to direct the respondent/State police authorities to immediately hand over all documents and evidences pertaining to the criminal proceedings initiated by them to the Central Bureau of Investigation or any other independent investigating agency.
2. Apart from such prayer, there are other reliefs sought for, which are to install adequate number of CCTV cameras in every floor, roofs of the Government Hospitals and Medical Colleges, to provide adequate resting places and wash rooms to the medical students of the Medical Colleges and Hospitals, more particularly, to the female students, to transfer the investigation from Tala Police Station U.D. Case No. 161 of 2024 dated 9th August, 2024 or any subsequent

F.I.R. in connection with the said U.D. Case to the Central Bureau of Investigation, to transmit to this Court, the record of the incident, CCTV footage of the particular place and other video footage or records relating to the case as well as the post-mortem report of the victim.

3. The matter concerns a shocking incident, which took place on August 9, 2024 at R.G. Kar Medical College & Hospital, wherein a post graduate trainee doctor, who was on duty was found dead inside the hospital premises, allegedly in half-naked condition.
4. The petitioners would allege that there were injuries over the body of the victim including the private parts and the family members and other persons firmly believe that the death occurred due to rape and murder and was committed by several offenders.
5. The writ petitioners would also state that the Hon'ble Chief Minister of the State of West Bengal on August 10, 2024 had issued a statement stating that the State of West Bengal has no objection, if the investigation of the alleged incident is transferred to C.B.I.
6. Leave was granted to the writ petitioners on August 12, 2024 to file these writ petitions and today, we have also granted leave to the parents of the victim to file a writ petition. In the said writ petition, the parents have sought for a direction to conduct independent investigation by a team of independent/impartial

officers under the supervision of a Hon'ble Judge of this Court; to direct the team of independent investigating officers to take into custody all evidence including but not limited to the post-mortem report, forensic evidence, CCTV footages, electronic communications and witness statements to ensure that no evidence is tampered with, suppressed or destroyed.

7. They have also sought for a direction to direct the team of independent investigating officers to investigate the conduct of the hospital authorities including the role of the Principal of the R. G. Kar Medical College & Hospital and any other officials, who have tampered, suppressed mislead or manipulated the investigation or evidence in the case. Further direction has been sought for to prosecute all individuals involved in the death of the daughter of the writ petitioners including any potential accomplices, who have aided, abetted or conspired to commit crime irrespective of their position or influence.
8. The parents also seek for a direction upon the State Government to provide protection to them, witnesses and any other individual who may have pertinent information related to the case to ensure that they can freely and safely co-operate with the investigation without fear or reprisal or intimidation.
9. In the batch of cases, we consider it appropriate to treat the writ petition filed by the parents of the victim as the

lead case. To consider as to whether the case has to be transferred to an independent agency or a Central agency, we are guided by various decisions of the Hon'ble Supreme Court. At this juncture, we referred to the decision in ***K. V. Rajendran Vs. Superintendent of Police*** reported in ***(2013) 12 SCC 480***, where the law has been summarized that the Court would exercise its Constitutional powers for transferring an investigation from the State Investigating Agency to any other independent investigating agency like C.B.I. only in rare and exceptional cases, where the Court finds it necessary in order to do justice between the parties and to instill confidence in the public mind. The other factors are where investigation by the State police lacks credibility and it is necessary for having a fair, honest and complete investigation and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

10. We are to test the case on hand on the anvil of the above legal principle.

11. The learned Senior Standing Counsel appearing for the State of West Bengal would contend that the investigation has been done in an appropriate manner and prays for a reasonable time to submit a detailed report of the investigation done thus far which can be placed before this Court in a sealed cover.

12.It is submitted, statements have been recorded from more than 25 persons and 01 person has been arrested and the investigation is proceeding in the proper direction.

13.We have read the averments made by the parents of the victim in their writ petition. They would state that at about 11:30 p.m. on August 9, 2024, the victim spoke to her parents as it was her routine before she has dinner and she sounded in her usual good spirits showing no sign of distress or discomfort. The parents would state that at about 10:53 a.m. on August 10, 2024 they received a call from the hospital authorities. According to them, the Assistant Superintendent, R. G. Kar Medical College & Hospital informed them that their daughter was unwell. It is further stated that approximately 22 minutes later, at about 11:15 a.m., the same Assistant Superintendent had informed the petitioners that their daughter had committed suicide in the hospital premises. The petitioners immediately rushed to the hospital and according to them, they were not permitted to see their daughter's body and they were made to wait for 3 hours. The petitioners suspect that this delay was intentional and for reasons best known.

14.It is further stated that soon after, large scale agitation had began and the Student's Body and the staff-members were part of the agitation and ultimately, the

petitioners were allowed to see the body of their daughter and they would state that this was done only after the Hon'ble Chief Minister intervened and instructed the Commissioner of Police to grant access.

15. The petitioners have narrated the state in which the body of their daughter was found when they were permitted to see and they would state that there were bleeding injuries over the body and there were no cloth on the lower part of the body.

16. The contents of the post-mortem report has been mentioned in paragraph 10 of the writ petition. The parents suspect that more than one individual were offenders and their suspicion is that it is a case of gang rape.

17. The learned Senior Standing Counsel appearing for the State on instruction submitted that it is true that the Assistant Superintendent of Police called the parents of the victim. On that day at about 10:10 a.m. information was received by the outpost police at the R. G. Kar Medical College & Hospital. At 10:30 a.m. the local police viz. Tala Police Station was informed. At 11:00 a.m. homicidal team reached the R. G. Kar Medical College & Hospital and by then more than 150 people had gathered. It is submitted that at 11:30 a.m., the Additional Commissioner of Police and senior officers were at site. The parents of the victim arrived at 1:00 p.m. Since the incident happened in the

seminar room, the forensic team was examining the seminar room. It is admitted that commotion occurred since the parents of the victim were not allowed to see the body of their daughter and at 1:10 p.m. the parents were given access into the seminar hall and it is false, as submitted by the State that they were made to wait for three hours but written request made by the mother of the victim was acceded to and the Judicial Magistrate was present when the Inquest was conducted and two lady doctors were also present. Thereafter, the father gave a demand in writing at 3:55 p.m. The Inquest Report, which was recorded was signed by the mother of the victim.

18. It is further submitted that the body of the victim could not be moved out of the seminar hall as there was huge agitation and, therefore, the doctor had to be requested to come to the seminar hall to examine the body and, thereafter death certificate has been issued.

19. It is further admitted that the situation became extremely chaotic and Rapid Action Force was brought in and the post-mortem was done between 6:10 p.m. and 7:10 p.m.

20. It is further submitted that the unnatural death case was registered since there was no complaint at the relevant point of time from any corner.

21. It is rather disheartening to note that the hospital administration, more particularly, the then Principal

Professor Sandip Kumar Ghosh, who has been impleaded in his personal capacity in W.P.A.(P) 331 of 2024 was not pro-active qua the post he was holding viz. Principal of the institution.

22. The Principal of the institution either by himself or by issuing appropriate directions could have lodged a complaint with the police since the death occurred within the hospital premises. This, in our view, was a clear dereliction of duty on the part of the Principal and the officers under his command and this has led to various repercussions and it has been admitted by the authorities that the situation became chaotic and Rapid Action Force had to be brought in.

23. It is on record that the said Professor Sandip Kumar Ghosh tendered his resignation and it is not clear as to what orders were passed on such request for resignation rather, within the shortest possible time on August 12, 2024, the said person has been made a Principal of National Medical College & Hospital, Kolkata. It is difficult to comprehend as to why when a person submits his resignation, the concerned authority of the State did not exercise the two options, which are available i.e. either to accept the resignation or to refuse to accept the resignation.

24. The appropriate authority of the State Government should bear in mind the circumstances, which led to the resignation. Therefore, even assuming the

resignation was not accepted, the least that can be expected from a responsible higher official of the concerned department is to immediately relieve the Principal from his duties and not assign him any other duty of equal responsibility. If this course had not been adopted and if he has been assigned another responsibility equivalent to the responsibility held by them, it would tantamount to putting a premium. That is what has exactly happened in the instant case, wherein the said Professor Sandip Kumar Ghosh has been made a Principal of another Government Medical College and Hospital. It is not clear as to what was the tearing urgency in doing so. Several submissions were made at the Bar with regard to as to how highly influential is Professor Sandip Kumar Ghosh, however, these aspects are not gone into at this stage.

25. We have advised the learned advocate appearing for Professor Sandip Kumar Ghosh to direct his client to immediately proceed on leave, failing which the Court will be compelled to pass necessary orders. On oral instruction, the learned advocate submitted that his client will immediately proceed on leave. If such an application is submitted by Professor Sandip Kumar Ghosh, the same shall be accepted and he shall be granted extraordinary leave and not permitted to hold the post of Principal of the National Medical College and Hospital, Calcutta until further directions.

26. The parents of the victim apprehend that if the State police is permitted to continue the investigation, in all probabilities, the investigation will be derailed and the culprits will not be brought to books and, therefore they pray that the case on hand is unlike other cases and involves extraordinary urgency for this Court to intervene so that the investigation is transferred to an independent agency.
27. We have directed the learned Senior Standing Counsel for the State to produce the Case Diary and the matters were passed over. The Case Diary was produced and we perused the same.
28. One more aspect, which is also quite disturbing is that a case of unnatural death has been registered with the Tala Police Station in Case No.161 of 2024 dated August 9, 2024. It is submitted that under normal circumstances, a case of unnatural death is registered when there is no complaint. When the deceased victim was a doctor working in the hospital, it is rather surprising as to why the Principal/hospital did not lodge a formal complaint. This, in our view, was a serious lapse, giving room for suspicion.
29. On or after August 9, 2024, prima facie there has been no significant progress as till date, the State police have not arrested any other person, who may be allegedly involved in the commission of the offence. The place where the crime had been committed assumes

extraordinary importance viz. it is in a Government hospital. The victim was a doctor working in the same hospital.

30. Considering these factors, we would be well-justified in making an observation that the administration was not with the victim or the family of the victim. We had asked the learned Senior Standing Counsel as to whether the statement has been recorded from the Principal, the Superintendent and the Assistant Superintendent. The reply at the time of hearing was that, no statement has been recorded. As pointed out earlier, though the Principal resigned, he has been within a couple of hours transferred and posted to another Medical College and Hospital under the control of the State Government. Under normal circumstances, the Court could have directed a report to be filed and considered the report and also might have granted leave to file exception to the report etc. However, the case on hand, is a peculiar case and the facts and circumstances warrant appropriate orders without further loss of time. We are convinced to say so because even after a lapse of five days there appears to be no significant progress in the investigation, which ought to have happened by now and by further loss of time, we would be well-justified in accepting the plea raised by the writ petitioners, more particularly, the parents of the victim that there is every possibility that

the evidence will be destroyed and the witnesses will be influenced etc.

31.As pointed out by the Hon'ble Supreme Court, one of the circumstances, which the Court should take note while transferring an investigation from the State Investigating Agency to any other independent agency is to do justice between the parties and to instill confidence in the public mind. Apart from that when it is necessary for having a fair, honest and complete investigation and particularly when it is imperative to retain public confidence in the impartial working of the State agencies. The circumstances, which we have set out above clearly shows that the public have agitated on the very same day that too in large numbers and it is admitted by the State that Rapid Action Force had to be brought in.

32.The doctors/students in their Memorandum had stated that the Rapid Action Force had assaulted several innocent people and they demand action to be taken against the force.

33.Therefore, it has become imperative and necessary for this Court to exercise its jurisdiction failing which the confidence in the public mind would be shattered and the public confidence will also be jeopardized.

34. At this juncture, we take judicial notice of the fact that the agitation, which initially commenced in the R.G. Medical College & Hospital has spread over to other

institutions in the State of West Bengal. Apart from that the agitations have spread out to other States in the country, which have been widely reported in the newspapers. These are all relevant factors, which have to be borne in mind.

35. Therefore, we deem it appropriate to transfer the investigation to the Central Bureau of Investigation.

36. That apart, the public confidence would not connote the public in general alone but since the incident took place in the hospital, which is a Government Hospital, the patients, who are the public concerned should also feel safe and confident that appropriate action is being taken and the investigation proceeds in an appropriate manner and the culprits are brought to books.

37. The respondent/police is directed to hand over the Case Diary to the officer of C.B.I., who is present in Court and an acknowledgement shall be given by the said officer to the officer of the State police forthwith. The other records, CCTV footages, statements, if any and all material and matters concerning the case shall be handed over to the C.B.I. by 10:00 a.m. tomorrow. The CCTV footages, which are stated to have been preserved should be handed over as such. Apart from that any other information, which is relevant to the case as may be called for by the C.B.I. shall be provided by the State police/S.I.T.

38. With regard to the other prayers, which have been sought for in the writ petitions, we direct the concerned authority of the State Government to file its report. The Superintendent of the Hospital shall also file a report as regards the infrastructure and other facilities, which are available in the hospital.
39. The doctors/medical students, who have formed a Joint Forum are also permitted to file their suggestions. After the reports and suggestions are put on record, the Court will examine and consider as to what appropriate directions have to be issued.
40. The Central Bureau of Investigation shall file periodical reports before this Court as to the progress of investigation and the first report in a sealed cover shall be filed on the next date of hearing.
41. In W.P.A.(P) 335 of 2024, the Joint Forum consisting of doctors and medical students have been impleaded as parties.
42. Let notice be served on the newly added parties.
43. We are truly appreciative of the feelings vented out by the doctors and the medical students and in particular, those at R. G. Kar Medical College & Hospital.
44. However, we wish to observe that there is pious obligation on the part of the doctors to treat their patients, more particularly the patients, who come to the Government hospital, who are not from the affluent strata of society.

45. Therefore, we would appeal to the learned members of the medical profession to discuss with the senior officials of the State Government and consider calling off their agitation so that the public, who come to the hospitals for treatment are not put to prejudice.

46. The learned Senior Standing Counsel submitted that already the officials of the State Government are taking necessary efforts in this direction.

47. List the matters after three weeks.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)