

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO.109 OF 2003

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

[With appln(s) for directions filed by A.C.,and stay and intervention and direction and a note dt.27.02.2004 submitted by A.C. and directions)  
(For final disposal)

WITH

CrI.M.P.No.10719/2003 in W.P.(CrI.)No.109/2003  
[For direction]

CrI.M.P.No.7078/2003 in W.P.(CrI.)No.109/2003  
[For stay]

CrI.M.P.Nos.7827/2003, 8193/2003 & 8194/2003 in W.P.(CrI.)No.109/2003  
[For intervention]

CrI.M.P.No.11668/2003 in W.P.(CrI.)No.109/2003  
[For intervention]

CrI.M.P.No.11689/2003 in W.P.(CrI.)No.109/2003  
[For directions]

WITH

CrI.M.P.No.4782/2003 in W.P.(CrI.)No.109/2003  
[ A note dt. 27.02.04 submitted by Ld. AC. with regard to entrusting the UOI with responsibility of providing appropriate protection to all the witnesses involved in the major trials in the State of Gujarat(including the Bilkis case) in the manner which they consider appropriate including wherever necessary by resort to the Central forces ]

CrI.M.P.No.3741/2004 & 3742/2004 in W.P.(CrI.)No.109/2003

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[For directions]

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WITH

CrI.M.P.No.6864/2004 in W.P.(CrI.)No.109/2003  
[For intervention]

CrI.M.P.No.9236/2005 in W.P.(CrI.)No.109/2003  
[For intervention/directions]

CrI.M.P.No.6767/2006 in W.P.(CrI.)No.109/2003  
[For directions]

CrI.M.P.No.7824/2007 in W.P.(CrI.)No.109/2003  
[For directions]

W.P.(CrI.)No.D17953/2003

[With Office Report]

T.P.(Crl.)No.194-202 & 326-329/2003

[With Appln.(s) for stay; exemption; impleading party; permission to submit additional document(s); permission to place addl. documents on record and office report]

S.L.P.(C)No.7951/2002

[With Appln.(s) for exemption from filing C/C of the impugned judgment and permission to place addl. documents on record]

SLP(Crl.) NO.4409 of 2003

[With Appln. for stay]

S.L.P.(Crl.)No.5309/2003

[With Appln.(s) for c/delay in filing SLP; exemption from filing C/C of the impugned judgment exemption from filing O.T. and office report]

W.P(CRL.) NO.216 of 2003

T.P.(CRL) NO. 66-72 of 2004

[With Appln.(s) for permission to file T.P.; stay; directions; taking additional document on record and permission to submit additional document(s)]

T.P.(CRL) NO. 43 of 2004

[With Appln.(s) for stay; exemption from filing O.T.; and office report]

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W.P(CRL.) NO.118 of 2003

[With Appln.(s) for directions; interim relief; exemption from filing O.T. and Office Report]

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T.P.(Crl.)Nos.233-234/2004

[With Appln.(s) for stay and office report]

W.P(Crl.) NO. 37-52 of 2002

[With Appln.(s) for permission to submit additional document(s); exemption from filing O.T.; interim directions; permission to place addl. documents on record and Office Report]

W.P.(Crl.)No.284/2003

[With Office Report]

Crl.M.P.No.6767/2006

in

Crl.M.P.Nos.3741-3742/2004

In

W.P.(Crl.)No.109/2003[For directions]

Crl.M.P.No.4485/2006 in S.L.P.(CRL.)No.3770/2003

[For directions]

Date: 26/03/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE P. SATHASIVAM

HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Harish N. Salve, Sr. Adv.(A.C.)

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

Mr. Rahul Gupta, Adv.

Ms. Reema Sharma, Adv.

Mr. Sanjay Parekh, Adv.

Ms. Indu Malhotra, Adv.

Ms. Shilpa Gupta, Adv.

Mr. Gopal, Adv.

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Mr. Umed Singh Gulia-in-person

Mr. Amit Singh Chauhan, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Huzefa Ahmadi, Adv.

Ms. Aparna Bhat, Adv.

Mr. P. Ramesh Kumar, Adv.

WRIT PETITION (CRL.) NO.109 OF 2003 contd..

Mr. Anand Grover, Adv.

Ms. Lalit Mohini, Adv.

Mr. Naveen R. Nath, Adv.

Ms. Shobha, Adv.

For Respondent(s)

UOI

Mr. Vikas Singh, ASG

Ms. Sandhya Goswami, Adv.

Ms. Sushma Suri, Adv.

For State of

Mizoram:

Mr. K.N. Madhusoodhanan, Adv.

Mr. R. Sathish, Adv.

Mr. Fakhruddin, Sr. Adv.

Mr. Kazi Mohd. Ali, Sr. Adv.

Mr. Mohd. Izhar Alam, Adv.

Mr. Kazim Ali, Adv.

Mr. M.P. Singh, Adv.

Dr. Nafis A.Siddiqui, Adv.

St of Arunachal Mr. Anil Shrivastav, Adv.

Pradesh

Mr. Ritu Raj, Adv.

For State of

Sikkim

Mr. A. Mariarputham, Adv.

Mrs. Aruna Mathur, Adv. for

M/s. Arputham, Aruna & Co., Adv.

For NHRC

Mr. Sanjay Parikh, Adv.

Ms. Anita Shenoy, Adv.

Mr. S. Udaya Kumar Sagar, adv.

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Ms. Bina Madhavan, Adv. for  
for M/s. Lawyer's Knit & Co., Adv.

Mr. Manish Kumar, Adv.

Mr. Ansar Ahmad Chaudhary, Adv.

For State of T.N. Mr. V.G. Pragasam, Adv.

and UT of

Pondicherry

Mr. S.J. Aristotle, Adv.

Mr. Prabu Rama Subramanian, Adv.

Dr. Meera Agarwal, Adv.

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For State of

Gujarat

Mr. Arun Jaitley, Sr. Adv.

Mr. Mukul Rohtagi, Sr. Adv.

Mrs. Hemantika Wahni, Adv.

Mr. Saurav Kripal, Adv.

Ms. Pinky, Adv.  
Ms. Jesal, Adv.

Mr. Manjit Singh, Adv.  
Mr. T.V. George, Adv.

For State of  
Manipur

Mr. Khawarakpam Nobin Singh, Adv.  
Mr. David Rao, Adv.  
Mr. Tarun Jamwal, Adv.  
Mr. S. Biswajit Meitei, Adv.  
Mr. Vijay Prakash, Adv.

For NCT of Delhi  
& All UTs.

Mr. S. Wasim A. Qadri, Adv.  
Mr. D.S. Mahra, Adv.

Ms. Aparna Bhat, Adv.

For State of  
Chattisgarh

Mr. Atul Jha, Adv.  
Mr. D.K. Sinha, Adv.

For State of  
Punjab

Ms. J. Anand, AAG.  
Mr. Ajay Paul, Adv.

Mr. Gopal Singh, Adv.  
Mr. Manish Kumar, Adv.  
Ms. Sujoya Bardhan, Adv.

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Mr. Anand Grover, Adv.  
Ms. Lalit Mohini Bhat, adv.  
Mr. Naveen R.Nath, Adv.

Mr. K.T.S. Tulsi, Sr. Adv.  
Mr. Nikhil Goel, Adv.  
Mr. Sayid Marsook Bafaki, Adv.  
Dr. Kailash Chand, Adv.

Mr. C.D.Singh, Adv.

St.of Assam

Mr. Riku Sarma, Adv. for  
for M/s. Corporate Law Group, Adv.

Mr. Tara Chandra Sharma, Adv.  
Ms. Neelam Sharma, Adv.

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Mr. K.R. Sasiprabhu, Adv.

Mr. J.S.Attri, Adv.

Mr. Bimal Roy Jad, Adv.

Mr.Ravi Prakash Mehrotra, adv.

Mr. Radha Shyam Jena, Adv.

Mr. K.R.Sasiprabhu, Adv.

Mr. P.V.Dinesh, Adv.

Mr. Gopal Prasad, Adv.

Mr. R.K.Adsure, Adv.

Mr. Ranjan Mukherjee, Adv.

Mr. Sanjay R.Hegde, Adv.  
Mr. Amit Kr. Chawla, Adv.  
Mr. Arul Varma, Adv.

Mr. Vikrant Yadav, Adv.

Mr. P.Parmeswaran, Adv.

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Mr. ADN.Rao, Adv.

Mr. Sameer Parekh, Adv. for  
M/s. P.H. Parekh & Co.

Mr. S.N. Bhat, Adv.

Mr. Sanjay Jain, Adv.

Mr. Rashmikumar Manilal Vithlani, Adv.

Mr. R. Satish, Adv.

Mr. P.V. Dinesh, Adv.

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UPON hearing counsel the Court made the following  
ORDER

After having heard learned counsel for the parties, we feel that considering the sensitive nature of the cases involved, appointment of a Special Investigation Team (in short 'SIT') is warranted. Communal harmony is the hallmark of a democracy. No religion teaches hatred. If in the name of religion, people are killed, that is essentially a slur and blot on the society governed by rule of law. The Constitution of India, in its preamble refers to secularism. Religious fanatics really do not belong to any religion. They are no better than terrorists who kill innocent people for no rhyme or reason in a society which as noted above is governed by rule of law.

These are cases where there is an element of communal disharmony, which is not to be countenanced. The State of Gujarat has stated that it has no objection if further investigation is done so that peoples' faith on the transparency of action taken by the State is fortified.

Mr. Mukul Rohtagi, learned senior counsel appearing for the State stated that the State's approach is fair and it is not interested in shielding any culprit or a guilty person, but on the other hand, would like all those who are guilty, to be punished. This statement of Mr. Rohtagi is not accepted by some of the learned counsel appearing for the alleged victims. We need not go into that aspect, in view of the fact that there is an agreement that there is need for a Special Investigation Team.

We, therefore, direct that an appropriate notification shall be issued by the State Government regarding the creation of SIT, the constitution of which shall be as follows.:-

1. Shri R.K. Raghavan, retd. Director of the CBI.
2. Shri C.B. Satpathy, retd. DG, Director, Uttar Pradesh, Police College, Moradabad
3. Ms. Geeta Johri
4. Shri Shivanand Jha
5. Shri Ashish Bhatia

The notification by the State be issued as early as practicable, preferably within ten days.

Officers at Sl Nos. 3 to 5 are IG rank officers. Shri Raghavan will be the chairman of the committee and Ms. Geeta Johri shall be the convener. The committee shall in

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its first meeting work out the modalities to be adopted for the purpose

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of enquiry/investigation. If any person wants to make statement before

the SIT for giving his or her version of the alleged incidents, the SIT shall record it. Those who want to give their version shall in writing intimate the convenor of the committee so that the SIT can call him or her for the purpose of recording his/her statement. It is needless to say that the SIT shall not confine the investigation by recording statement of those who come forward to give his or her version and shall be free to make such inquiries/investigation as felt necessary by it. The State Government shall provide necessary infrastructure and provide resources for effective working of the SIT. The report of the SIT shall be furnished to this Court in a sealed cover after completion of the inquiry/investigation for which three months time is granted. After the report is submitted, the further action required to be taken shall be dealt with by this Court. The SIT shall conduct inquiries/investigations including further investigation in the following cases:-

I. GODHRA

FIR NO.09/2002 DATED 27.2.2002:

- i) CR NOS.1-6/2002 titled Mohd Rafudan Ansari & Ors.
- ii) CR NOS.09/2002 titled State Vs. Junia Farooq Hassaan & Ors. pending in Juvenile court

II. SARDARURA, MEHSANA

CR Nos. 275/2002 arising out of FIR No.46/2002 dated 28.2.2002 of police station Bijapur, Mehsana

III. GULBERG SOCIETY, MEGHANINAGAR AHMEDABAD

CR Nos.67/2002 at Meghaninagar Police Station

- i) Sessions Case No.152/2002 titled State V/s. Kailash Lalchand Dhobhi & Ors.
- ii) Criminal Case No.1720/2002 titled State V/s. Shankarji Hakaji Mali pending Metro Magistrate court, Ahmedabad
- iii) Criminal Case No.296/2003 titled State V. Sandeep pending in the Metropolitan Magistrate court, Ahmedabad
- iv) Criminal Case No.524/2002 titled State V. Vishal Badrilal Nayee & Ors. pending in the Juvenile court, Ahmedabad

IV. NARODA PATIYA

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Arising out of FIR No.100/2002 dated 28.2.2002 of PS Naroda, Ahmedabad

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- i) CR No.982/2002 titled State v. Naresh Chahra pending in MM Court, Ahmedabad
- ii) CR No.1662/2002 titled State V. Padmendra Singh & Ors.

V. ODE ANAND DISTRICT

Cr.Nos.23/2002 and 27/2002 (Ode Massacre). Leave was granted to petitioners, CJP, to amend petition to include these Session Trials. Trials were stayed.

VI. NARODA GAON

Inadvertently left out. CJP filed a TP(Crl.)No.233/2004 and trial was stayed on 23.8.2004.

VII. W.P.No.284/2003 TP(Crl.)No.43/2004 Imran Dawood Vs. Union of India.

So far as SLP(Crl.)No.4409/2003 and Writ Petition(Crl.) 216/2003 are concerned, though it is pointed out by learned counsel by the State of Gujarat that the trial is at concluding stage, in view of the orders passed in the other cases, we feel it would be appropriate if the inquiry/investigation including further investigation is done, in this case also. The relevant case No. is FIR 60/02 commonly known as 'Deepda Darwaza'. So far as Writ Petition(Crl.)No.284/03 and T.P.(Crl.)43/2004 are concerned, the case is commonly known as 'British Nationals Case'

and relates to Himmat Nagar, Prantij P.S district Sabarkantta and relates to FIR 1/26/2002.

We make it clear that SIT shall be free to work out the modalities and the norms required to be followed for the purpose of inquiry/investigation including further investigation. Needless to say the sole object of the Criminal Justice System is to ensure that a person who is guilty of an offence is punished.

Mr. K.T.S. Tulsi, learned senior counsel had submitted that in some cases the alleged victims themselves say that wrong persons have been included by the police officials as accused and the real culprits are sheltered. He, therefore, suggested that trial should go on, not withstanding the inquiry/investigation including further investigation as directed by us. We find that the course would not be appropriate because if the trial continues and fresh evidence/materials surface, it would require almost a de novo trial which would be not desirable.

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These matters shall be listed for further directions in the last week of August, 2008.

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The pleadings in all these matters be completed within a period of three months.

(Sheetal Dhingra)  
Court Master

(Vijay Aggarwal)  
Court Master