
(2013) 07 CAL CK 0103

Calcutta High Court

Case No: Writ Petition No. 4887 (W) of 2013

Gouranga Chatterjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 8, 2013

Citation: (2013) 4 CHN 497

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: B.R. Bhattacharyya, Rabi Sankar Chattopadhyay, Uday Sankar Chattopadhyay, Suman Sankar Chattopadhyay and Shamim Ahamed, for the Appellant; Ashok Kumar Banerjee, Govt. Pleader, Anwar Mondal, Suman Sengupta for the First to Third Respondents, B.K. Chatterjee, AG, Subrata Talukder, Abdul Momen and Kaushik Chandra Gupta for the Fourth Respondent, for the Respondent

Final Decision: Disposed Off

Judgement

Dipankar Datta, J.

A member of the West Bengal Legislative Assembly is the petitioner in this writ petition which includes in the array of respondents, the Hon"ble Speaker of the said legislative assembly as the fourth respondent. It is claimed by the petitioner that while the winter session of the said legislative assembly was in progress, the leader of the opposition and other members owing allegiance to the Left Front had given an adjournment notice to the Hon"ble Speaker in respect of alleged violation of guidelines by the Reserve Bank of India and the Securities Exchange Board of India by various chit funds and the situation arising therefrom. The aforesaid adjournment notice was rejected whereupon the leader of the opposition raised his voice of protest. The Hon"ble Speaker suspended 4 (four) opposing members who had lent their voices to the leader of the opposition. This was followed by utter chaos and mayhem. One lady member owing allegiance to the ruling party chased another lady member owing allegiance to the opposition and pulled her by the hair. The victim member was thereafter dragged by the assailant and other members

who joined her, towards the Treasury Bench. The petitioner attempted to save the victim member from being physically attacked by the assailants. It was at this stage that the petitioner was physically assaulted and severely beaten up by the members from the Treasury Bench by random fists and kicks on his chest, abdomen and head. Because of such physical assault, the petitioner sustained severe injury. The doctors attached to the said legislative assembly were thereafter called who rendered primary medical assistance and advised shifting of the petitioner for better care and treatment to the SSKM Hospital. There, the attending nurse immediately applied intravenous medicine making him drowsy whereafter a C.T. Scan was conducted. The outdoor ticket issued by the SSKM recorded "no definite intracranial Inge is found or injury is seen. No neuro surgical intervention needed". The petitioner was immediately discharged, allegedly without proper care and treatment.

2. After his return from the SSKM Hospital to the MLA Hostel, the petitioner started vomiting and his condition deteriorated. He was shifted to Ekbalpur Nursing Home Pvt. Ltd., where he was admitted and treated, and ultimately discharged on December 15, 2012. Upon various medical examinations, the doctors diagnosed the petitioner with fracture on the right temporal bone. The report further revealed that the petitioner had been suffering from Chronic Obstructive Pulmonary Disease, Pulmonary Hypertension and Cholelithiasis ASD.

3. Grievances voiced in this writ petition by the petitioner are two-fold: (i) lack of proper care and treatment at the SSKM Hospital when he was shifted there after suffering injury at the hands of certain rowdy members of the said legislative assembly; and (ii) apathy of the Hon"ble Speaker to act on the basis of his complaint dated January 8, 2013, whereby a polite request was made to conduct a probe in respect of the incident of December 11, 2012 and to take appropriate action against the assailants responsible for inflicting physical harm and injury to him.

4. The main prayers of the writ petition read as follows:

a) Issue a Writ of Mandamus commanding the Hon"ble Speaker of the House to initiate appropriate action and lodge an FIR relating to the incident of criminal assault upon the petitioner on 11.12.2012;

b) Issue a writ in the nature of Mandamus directing the respondents No. 1 and 2 to enquire about the matter in respect of refusal for admission of the petitioner in SSKM Hospital on 11.12.2012 and to file a report before the Hon"ble Court and take steps against the erring officers of the SSKM Hospital in accordance with law;

5. At the outset, Mr. Chatterjee, learned Advocate General representing the fourth respondent objected to the maintainability of the writ petition against the Hon"ble Speaker insofar as prayer "a" extracted (supra) is concerned.

6. According to him, the Court has no supervisory jurisdiction/authority over the Legislature or its Hon"ble Speaker and other officers. Clauses (1) and (2) of Article

212 of the Constitution give immunity to the Hon"ble Speaker and its officers. Thus, the Court while considering a petition under Article 226 of the Constitution has no power of judicial review in respect of an incident that has taken place within the walls of the said legislative assembly and supervisory power in respect of an act of omission/commission of the Hon"ble Speaker in respect of maintaining order in the said legislative assembly, if at all, cannot be exercised. However, according to the learned Advocate General, the niceties of law in relation to Article 212 do not fall for examination on facts and in the circumstances of the present case since the pleadings in the writ petition do not reveal, in the context, that the petitioner is asking for judicial review of any action of the Hon"ble Speaker. The petitioner has no legal or fundamental right as against the Hon"ble Speaker or any officer of the Legislature in the facts and circumstances of this case. No legal or fundamental right of the petitioner has been breached in respect of which he himself cannot take or initiate an action to remedy the same. If the Hon"ble Speaker takes a decision, at the most the same can be the subject matter of judicial review and such decision may be examined if the said decision is challenged on the ground of it being unconstitutional or illegal, but the Hon"ble Speaker cannot be directed to take a decision by the Court. The petitioner is seeking a direction on the Hon"ble Speaker, which is not permissible in law. Alleged inaction of the Hon"ble Speaker cannot be the subject matter of judicial review by the writ Court. Since no right has been infringed for which the petitioner could approach the Court of writ for mandamus, and that too against the Hon"ble Speaker, it ought to be held that the writ petition is not maintainable.

7. Referring to the alleged incident of December 11, 2012, it was the contention of the learned Advocate General that the petitioner is attempting to blow the incident out of proportion and that the writ petition has not been filed in good faith. By referring to "appropriate action" in prayer "a" of the writ petition, he wondered as to what action the petitioner intended the Speaker to initiate. According to him, it is trite that a First Information Report (hereafter FIR) need not be detailed. It is only a first information u/s 154 of the Code of Criminal Procedure. There is no answer why the petitioner himself could not file a simple FIR. An FIR could be lodged by anyone having knowledge of the incident and it is not the function of the Court to compel anyone to lodge an FIR. The FIR that he could easily file has not been filed and instead he has chosen to approach the writ Court to express his alleged grievances and for seeking a direction on the Hon"ble Speaker. This action of the petitioner is in bad faith and smacks of abuse of the process of law. It was the further submission of the learned Advocate General that the victim member never raised any hue and cry over the alleged incident of December 11, 2012 nor complained to any authority in respect thereof. In fact, she acted responsibly by not coming to the Court for any direction. Taking the totality of the fact situation, it stands to reason that she has no grievance. It was further contended that the petitioner has not named those members in his complaint to the Hon"ble Speaker, who allegedly assaulted him. It is

also curious that the petitioner himself does not know who had allegedly assaulted him. He has also not impleaded them as parties to this proceeding. He could have or even now raise the issue in the House itself. If he does so, the Hon"ble Speaker would give his ruling and the same would be final. The Court cannot examine the ruling unless the same is alleged to be illegal or unconstitutional or in breach of any fundamental rights.

8. In relation to the conduct of the petitioner, it was also submitted that the petitioner has not said that he is suffering from any disability to lodge an FIR himself; since he could himself lodge an FIR disclosing commission of cognizable offence, seeking assistance of the Writ Court is in gross abuse of law and that the Court at the threshold ought to throw out the misconceived writ petition.

9. Learned Advocate General referred to the decisions reported in [Hem Chandra Sen Gupta and Others Vs. The Speaker of Legislative Assembly of West Bengal and Others](#), [Saradhakar Supakar Vs. Speaker, Orissa Legislative Assembly and Secretary Orissa Legislative Assembly](#), [State of U.P. Vs. Ballabh Das and Others](#), , and [Union of India \(UOI\) and Another Vs. Arulmozhi Iniarasu and Others](#), , to drive home his point of argument.

10. An Hon"ble member of the Legislative Assembly, the learned Advocate General finally contended, should not have taken recourse to this motivated step to come to this Court to try and fulfil an otherwise agenda of his. This Court would be pleased not to allow any litigant to use judicial process to achieve his otherwise motive and object and prayed for dismissal of the writ petition against the Hon"ble Speaker.

11. Per contra, Mr. Bhattacharya, learned senior counsel representing the petitioner, expressed surprise that the Hon"ble Speaker instead of protecting a member of the said legislative assembly had chosen to raise technical points. While arguing that the writ petition is well-nigh maintainable against the Hon"ble Speaker by relying on the decisions reported in [In the matter of: Under Article 143 of the Constitution of India, Syed Abdul Mansur Habibullah Vs. The Speaker, West Bengal Legislative Assembly and Others](#), , [State of Kerala Vs. R. Sudarsan Babu and Others](#), [P.V. Narsimha Rao Vs. State \(CBI/SPE\)](#), and [Raja Ram Pal Vs. The Hon"ble Speaker, Lok Sabha and Others](#), he invited the attention of the Court to the representation dated January 8, 2013 that the petitioner submitted before the Hon"ble Speaker. After reading the contents of the same, he submitted that to uphold the prestige and dignity of the House as well as the honour of the members of the said legislative assembly the petitioner neither named the assailants nor lodged any FIR and felt that the Hon"ble Speaker would rise to the occasion and set the ball rolling for initiating legal action against those members who had chosen to take law in their own hands by subverting the rule of law on the floor of the House. Absence of the names of the assailants in the complaint, according to him, ought not to be construed as if the petitioner is not aware of their identity. It was specifically pointed out by him that the petitioner had appealed to the conscience of the Hon"ble Speaker since the

extent of security and the dignity that the former deserved were sadly lacking in the House but unfortunately the Hon"ble Speaker demonstrated an apathetic and indifferent attitude which was clearly unexpected.

12. Reference was made by Mr. Bhattacharya to Politico's Guide to Parliamentary by Susan Child, 1st Indian Reprint, to buttress his contention that assault of one member by another member is not part of "proceeding of a Legislative Assembly and, therefore, not immune from judicial scrutiny".

13. While concluding his submission on the point of maintainability of the Writ petition, Mr. Bhattacharya contended that it was the duty of the Hon"ble Speaker to lodge an FIR and failing to discharge such duty makes the petitioner a person aggrieved to seek the assistance of the Court of Writ.

14. Insofar as the allegation of the petitioner that he had not been properly cared and treated at SSKM Hospital, Mr. Bhattacharya submitted that during the pendency of the writ petition the petitioner had to be shifted to AIIMS, New Delhi for surgery and the reports of the Institute have been placed to demonstrate the extent of the injury that the petitioner suffered and the nature of treatment he was administered.

15. Mr. Banerjee, learned Government Pleader appearing for the first to third respondents submitted that it is not that the petitioner did not receive medical treatment. His complaint is with regard to the quality of medical treatment that he received. He has also not alleged that there was any medical negligence. Medical reports may vary. That does not mean there was any negligence. It is not for the Writ Court to judge which report is correct. There has been no denial of medical treatment. Since numerous disputed questions of fact would require examination, the Writ Court may not and would be pleased not to probe into those disputed questions in the exercise of its extra-ordinary jurisdiction. The writ petition is wholly misconceived and a gross abuse of the process of law and, thus, merits dismissal.

16. On the date hearing of the writ petition was concluded by me, I had called for a report from the Surgeon Superintendent, SSKM Hospital in respect of the alleged injury suffered by the petitioner and the nature of treatment that he was offered thereat on December 11, 2012. A report has since been filed by the Medical Superintendent cum Vice-Principal, SSKM Hospital, which records that the petitioner was properly attended, his general condition was assessed and only upon consideration of the opinion of the specialist doctors of the Cardiology and Neurosurgery Departments that he was not admitted.

17. I have heard learned senior counsel for the parties.

18. Having regard to the preliminary objection of maintainability of the writ petition, I consider it necessary to examine as to whether Article 212 grants absolute immunity to the Hon"ble Speaker or not and further as to whether the Court would be powerless to administer justice in a given case where there is brazen

infringement of the fundamental right of a complaining party.

19. The discussion on the topic must begin with the caveat that the legislature and the judiciary being two very important organs of the State, it would be an unhealthy practice and absolutely undesirable if one organ were to exercise supervisory power over the other, considering that between the two it is supreme. Articles 211 and 212 were incorporated in the Constitution with the confidence, hope and trust that the legislature and the judiciary would keep themselves within their bounds and would exercise a spirit of restraint in the unlikely event of a situation arising where the conduct of one deserves to be considered by the other and even deprecated, if justified on the peculiar facts. Confrontation between the two organs must have been last in the minds of the framers of the Constitution. However, during the last more than six decades the Constitution has been in operation, the spirit with which the framers of our Constitution expected the legislature and the judiciary to act at times has sadly been found to be lacking, which has resulted in an unwarranted clash between the two organs and the number of reported cases is testimony to the same. It is, therefore, in the better interest of the nation as a whole that the rule of least interference ought to be adopted by each organ to avoid confrontation.

20. Although number of decisions have been cited by learned senior counsel for the parties, I need not discuss in detail the ratio laid down in each of such decisions, except the decision of the Constitution Bench in Special Reference No. 1 of 1964 (supra). The law laid down therein has stood the test of time for little less than half a century and, therefore, has to be regarded as the guiding light for examining the bounds of the Constitutional Courts' powers to scrutinise proceedings of Legislative Assemblies.

21. Special Reference No. 1 of 1964 (supra) arose out of a factual context, which makes interesting reading. On March 14, 1964, the Speaker of the Legislative Assembly of Uttar Pradesh administered a reprimand to one Keshav Singh for having committed contempt of the House and also for having committed a breach of the privileges of a member of the House. Keshav Singh had printed and published a pamphlet giving rise to the contempt and the breach of privileges. Later in the day, pursuant to a decision taken by the House, the Speaker directed Keshav Singh to be committed to prison for committing further contempt of the House by his conduct in the House when he was summoned to receive the aforesaid reprimand and for writing a disrespectful letter to the Speaker of the House earlier. According to this order, a warrant was issued and Keshav Singh was detained in the District Jail, Lucknow. Mr. B Solomon, an advocate, presented a petition on March 19, 1964 on behalf of Keshav Singh before the High Court u/s 491 of the Code of Criminal Procedure 1898 as well as under Article 226 of the Constitution. The respondents in the writ petition were the Speaker of the Legislative Assembly of Uttar Pradesh, the Chief Minister of Uttar Pradesh and the Superintendent of the District Jail, Lucknow where Keshav Singh was serving the sentence of imprisonment. It was claimed in

the writ petition that detention in jail was illegal on several grounds. An order was passed by the Division Bench hearing the petition that Keshav Singh should be released on bail on terms and conditions mentioned therein and notice was issued to the respondents. Two members of the House had brought to the notice of the Speaker of the House on March 20, 1964 what had happened in the Court in regard to the petition of Keshav Singh. The House proceeded to take action against the two learned Judges who passed the order on Keshav Singh's petition, as well as Keshav Singh and Mr. Solomon on March 21, 1964. A resolution was passed by the House holding that the two learned Judges, Keshav Singh and Mr. Solomon had committed contempt of the House. A direction was issued for bringing the two learned Judges and Mr. Solomon before the House. Keshav Singh was also directed to be brought before the House after completing the term of his imprisonment for having committed contempt of the House again on March 19, 1964. The learned Judges having heard the resolution of the House on the radio in the evening of March 21, 1964 and read about it in a daily newspaper on the morning of March 22, 1964, rushed to the Allahabad High Court with two separate writ petitions alleging that the resolution passed by the House was wholly unconstitutional and violated the provisions of Article 211 of the Constitution. According to the writ petitions, the petition of Keshav Singh under Article 226 was competent and in directing release of Keshav Singh, the Judges were exercising jurisdiction and authority as Judges of the High Court under Article 226 and the resolution passed by the House, apart from being wholly without jurisdiction, amounted to contempt of Court. A Full Bench of the Allahabad High Court consisting of 28 Judges entertained the petitions and directed an order of issuance of notice against the respondents and restrained the Speaker from issuing warrant in pursuance of the direction of the House given to him on March 21, 1964, and from securing execution of the warrant, if already issued, as also restraining the Government of Uttar Pradesh and the Marshall of the House from executing the said warrant. On March 25, 1964, Mr. Solomon and Keshav Singh presented a similar petition to the High Court under Article 226. This application was also heard by the Full Bench of 28 Judges of the Allahabad High Court on March 25, 1964 and after admitting the same, suitable interim order was passed. On the same day the House passed a clarificatory resolution. It began with the statement that a misgiving was being expressed with regard to the motion passed by the House in that it was construed as depriving the persons concerned of an opportunity of explanation, and it added that it was never the intention of the House that a charge against a High Court Judge for committing breach of privilege or contempt of the House, should be disposed of in a manner different from that governing breach of privilege or contempt committed by any other person. The House, therefore, resolved that the question of contempt may be decided after giving an opportunity of explanation to the persons named in the original resolution of 20th March, 1964 according to rules. As a result of this resolution, the warrants issued for the arrest of the two learned Judges and Mr. Solomon were withdrawn, with the result that the said two learned Judges and Mr. Solomon were placed under

an obligation to appear before the House and offer their explanations as to why the House should not proceed against them for their alleged contempt of the House.

22. The President of India at this stage decided to exercise his power to make a reference to the Supreme Court under Article 143(1) of the Constitution on March 26, 1964. The 5 (five) questions which were referred, finds answer in paragraph 143 of the majority judgment authored by the Hon"ble the Chief Justice. It is set out below:

143. Having thus discussed all the relevant points argued before us and recorded our conclusions on them, we are now in a position to render our answers to the five questions referred to us by the President. Our answers are:

(1) On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N.U. Beg and G.D. Sahgal, JJ., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition.

(2) On the facts and circumstances of the case, Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon, Advocate, by presenting the said petition, and the said two Hon"ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh.

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon"ble Judges and Mr. B. Solomon, Advocate, before it in custody or to call for their explanation for its contempt.

(4) On the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon"ble Judges and Mr. A. Solomon, Advocate, and to pass interim orders restraining the speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly; and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confirmed to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four- walls of the legislative chamber. A Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and

immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcements of its powers, privileges and immunities. In this answer, we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference.

23. Since the aforesaid answers are sufficient for understanding the questions that were referred, the questions are not reproduced in this judgment.

24. Regard being had to the aforesaid authoritative pronouncement as well as the other decisions subsequent thereto which have been cited before me by the parties, there cannot be any doubt that the officers of the Legislative Assembly and for that matter the Hon"ble Speaker cannot claim that his actions within the walls of the Legislative Assembly are beyond any degree of judicial scrutiny. Of course, the tests laid down in the aforesaid authorities for exercising the power of scrutiny must be satisfied. It is not only legislative acts that are amenable to challenge under Article 226 or Article 32 of the Constitution before the High Courts and the Supreme Court respectively, but proceedings in the House leading to infraction of a fundamental right of a person could legitimately be canvassed and an appropriate direction passed provided the Court chooses to exercise discretion in that behalf. No hard and fast rule can be laid down in this respect and it is for the Court to exercise discretion judiciously, having regard to the facts and circumstances of a particular case.

25. Now I turn to the facts of the present case. The complaint of the petitioner relates to an alleged incident of assault perpetrated by certain rowdy members of the legislative assembly leading to suffering of physical injury by him and alleged inaction or non-action of the Hon"ble Speaker to lodge a complaint with the police. Are criminal acts that take place on the floor of the House beyond the bounds of the criminal justice system? Are such criminal acts part of the proceedings of the House, which enjoy constitutional immunity from review by Courts of law? The questions were put to the learned Advocate General by citing an example. In the unlikely event of a member succumbing to the injuries that he received on the floor of the House from an honourable member and despite there being disclosure to the police of commission of a cognizable offence no FIR is registered because such honourable member being the accused has to be taken in custody, could the writ Court not direct the police {if a writ petition were presented alleging police inaction) to register an FIR and conduct investigation? The question could not have been and was not answered in the negative. An assault, irrespective of its situs, is an assault and if it were intended and actually resulted in physical injury being sustained by a member or even death, it cannot in my opinion either form part of the proceedings of the House as contemplated in clause (1) of Article 212 of the Constitution so as to enjoy immunity thereunder or receive protection under clause (2) thereof, should

maintenance of order be effected in a manner that is in breach of a valid and binding law and results in irretrievable consequences. An honourable member of the House cannot escape the rigours of law merely because the alleged offence may have been committed by him on the floor of the House. The members of the legislative assembly while taking part in proceedings in the House are part of Article 12 of the Constitution and, therefore, obliged in terms of the constitutional provisions not to invade a fellow member's fundamental rights guaranteed by Articles 21 and 19(1)(a) to (d). Insofar as acts forming part of the proceedings are concerned, if the same end up in breach of the fundamental rights of a person or suffers from gross illegality or unconstitutionality, the Courts may exercise the power of judicial review and even interfere in a fit and proper case.

26. Insofar as the present claim of the petitioner is concerned, even if the version of the incident as expressed in the complaint addressed to the Hon"ble Speaker is believed in its entirety, there can be no doubt that no law prevented the petitioner from approaching the police for providing the information of commission of cognizable offence. It could be so, as contended by Mr. Bhattacharya, that the petitioner with a view to uphold the honour of the concerned members had himself not lodged the FIR but had intended the Hon"ble Speaker to act on such complaint but that by itself does not provide to the petitioner the right of action to move this Court for the purpose of obtaining a direction on the Hon"ble Speaker to lodge an FIR. Although the Hon"ble Speaker could have directed lodging of an FIR by the fifth respondent, it cannot be held that by not so directing, the Hon"ble Speaker has failed to discharge a statutory duty which could be enforced by a mandamus. The members of the legislative Assembly are considered to be honourable members by virtue of being elected representatives of the people and being part of the legislature, not by their ignominious acts in the House, which might result in causing physical harm and injury to a fellow member. The petitioner had no good reason to protect the honour of such dishonourable members and could have approached the police once reasonable time lapsed after service of the complaint on the Hon"ble Speaker did not yield any result.

27. While rejecting the general contention raised by learned Advocate General that the writ Court has no supervisory jurisdiction over the legislature or its Speaker and other officers in view of Article 212 of the Constitution, I hold that the facts of the present case are not such that the Court's supervisory jurisdiction/authority warrants to be exercised. It is open to the petitioner to set the ball of criminal justice rolling by approaching the appropriate police station having jurisdiction, whereafter it shall be the duty of the police to conduct investigation in accordance with law.

28. The other contention of the petitioner regarding lack of proper care and treatment by the SSKM Hospital now falls for consideration. There is a report of the Medical Superintendent of the SSKM Hospital that the petitioner's condition was not so serious so as to warrant his admission for treatment. There are also reports from

the private nursing home, in which the petitioner was admitted, to the effect that he had suffered fracture. The petitioner also had to undergo a surgery at AIIMS, New Delhi. However, it has to be borne in mind that the Court is not an expert to say that the report of the Medical Superintendent is not correct or not sound and, therefore, such report lacks credibility, warranting outright rejection relying only on the other two reports placed by the petitioner. The Court is only concerned with the process that is undertaken and to pronounce as to whether it is lawful or not. Viewed from that angle it would not be proper for the Court to hold that the petitioner is entitled to prayer "b". It shall always be open to the petitioner to present a petition before the appropriate forum for returning a finding of medical negligence and once such medical negligence is proved and the State Government fails to act, the Court may in its discretion assume jurisdiction, if approached, to direct the State Government to initiate appropriate disciplinary action against the erring doctors of the SSKM Hospital.

29. Reserving the liberty of the petitioner in respect of lodging FIR as well as lodging a complaint of medical negligence, this writ petition stands disposed of.

30. There shall be no order as to costs. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.