

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(PUBLIC INTEREST LITIGATION)
APPELLATE SIDE**

RESERVED ON: 15.06.2023
DELIVERED ON: 15.06.2023

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAMAM

AND

THE HON'BLE MR. JUSTICE UDAY KUMAR

**W.P.A.(P) 301 OF 2023
(CAN NO 01 OF 2023)**

SUVENDU ADHIKARI AND ANR.

VERSUS

STATE OF WEST BENGAL AND ORS.

Appearance:

**Mr. Soumya Majumder, Adv.
Mr. Srijib Chakraborty, Adv.
Mr. Lokenath Chatterjee, Adv.
Mr. Kallol Mondal, Adv.
Ms. Priyanka Tibrewal, Adv.
Mr. Vikas Singh, Adv.
Mr. Sayak Chakraborti, Adv.
Mr. Anish Kumar Mukherjee, Adv.
Mr. Suryaneel Das, Adv.
Mr. Anindya Sundar Das, Adv.
Mr. Chiranjit Pal, Adv.
Mr. Arup Kr. Dasgupta, Adv.
Mr. Chittaranjan Panda, Adv.
Mr. Harishankar Chattopadhyay, Adv.**

Mr. Sourav Mukherjee, Adv.
Mr. Partha Chakraborty, Adv.
Mr. S.C. Prasad, Adv.
Ms. P. Saha, Adv.
Ms. Hasi Saha, Adv.
Mr. Sukanta Ghosh, Adv.

.....for the Petitioners

Mr. Jayanta Mitra, Sr. Adv.
Mr. Kishore Datta, Sr. Adv.
Ms. Sonal Sinha, Adv.
Ms. Sanjukta Samanta, Adv.

.....For the State Election Commission

Mr. Ashoke Kumar Chakraborti, Ld. ASG
Mr. Billwadal Bhattacharya, Ld. DSGI
Mr. Ayanabha Raba, Adv.

.....For the Union of India

Mr. Kalyan Bandopadhyay, Id. Senior Advocate,
Mr. Anirban Ray, Ld. Government Pleader
Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.

..for the State.

Mr. Ritzu Ghosal, Adv.
Mr. Mrityunjoy Chatterjee, Adv.
Mr. Malay Bhattacharjee, Adv.
Mr. Siddhartha Sankar Mandal, Adv.
Mr. Rajit Lal Maitra, Adv.
Syed Chandan Hossain, Adv.
Ms. Saloni Bhattacharya, Adv.
Ms. Gulsanwara Parvin, Adv.
Mr. Kaustav Bagchi, Adv.
Ms. Priti Kar, Adv.
Mr. Sabyasachi Chattopadhyay, Adv.
Mr. Sudipta Dasgupta, Adv.
Mr. Arka Nandi, Adv.

.....for the intervenors

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ. and Uday Kumar, J.)

1. This public interest writ petition has been filed for issuance of a writ of mandamus to direct the State Election Commission to immediately file a report marking the areas which are sensitive after considering the Election Commission of India Report earmarking sensitive areas during the 2021 Assembly Elections as well as the NHRC and a special committee report filed pursuant to directions issued in the post-poll violence case in WPA (P) No. 142 of 2021 and 144 of 2021 and immediately requisition and deploy Central Para-military Forces in such areas and also at the areas where the state security assessment report denotes to have inadequate force to provide security till after the declaration of the results; to direct the State Election Commission to allow filing of nomination by the candidates contesting in Gram Panchayat Samity and Zilla Parishad who were prevented from filing their nominations in the respective officers of the SDOs; to direct the State Election Commission to ensure that all police personnel have to present their Government issued photo identity card along with Badge Number, tag and Aadhar Card and also other State Government Officials while discharging election related duties.
2. The present writ petitioner had filed an earlier writ petition in WPA (P) 287 of 2023 which was heard along with WPA (P) 250 of 2023 and WPA (P) 286 of 2023 and by common judgment dated 13.06.2023 the writ petitions were disposed of.

Since, the main issued highlighted in the present writ petition concerns deployment of the Central Para-military Forces, we would refer to the relevant paragraphs of the common judgment in WPA (P) 250 of 2023 etc. dated 13.06.2023 which is as follows:

50. *The next issue is regarding deployment of central para military forces. It has been stated by the State Election Commission that a meeting on assessment of deployment of forces was taken by the Commission on 09.06.2023 with the Chief Secretary of the state and the Director General of Police and an assessment plan by the State will be submitted in due course which will be reviewed by the Commission for taking appropriate decision. The petitioner's contention is that to instill confidence in the electorate and to ensure fair and transparent election without any violence taking place can be achieved only by deployment of central para military forces. The petitioner in WPA (P) 287 of 2023 would state that prior to the election to the Kolkata Municipal Corporation during 2021 and the Municipal Election conducted in 2022 the State has witnessed large scale violence which has resulted in various deaths as well. In this regard, the petitioner has relied upon the various press reports which were reported in leading Dailies during February 2022 highlighting the violence which has occurred during the said elections. It is pointed out that the State Election Commission during the elections for the Kolkata Municipal Corporation declared 1339 polling centers to be sensitive out of the total polling centers of 4949. Reference was also made to the judgment of five judges bench of this court in WPA (P) No. 142 of 2021 etc, batch dated 19.08.2021 which dealt with the post-poll violence after the assembly elections in the state in the year 2021. After taking note of the all the facts and circumstances the larger bench referred the matter to the CBI for investigation wherever allegations are about murder of a person and crime against women and various directions were issued. The petitioner had also referred to the various orders passed by this Court from August 2022 till May 2023 where the court had directed the central agencies to investigate into the acts of communal violence, explosions bomb blasts and violence during religious festivals and as many as ten such orders were referred to. The decision of the Division Bench in WPA 272 of 2021 dated 10.02.2022 was*

also referred to which concerned the municipal elections wherein the court observed that the Election Commission is vested with the responsibility to ensure free, fair and fearless elections and to assess the ground situation and to take the decision in respect of deployment of para military forces if the circumstances so demand. The court also noted the instances which were pointed out about the violence during the election and post poll violence on the earlier occasion during the election in Bidhannagar. In the light of the same, it was observed that the Election Commission along with the state authorities is required to be appraised of the ground situation prevailing in Bidhannagar and to take a decision to deploy the para military forces if required. Further it was observed that in case the State Election Commission forms an opinion that deployment of the para military forces during the Bidhannagar Municipal Corporation is not necessary, then the State Election Commission will be personally liable to ensure that no violence takes place and free, fair and fearless election are held in Bidhannagar. This court also had an occasion to consider the situation which had arisen during the Hanuman Jayanti festival and after assigning reasons, directions were issued to requisition the assistance of the para military forces which order and direction was complied with by the State. It is not in dispute that a preliminary assessment has already been made by the State Election Commission and several districts having been earmarked as "sensitive districts". It has been widely reported in the press that there have been several instances where the prospective candidates complained about non availability of nomination papers which resulted in violence being precipitated and such other incidents. Considering the fact that the total number of seats for which the election has to be conducted is more than 75000 and going by the past incidents wherein on more than 12 occasion the court had to intervene for directing deployment of central forces or transferring the cases to the National Investigating Agency, we are of the view that the State Election Commission should and shall requisition the deployment of central forces to work in tandem with the police force of the State of West Bengal to ensure free and fair elections. It is stated in the report that the assessment plan submitted by the State will be reviewed by the State Election Commission for taking appropriate decision. The ultimate decision should lie with the State Election Commission more particularly when it has been the consistent submission of the petitioners that there is inadequate police force for being deployed throughout the

state so as to cover all polling stations especially when the number of seats for which elections are to be held are more than 75000. Therefore the State Election Commission shall forthwith send requisition of the deployment for the Central forces at the first instance for all the areas / districts which in the opinion of the State Election Commission have been declared as sensitive. Thereafter the State Election Commission shall review the assessment plan submitted by the state and wherever there is inadequacy of the state police force in all such areas also the State Election Commission shall requisition the deployment of para military forces. This requisition shall be done forthwith by the State Election Commission and on receipt of the same, the appropriate authority of the central government shall deploy the required strength without loss of time. Considering the facts and circumstances we are of the view that the charges towards such deployment shall be borne by the central government and no part of it shall be charged to the State of West Bengal.

3. In the above referred decision to which one of us (TSSCJ) was a party, there was direction was issued to the State Election Commission to forthwith send a requisition for deployment of the Central Forces at the first instance for all the areas/ Districts which in the opinion of the State Election Commission have been declared as “sensitive”. The further direction was to the State Election Commission to review the assessment plan submitted by the State and wherever there is inadequacy of the State Police Force in all such areas also the State Election Commission shall requisition the deployment of the Para-military Forces which shall be done forthwith by the commission and on receipt of such request the appropriate authorities of the Central Government was directed to deploy the required strength without loss of time and the charges to be borne by the Central Government. Till the writ petition was filed and heard in the moving session, the State Election Commission had not

requisitioned the deployment of the Central Forces. If that be so should the action of the State Election Commission be consider to be a deliberate violence of the order and direction issued in the earlier writ petitions. This issue is not gone into for the present.

4. The petitioner has referred to the report of the Enquiry Committee constituted by the National Human Rights Commission dated 12th July, 2021. This report was submitted after the post-poll violence in the State of West Bengal after the Assembly Election. The report is a very voluminous report which states that the situation in the State of West Bengal is manifestation of “Law of Ruler” instead of “Rule of Law”. With regard to the nature of violence, it is stated that the spatio-temporal expanse of violent incidents in the State of West Bengal with little efforts of State machinery to prevent or control or rectify the same is actually a larger picture of organized violence by supporters of the ruling party in retribution against persons who desire to support the other major party which lost the recent Assembly Election in the State. It is further stated that while some organs or person of the State Government remained mute spectators, some others were apparently complicit. Further, the report states that most of the violent incidents included murder, rape, molestation, assault, vandalism, looting, dispensation, arson and extortion, threat and intimidation and pertinently they were neither sporadic nor random instead they targeted specific person and that there are large gaps in the cases registered by the police as compared to the compliant received by the Committee of the NHRC. Further, the report states that the poor and common

people have lost faith in police. Further, it is stated in the report that the spread of violence shows pernicious politico-bureaucratic-criminal nexus.

5. The petitioner had also placed reliance upon the report of the fact finding committee on post-poll violence in West Bengal prepared by an NGO in which it has been stated that more than 25 persons including women were murdered, over 15000 incidents of violence took place, 7000 women were molested, 16 districts out of 26 districts of the State were badly affected due to violence. The report of the NHRC projects other crimes image of the situation which prevailed at the relevant time. Mr. Kalyan Bandhyopadhyay, Learned Senior Advocate for the State of West Bengal submitted that the report of the NGO cannot be relied on and cannot be taken as evidence.

6. As could be seen from the decision in WPA (P) 250 of 2023 etc. dated 13.06.2023, the Court was of the opinion that requisition of Central Forces would aid and assist in the conduct of free and fair election. The Court also noted submissions of the petitioners that there was inadequacy in the police force. It is submitted by the learned Senior Advocate appearing for the State of West Bengal that police force have been requisitioned from other States and sufficient number of police will be made available. In our view, it is not clear as to why the State Election Commission and the State of West Bengal are averse to deployment of Central Forces when on earlier occasion such deployment has yielded the necessary result. Thus, even assuming the police forces have been requisitioned from the neighbouring States, in our opinion, the same will not solve the issue and the assistance of the Central Forces is vitally required as

the methodology that will be adopted by such Central Forces are quite distinct and such presence and assistance of the Central Forces have yielded results earlier. Therefore, this Court is at a loss to understand as to why the State Election Commission is yet to identify the sensitive districts in spite of several news reports reporting violence in several areas whereby the candidates who were desirous of filing nominations were prevented from doing so. There is also allegation that civic volunteers have been given police uniform and they have been deployed for election duty. In the order dated 13.06.2023 deployment of Civic Volunteers for election duty has been specifically prohibited. Therefore, if any attempt is made by any authority to make the said order unworkable will be liable for action under the Contempt of Courts Act. In any event, the State should ensure that the officers and employees of the State who are deployed for election duty should carry a valid identity card with full particulars of their employment, so that in the event of any doubt being created, the identity of the concerned person can be easily ascertained. The State Election Commission is directed to issue a circular in this regard immediately.

7. Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the state contended that in none of the paragraphs of the writ petition there is any specific averment and all the pleadings are absolutely vague. In this regard, learned senior counsel referred to the paragraphs 9 to 15 of the writ petitions, to buttress his submissions that based on such vague pleadings, the plea of the writ petitioner should not be entertained. It is further submitted that the

court has to proceed based on evidence and press reports cannot be the basis as it does not have any evidentiary value.

8. In paragraph 14 of the writ petition, was referred to as being vague, no complaint by any proposed candidate has been produced and there is no contemporary documents produced to establish the case of the writ petitioner. Referring to the earlier orders passed by the Hon'ble Supreme Court it is submitted that though it was stated that in the earlier panchayat elections, 20,000 candidates won uncontested, though liberty was granted by the Hon'ble Supreme Court to file election petition by extending period of limitation not a single petition was filed based on such liberty. Further the learned senior advocate referred to the paragraphs 16 to 19 of the writ petition and submitted that no details have been furnished and this court cannot decide based upon media trials. The learned Senior Counsel further referred to the copies of the complaint which have been annexed to the writ petition and submitted that all complaints are identical in format and has been prepared by the political party and the court should not take any cognizance of such complaints. It is further submitted that the personal perception of a person cannot be a basis for obtaining the order from the court. It is submitted that it is not clear as to who has brought this sort of culture in the state of West Bengal.

9. Mr. Bandopadhyay submitted that in 2003 panchayat election 70 persons were killed and in 2008 election 70 persons have been killed. Thereafter the learned senior counsel referred to a number of nominations which have been filed for the three tier panchayat elections till 14.06.2023 of

which more than 94000 nominations are by the opposition parties. Further by referring to the note said to have been handed over by police department, it is submitted that in few places, sporadic instances had occurred, otherwise filing of the nominations has been proceeding smoothly. It is submitted that in wherever such incidents have occurred 13 cases have been registered and 52 persons have been arrested and in another place four cases have been registered and 27 persons have been arrested. Further the instance which was referred to by one of the learned advocates relates to a private dispute and it has been given a colour of a dispute concerning the election. It is further submitted that the learned advocate appearing for the writ petitioner referred to the report of an NGO which cannot be relied upon and cannot be taken as evidence. Further it is submitted that the writ petitioner who is a leader of opposition came to the office of the State Election Commission along with several persons and there was a commotion in the area and this conduct of the writ petitioner should not be appreciated. Further it is reiterated that already police force have been requisitioned from the state of Orissa, Jharkhand, Bihar, Punjab and Tamil Nadu. Further the learned senior counsel stated about the incident where a person entered the areas with CISF protection and firing took place and people died creating fear in the minds of the people. Learned senior counsel in support of his contention submitted that a writ petition cannot be decided based on vague pleadings and based on opinion of retired bureaucrats etc. referred to the decision of the Hon'ble Supreme Court

in ***Bharat Singh Versus State of Haryana***¹ are referred to paragraph 13 of the judgment wherein the Hon'ble Supreme Court pointed out about the distinction between pleadings under the Code of Civil Procedure and a writ petition or counter affidavit and pointed out that in a writ petition not only facts but also evidence to prove such facts has to be pleaded and annexed to the writ petition. Thus, it is submitted that on such vague pleadings the writ petition should not be entertained.

10. Mr. Soumya Majumdar learned advocate appearing for the writ petitioner in reply submitted that the law of pleadings in an adversarial litigation will not apply to a public interest litigation and technical rules cannot be made applicable to a public interest litigation and the duty of a public interest litigant is to bring facts to the notice of the court. In support of his contention reliance was placed on the decision of the Hon'ble Supreme Court in ***State of West Bengal Versus Narmada Bachao Andolan***² and has drawn our attention to the paragraph 13 of the said judgment. There were other learned advocates who had also made their submissions.

11. Mr. Jayanta Mitra learned senior advocate appearing for the State Election Commission assisted by Ms. Sonal Sinha learned counsel for the State Election Commission placed before this court the minutes of the Meeting convened by the State Election Commission on 09.06.2023 with the Chief Secretary, Government of West Bengal and Director General of Police, West Bengal and submitted that the necessary arrangements have been made to

¹ (1988) 4 SCC 534

² (2011) 7 SCC 639

comply with the directions of the court and it may take a few days to identify the sensitive areas.

12. Ms. Sonal Sinha handed over the copies of the letters written by the State Election Commissioner dated 14.06.2023 addressed to the Chief Secretary, Government of West Bengal stating that in the light of the order passed by the High Court the Chief Secretary was requested to submit an assessment plan to deploy central forces for the ensuing panchayat election 2023 at the earliest so as to enable the Commission to take further necessary action in the matter. Copy of the letter addressed by the State Election Commissioner to the District Magistrates and the District Panchayat Officers dated 15.06.2023 was also placed before the Court regarding the instructions issued by the Commission.

13. After we have elaborately heard the learned advocates for the parties and carefully considered the materials placed by the State Election Commission, it is clear that the State Election Commission has not taken any proactive and diligent steps with a view to implement the directions issued by this Court in the earlier writ petition in its letter and spirit. We say so because in the minutes of the Meeting dated 9.06.2023 convened by the Commission with the Chief Secretary and the Director General of Police with regard to the identification of the sensitive areas from law and order point of view it has been stated that the District Magistrates and Superintendent of Police have initiated the process of identification of sensitive areas from law and order point of view. Though such was the decision was on 09.06.2023 till today, (15.06.2023) such

identification has not been made. This is clear from the communication sent by the State Election Commission to the Chief Secretary, Government of West Bengal dated 14.06.2023 wherein it is stated the Chief Secretary has been requested to submit assessment plan and deploy of forces for the ensuing panchayat general election at the earliest so as to enable the Commission to further necessary action in the matter. Thus it is seen that more than 5 days no action had been initiated and no assessment plan has been submitted to the Commission which clearly shows that there is a slackness on the part of the administration in promptly reporting by identification of sensitive areas from the law and order point of view. In fact it is the submission made on behalf of the Commission today that it may take a few more days for the identification of the sensitive areas. This in our view is not appreciable because of the fact that today (15.06.2023) is the last date for filing of nominations and the next will be a crucial event where the last date of withdrawal of nomination have been fixed.

14. Therefore, considering the sensitivity of the problem, the Court in the earlier writ petition had directed the State Election Commission to forthwith requisition the Central forces. However, the matter has been dragged on and we find that the State authorities have not extended the due support though a decision was taken as early as 09.06.2023 for identification of the sensitive areas from law and order point of view. Therefore, we are of the view that we will be well justified to issue appropriate directions which to our mind is absolutely essential in order to ensure free and fair elections. We wish to

emphasize that a direction in this regard is required to be issued bearing in mind the electorate, the people of West Bengal, who will exercise their franchise in the ensuing election.

15. With regard to the submission of Mr. Bandhyopadhyay, that the pleadings are vague, no evidence has been placed on record, Court cannot decide on media trial, Court cannot decide based upon oral submissions of Advocates across the Bar etc., have been noted by this court but what is important to point out is that the present writ petition is a public interest litigation. The Hon'ble Supreme Court in ***Narmada Bachao Andolan*** has held that strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averment on the basis of which such a person claims relief. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice and even in PIL the litigant cannot approach the court to have a fishing and roving enquire, he cannot claim to have a chance to establish his claim. It was further pointed out that the technicality of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determined class. The present public interest litigation is a sequel to the earlier set of public interest litigations which were disposed of by a common order dated 13.06.2023. We find that the directions issued in the said order are

yet to be complied with. The petitioner in the public interest litigation seeks to focus on the consequences which have occurred on account of non-compliance of the directions issued in the earlier order and seeks for additional relief in the aid of the decision taken by the court in the earlier set of writ petitions. Therefore, in our view, the Court is well justified in entertaining the public interest litigation and considering the matter in a wholesome perspective. So far as the decision in **Bharat Singh** is concerned, the same would be inapplicable to the facts and circumstances of the case. It was a writ petition challenging the validity of an acquisition of the said petitioner's property by the State of Haryana under the Land Acquisition Act, 1894. In the said case, an allegation was made that the application made by the Haryana State Industrial Development Corporation (HSIDC) is nothing but a profiteering venture of the Government. Considering this aspect the Court pointed out that in a writ petition not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. Thus, the said decision is clearly distinguishable on facts.

16. In the light of the observations in the preceding paragraphs and also taking note of the fact that no appreciable steps have been taken ever since the order was passed in the earlier writ petitions and till date no effective steps have been taken to identify sensitive areas from law and order point of view and in the light of the submission on behalf of the commission that it may take a couple of more days to do so, we are of the view that waiting any longer will

cause more damage to the situation and will not aid in protecting the purity of the election process.

17. In the result, this writ petition is disposed of by directing the State Election Commission to requisition the deployment of Central Forces for all Districts in the State of West Bengal and this direction shall be complied with by the State Election Commission within 48 hours from the date of the receipt of the server copy of this order. On receipt of the requisition the appropriate authority of the Central Government shall deploy the required number of Central Forces and the cost to be borne by the Central Government and no part of it to be charged to the Government of West Bengal. The State Election Commission shall issue a circular that all officers who have been assigned for election duty shall display their identity cards prominently and whenever any of the observers or any authority calls upon to prove their identity, they should readily and immediately produce their identity card and establish their identity. With the above observation the writ petition stands disposed of. No costs.

(T.S. SIVAGNANAM, CJ.)

(UDAY KUMAR, J.)