

S/L 2
12.10.2022
Court. No. 28
*Sws.M/SA/
tbsr/ d.g.*

WPA (P) 528 of 2022

**Nabendu Kumar Bandyopadhyay
Vs.
The State of West Bengal & Ors.**

*Mr. Swatarup Banerjee
Mr. Lokenath Chatterjee
Mr. Sukanta Ghosh
Mr. Debanca Das
Ms. Amrita Pandey
Mr. Pradip Kumar Mondal
Ms. Anamika Pandey
Mr. Rajarsi Basu
Mr. Kuntal Ray
Ms. Tanushree Ghosh
Mr. Suman Chattopadhyay
Ms. Sanchita Burman Roy
Mr. R. Dutta*

...for the Petitioner.

*Mr. T.M. Siddiqui, Ld. AGP
Ms. Sangeeta Roy
Mr. Benazir Ahmed
Mr. Sayak Chakraborty*

...for the State.

*Mr. Billwadal Bhattacharya, ld. Dy. S.G.I
Mr. Kallol Mondal*

...for the CBI

*Mr. Kaushik Gupta
Mr. Debanjan Mukherjee*

...for the CESC

A communal conflagration in the city of Kolkata has prompted the filing of the two petitions seeking various reliefs.

Petitioners allege State Police administration remained silent spectators when communal violence

flared in Ekbalpore – Mominpur area on the eve of Laxmi Puja. No steps were taken to ensure protection of life and property of the members of the Scheduled Caste community who were severally affected by the riot. It is further alleged, adequate compensation has not been given to the victims of crime. Other restitutive measures have also not been taken. It is also contended though the incident involved throwing of bombs in the locality, requisite steps under the National Investigation Agency (NIA) Act, 2008 have not been taken.

Under such circumstances, it is prayed that Central Para Military Forces be forthwith deployed in the area to maintain peace and the investigation of the crimes be taken up by the National Investigating Agency.

Other prayers relating to providing compensation to victims, installation of CCTV Cameras in the area and preservation of CCTV footage of the incident have also been made.

Learned Counsels appearing for the petitioners argue there is gross apathy to conduct a fair and effective investigation into the acts of violence perpetrated upon members of the Scheduled Caste community. Inefficiency of the State Police is evident

from the fact that the Police Station itself was attacked. Under similar circumstances, a Bench presided over by the Hon'ble Chief Justice had issued directions to the State agencies to take assistance of Central Agency, if necessary, to restore peace and tranquility.

In response to the aforesaid submissions, a preliminary report is filed before us.

From the report it appears five criminal cases have been registered over the incident:-

1. Ekbalpore PS Case No. 479 dated 9.10.2022 u/s 153A/295A/506/120B, IPC read with Section 25/27 Arms Act,
2. Ekbalpore PS Case No. 480 dated 9.10.2022 u/s 147/148/149/152/353/427/307/34 IPC, 3 PDPP Act, 4/5/6 Explosive Substance Act, read with 25/27 Arms Act,
3. Ekbalpore PS Case No. 481 dated 10.10.2022 u/s 147/148/149/152/353/436/427/307/34 IPC, 3 PDPP Act, 4/5/6 Explosive Substance Act read with 25/27 Arms Act,
4. Ekbalpore PS Case No. 482 dated 10.10.2022 u/s 147/148/149/152/353/436/427/307/34 IPC, 3 PDPP Act, 4/5/6 Explosive Substance Act read with 25/27 Arms Act,

5. Ekbalpore PS Case No. 486 dated 11.10.2022 u/s 147/148/149/326 IPC.

Investigation of the cases is in progress, 42 persons have been arrested. 15 live bombs, 4 crude bombs and other weapons have been seized. It is also noted in the report that the situation at present is peaceful. Police pickets have been set up in the area and Section 144 Cr.P.C. has also been promulgated in order to ward off any possibility of breach of peace and public tranquility. Report also discloses that investigation is being conducted by the local police authorities under the supervision of superior police officers. Steps are being taken to apprehend the miscreants who have been identified from the CCTV footages.

Perusal of the report shows three out of the five FIRs have been registered under the Explosive Substances Act.

In view of the aforesaid, this Court called upon the learned Counsel representing the State Government to clarify whether the State has complied with the requirements of Section 6 of the NIA Act, 2008 (hereinafter referred to as the Act of 2008). Section 6 of the Act, *inter alia*, casts a statutory duty upon the Officer-in-Charge of the Police Station where an FIR is registered in respect of any of the scheduled

offences to forthwith forward a report to the State Government who in turn is required to forward a report to the Central Government as expeditiously as possible. Upon receipt of report, Central Government may within 15 days thereof has to take a decision whether, keeping in mind the gravity of the offence and other relevant factors, it is a fit case to be investigated by NIA.

Mr. Siddiqui, learned counsel submits that the Officer-in-Charge, Ekbalpore Police Station had forwarded a report in terms of Sub-Section (1) of Section 6 of the Act of 2008 and the State Government, in its turn, has already sent intimation to the Central Government in terms of Sub-Section (2) of Section 6 of the NIA Act.

Report in that regard is kept on record.

In view of the aforesaid development, we are of the considered opinion, the issue whether the investigation of the cases involving Explosive Substances Act is to be taken over by NIA is to be considered by the Central Government in the first instance. Hence, we do not express any opinion in that regard at this stage.

With regard to the other prayers made by the writ petitioners, we note FIRs have been duly

registered and investigation is in progress. However, as the offences giving rise to the aforesaid criminal cases relate to communal disharmony between communities and would require a sensitive approach in the matter of investigation, we are of the considered opinion, the investigation of the cases be at present transferred to a superior investigating agency of the State Government.

Accordingly, we direct that the investigation of the cases be conducted by a special investigation team comprising of experienced police officers. The team shall be selected and headed by the Commissioner of Police, Kolkata.

Special Investigation Team shall conduct the investigation in an effective and efficient manner and take all necessary and prompt steps for preservation and analysis of electronic evidence including video footages of the incident. They shall take prompt measures for apprehension of the miscreants who are responsible for the commission of the offences.

In addition to the investigation of the cases, Commissioner of Police shall take necessary measures for prevention of similar offences and spread of communal hatred in the area.

This court takes note of the fact that police pickets have been stationed in the area. We direct that the police pickets be reinforced and lives and properties of the citizens be duly protected.

State Government shall ensure that communal harmony in the area is restored and all ameliorative measures are undertaken to instill feelings of harmony and fraternity amongst all sections of the society. Local communities shall cooperate with the government and the law enforcement agencies in that regard.

It is also necessary that the victims of crime are promptly and adequately compensated for the loss suffered. State shall take necessary steps in the matter.

If inhabitants of the locality have been displaced due to the communal disharmony, the government shall take immediate steps for their repatriation to the locality.

As the report submitted on behalf of the State records that the condition at present in the area is peaceful, we choose not to pass any order with regard to deployment of central forces for maintenance of peace and tranquility at present.

Comprehensive report shall be filed by the Commissioner of Police with regard to the following:-

- i) Progress in the investigation of the cases;
- ii) Law and order situation in the area and measures taken to prevent similar offences;
- iii) Steps taken to protect life and property of the victims.

State Government shall submit report disclosing the following: –

- i) Steps taken for compensation and/or rehabilitation of the victims of crime;
- ii) Measures to restore communal peace and tranquility in the area.

Reports shall be filed on the adjourned date.

The matter shall appear before the regular Bench two weeks after the vacation (i.e., on 14.11.2022).

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)