

ix

W.P(Crl.)No. 109 OF 2003

ITEM Nos.1-5

Court No. 2

SECTION PIL & XVIA

A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Crl.MP No.3740-42/2004 in Writ Petition(Crl.) No. 109/2003

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner (s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent (s)

(With Appln(s). for directions)

With

Transfer Petition (Crl) No. 194-202&326-329/03

W.P(Crl.)No.11-15/2003,W.P(Crl.)No.216/2003,

W.P(C)No.310/1996,T.P.(Crl.) No.43/2004,SLP(Crl.)No.4409/2003,

T.P.(Crl.) No.66-72/2004,SLP(C)No.7951/2002,W.P(Crl.)No.D17953/2003,

WITH

TP(C)544/2004,WP(C) 221/02,37-52/02, 530/02 and 284/03

Date : 17/08/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE S.H. KAPADIA

For apparing parties:Mr. Harish N. Salve, Sr. Adv. (A.C.)

Mr. B.V.Desai,Adv.(A.C.)

Ms. Meenakshi Grover, Adv.

Ms. Aparjita Singh, Adv.

Mr. Sanjeev Kr. Singh, Adv.

Mr. Imtiaz Ahmad, Adv.

M s. Nagma Imtiaz, Adv.

Mr. V.N. Raghupathy, Adv.

Mr. S. Muralidhar,Adv.

Mr. Somiran Sharma, Adv.

Mr. Amit Sharma, Adv.

in WP(Crl).D17953/03 Mr.Umed Singh Gulia,Adv .

In TP 194-202/03 M/s. Nitya Ramakrishna, Anita Shenoy,

Naveen R.Nath,Lalit Mohan Bhat,

Hetu Arora,Shila Ditya,Advs.

-2-

in SLP.7951/02 Mrs.Jayshree Wad,Adv.for

M/s JS Wad & Co.

in WP(Crl).11-15/03 Mr. Ram Jethmalani,Sr.,.Adv.

& TP(Crl)No.66-72/04 Ms.Aparna Bhat,Adv.

in WP(C)No.310/96 Mr.Prashant Bhushan,Adv.

in SLP(Crl)No.4409/03 M/s. H.Ahmadi,Ejaz Maqbool,

Nakul Dewan,Abhimeet Sinha,

Minakshi Nag,Gaurav Kejriwal&

S.Arbab,Advs.

TP(Crl)No.43/2004 Mr.Anand Grover,Adv.
Mr.Farheen Syed Kapra,Adv.
Mr.Naveen R. Nath,Adv.

WP 221/02 Mr. Anand Grover,Adv.
Mr. Manish Agarwal,Adv.
Mr. Farheen Syed Kapur,Adv.
Mr. Manu Krishnan,Adv.
Mr. E.C.Agrawala,Adv.

WP 530/02 Mr.Chandra Prakash,Adv.
Mr.Ravi Prakash,Adv.
Mr.L.R.Singh,Adv.
Mr. Prashant Venkatesh,Adv.

For State of Gujarat Mr. Mukul Rohtagi,Sr.Adv.
Ms. Hemantika Wahi,Adv.

For UOI Mr. Gulam E. Vahanvati, S.G.
Ms. Sushma Suri,Adv.
Mr. A. Mariarputham, Adv.
Ms. Aruna Mathur, Adv.
Mr.Anurag D. Mathur,adv.

Ms. Aruna Gupta, Adv.
Ms. Archana P. Khopde, Adv.
Ms. Sadhna Sandhu, Adv.

For Intervenor Dr. Nafis A. Siddiqui,Adv.
Ms. Sushma Suri,Adv.

State of Haryana Mr. Vinay Kr. Garg, Adv.
Mr. Anil Kr. Thakur, Adv.
Mr. Praveen Kumar Rai,Adv.
Ms. Kavita Wadia,Adv.

-3-

State of Kerala Mr. K.R. Sasiprabhu, Adv.

State of West Bengal Mr. Tara Chandra Sharma, Adv.
Ms. Neelam Sharma, Adv.
Ms. Tarun Sharma, Adv.

State of Rajasthan Mr. Aruneshwar Gupta, Addl.AG

State of Sikkim Mr. A. Mariarputham, Adv.
Ms. Aruna Mathur, Adv.
Mr. Anurag D. Mathur, Adv.

for State of UP. Mr. Sunil Gupta,AAG.
Mr. R.P.Mehrotra,Adv.
Mr. Garvesh Kabra,adv.

For Assam Ms. Krishna Sarma,adv.
Mr. Niraj Kumar,adv.for
Corporate Law Group,Advs.

For Orissa Mr. R.S.Jena,Adv.

In WP 310/96 Mr.Shri Narain,Adv.
Mr.Sandeep Narain,Adv.
Ms. Anjali Jha,Adv.for
M/s. S.Narain & Co.Advs.

State of M.P. Ms. Kamakshi Mehlwal,adv.

Mr. Satish K. Agnihotri, Adv.

Mr. Harsh Kumar Puri, Adv.

Mr. Ujjwal Banerjee, Adv.

Mr. S.K. Puri, Adv.

Mr. Shiv Gupta, Adv.

Mr. J.S. Attri, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. Mukesh K. Giri, Adv.

For SC/ST Commission Mr. C.D. Singh, Adv.

Mr. Vijay Pratap Singh, Adv.

-4-

For State of Manipur Mr. K.H. Nobin Singh, Adv.

Mr. Kamal Pundir, Adv.

For Pondicherry Mr. V.G. Pragasam, Adv.

State of Kerala Mr. K.R. Sasiprabhu, Adv.

For Maharashtra Mr. Ravindra K. Adsure, Adv.

State of Tripura Mr. Anurag Sharma, Adv.

Mr. Gopal Singh, Adv.

For State of Chhattisgarh Ms. Suparna Srivastava, Adv.

Mr. Rajesh Srivastava, Adv.

State of Nagaland Mr. U. Hazarika, Adv.

Mr. Riku Sharma, Adv.

Ms. Sumita Hazarika, Adv.

State of A.P. Ms. D. Bharathi Reddy, Adv.

Mr. B. Vikas, Adv.

State of Arunachal

Pradesh Mr. Anil Shrivastava, Adv.

State of Punjab Mr. Kuldip Singh, Adv.

Mr. Raj K. Pandey, Adv.

Ms. Naresh Bakshi, Adv.

State of Meghalaya, Mr. Ranjan Mukherjee, Adv..

State of West Bengal Mr. Tara Chandra Sharma, Adv.

Ms. Neelam Sharma, Adv.

State of Jharkand Mr. Gopal Prasad, Adv.

Mr. Manish Mohan, Adv.

State of A.P. Ms. D. Bharathi Reddy, Adv.

Mr. B. Vikas, Adv.

Mr. G. Venugopal, Adv.

Dr. Kailash Chand, Adv.

Mr.Nikhil Goel,Adv.

-5-

Mr. P.H. Parekh, Adv.
Mr. Lalit Chauhan, Adv.
Mr. Sumit Goel, Adv.

Mr. Shri Narain, Adv.
Mr. Sandeep Narain, Adv.
Ms. Anjali Jha, Adv.
For S. Narain & Co., Adv.

Mr. Huzefa Ahmadi, Adv.
Mr. Ejaz Maqbool, Adv.
Mr. Nakul Dewan, Adv.
Mr. Abhimeet Sinha, Adv.
Ms. Minakshi Nag, Adv.
Mr. Gourav Kejriwal, Adv.
Mr. Saquib Arbab, Adv.

Mr.Gopal Singh,Adv.

Mr. R.M.Vithlani,Adv.

Mr.Anis Suhrawardy,Adv.

Ms.Sandhya Goswami,Adv.

Mr.T.V.Ratnam,adv.

Mr.K.R.Nagaraja,adv.

Ms.Revathy Raghavan,adv.

Mr.Ashok Mathur,adv.

Mr.G.Prabhakar,Adv.

Ms. Malini Poduval, Adv.

Mr.Rajan Narian,Adv.

Mr.P.H.Parekh,Adv.

Ms. Neeru Vaid,Adv.

Mr. Nikhil Nayyar,Adv.

-6-

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

Crl.M.P.No.3741/2004 in WP(Crl)No.109/2003:

This application has been made for the setting up of a Committee for overlooking a Special Investigation Team to be set up by the State Government of Gujarat to enquire into those cases in which final reports have been filed by the local police stations closing the same. The State Government has filed an application in which it is stated that the State Government has already authorised high ranking officers to monitor each and every investigation which has been car

ried out in connection with the communal riots which have taken place in the State. It is submitted that the communal riots which have taken place, have taken place in particular Districts of the State and not throughout the State. It is also stated to this Court by the State that the particular police Districts in which there have been communal riots are under the supervision of Range Inspector Generals.

At the outset, we may point out that today when the matter reached hearing, we made it clear to all the parties appearing before us (including the State of Gujarat) that in this matter we are not going to proceed on the basis that the entire Investigating machinery in the State has failed; that there should be further/more extensive and indepth investigation into cases, numbering 2000, in which "A" Summary Reports have been filed resulting in closure of cases at the threshold and that the State should consider further/extended investigations through its own high ranking officers to which none of the concerned parties (including State of Gujarat) had any objection.

Having heard the submissions of the parties and having regard to the extant procedure in the State relating to the monitoring of investigation, in order to provide for a more integrated approach to the issues raised in the application of the Amicus Curiae, we direct the State Government to set up a Cell which would consist of the following:-

-8-

(1) Seven Range Inspector Generals who are at present supervising the 30 Districts in which the communal riots have admittedly taken place;

(2) The Range Inspector Generals shall look into the FIRs, the existing material in support of those FIRs, any other material found or brought to their notice and then decide in connection with each of the 2000 cases- whether further investigation is necessary. In the event of their coming to the conclusion that further investigation is not required, the reasons for their conclusion shall be recorded and put on the Internet for the purposes of informing anyone who may be interested in bringing the matter to the attention of the Court;

(3) The Range Inspector Generals will report to two Additional Director Generals to be nominated by the State Government for the purposes of overlooking the work of the Range Inspector Generals;

-9-

(4) The Additional D.Gs. will ensure the correctness of the reports to be submitted to them by the Range Inspector Generals and submit the same to the Director General of Police who will be in overall charge and will report to this Court as to the outcome of the status of the matters considered by the Cell operating his supervision. The D.G. should give such status report to this Court quarterly (every three months). The first of such report shall be submitted within 90 days. In this report, the D.Gs. will give the status report of cases in which the Cell is of the opinion that further/extended investigation is warranted. The Cell will also in its report state the particulars of cases in which according to the Cell, further investigation is not warranted;

-10-

(5) In cases where further investigation is necessary, the same shall be carried out by the Officer to be nominated by the Cell after forwarding its report to the concerned Authorised Magistrate. However, in this connection it is clarified that the Cell should not nominate Officer for such investigation who has in the past submitted a Summary Report. In other words, a fresh look must be given by an independent officer.

The Non-Governmental Organizations which have been participating in this entire process, will be at liberty to draw the attention of the Range Inspector General to any particular case within the District of a particular Range Inspector General and the Range Inspector General will consider the same before deciding whether further/fresh investigation or what action, if any, needs to be taken in connection with the FIRs filed. The Range Inspector General shall see whether the FIRs already filed are defective/deficient

-11-

or faulty in any manner.

CrI.M.P. No.3742/04 In WP(CrI)No.109/2003:

The application is adjourned till Monday i.e. 23rd August, 2004. The Advocate General, State of Gujarat will be present on that day to make submissions with regard to the procedure relating to the filing of appeals arising out of acquittals in the cases which are t

he subject matter of enquiry before this Court at present. The State Government will make available to this Court the details of the number of acquittals up to Thursday i.e. 19th August, 2004, the decision and date of the decision to file/not to file an appeal therefrom, the nature of the case involved (i.e. the Sections of the Indian Penal Code or any other statute alleged to have been violated by the accused) and the date of the filing of the appeal. The State Government will also indicate in detail the departmental steps involved in the procedure for taking a decision whether or not to file an appeal from a judgment of acquittal.

-12-

CRLMP No. 3740/2004 in WP(Crl)No.109/03 & WP.No.530/02, TP.No.544/04 & WP.No.221/02:

The I.A. as well as the other matters being disposed of by this order relate to the payment of compensation to the victims of the communal riots which have taken place in the State of Gujarat.

There is no dispute that the issue of compensation to the victims of the Godhra carnage is the subject matter of writ petitions by victims and a non-governmental organisation before the Gujarat High Court. In addition, the Gujarat High Court is also in seisin of a petition filed by Citizens for Justice and Peace in Special Civil No. 3217/2003 in which the question of implementation of a Rehabilitation Scheme framed by the State is in question. It is however pointed out to us by the learned amicus curiae and the petitioners that while the High Court is monitoring the implementation of the Scheme framed by the State Government for payment of compensation to the victims, the Scheme itself is questionable in that many aspects of the Scheme are deficient. For example, it is submitted, the Scheme does not provide for a realistic

-13-

compensation in respect of damage to property. It is also submitted that the Scheme limits the compensation payable only to death or permanent disablement while excluding cases where the victim may have otherwise suffered grievously, for example by burning, etc. It is also submitted that the victims of sexual offences have not been brought within the purview of the Scheme at all. It is also submitted that the scheme should be according to the one formulated by this Court in connection with the Cauvery riots reliefs as reported in 1999 (6) SCC 26 (Ranganathan and Anr. vs. Union of India & Ors.).

In our view, these all are issues which can be raised in the pending writ petitions before the High Court since the High Court would have the jurisdiction to consider each of the grievances raised. In fact, having regard to the nature of the claim it will be more appropriate, that the High Court should deal with the issues raised in the first instance.

Since this order disposes of several petitions, those persons who have approached this Court will be entitled to apply to the

-14-

High Court to intervene in the pending petitions.

Accordingly, Crl.M.P. 3740/2004 is disposed of. The further issues of law raised by these petitioners before us in connection with payment of compensation to the victims of the Gujarat Communal riots which involve larger Constitutional questions are left open.

Crl.M.P. No. 3742/2004, TP(Crl.)Nos. 194-202 & 326-329/2003, SLP(Crl.)No.4409/2003 and WP(Crl.)No. 216/2003, T.P.Nos 66-72/2004, TP(Crl.) 43/2004, WP(C)Nos. 37-52/2002, WP(C)No. 284/2003 and Crl.M.P. 6864/2004 in WP 109/2003

List all these matters on 23.8.2004 after the hearing of matters listed before this Court is over or at 2.00 p.m. whichever is earlier.

WP (Crl.) No. D17953/2003 and SLP(C)No. 7951/2002

To be heard alongwith WP 109/2003.

WP(Crl.)No. 11-15/2003 and WP(C)No. 310/1996

These matters are delinked and to be listed before any other Bench.

(USHA BHARDWAJ) SUMAN WADHWA (MADHU SAXENA)
P.S. TO REGISTRAR COURT MASTER COURT MASTER