

**Court No. - 42**

**Case :-** CRIMINAL WRIT-PUBLIC INTEREST LITIGATION  
No. - 6 of 2024

**Petitioner :-** Association Of Protection Of Civil Rights

**Respondent :-** State Of Uttar Pradesh And 9 Others

**Counsel for Petitioner :-** Pawan Kumar Yadav

**Counsel for Respondent :-** G.A.

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard Sri S.F.A. Naqvi, learned Senior Counsel assisted by Sri Pawan Kumar Yadav, learned counsel for the petitioner and Sri Manish Goyal and Sri A.K. Sand, learned Additional Advocate General for the State.

2. This public interest litigation has been instituted in respect of an incident of a violence occurred in Sambhal on 24.11.2024, inter-alia with the following relief:-

*"i) Issue a writ, order or direction in the nature of mandamus directing the respondents in terms of following prayers:-*

*a. That this Hon'ble Court may graciously be pleased to pass an appropriate writ order or direction, directing the respondents to submit a status report on the number of deaths along with the cause of death in the aftermath of the violence that ensued on 24.11.2024 in Sambhal and in any other areas where the violence spread.*

*b. It is further be pleased to call for a status report disclosing the names of persons detained and arrested by the police in relation to the violence since 24.11.2024 along with the FIR/ status under which they have been detained/arrested.*

*c. It is further prayed that this Hon'ble Court may also directing the local police to upload the FIR's registered by them on its website according to the procedure and make the same available immediately to accused and victims alike.*

*d. It is further be prayed to directing the local police to listing the names of*

*arrested persons in terms of Section 37 of The Bhartiya Nagrik Suraksha Sanhita, 2023 outside the district Police Control Room/ Police Station, to be updated on a case-by-case basis and also directed that the necessary information be sent by the police to the Executive Magistrate in terms of the mandate of Section 194(1) BNSS and direct the respondent No.1 to provide compensation to the families of the victims who lost their lives in the police firing/police brutality under Section 396 BNSS.*

*e. It is further be pleased to direct that all complaints alleging acts, offences and atrocities by members of the police or state functionaries in relation to the widespread violence in Sambhal, Uttar Pradesh and any adjoining areas be registered forthwith and investigated by an independent investigating agency/team as directed by this Hon'ble Court and the same be monitored by this Hon'ble Court and also direct the respondents to file a status report what was the ground prompted the police officers to open fire on 24.11.2024 on the public which led to the deaths of five people.*

*f. It is further be pleased to direct the respondents to file a status report along with supporting material indicating the protocol followed and measures that were undertaken before opening fire on a crowd. In particular and without prejudice to the generality of the foregoing, direct an investigation by an independent agency under the supervision of this Hon'ble Court or any other competent agency against the police officers involved in the brutal killing of five people namely Naeem Gazi, Mohammad Bilal, Rumaan Khan, Mohd. Ayan and Mohd. Kaif and call for a status report with respect to investigation conducted.*

*ii). Issue a writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case."*

3. Learned Senior Counsel for the petitioner submits that as the allegations are against police, therefore, police may not record statements of relevant witnesses and there are chances that police may destroy relevant evidences. Therefore, a Court monitored investigation is necessary.

4. At the very outset, Sri Manish Goyal, learned Additional Advocate General for the State has placed the order dated 04.12.2024 passed by a co-ordinate Bench of this Court in Criminal Writ- Public Interest Litigation No.7 of 2024 (Dr. Anand Prakash Tiwari Vs. State of U.P. and 6 others), wherein the Division Bench has taken note of the notification dated 28.11.2024 issued by the State of Uttar Pradesh, under Section 3 of the Commissions of Inquiry Act, 1952, whereby a Retired Judge of

this Court has been appointed as Chairman of the Enquiry Commission. The Enquiry Commission otherwise included two other members. By the said notification a Judicial Enquiry Commission has been constituted by the State Government and the Commission is required to submit its report within two months. In this backdrop, the Division Bench has opined that we do not find it appropriate to entertain the cause raised in this P.I.L. writ petition at this stage. Accordingly, the leave was accorded by the co-ordinate Bench to the petitioner therein to institute a fresh petition as and when the cause of action is available in that regard.

5. We have also taken note of Section 5 of the Commission of the Inquiry Act, 1952. As per Section 5(2) of Commission of Inquiry Act, 1952, Commission shall have power to examine any person conversant with the relevant facts and can also seize relevant documents under Section 5(3).

6. Section 5 of Commission of Inquiry Act, 1952 (in short 'The Act of 1952') is being quoted as under:-

*"5. Additional powers of Commission*

*(1) Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.*

*(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry [and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860)].*

*3) The Commission or any officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry may be found, and may seize any books of account or documents or take extracts*

or copies therefrom, subject to the provisions of section 102 and section 103 of the [Code of Criminal Procedure, 1898 (5 of 1898)] [12. Now see the Code of Criminal Procedure, 1973(2 of 1974).], in so far as they may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the [Code of Criminal Procedure, 1898 (5 of 1898)] [12. Now see the Code of Criminal Procedure, 1973(2 of 1974).], forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the [Code of Criminal Procedure, 1898 (5 of 1898)] [12. Now see the Code of Criminal Procedure, 1973(2 of 1974).].

(5) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860). [5-A. Power of Commission to utilise the services of certain officers and investigation agencies for conducting investigation pertaining to inquiry [13. Inserted by Act 79 of 1971, Section 8.]

1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services,

a) in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be; or b) in the case of a Commission appointed by the State Government, of any officer or investigation agency of the State Government or Central Government with the concurrence of the State Government or the Central Government, as the case may be.

2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,

a) summon and enforce the attendance of any person and examine him;

b) require the discovery and production of any document; and

c) requisition any public record or copy thereof from any office.

3) The provisions of section 6 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the

*course of giving evidence before the Commission.*

*4)The officer or agency, whose services are utilised under sub-section (1), shall investigate into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period as may be specified by the Commission in this behalf.*

*5)The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub-section (4), and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit].[5-B. Power of Commission to appoint assessors [14. Inserted by Act 63 of 1988, Section 2 (w.e.f. 10.12.1988).].The Commission may, for the purpose of conducting any inquiry, appoint persons having special knowledge of any matter connected with the inquiry as assessors, to assist and advise the Commission in the inquiry and the assessors shall be entitled to such travelling and other expenses as may be prescribed]."*

7. Additionally Section 6 of Commission of Inquiry Act further provides that statement of any other evidence recorded by the Commission, shall not used again him in any civil or criminal proceeding. Therefore, protection from prosecution has also been given to the person giving evidence to the Commission.

8. Section 6 of the Commission of Inquiry Act of 1952 is being quoted as under:-

*"6. Statements made by persons to the Commission.*

*No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:Provided that the statement*

*a) is made in reply to a question which he is required by the Commission to answer, or*

*b) is relevant to the subject-matter of the inquiry.*

*6-A. Persons not obliged to disclose secret process of manufacture of goods in certain cases [15. Inserted by Act 79 of 1971, Section 9.]. Except in cases where a Commission is expressly required to inquire into the process of manufacture of any goods, nothing in this Act shall be deemed to compel any person giving evidence before the Commission to disclose any secret process*

*of manufacture thereof.]"*

9. Fair and transparent proceeding for conducting enquiry by the Commission has also been provided under Rule 5 of Commission of Inquiry (U.P.) Rules, 1985.

10. Rule 5 of Commission of Inquiry (U.P.) Rules, 1985 is being quoted as under:-

*"5. Procedure of inquiry.- (1) A Commission may sit in public or in private as it thinks fit:*

*Provided that a Commission shall sit in private on a request being made by the State Government in that behalf.*

*(2) A Commission shall, as soon as may be after its appointment-*

*(a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice; and*

*(b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject-matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.*

*(3) Every statement furnished under clause (a) of sub-rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.*

*(4) Every person furnishing a statement under clause (a) of sub-rule (2) shall also furnish to the Commission along with the statement of list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable, the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from whom the remaining documents may be obtained.*

*(5) (a) A Commission shall examine all the statements furnished to it under clause (b) of sub-rule (2) and if, after examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the State Government and may thereafter record evidence in such order as it may deem fit-*

*(i) the evidence of any person who has furnished a statement under clause (b) of sub-rule (2) and whose evidence the Commission, having regard to the*

*statement, considers relevant for the purpose of the inquiry; and*

*(ii) the evidence of any other person whose evidence, in the opinion of the Commission, is relevant to the inquiry:*

*Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, in its opinion:*

*(i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person; or*

*(ii) such attendance should be dispensed with for any other sufficient reason to be recorded by it in writing.*

*(b) If after all the evidence is recorded under clause (a), the Commission is satisfied that it is necessary for the proper determination of any relevant fact to do so, it may recall any witness already examined or examine any new witness.*

*(6) Travelling and other expenses, as the Commission may deem reasonable, shall be paid to a person who is summoned to assist the Commission at stage of preliminary investigation or to give evidence or to produce documents before the Commission.*

*(7) The Commission shall have the power of a Civil Court to make local investigation, either personally or through any person, duly authorised by it, into any matter falling within its term of reference.*

*(8) A Commission shall have the power to regulate its own procedure in respect of any matter for which no provision is made in these rules."*

11. From the above quoted provisions, it is clear that any person conversant with relevant facts can submit his evidence before the Enquiry Commission and the police is still investigating the aforesaid episode. Therefore, instead of approaching this Court on the basis of half baked facts, aggrieved person can give their evidence or statement to the Enquiry Commission.

12. We have carefully examined the record and perused the relief, as has been prayed for in the instant matter. We do not find it to be a fit case to entertain at this stage as the co-ordinate Bench has already accorded the leave to the petitioner to institute the proceeding in case such situation warrants. Once, the co-ordinate Bench has taken a note of the Enquiry Commission which is already constituted and has declined to entertain the matter

granting leave to press the relief at the appropriate stage, this Court finds no reason to entertain the matter at this stage which is already seized with the Enquiry Commission.

13. Therefore, submission of counsel for petitioner for non recording of relevant statements and destruction of evidence by police is absolutely misconceived. If the petitioner or any other person still aggrieved after conclusion of enquiry, he may again approach this Court.

14. In view of the above, the instant matter is accordingly, consigned to record with the liberty granted aforesaid.

**Order Date :- 17.12.2024**

Jitendra