

17.12.2021
(PA – RB)

MAT 1354 of 2021

IA No: CAN 1 of 2021

Bhartiya Janata Party

Vs.

The State of West Bengal and Ors.

Mr. Dhiraj Trivedi,
Mr. Nilanjan Bhattacharya,
Mr. Bilawadal Bhattacharya,
Mr. Vipul Kuntalia,
Mr. Ajay Choubey,
Mr. Kalol Mandal,
Mr. Partha Ghosh,
Mr. Rajdeep Mazumdar,
Mr. Loknath Chatterjee,
Mr. Vikash Singh,
Mr. K. Kashyap,
Mr. Rahul Sharma,
Ms. Sneha Singh,

... For the appellants.

Mr. S.N. Mookherjee, learned Advocate General
Mr. Anirban Ray, learned Government Pleader
Mr. T.M. Siddiqui,
Mr. Raja Saha,
M. Nilatpal Chatterjee,

....For the State.

Mr. Y.J. Dastoor, learned Additional Solicitor General
Mr. Phiroze Edulji,

....For the UOI

Mr. Ratnanko Banerjee, learned Sr Advocate
Ms. Sonal Sinha,
Mr. Subhankar Nag,
Mr. Kaniska Kejriwal,

....For the WBSEC

The appellant is aggrieved with the order of the
learned Single Judge dated 16th December, 2021

whereby WPA No. 20354 of 2021 has been disposed of with certain directions.

The election of Kolkata Municipal Corporation is to be held on 19th December, 2021. Appellant had approached the writ court with the prayer to issue a direction to the concerned respondents to discharge their constitutional and statutory duty during the Kolkata Municipal Corporation Elections and to arrange adequate Paramilitary Forces and create a conducive atmosphere for voters to exercise their valuable right of voting without fear. Further prayer was made to ensure safety and security of the candidates contesting the election.

Learned Single Judge by order dated 16th December, 2021 has reached to the conclusion that there is no need for Central Forces in the Kolkata Municipal Corporation elections. He has observed that one police constable duly armed has been provided to each of the four petitioners and directed the Commissioner to forthwith attend to any other complaint from the other complainant. A general direction has been issued that all steps must be taken to facilitate exercise of franchise by the citizen and to ensure that free, fair and peaceful elections are held. Relying upon the assurance of the learned Advocate General and the views of the Election Commission, the prayer for deployment of Central Forces has been declined.

Submission of learned Counsel for the appellant is that on account of post-poll violence which took place after the general elections in the State in May, 2021, there is fear in the minds of the voters therefore, unless the confidence is built, the voters will not come forward to vote. He has referred to the Full Bench Judgment of this Court dated 19th August, 2021 in the matter of **Susmita Sen Dutta vs. The Union of India and Others** passed in **WPA(P) 142 of 2021** and also the report of the Enquiry Committee dated 12th July, 2021 in support of his submission that after the General Elections in the State, violent incidents had taken place resulting into disruption of life and livelihood and causing trauma to the residents which resulted in prevalent fear and loss of faith in police. He has also submitted that the Hon'ble Supreme Court in **W.P. (Crl.) No. 455 of 2021** in the matter of All India Trinamool Congress and Another vs. State of Tripura and Others in similar circumstances had directed deployment of CRPF. Hence, in the forthcoming elections also, CRPF should be deployed.

Learned Counsel for respondent No. 4, State Election Commission has submitted that the security to the concerned candidates has already been provided and learned Single Judge has taken note of the report submitted by the Election Commission which makes it clear that free and fair elections will be held. He has also referred to the communication dated 11th

December, 2021 issued by the Commissioner of Police in respect of the scale of deployment of police personnel during the forthcoming election and has submitted that adequate police personnels have been deployed and has further submitted that as a confidence building measure, the steps as provided in the order dated 16th December, 2021 are being taken.

Learned Advocate General appearing for the State has submitted that scope of the writ petition was limited and it was mainly relating to extending protection to the candidates and till now, no violence has taken place and the complaints by the candidates were also without disclosing the names of the offenders. He has also submitted that Kolkata has 27,000 police personnels out of which 18,000 have been deployed in the election and West Bengal has 69,669 police personnels out of which, 5,000 have been deployed and on requisition, more will be provided. He has submitted that respondent No. 6 and 7 are the persons responsible to ensure free and fearless election without any violence. He submits that the State is not agreeable for deployment of CRPF and in this regard, he has placed reliance upon the Division Bench judgment of this Court in the matter of **Basabi Raichoudhury vs. State of West Bengal, (2013) SCC OnLine Cal 15463**. He has also submitted that the Hon'ble Supreme Court also in the case of Tripura

Election had passed the order in different fact situation.

Learned Additional Solicitor General, appearing for the Union of India has submitted that the Union of India is ready to put the Central Forces at the disposal of the West Bengal State Election Commission which can be used for bolstering the confidence of the voters.

We have heard learned Counsel for the parties, and perused the record.

It cannot be disputed that free and fair election is the backbone of democracy. Forthcoming Kolkata Municipal Corporation Election must be held in a transparent manner in such an atmosphere where voters can vote without fear. Though no concrete incident of violence in reference to coming election has been pointed out till now but the appellants have raised an important issue for taking up adequate measures so that voters come out fearlessly to vote because on account of the past incidents of post-poll violence after general elections, they have fear in their mind.

The Election Commission has placed heavy reliance upon the communication vide Memo No. 35/HQ/KMC/Elec dated 11th December, 2021 issued by the Joint Commissioner of Police (Hqrs.), Lalbazar, Kolkata in respect of the scale of deployment of police personnels. Having examined the same, we find that the State authorities and the Election Commission

should reconsider the same. Having regard to the fact that the deployment is to be done not only for preventing violence but for also building confidence in the voters in respect of their safety, we are of the opinion that deployment in polling booth should be strengthened.

The deployment of Central Paramilitary Forces during the elections has been opposed by learned Advocate General placing reliance upon the Division Bench judgment of this Court in the matter of **Basabi Raichoudhury (supra)** wherein it has been held that:

“After hearing the learned Counsel for the petitioner at length, we are of the considered opinion that the petition is premature. Apart from that, we find that in the matter of holding election, law and order situation has to be considered by the State Election Commission and there are various factors for requisition of the Central Paramilitary Forces, such as, law and order situation and paucity of State Forces etc. Such a matter has to be considered by the State Election Commission and the State Government and, in case of any dispute between them, the State Election Commission had approached this Court earlier. In judicial review, the Court cannot decide whether Central Paramilitary forces are necessary in any of the election. These are the decisions to be taken by the constitutional bodies like the State Election Commission, the State Government, etc. Ordinarily, it is not for the Court to interfere with such matter. It is the duty of the Election Commission to ensure that free and fair election

is held and for that, necessary step to be taken by them.

Considering the prayer made in the writ petition, we find that the same is not only premature but on merits this writ petition is misconceived also.”

So far, no instance of violence has been pointed out nor along with the writ petition, any such material has been enclosed which furnishes a ground for deployment of the Central Paramilitary Forces in the forthcoming Kolkata Municipal Corporation Elections. Therefore, at this stage, we do not find sufficient material to accept the prayer. However, we take note of the submission of the learned Additional Solicitor General that within six hours, the Central Paramilitary Forces can be sent to avoid any untoward incident. Hence, we direct the Election Commission to take an appropriate decision having due regard to the ground situation in consultation with the State authorities for deployment of Central Paramilitary Forces, in case, if the need so arises, to ensure free and fearless elections.

So far as the judgment of the Hon'ble Supreme Court relied upon by the learned Counsel for the parties in the case of deployment of Paramilitary Forces in the case of deployment of Paramilitary Forces in the Municipal Election in the State of Tripura, the fact situation noted therein was different and even otherwise, the Hon'ble Supreme Court by order dated

23rd November, 2021 had directed the DGP and IGP (Law and Order, Tripura) to hold a meeting with the State Election Commission for the purpose of assessing requirement of sufficient strength of Paramilitary Forces and further directed that after making an assessment of the situation, if so required, requisition should be submitted to the CRPF or to the Ministry of Home Affairs. Hence, a decision in this regard is required to be taken by the concerned State authorities and the State Election Commission, keeping in view the ground situation.

The communication dated 16th December, 2021 has been placed on record by the West Bengal State Election Commission, which amongst other, provides for conducting area domination and route march as confidence building measure to the electors but it does not provide for the specific details thereof and learned Counsel for the West Bengal State Election Commission is also not in a position to inform the details thereof. Similarly, it mentions that all attempts will be taken to ensure that willing electors are able to access their polling stations without any undue threats or fears. Details of those attempts have not been disclosed. Learned Counsel appearing for the West Bengal State Election Commission has submitted that if the appellant suggest any confidence building measures for the voters, then the same will be duly looked into.

Having regard to the fact that an issue has been raised by the appellant that on account of the fear due to the post-poll violence after the general elections in the State, the voters may not freely come forward exercising their vote, the State Election Commission is directed, with the help of the State authorities, to take all possible measures to boost up confidence in voters. Area domination and route march be conducted in a planned and systematic manner. The respondents are also directed to fully comply with the earlier order in this Court dated 14th December, 2021 in respect of installation of the CCTV camera in each polling booth. Since the State Election Commission in consultation with the respondent Nos. 6 and 7 had assured this Court that free and fearless elections will be held, therefore, the respondent Nos. 6 and 7 will be answerable to this Court in case if any violence or untoward incident takes place during the election.

The appellant is permitted to submit a suggestion for holding free and fearless election to the respondent.

The respondent State Election Commission is directed to hold a meeting with the respondent Nos. 6 and 7 without any delay to chalk out a detailed plan for confidence building in the voters keeping in the observations made above and to implement it with full seriousness. In this process, they will also duly

consider the suggestions, if any, made by the appellants.

Respondent Nos. 6, 7 and the State Election Commission are directed to submit the report compliance of above directions before the next date of hearing.

List on 23rd December, 2021.

[Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)