WBCHCA0573582026

Item No.1/SL
Ct. No.8
PG

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA(P) 507 of 2026

Tapas Kumar Dey
Versus

The State of West Bengal & Ors.

Appearance:

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Suman Sengupta
Mr. Anit Kr. Das
Mr. Ashish Dutta
Mr. Zoaib Rauf
Mr. Rahul Kr. Singh ……...Advocates for the Petitioner

Mr. Billwadal Bhattacharyya, Ld. AAG
Mr. D.N. Ray, Ld. GP
Mr. Anindya Basu
Mr. Pratip Mukherjee
Mr. Indradeep Pal
Mr. Bikash Kumar Sriwastav …….Advocates for the State

CORAM: RAVINDRA VITHALRAO GHUGE,
CHIEF JUSTICE
&
MD. SHABBAR RASHIDI, J.
Date: October 20, 2026

Order (Per Court)

1. This Petition, styled as a Public Interest Litigation Petition, has been filed in the Court today. This Court (Coram: Ravindra Vithalrao Ghuge, Chief Justice and Md. Shabbar Rashidi, J.) is holding Court sitting as a Vacation Bench. Since the learned Senior Advocate Shri Bandyopadhyay made a request that the matter is urgent, this case is taken up on the Board today by preparing a supplementary cause list dated 20.10.2026.

2. The learned Senior Counsel for the Petitioner has drawn our attention to a tragic stampede that occurred in Chorbagan Sarbojonin Durga Puja Pandal, on 17/10/2026, resulting in the death of 19 persons and injuring about 25 persons. He submits that a retired Judge may be entrusted with the task of heading a Commission to investigate into the alleged critical failures, which have been narrated in the Memo of the Petition, more particularly, below paragraph 6, which reads as under:

> *"6. It is stated that the said tragedy was not an act of God but a direct consequence of gross negligence, mismanagement, and a blatant disregard for public safety by the Respondents. Eyewitnesses and initial reports point to several critical failures which are categorised as follows:*

a. The entry and exit gates of the pandal were dangerously narrow and wholly inadequate to handle the massive and forseeable crowd.

b. There was a conspicuous absence of adequate police personnel to regulate the flow of the crowd and implement orderly queue management.

c. The area was poorly lit, which contributed to the panic and confusion when the rush began.

d. A wrong and irresponsible announcement made over the microphone by the organisers triggered a sudden surge in the crowd, leading directly to the stampede.

e. There was a complete lack of an emergency response plan, with no ambulances or medical teams readily available at the site to provide immediate aid to the victims.

3. Shri Bandyopadhyay has seriously canvassed that a tragic and preventable loss of life in the stampede at Chorbagan Sarbojonin Durga Puja Pandal on 17.10.2026. It is specifically averred in the Memo of the Petition that the Petitioner is not seeking any relief against any private individual or any of the newspapers, who have been arrayed as Respondents at Serial Nos. 9 to 12. It is averred in the Petition that the tragedy could have been prevented and as the stampede has resulted in the death of 19 individuals, including a 7 year old child and has left about 25 persons with serious injuries, an inquiry needs to be conducted in the said incident.

4. The learned AAG, the learned Government Pleader and the learned Senior State Government Counsel, bring it to our notice that the State

Government has already sought the assistance of the Chief Justice of the Calcutta High Court, vide letter dated 18/10/2026, under the signature of the Chief Secretary, for sparing a serving Judge to head the enquiry commission.

5. The Registry of this Court, on instructions of the Chief Justice, has placed the said letter dated 18/10/2026 (2 pages) before us, wherein the details of the unfortunate incident of stampede have been narrated. An annexure (2 pages) to the above stated communication contains proposed Terms of Reference for Inquiry into the Chorbagan Stampede dated 17.10.2026. We have perused the Terms of Reference that have been proposed by the State Government before the Office of the Chief Justice. Suffice it to state that the State Government has already declared its decision to appoint an Inquiry Commission to inquire into the said incident dated 17.10.2026.

6. The learned AAG and the Government Pleader submits that, now this Petition need not be dealt with. It is for the Chief Justice to spare a serving Judge of the Court to head the Inquiry Committee, which the Government would be constituting in its capacity of being the 'Appropriate Government' under Section 3(1)(b) and sub-sections under section 3 of the Commissions of

Inquiry Act, 1952. The State Government would then invoke its powers under the Commissions of Inquiry Act, 1952 and constitute the Committee.

7. We have perused the judgment of the Hon'ble Supreme Court in ***T. Fenn Walter & Ors. vs. Union of India & Ors., (2002) 6 SCC 184***, more particularly, the guidelines culled out by the Hon'ble Supreme Court below paragraphs 14, 15 and 16, which read as under:

> *"14. Quite often sitting Judges are appointed as Inquiry Commissions. Generally it may not create any difficulty, if the inquiry itself can be conducted without prejudice to other judicial work as a Judge of the superior court. However, the appointment of Judges to head or chair a Commission of Inquiry or to perform other non-Judicial work would create unnecessary burden on the Judges and it would affect the administration of justice. The work of these Commissions takes considerable time and there are several instances where the work of the Commission continued for years. If a sitting Judge is appointed, considerable time is lost and the Judge would not be in a position to attend to his regular judicial work. In view of the mounting arrears of cases in superior courts, it would be difficult to lend services of a Judge for such commission work. Moreover, the report of the Commission of Inquiry is often stated to have only recommendatory value and the opinions expressed therein are not binding on the Government. Quite often the reports of the Commission are ignored and no follow-up actions are being taken by the Government. In some matters, when political issues are also involved, even impartiality and objectivity of the Court may sometimes be questioned due to some extraneous and oblique motives. The public image and prestige of the Court as guardian of the Constitution and rule of law has to be maintained. It is desirable that the Judges are not subjected to unwanted criticism on account of appointment as Inquiry*

Commission. The image and the authority of the Court, which is of utmost importance, has to be upheld. Justice Harlan F. Stone in a letter as far back as in 1953 wrote: "It has been a long tradition of our Court that its members do not serve on committees or perform other services not having a direct relationship to the work of the Court." [Harvard Law Review (Vol. 87, 1953-54)] Keeping in view all these aspects, the appointment of a sitting Judge as a Commission of Inquiry has to be made only on rare occasions if it becomes necessary for the paramount national interest of the country.

15. When a sitting Judge is appointed to another post, which is whole time and if the decision taken in that capacity is subject to Judicial review, it may not be in the best interests of the independence of the judiciary. Sometimes, the additional post held by the Judge may not be of equivalent status or may be under different situations, which may even spell out a master and servant relationship between the Judge and the appointing authority. Even though this may not create any conflict of duty or interest, in these days of multifarious litigation, it is always desirable for the Judge of the superior judiciary to keep away from areas of controversy so that the public confidence in our system is not hampered in any way.

16. Having regard to various constitutional issues raised by counsel on either side we are inclined to formulate some broad guidelines as to the manner in which the appointment of a sitting Judge of a High Court to a Commission should be dealt with:
(1) Appointment of a sitting Judge to the following offices may not be objectionable:
(a) As a Commission of Inquiry under the Commissions of Inquiry Act.
(b) Judicial office which is of such a high character and where it has to be filled up by a sitting Judge to fulfil the requirement of law e.g. under Article 262 of the Constitution of India which provides for adjudication of any dispute with respect to the use, distribution or control of water or any inter-State river or river valley, read with the Inter-State Water Disputes Act, 1956.

(c) Where expertise and experience of a sitting Judge is required to discharge the functions, a sitting Judge may be appointed, for example, as a Member of the Finance Commission or Law Commission.

(2) Appointment of a sitting Judge to a Tribunal is not desirable where the adjudicating Members are composed of other Members who are not Judges or qualified to be appointed as Judges, such as bureaucrats, revenue officials etc.

(3) So also, appointment of a sitting Judge to a Judicial Tribunal is not desirable where the statute or the rules and regulations framed therein contemplate provisions for removal from such office or other disciplinary action by any authority.

(4) When a sitting Judge is appointed to a post or Tribunal, he shall be amenable to the disciplinary jurisdiction only in the manner provided for in Article 124(4) of the Constitution of India if he is al Judge of the Supreme Court or in the manner provided for in proviso (b) to Article 217(1) read with Article 124(4) of the Constitution of India if he is a Judge of a High Court.

(5) Where the post may not be a wholetime post but the nature of duties are such that his order as a Tribunal or Commission would be subjected to the supervisory jurisdiction of the High Court under Articles 226. 227. a sittina Judae of the High Court mav not be appointed to such post, but if the sitting Judge concerned has only a short period to retire from service, he may be appointed, but after accepting the full-time post, he shall not sit as a Judge and discharge duties and functions (both judicial and administrative) as a sitting Judge of High Court, even though he may not demit office consequent on his appointment to a full-time post.

(6) When the Chief Justice of a High Court is consulted for appointment of a sitting Judge as Member, Chairman, Vice-Chairman or President of any Court, Commission or Tribunal and it is a whole time post, the Chief Justice shall bear in mind the relevant circumstances and shall not compromise the dignity of the office of the sitting Judge and shall strive to preserve the independence of Judiciary.

(7) When a sitting Judge who has only a short period to retire from service is appointed to a post, he shall express his

> *willingness to relinquish the remaining tenure as a Judge and then only his service shall be made available for such post.)"*

8. We are aware that the sanctioned strength of Judges of this High Court is 72 and presently, this Court is functioning with the strength of 50 Judges. One Hon'ble Judge of this Court Smt. Justice Shampa Dutt (Paul) would be demitting office on 27/10/2026. Another Judge of this Court Mr. Justice Apurba Sinha Ray would be demitting office on 25th November, 2026. This Court would be functioning with 48 Judges.

9. Whether to spare a serving Judge of this Court so as to be appointed as a Chairperson of the Inquiry Commission, is for the Chief Justice to decide, on the Administrative side. If the Chief Justice does not spare a serving Judge to head the Inquiry Commission, it would be for the State Government to act in terms of the provisions of the Commission of Inquiries Act, 1952 and constitute a Commission for investigating into the unfortunate stampede dated 17.10.2026, by appointing a retired Judge of this Court, strictly in accordance with the law applicable.

10. The learned Senior Advocate Shri Bandyopadhyay has expressed his views about certain factors to be included in the Terms of Reference, like acts and omissions on the part of the organisers, authorities, lapses or negligence or dereliction of duties or failure, on the part of the Police Authorities, Municipal Corporation Authorities, Public Works Department etc.

11. The learned Additional Advocate General for the State of West Bengal, Shri Bhattacharya, along with the learned Government Pleader, submit that the proposed Terms of Reference may be reproduced in the order.

12. In view of their statement, the proposed Terms of Reference for Inquiry into the Chorbagan Stampede dated 17.10.2026, as proposed by the Government of West Bengal, are re-produced hereunder:

> *"PROPOSED TERMS OF REFERENCE FOR INQUIRY INTO THE CHORBAGAN STAMPEDE DATED 17.10.2026*
>
> *The inquiry may consider the following matters:*
>
> *1. To ascertain the exact sequence of events leading to the stampede at Chorbagan Sarbojanin Durga Puja Pandal, Kolkata, on 17 October 2026, including the time, place and circumstances of its occurrence.*
>
> *2. To determine the causes and contributing factors, including overcrowding, adverse weather conditions, sudden opening or closure of gates, rumours, electrical failure, inadequate entry and*

exit arrangements, structural deficiencies or failure of crowd-control measures.

3. To ascertain the time, location and manner in which the initial crowd surge occurred and the circumstances in which it developed into a stampede.

4. To assess the number of persons, present at the venue, the volume and direction of crowd movement, entry and exit flows, and whether the gathering exceeded the reasonably assessed safe capacity of the premises.

5. To examine the prevailing weather conditions, including relevant meteorological reports and rainfall or thunderstorm bulletins, and their possible effect on crowd movement, visibility, surface conditions and panic.

6. To examine whether any public announcements, whistles, rumours, sudden movements or other events triggered or aggravated the crowd surge.

7. To inspect and assess the condition and adequacy of passages, barricades, stairways, gates, emergency exits and other structural and access arrangements at the pandal.

8. To examine the preparedness, response time and conduct of the organisers, private security personnel, volunteers, police, ambulance services, hospitals, fire services and civic authorities.

9. To examine relevant CCTV footage, mobile video recordings, forensic findings, call records, police station and control-room logs, medical records and physical evidence relating to the incident.

10. To examine whether permissions were granted in accordance with applicable rules and whether adequate crowd-management plans, disaster-management plans, evacuation arrangements and police bandobast plans had been prepared and implemented in

accordance with applicable laws, judicial directions and relevant guidelines, including those of the National Disaster Management Authority.

11. To ascertain whether any lapse, negligence, dereliction of duty or failure of coordination is attributable to the organisers, police authorities, Kolkata Municipal Corporation, Public Works Department, Fire and Emergency Services, CESC limited or any other agency or individual, and to recommend appropriate action in accordance with law wherever warranted.

12. To recommend measures for regulating large Durga Puja gatherings in congested areas, particularly the narrow lanes of North Kolkata, including scientifically assessed footfall limits, adequate entry and exit routes, CCTV surveillance, public-address systems, emergency evacuation plans and effective inter-agency coordination.

13. To examine the assistance, compensation and rehabilitation extended or required to be extended to the victims and their families, including the adequacy of any ex-gratia assistance announced.

14. To examine any other matter incidental or ancillary to the incident that may be considered necessary for determining its causes, fixing responsibility in accordance with law and preventing the recurrence of similar incidents.

Note: The foregoing Terms of Reference are proposed for consideration and may be modified as deemed fit and proper by your Lordship."

13. The learned Senior Advocate Shri Bandyopadhyay is satisfied with the above terms and the intention expressed by the State Government, which may nominate a retired Judge of the jurisdictional High Court (High Court at Calcutta)

as the Chairperson of the Commission, if the Chief Justice does not spare a sitting Judge on the Commission.

14. We make it clear that considering the provisions of the Commission of Inquiries Act, the High Court would not be monitoring the inquiry. It would be for the State Government to deal with the report that the Commission would tender to the State Government.

15. Learned Senior Advocate Shri Bandyopadhyay submits that this Petition may be kept pending. We were inclined to dispose it of.

16. In view of the above request, this Petition is kept pending. It is, however, made clear that in the event Shri Bandyopadhyay desires to address this Court, after the conclusion of the Enquiry by the Commission and submission of the report to the Government, all contentions of all the parties, will be kept open, including the aspect of maintainability of this petition.

(MD. SHABBAR RASHIDI, J.)

(RAVINDRA V. GHUGE)
CHIEF JUSTICE