

(2019) 05 CAL CK 0078

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9313 (W) Of 2019, 150 Of 2018 With Civil Application (CAN) No. 4814 Of 2019

Kunal Saha & Anr Vs Bar Council of West Bengal & Ors ?

Date of Decision : 22-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 05 CAL CK 0078

Hon'ble Judges : Biswanath Somadder, J;Arindam Mukherjee, J

Bench : Division Bench

Advocate : S. K. Kapoor, L.K. Gupta, Ajoy Krishna, Saptansu Basu, Subir Sanyal, Subhasish Chakraborty, Imtiaz Ahmed, Sumeet Chowdhury, Subhajit Bal, Pradip Kumar Mondal, Arindam Ganguly, Ashok Das, Achin Jana, Shamim Ahmed, Ratul Biswas, Sabyasachi Chatterjee, Soumya Basu Roychowdhury, Srijan Dutta, Amit Chowdhury, Sushmita Kumari Singh, Mrinalini Majumder, Ankan Rai, Kishore Datta, Abhrotosh Majumdar, Md. T.M. Siddiqui, Subhabrata Datta, Partha Sarathi Sengupta, Uttam Kumar Mazumdar, Sujay Bandyopadhyay, Mousumi Choudhury, Jagajyoti Das, Ashish Kr. Sanyal, Imtiaz Ahmed, Rajendra Banerjee, Dipjyoti Chakraborty, Smrajit Roychoudhury, Debjani Ghosal, Jaydeep Kar, Siddhartha Banerjee, Ranjit Sarkar

Judgement

The Court :-

1. Having regard to certain untoward incidents which were stated to have occurred in the premises of the Howrah District Sadar Court complex on 24th April, 2019, the Hon'ble the Chief Justice deemed it appropriate to direct the Registry to place this matter for consideration on the judicial side in the Division Bench headed by the Hon'ble the Chief Justice for consideration on the judicial side as to whether suo motu proceedings be initiated in jurisdiction under Article 226 and/or 227 of the Constitution and, if so, to delineate the issues that require to be focused upon to have a comprehensive look into the matter. It was further held that the said matter should be treated as a matter in exercise of supervisory jurisdiction in terms of the Constitution. The Registry was directed to place the matter on 29th April, 2019 as 'Listed as Directed matter'. The following were the parties in the said matter:-

- "1. Registrar General, Calcutta High Court
2. District Judge, Howrah
3. Chief Judicial Magistrate, Howrah
4. Union of India, represented by Additional Solicitor General
5. State of West Bengal, represented by Advocate General
6. Chief Secretary, Government of West Bengal
7. Secretary, Home Department, Government of West Bengal
8. Director General of Police, State of West Bengal
9. Commissioner of Police, Howrah Police Commissionerate
10. Superintendent of Police, Howrah Commissionerate
11. Commissioner of Howrah Municipal Corporation
12. Station House Officer (SHO), Howrah"

2. By an order dated 29th April, 2019, the said matter was ordered to be registered as a writ petition taken up suo motu in exercise of authority under Article 226 of the Constitution and supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Relevant portion of the order dated 29th April, 2019, reads as follows:-

"9. Having regard to the different aspects and issues which may be relevant for consideration in larger public interest and for protecting the premises of Courts and to ensure that due process in terms of the Constitution and the laws are obeyed and enforced in relation to the incident at Howrah, this matter is ordered to be registered as a writ petition taken up suo motu in exercise of authority under Article 226 of the Constitution and the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. This will stand registered and notice is hereby ordered to be issued to the authorities listed in the cause title.

10. Respondent Nos. 7, 8, 9, 10, 11 and 12 are directed to file separate personal affidavits touching all aspects of the untoward incidents which are stated to have occurred in the premises of the Courts at Howrah on 24th April, 2019. All such affidavits shall be available before the Bench when this matter is taken up at the next date of hearing.

11. Post on Wednesday, 1st May, 2019.

12. In the meantime, the High Court on the Administrative Side, at the appropriate level, will carry out requisite exercise to ensure that judicial functioning of the Courts at Howrah is smoothly carried out. For this purpose the organizations of the Advocates, including the Bar Council of West Bengal and other requisite stake-holders, may extend such cooperation as the High Court

may require and call for. It is clarified that the pendency of this Writ Petition on the Judicial Side will not, in any manner, stand in the way of any action that the High Court may take on the Administrative Side."

3. Records reveal that the learned Additional Solicitor General appeared on behalf of the fourth respondent while the learned Advocate General assisted by the learned Additional Advocate General represented the respondent nos.2 to 10 and 12 after the writ petition was taken up suo motu, registered and numbered. Representation of parties through the learned Advocate General was subsequently corrected and the learned Advocate General represented respondent nos.5 to 10 and 12 as will appear from the order dated 30th April, 2019.

4. In terms of the order dated 29th April, 2019, the respondent no.7 (Secretary, Home Department, Government of West Bengal), the respondent no.8 (Director General of Police, State of West Bengal), the respondent no.9 (Commissioner of Police, Howrah Police Commissionerate), the respondent no.11 (Commissioner of Howrah Municipal Corporation) and the respondent no.12 [described as the Station House Officer (SHO), Howrah] were directed to file their respective personal affidavits. All the said affidavits were filed on 30th April, 2019.

5. On or about 29th April, 2019, Goutam Kumar Mookherjee, an advocate and the President of Howrah Bar Association at Howrah District and Sessions Judge's Court filed an application, being CAN 4696 of 2019 in the said writ petition with a prayer to intervene therein. In the said application, it was inter alia alleged that the police personnel entered the Court premises, ransacked the rooms and destroyed valuable books and articles thereat. It was also alleged that the police had wrongfully confined a lady member, namely, Tanushree Das and Subho Bhattacharya (later on identified as Subhodeep Bhattacharya) who were released after active intervention made by the learned District and Sessions Judge, Howrah. The said application was allowed by an order dated 1st May, 2019. It also appears from the order dated 1st May, 2019 that another application, being CAN 4728 of 2019 was also taken up with CAN 4696 of 2019. This application was, however, directed to stand deferred on that day. Record reveals that the said application, being CAN 4728 of 2019 was filed by Tanushree Das, the lady advocate who was said to have been detained by the police and released on active intervention of the District and Sessions Judge, Howrah. It further appears from the order dated 1st May, 2019 that the name of the Superintendent of Police, Howrah Police Commissionerate, being respondent no.10, was deleted from the array of parties.

6. The matter was taken up next on 8th May, 2019. On that day, two separate orders were passed. In the main writ petition, being WP 9313 (W) of 2019, the Bar Council of West Bengal, represented by its Chairman and Secretary, were impleaded as additional respondents. Records reveal that they have been added as respondent nos.13 and 14 in the writ petition. The other order was passed in CAN 4728 of 2019. The said application was disposed of by impleading Tanushree

Das as an added party respondent. Tanushree Das has been impleaded as respondent no.15 in the array of the respondents in the writ petition.

7. We find that though the intervention application filed by the President of Howrah Bar Association at Howrah District and Sessions Judge's Court was allowed on 1st May, 2019, however, the name of the said Bar Association has not been formally included in the array of parties to the writ petition. Since the name of the respondent no.10 has been deleted from the array of parties, we, for the convenience, include Howrah Bar Association at Howrah District and Sessions Judge's Court as respondent no.10 in the array of parties. This is done precisely for the reason that there are already respondent nos.13, 14 and 15 on record as stated hereinabove.

8. Pursuant to the leave granted by the order dated 1st May, 2019, Howrah Bar Association through Goutam Kumar Mookherjee on or about 7th May, 2019 filed a composite reply to the affidavits filed by the respondent nos.7, 8, 9, 11 and 12 on 30th April, 2019.

9. Thereafter the matter was mentioned before this Bench by the parties citing urgency as the Division Bench presided over by the Hon'ble the Chief Justice was not available. This Bench considering the urgency took up the matter on 15th May, 2019 and heard it at length till the hearing was concluded on 20th May, 2019.

10. Records further show that the Bar Association of Howrah on or about 8th May, 2019 sought impleadment of the following five individuals who are working at different levels in the State police as parties to the writ petition:-

- i) V.S.R. Anantanag, IPS, Deputy Commissioner of Police, South Zone-II;
- ii) Bhavna Gupta, IPS, Additional Deputy Commissioner of Police (South);
- iii) Golam Sarwar, WBPS, Assistant Commissioner of Police;
- iv) Abhijit Banerjee, Sub-Inspector, Howrah Police Station;
- v) Bipen Tamang, Sub-Inspector, Howrah Police Station.

11. By an order dated 10th May, 2019, the five proposed added respondents were directed to be served by the Registry of this Court. In this context, the relevant portion of the order dated 10th May, 2019, is set out hereunder:-

"This is an application seeking impleadment of five individuals who are working at different levels in the State Police. Their impleadment is sought for in the writ petition.

In response, learned Advocate General submits that the State will place an affidavit disclosing its response to this application. Let that be done by Monday i.e. 13.05.2019.

In the meantime, it is appropriate to issue notice to those five persons in their

personal capacity. This will enable them to place their response if they intend to do so independent of support given through the learned Advocate General and other government law officers."

Hence, Registry is directed to issue notice to those five proposed added respondents in CAN 4814 of 2019. Registry should effect hand service of this order on those five persons who are sought to be impleaded in the writ petition."

12. Records reveal that the four out of five proposed added respondents were served by the Registry. The fifth one could not be served. The Bar Association of Howrah, however, has served all the five proposed added respondents. Despite such service, neither of them placed their personal response on record nor represented themselves at the hearing, though such opportunity was adequately afforded to them. The State of West Bengal (respondent no.5) through the Director General of Police (respondent no.8) has filed an affidavit-in-opposition controverting the allegations made in CAN 4814 of 2019.

13. Since none of the five proposed added respondents have objected to their addition and prima facie on being found that these five police personnel were present at the spot, we find that they are necessary and proper parties to the writ petition. We, therefore, overrule the objection from the side of the State raised as against the said five police personnel being added as party respondents and add them as respondent nos.16, 17, 18, 19 and 20 in the writ petition.

14. The Registry is directed to show the said five police personnel in the array of respondents in this suo motu writ proceeding.

15. CAN 4814 of 2019 is accordingly disposed of.

16. At the time of hearing, considering the order dated 29th April, 2019 passed by the Division Bench presided over by the Hon'ble the Chief Justice, we confined ourselves with regard to the untoward incidents said to have occurred within the Howrah District Sadar Court complex and the same was made clear to the advocates representing the various parties. However, at the insistence of the parties, we had to take into account the entire day's events that occurred on 24th April, 2019 in and around Howrah District Sadar Court complex right from 10.00 a.m. approximately. We had to also look into the video footages relied upon by the learned Advocate General as also the photographs and video footages relied upon on behalf of the Howrah Bar Association. The parties in terms of the earlier orders of this Court had exchanged the photographs and video footages prior to commencement of the hearing before this Bench. We have considered the photographs and video footages subject to the same being proved as none of the parties challenged its authenticity.

17. The main allegations of Howrah Bar (respondent no.10) as we gathered in course of hearing are inter alia as follows:-

a) Miscreants said to be staff and employees of Howrah Municipal Corporation (in short "HMC") without any provocation entered the Howrah District Sadar Court

complex on 24th April, 2019 at around 11.30 a.m. and damaged about 15 to 20 sherestas of the advocates.

b) The advocates of Howrah Court were severally beaten up by the employees and staff of HMC outside as also inside the Court premises resulting in severe injuries to some of them.

c) The police, instead of taking steps against the employees and staff of HMC, by disproportionate use of force including severe lathi charge. The advocates were hit by lathis by the police when the advocates were actually inside the gate of the Court premises and not even on the road, thereby causing grave injuries to some of the advocates.

d) The police personnel entered the Court premises without being called for by the learned District Judge or any other judicial officer, without any provocation and resorted to severe lathi charge thereby causing damage not only to properties within the Court premises but also causing grave injury to some of the advocates.

e) The police personnel fired tear gas shell within the Court premises even though the advocates were running to save their lives and there was no assembly of advocates.

f) The police personnel took into custody and detained an advocate (Subhodeep Bhattacharya) from within the Court premises without any rhyme or reason.

g) A lady advocate was taken into custody near the gate of the Howrah District Sadar Court complex without any reason when she was leaving the Court premises and detained at the premises of Howrah Municipal Corporation where she was subjected to physical and mental torture by the police personnel including the civic volunteers who are only to assist police personnel.

18. Learned senior advocate appearing on behalf of the Bar Council of West Bengal while adopting the submissions made on behalf of the Howrah Bar Association submitted that the advocates in the State of West Bengal and, in particular, those at Howrah District Sadar Court complex are feeling insecured after the crude and barbaric attack on them by the police personnel. They require protection and this Court should protect them. He further submits that allowing the investigation of the incidents that have occurred at the precincts of the Howrah District Sadar Court complex on 24th April, 2019 by the police authority will be nothing but an appeal from Caesar to Caesar's wife and as such an independent authority like the Central Bureau of Investigation may be appointed for probing into the incidents that had occurred on 24th April, 2019. The police personnel who had resorted to such crude and barbaric attack on the advocates on 24th April, 2019, at the precincts of the Howrah District Sadar Court complex should be given exemplary punishment.

19. Learned advocate appearing on behalf of Tanushree Das (respondent no.15) while adopting the submissions made on behalf of the Howrah Bar Association

submitted that the police personnel involved in the lathi charge both outside and inside the Howrah District Sadar Court complex should be closed and disciplinary proceedings against them should be initiated immediately . He further submitted that the advocates who were assaulted and have suffered injuries should also be compensated.

20. The learned Advocate General while replying to the allegations made on behalf of the Howrah Bar admitted the entry of the employees and staff of HMC into the Court premises and did not also dispute the entry of police personnel inside the Court premises without being called for, either by the District Judge or any other judicial officer. He, however, tried to justify the entry of the police personnel inside the Court premises in order to retrieve the situation as the unruly advocates who had assembled in large number in front of the gate of the HMC opposite to gate no.2 of Howrah District Sadar Court complex had started brick-batting causing injury to the police personnel. He further submitted that the situation was so grave that the police personnel had no other alternative but to enter the Court premises. He also submitted that the whole day's incident should be considered to trace out the reason as to why the police personnel had to enter the Court premises. He further invited us to increase the ambit of enquiry by not restricting the same to the events that have occurred inside the Court premises. The learned Advocate General lastly took us through the intervention application, being CAN 4696 of 2019, to point out the inconsistencies therein as also the so-called change in the stand of the Howrah Bar.

21. As we were shown the pleadings of the Howrah Bar, we also noticed the inherent contradiction in the affidavits filed by respondent nos.7, 8, 9, 11 and 12. Although, the order dated 29th April, 2019, directed the respondent nos.7, 8, 9, 10, 11 and 12 to file separate personal affidavits touching all aspects of the untoward incidents which are stated to have occurred in the premises of the Courts at Howrah on 24th April, 2019, the affidavits of the respondent nos.7, 8 and 9 - while admitting the entry of the employees and staff of HMC into the Court premises on 24th April, 2019 - however, do not even utter a whisper that the police personnel had, in fact, entered the Court premises in the evening of 24th April, 2019. The affidavits only suggests that no police personnel entered the Court premises on 24th April, 2019. The entry of police personnel inside the Court premises is, however, prima facie established from the photographs and video footage relied upon by Howrah Bar Association as also by the State during the course of hearing of the matter. This fact as stated hereinabove is also not disputed by the learned Advocate General in course of hearing of the matter. The photographs and video footages also prima facie establish lathi charge on the advocates within the Court premises.

22. The affidavit of the respondent no.12 admits the entry of a group of casual staff of HMC into the Howrah District Sadar Court complex as also the entry of police officers and force into the Court premises. The relevant portions of the

affidavit of the respondent no.12 are set out hereunder:-

"5. After receiving this information of assault of Sri Sujan Bhakta, a number of Ld. Advocates practicing in Howrah Court entered the office premises of Howrah Municipal Corporation and allegedly assaulted the security guards of Howrah Municipal Corporation causing injury to some of the security guards of Howrah Municipal Corporation. The injured security guards were taken to Howrah General Hospital for treatment. It further revealed that some Ld. Advocates practicing in Howrah Court were also injured in this incident.

After that, a group of casual staff of Howrah Municipal Corporation entered the Howrah Court premises and allegedly caused damage to the furniture and fixtures of the serestas of Ld. Advocates and returned to Howrah Municipal Corporation premises. Over this a good number of Ld. Advocates assembled in front of the main gate of Howrah Municipal Corporation and started brick batting among themselves.

11. Meanwhile, information came that one Debashis Panja, a staff of Howrah Municipal Corporation was taken away and captivated inside the Court premises by the Ld. Advocates present there. While Police went to rescue him, watcher Constable 2348, Monoj Roy of Special Branch Howrah was also wrongfully confined by the Ld. Advocates and both were assaulted by the Ld. Advocates. While situation got worse other police officers and force entered the Court premises to rescue both when the Ld. Advocates started pelting bottles, wooden stools etc. The situation went bad to worse and finding no alternative, to save the lives of Police, common people present there from different offices like Post Office, Registry Office, etc., police resorted to firing of 02 rounds of tear gas shell, the first one on M.G. Road in front of a Post Office and the second one near the gate of Court premises beside the Rishi Bankim Setu and mild lathi charge was also resorted to observing all the formalities. Thereafter the entire situation came under control after a lapse of approximately 05 hours."

23. The affidavits of respondent nos.7, 8 and 9 only speak of the employees and staff of Howrah Municipal Corporation (hereinafter referred to as "HMC") to have entered the Howrah District Sadar Court complex and caused mischief. The relevant portions in this regard from the affidavits of the respondent nos.7, 8 and 9 are serially set out hereunder:-

"Affidavit of Respondent no.7

7. After about 10 minutes, employees of HMC assembled there, entered the Court premises and started beating the Advocates inside Court premises. The police arrived soon thereafter and tried to control the situation.

Affidavit of Respondent no.8

Within a short time, employees of HMC gathered, entered the Court premises and caused mischief with the records of the Advocates inside Court premises. This was followed by brick-batting by both sides. This caused injury to some

persons including Smt. Sarmistha Dutta of HMC. Police arrived on the spot and controlled the situation.

Affidavit of Respondent no.9

7. After the above-mentioned incident, a group reportedly casual staff of Howrah Municipal Corporation entered into the Howrah Court premises and caused mischief and returned to Howrah Municipal Corporation. After this incident a group of Ld. Advocates numbering near about hundred, assembled in front of the Main Gate of Howrah Municipal Corporation and a hot altercation followed by brick-batting from both sides started."

24. The confidential report of the Commissioner of Police, Howrah Police Commissionerate (respondent no.9) annexed to the affidavit of the respondent no.8 (Director General of Police, State of West Bengal) does not speak of the entry of police officers and forces into the Howrah District Sadar Court complex in the evening of 24th April, 2019. In fact, this confidential report of the Commissioner of Police, Howrah Police Commissionerate is relied upon by the Chief Secretary, Government of West Bengal (respondent no.6) in his report forwarded to the Hon'ble the Chief Justice, which was taken on record as will appear from the order dated 25th April, 2019. It is, therefore, evident from the affidavits of respondent nos.7, 8 and 9 that the entry of police officers and forces into the Howrah District Sadar Court complex have been suppressed though they were obliged to divulge the same in terms of the order dated 29th April, 2019 as also otherwise. This act of three senior officers of the State cannot be appreciated. It definitely amounts to an attempt to mislead this Court.

25. It further appears from the affidavit of respondent no.12 that on 24th April, 2019, at about 10.55 hours, he received an anonymous call in police station land line number that a chaotic situation was going on in front of Howrah Municipal Corporation main gate at M.G. Road over the issue of parking of vehicles. He along with S.I. Avijit Banerjee, S.I. Samrat Mitra, S.I. Kanchan Kr. Das, S.I. Bipen Tamang with Constable Janardan Uppadhyay, Constable Anup Kumar Ghosh, Constable Surajit Debnath, Constable Lal Bahadur Kuwar, all of Howrah Police Station left for the spot by recording the same in Howrah P.S. GDE No.2228 dated 24th April, 2019 and reached there.

26. It is an undisputed fact that Howrah Police Station is situated within hundred metres from the Howrah Municipal Corporation building and the Howrah District Sadar Court complex. It will, therefore, take a few minutes to reach the spot where a chaotic situation was reported to the respondent no.12.

27. It further appears from the said affidavit of respondent no.12 that at about 11.15 hours, the Assistant Commissioner of Police (South Division), Howrah arrived at the spot. The said affidavit also reveals that at around 11.55 hours, the Deputy Commissioner of Police (South Division), Howrah, with the Officer-in-Charge, Shibpur Police Station, along with other officers and force and an additional contingent of RAF arrived at the spot. The said affidavit also states

that the Commissioner of Police, Howrah Police Commissionerate, reached the spot within a short while from 11.55 hours. The affidavit of respondent no.9 corroborates these statements.

28. The affidavits of respondent no.9 and 12 clearly demonstrate commission of cognizable offence prior to their reaching the spot. The affidavit of respondent no.12 also demonstrates commission of cognizable offence in and around Howrah District Sadar Court complex and HMC building during his presence at the spot. All the police officers who had reached the spot as aforesaid, therefore, were obliged to prevent the commission of cognizable offence. The said police officers neither took any step to identify the employees and staff of HMC who admittedly entered the Court premises and said to have caused damages to the property and records inside the Court rooms nor did any of the said police officer interpose or make any arrest on coming to know of such cognizable offence said to have been committed by the employees and staff of HMC or cognizable offence having been committed in their presence. The sequence of events to which the learned Advocate General made us to look into, prima facie establishes that the police officers had sufficient time to control the situation said to be prevailing around the Court premises at Howrah and HMC building but they failed to take any step to control the same.

29. There are also sharp contradiction between the statements made in the affidavit of respondent nos.9 and 12 respectively with regard to several issues - one of which is the incident said to have occurred in respect of one Debashis Panja, an employee of HMC. In this context, paragraph 18 of the affidavit of respondent no.9 and paragraph 11 of the affidavit of the respondent no.12 are set out hereinbelow one after the other:-

"Paragraph 18 of the affidavit of the respondent no.9

18. Suddenly, information came that one Sri Debashish Panja, an employee of Howrah Municipal Corporation, was confined by the agitating Ld. Advocates near the gate of the Howrah Court compound just opposite to the corner gate of Howrah Municipal Corporation. Watcher Constable 2348 Manoj Rai of Howrah city Police, who went to rescue the said person, was also detained and assaulted. In order to recover the said persons, to prevent loss of life and damage to public property and to disperse the agitators, announcement was made declaring the assembly as unlawful with an order to disperse immediately, failing which, tear gas shells were charged, one on MG Road opposite to Head Post Office Howrah and another near the entry gate of court compound adjacent Bankim Setu.

Paragraph 11 of the affidavit of the respondent no.12

11. Meanwhile, information came that one Debashis Panja, a staff of Howrah Municipal Corporation was taken away and captivated inside the Court premises by the Ld. Advocates present there. While Police went to rescue him, watcher Constable 2348, Monoj Roy of Special Branch Howrah was also wrongfully confined by the Ld. Advocates and both were assaulted by the Ld. Advocates.

While situation got worse other police officers and force entered the Court premises to rescue both when the Ld. Advocates started pelting bottles, wooden stools etc. The situation went bad to worse and finding no alternative, to save the lives of Police, common people present there from different offices like Post Office, Registry Office, etc., police resorted to firing of 02 rounds of tear gas shell, the first one on M. G. Road in front of a Post Office and the second one near the gate of Court premises beside the Rishi Bankim Setu and mild lathi charge was also resorted to observing all the formalities. Thereafter the entire situation came under control after a lapse of approximately 05 hours."

30. On perusal of paragraph 18 of the affidavit of the respondent no.9, it will appear that Debashis Panja was confined by the agitating advocates near the gate of the Howrah District Sadar Court complex, just opposite to the corner gate of Howrah Municipal Corporation. Watcher Constable Manoj Rai of Howrah City Police, who went to rescue the said person, was also detained and assaulted. On the other hand, the respondent no.12 states that Dehashis Panja was taken away and captivated inside the Court premises by the advocates present there. These contradictory statements are on oath by the highest police officer of the Commissionerate and by the Officer-in-Charge of the local police station.

31. The affidavit of respondent no.9 at page 23 discloses a First Information Report of Howrah Police Station bearing no.163/19 dated 24th April, 2019. The said FIR is said to have been lodged by Debasish Panja at about 18.25 hours. The hand-written complaint of Debasish Panja appears at page 24 of the said affidavit. The same letter written in Bengali which appears at page 24 of the affidavit of respondent no.9 also appears at page 40 of the affidavit of respondent no.11 which is said to have been received by the Howrah Police Station at 20.15 hours on 24th April, 2019. If the said letter had been received at 20.15 hours, how could an FIR be lodged at 18.25 hours as appearing at page 23 of the affidavit of respondent no.9.

32. In addition to what has been stated above, we find a suo motu FIR said to have been lodged by the respondent no.12 on 24th April, 2019 at about 18.25 hours, which has been registered as FIR No.162/19 dated 24th April, 2019 of Howrah Police Station.

33. The said FIR speaks of entry of police officers and forces into the Howrah District Sadar Court complex, but neither of the affidavits of the respondent nos. 7, 8 and 9, which are filed subsequent to filing of the said FIR, mentions about the entry of police officers and forces into the Howrah District Sadar Court complex.

34. Apart from the suppression and contradiction as mentioned hereinabove, there are several other contradictions. This relates to the number of complaints registered as FIRs on 24th April, 2019 at Howrah Police Station. In paragraph 22 of the affidavit of the respondent no.9 it is stated that about 11 (eleven) FIRs have been registered on 24th April, 2019, 25th April, 2019 and on 26th April,

2019. The numbers of the FIRs lodged on 24th April, 2019 are 159/19, 160/19, 161/19, 162/19, 163/19, 164/19, 165/19, on 25th April, 2019, are 166/19 and 167/19, and those on 26th April, 2019 are 168/19 and 169/19. However, in the confidential report filed by the Commissioner of Police, Howrah Police Commissionerate (respondent no.9) and annexed to the affidavit of the respondent no.8, the FIR said to have been filed by the Officer-in-Charge of Howrah Police Station is numbered as 142/19, whereas the FIR said to have been lodged by Guru Charan Chatterjee (165/19) is shown as 143/19 and that by Ashis Kumar Dinda (164/19) is mentioned as 144/19.

35. Despite all these contradictions, the admitted fact remains that employees and staff of HMC had entered the Howrah District Sadar Court complex. The affidavits of respondent nos.7, 8, 9 and 12 state that HMC employees and staff caused mischief to the property and records of the advocates and had also beaten them up. The suo motu FIR lodged by the respondent no.12 though speaks of the same, but no FIR was lodged for such offence against the employees and staff of HMC. On the contrary, the said FIR, being FIR no.162/19, at the instance of the respondent no.12, has been registered against "irate and rioter advocates of Howrah Court". Respondent no.12 did not feel the necessity of registering an FIR against the employees and staff of HMC when, admittedly, they had entered the Howrah District Sadar Court complex and not only caused mischief but also had beaten up the advocates.

36. The affidavit of respondent no.11 (Commissioner, Howrah Municipal Corporation) again contradicts the affidavits filed by respondent nos.7, 8, 9 and 12. Nowhere in the affidavit of the Commissioner of HMC, it has been mentioned that the advocates either entered the HMC premises or ransacked the same or had caused any damage thereat. In the affidavit of the respondent no.12, it is categorically mentioned that the advocates entered the HMC premises and ransacked the same. The other affidavits also mention about entry of some of the advocates. This apparent contradiction also gives rise to a doubt as to the conduct of the respondent nos.9 and 12 who were personally present at the spot according to their respective affidavits. That apart and in any event, the chain of events as revealed from the affidavits of respondent nos.7, 8, 9, 11 and 12 goes to show that the police personnel failed to act promptly and with due diligence in order to take control over the situation. On the contrary, it prima facie appears that they allowed the situation to drift out of their control by remaining inactive and showing undue favour to the employees and staff of HMC and being harsh on the advocates of the Howrah Bar Association.

37. After considering the affidavits of respondent nos.7, 8, 9, 11 and 12, we are at a loss as to which of the Government officials we should believe and whom not to when such apparent contradictory statements appear in their affidavits in respect of the selfsame incident. This gives rise to a reasonable doubt as to their efficiency and conduct. Considering the fact that they were answering to a suo motu writ petition and considering the seriousness of the issue, we feel that the

respondent nos.9 and 12, to say the least, were reckless in their affidavits. The respondent nos.7 and 8 appear to have derived knowledge from them and as such the respondent nos.9 and 12 have misled their superior officers apart from misleading the Court.

38. The sovereign preserve of a sacred institution under our Constitution and one of the three pillars of democracy - the judiciary - witnessed helplessly, violation of its sanctity, dignity and majesty, by an unprecedented, crude and barbaric action of some utterly insensitive members of the police force of the State of West Bengal, who, by such action, violated its sacred space and preserve without obtaining any sanction or authority from the district Judgeship of Howrah or the High Court for the purpose of entering the precincts of the Howrah District Sadar Court complex. This fact is corroborated by the suo motu FIR said to have been lodged by respondent no.12 as also from his affidavit. This fact is also prima facie proved from the photographs and video footage since there is no allegation of either of such photographs or video footage to be morphed. The learned Advocate General also admits the entry of police personnel into the Howrah District Sadar Court complex on 24th April, 2019, but tries to defend such action on behalf of the police personnel by submitting that the situation compelled them to enter the Court premises. We may observe at this stage that the situation prevailing at the spot/ground level was not remotely akin to a situation where the police personnel are constrained to enter the precincts of the Court for emergent reasons such as trying to thwart an immediate terror attack.

39. This leads us to a situation where the following facts are required to be ascertained:-

- i) Was the entry of the police personnel into the Howrah District Sadar Court complex on their own without being called for by the learned District and Sessions Judge or any other judicial officer necessary and justified in the facts and circumstances of the instant case?
- ii) Did the police personnel make use of disproportionate force as against the advocates within the precincts of the Howrah District Sadar Court complex?
- iii) Were the police authorities justified in taking into custody and detaining the advocates, namely, Tanushree Das and Subhodeep Bhattacharya?
- iv) Are the FIRs said to have been lodged on 24th April, 2019, 25th April, 2019 and 26th April, 2019 depict the correct picture of the incidents alleged to have occurred?
- v) Who amongst the employees and staff of HMC entered the Howrah District Sadar Court complex on 24th April, 2019, as stated in the affidavits of respondent nos.7, 8, 9 and 12?

40. The mechanism to ascertain the facts as aforesaid is not available to us while adjudicating an application under Article 226 of the Constitution of India though the same may have been initiated suo motu at the instance of the Court. We,

therefore, appoint a one-member Judicial Enquiry Commission comprising of Hon'ble Justice Kalyan Jyoti Sengupta (Retired), the former Chief Justice of Andhra Pradesh High Court and a former Judge of this Court, to enquire upon and file a report before the appropriate Bench within a period of three months from date on the following issues:-

i) Was the entry of the police personnel into the Howrah District Sadar Court complex on their own without being called for by the learned District and Sessions Judge or any other judicial officer necessary and justified in the facts and circumstances of the instant case?

ii) Who were the police personnel who had actually entered into the Howrah District Sadar Court complex on 24th April, 2019 at around 5.00 p.m. and resorted to lathi charge and fired tear gas shell(s)?

iii) If the entry to the Howrah District Sadar Court complex by the police personnel at around 5.00 p.m. was not necessary and justified, what measures are recommended against the erring police personnel who had actually entered the Howrah District Sadar Court complex on 24th April, 2019 at around 5.00 p.m.?

iv) Did the police personnel make use of disproportionate force as against the advocates within the precincts of the Howrah District Sadar Court complex? If yes, what are the measures recommended against such erring police personnel?

v) Were the police justified in taking into custody and detaining the advocates, namely, Tanushree Das and Subhodeep Bhattacharya? If not, what are the steps recommended to be taken against the erring police personnel?

vi) Are the FIRs said to have been lodged on 24th April, 2019, 25th April, 2019 and 26th April, 2019 depict the correct picture of the incidents alleged to have occurred? If yes, to recommend steps with regard thereto in accordance with law.

vii) Who amongst the employees and staff of HMC entered the Howrah District Sadar Court complex on 24th April, 2019 as stated in the affidavits of respondent nos.7, 8, 9 and 12? What is the extent of damages caused by them? Who are the advocates beaten up by them? What steps are recommended to be taken against such employees and staff of HMC?

41. The one member Judicial Commission shall have the powers of a civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents.

The Commission is at liberty to apply to this Court for any other assistance as may be required for discharge of its function.

All parties should render full co-operation with the said Judicial Enquiry Commission. State of West Bengal shall make all necessary arrangements as may be required by the said Judicial Commission to discharge its function pursuant to this order.

42. During the pendency of the judicial enquiry, the investigation in connection with the FIRs already lodged on 24th April, 2019, 25th April, 2019 and 26th April, 2019, should not be proceeded with. Any further investigation shall be conducted only after completion of the judicial enquiry and upon considering the findings in the report of such judicial enquiry.

43. In view of the allegations made against respondent nos.9(Vishal Garg), 12(Rajarshi Dutta), 16(V. S. R. Anantanag), 17 (Bhavna Gupta), 18(Golam Sarwar), 19(Abhijit Banerjee) and 20(Bipen Tamang) and considering their position - including the impact they may have on the investigation as to the incidents that occurred on 24th April, 2019 in and around the Howrah District Sadar Court complex - we direct the appropriate authority empowered to take necessary steps to issue appropriate direction immediately so that the said respondent nos.9, 12, 16 to 20 are not assigned any official work in the district of Howrah or any other work that may likely to influence the enquiry by the Judicial Commission till the completion of the enquiry in terms of this order.

44. The respondent no.5 (the State of West Bengal) is directed to ensure that in future, no police personnel - unless specifically called for, either by the High Court or the concerned District Court - shall enter into any Court premises within West Bengal except under extreme emergency situation that is likely to cause imminent danger to the sovereign preserve of the judiciary as an indispensable democratic institution. It is also made clear that any entry to the Court premises in such emergency situation should be immediately intimated to the High Court and/or the concerned District Court.

45. The writ petition is made returnable on 26th August, 2019.

In re: WP 150 of 2018

Considering the averments made in the instant writ petition, we find that the same is not required to be tagged with WP 9313 (W) of 2019 and, as such, the same is delinked and the file is returned back to the department.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties.