

ITEM NO.13 +3 Court 5 (Video Conferencing)

SECTION PIL-W

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

Miscellaneous Application No(s).1259/2020 in W.P.(Cr1.) No.  
539/1986

SHRI DILIP K. BASU

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

( IA No. 62812/2020 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 63928/2020 - EARLY HEARING APPLICATION)

ITEM NO.3

Writ Petition(s)(Civil) No(s). 668/2020

(FOR ADMISSION and IA No.61716/2020-EXEMPTION FROM FILING AFFIDAVIT  
and IA No.61717/2020-PERMISSION TO APPEAR AND ARGUE IN PERSON )

Date : 27-08-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE VINEET SARAN

For Parties: Mr. Devesh Saxena, Petitioner-in-person(item 3)

Dr. A.M.Singhvi, Senior Advocate, (AC)  
Mr.Lzafeer Ahmad B F, AOR for Amicus Curiae  
Mr. Amit Bhandari, Adv.  
Mr. Abhishek Tripathi, Adv.  
Mr.Avishkar Singhvi, Adv.

Mr. Pukhrambam Ramesh Kumar, Adv.  
Ms. Anupama Ngangom, Adv  
Mr. Karun Sharma, Adv

Mr. Tushar Mehta, SG  
Mr. S.V. Raju, ASG  
Mr.S. Wasim A Qadri, Sr. Adv.

Ms. Sonia Mathur, Sr. Adv.  
Ms. Binu Tamta, Adv.  
Mr. Rajat Nair, Adv.  
Mr. Raj Bahadur, Adv.  
Mr. B.V. B.Das, AOR  
Mr. A.K. Sharma, AOR

Mr. Ashok Panigrahi, Adv.  
Mr. Nabab Singh, Adv.  
MR. B.V. B.Das, AOR

Ms. Anitha Shenoy, Sr. Adv.

Mr. Mohit Paul, AoR.

Ms. Sunaina Phul, Adv.

Mr. Raghvendra Kumar (Standing Counsel),

Mr. Anand Kumar Dubey, Adv.

Mr. Narendra Kumar, AOR(Sikkim State)

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

Writ Petition (Cr1.) No.539 of 1986 has been engaging the attention of this Court for last few years and various orders have been passed by this Court from time to time. The last effective order was passed on 14.07.2015, reported in 2015 (8) SCC 744. Pursuant to the liberty granted in the concluding paragraph of said order, M.A. No.1259 of 2020 has been preferred by learned Amicus Curiae seeking various directions.

By order dated 05.08.2020, National Human Rights Commission (NHRC, for short) was made party to the application and NHRC was called upon to respond to paragraphs 8 and 9 of the application. Notice was also issued to Union of India to respond to para 10 of

the application.

Responses have since then been filed on behalf of NHRC and Union of India.

Dr. Abhishek Manu Singhvi, learned Amicus Curiae has invited our attention to the proceedings dated 05.04.2010 before NHRC in complaint referred by Senior Superintendent, District Jail, Fatehgarh, U.P., when the issue of applicability of Section 176(1A) of the Criminal Procedure Code ('the Code', for short), as inserted by Act 25 of 2005, was considered by NHRC and it was observed:-

"In our opinion, the correct position of law is that an enquiry by Judicial Magistrate or Metropolitan Magistrate is mandatory in only those cases of custodial death, where there is reasonable suspicion of foul play or well founded allegation of commission of offence. All other cases of custodial death where the death is natural or caused by disease may be enquired into by an Executive Magistrate."

Copies of said proceedings were marked for information and necessary action to all the concerned.

According to learned Amicus Curiae, the interpretation accepted and placed by NHRC on Sub-Section (1-A) of Section 176 of the Code is not correct.

We have heard Dr. Singhvi, learned Amicus Curiae, Mr. S.V. Raju, learned Additional Solicitor General for Union of India and Ms. Anitha Shenoy, learned Senior Advocate for NHRC at some length.

During the course of hearing, it is brought to our notice that the issue regarding interpretation of Section 176(1-A) of the Code and the question whether the provision is mandatory or not, are

pending consideration in Writ Petition (CrI.) No.354 of 2019 'Suhas Chakma vs. Union of India & Ors.'; and that the matter is to come up for hearing on 07.09.2020.

Another issue highlighted by learned Amicus Curiae is about the functioning of various State Human Rights Commissions. It is submitted that i) no information is available with regard to the States of Arunachal Pradesh, Mizoram and Nagaland; ii) in the States of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Manipur, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand there are substantial vacancies in the State Human Rights Commissions; iii) the States of Andhra Pradesh, Chhattisgarh, Jharkhand, Maharashtra, Manipur, Rajasthan and Tamil Nadu either do not have a Chairperson or are functioning through an Acting Chairperson; iv) the States of Jharkhand, Manipur and Meghalaya do not even have the required strength to constitute the Commission as no member or an investigative officer has been appointed.

It is submitted on behalf of NHRC that in Writ Petition (C)No.349 of 2018 [Jammula Choudaraiah vs. UOI] and Civil Appeal No.5912 of 2012 [Punjab State Human Rights Commission vs. Jat Ram & Ors.], the issues regarding strength of members of State Human Rights Commission as well as the appointments of Chairpersons and members in various State Human Rights Commission are pending consideration before this Court.

Another development that needs to be adverted to is that Writ

Petition ( C ) No.668 of 2020 has now been assigned to this Bench by virtue of Order dated 21.08.2020.

Since some of the issues projected in the present Writ Petitions are also arising in Writ Petition (Cr1.) No.354 of 2019, Writ Petition (Civil) No.349 of 2018 and Civil Appeal No.5912 of 2012, these matters are adjourned to 14.09.2020.

In the meantime, the Registry is directed to place the papers of Writ Petition (Cr1.)No.539/1986 as well as of Writ Petition (C)No.668 of 2020 before the Hon'ble CJI so that multiplicity of proceedings with regard to same issues is avoided and the matters are placed before the appropriate Bench.

(INDU MARWAH)  
COURT MASTER (SH)

(PRADEEP KUMAR)  
BRANCH OFFICER