

01 21.06.2023
AN Ct. No. 01
PK

CPAN 831 of 2023
Suvendu Adhikari & anr.
Vs.
Sri Rajiva Sinha
in
WPA(P) 301 of 2023
Suvendu Adhikari & anr.
Vs.
State of West Bengal & ors.

Mr. Mr. Soumya Majumder
Mr. Srijib Chakraborty
Mr. Kabir Shankar Bose
Mr. Suryaneel Das
Mr. Chiranjit Pal

... For the petitioners

Mr. Jishnu Saha, Id. Sr. Adv.
Mr. Kishore Datta, Id. Sr. Adv.
Mr. Abhijit Mitra, Id. Sr. Adv.
Ms. Sonal Sinha
Mr. Sujit Gupta
Mr. Sayan Datta
Mr. Soumen Chatterjee

... For the State Election Commission

1. This contempt application has been filed alleging willful disobedience of the order and direction passed by this Court in WPA(P) 301 of 2023 dated 15.06.2023. There was an earlier order passed by this Court in WPA(P) 250 of 2023 dated 13.06.2023. In the order dated 15.06.2023, there was a specific direction issued to the State Election Commission for requisition of deployment of Central Forces to all Districts in the State of West Bengal and the direction was to be complied with within 48 hours and in turn, the Central Government on receipt of such requisition to deploy the required number of Central Forces and the cost to be borne by the Central Government and no part to be charged with the

Government of West Bengal. The State Election Commission as well as the State of West Bengal had filed Special Leave Petition before the Hon'ble Supreme Court against both the orders passed by this Court dated 13.06.2023 and 15.06.2023. The Hon'ble Supreme Court by an elaborate order dated 20.06.2023 had dismissed the Special Leave Petition. The operative portion of the said order is as follows :

“The endeavour of the Respondents (writ petitioners before the High Court) appears to be ensure free and fair election to the local bodies in the State of West Bengal. This would strengthen the Panchayati Raj institutions in the State. Therefore, in our view, the High Court was not in error in issuing the aforesaid directions, as the same was done to ensure, not only that the nominations are filed in a peaceful manner, but also that the entire election is conducted fairly and the results are declared peacefully.

We also take note of the fact that the Respondents herein who were the petitioners before the High Court, although affiliated to different political parties, were united in seeking deployment of the Central Para-military Forces in the State of West Bengal.

In the circumstances, we find that the order of the High Court would not call for any interference in these Special Leave Petitions and we are also not inclined to interfere with any other direction issued by the High Court in this regard.”

2. The Hon'ble Supreme Court after taking note of the observations and findings recorded by this Court in both the orders pointed out that it is needless to observe that the Central Force would act in an appropriate manner bearing in mind the emergent situation and for aiding a free and fair conduct of election in the State. Further, the Hon'ble Supreme Court pointed out that the democratic

nations burgeon on the strength of the purity and impartiality in elections and India being a colossal democracy demands such a process. In this regard, the Hon'ble Supreme Court referred to the observations of the Constitution Bench in the cases of **T. N. Seshan Vs. Union of India reported in (1995) 4 SCC 611** and **Smt. Indira Nehru Gandhi Vs. Raj Narain reported in 1975 Supp. SCC 1**. Further it was pointed out that the sentiment that the free and fair election are at the heart of the democracy has been echoed by the Hon'ble Supreme Court in several judgments. Thus, the issue would be whether the order and directions issued by this Court as affirmed by the Hon'ble Supreme Court has been complied with.

3. After elaborately hearing the arguments of the learned counsel for the parties, we have no hesitation in our mind to hold that the order and direction has not been complied with in its letter and spirit. We fail to understand as to why the State Election Commission is still not taking any independent decision in the matter and the learned senior counsel for the State Election Commission on instruction stated that the Election Commission will abide by the directions issued by this Court. In the first order passed by this Court, the Court reposed confidence on the State Election Commission and directed to make an assessment of the sensitive Districts but we found that this direction has not yet been taken and the matter was being dragged which necessitated the Court to issue direction for

deployment of the Central Forces for the entire State which order has also been affirmed by the Hon'ble Supreme Court. On instructions, the learned senior advocate for the State Election Commission submitted that “one Company of the Central Force has been requisitioned for each of the 22 Districts”. It is submitted by the learned advocate for the petitioners that one Company consists of 80 active persons and the total number of such personnel of the Central Force would be 1700, which in our view is thoroughly inadequate. We are justified in taking such stand in the light of the requisition which was made for deployment of Central Forces during the Panchayat Elections conducted in the State of West Bengal in 2013. In this regard, we refer to the decision of the Hon'ble Supreme Court in the case of **West Bengal State Election Commission Vs. State of West Bengal and others reported in (2013) SCC on line 1283**. It is interesting to note that the State Election Commission was the petitioner before the Hon'ble Supreme Court resisting the decision of the State of West Bengal in the matter of deployment of Central Forces for the year 2013 Panchayat Election. If that was the manner in which the State Election Commission had acted in the year 2013, we are at a loss to understand as to what has happened to the independency and supremacy of the State Election Commission during the ensuing election. In the said order of the Hon'ble Supreme Court it has been recorded that the Panchayat Election 2013 was to be conducted in five phases

from 11th July to 25th July, 2013 and interestingly deployment of State Police was 1,05,000 and Central Forces was 82,000 and, more particularly, at the relevant point of time there were only 17 Districts in the State of West Bengal as against 22 Districts at present. Therefore, if the State Election Commission is not pro-active and not inclined to implement the order passed by this Court in its letter and spirit, we are of the prima facie opinion that the State Election Commission is attempting to make the orders passed by this Court unworkable to which they are not entitled to, more particularly, when the Hon'ble Supreme Court has affirmed the order. This will also lead us to a prima facie conclusion that there has been deliberate violation of the order and direction which was directed to be complied with in its letter and spirit. In the light of the submissions made by the learned senior counsel for the State Election Commission that the Commission will abide by the directions issued by this Court, we are inclined to issue the following directions which are ancillary and supplementary to the orders passed in the earlier two writ petitions.

4. The State Election Commission shall within 24 hours requisition sufficient number of Central Forces to be deployed to all the Districts and the number of Companies/Battalion which are to be requisitioned shall be not less than the forces which was requisitioned for the 2013 Election and it has to be definitely more than the

same as the number of Districts have increased and the Electorate would have definitely increased between 2013 and 2023, in these ten years. Therefore, we expect that the State Election Commission to take note of this direction in a proper and effective manner and this Court hopes that the direction will be complied with in its letter and spirit and any attempt to make the order unworkable may result in adverse consequences.

5. It is pointed out by the learned counsel for the petitioners that in the Special Leave Petition filed before the Hon'ble Supreme Court, a copy of the letter addressed by the Additional Chief Secretary, Home and Hill Affairs Department, Parliamentary Affairs Department, Government of West Bengal, to the Principal Secretary, Department of Home Affairs and Justice, Government of Punjab dated 12.06.2023 was annexed. On going through the letter, we are surprised to note that the requisition which was made to the Government of Punjab was to provide Police Force to reach the designated location by 6th July, 2023 morning. When the submissions on behalf of the State Election Commission was heard by this Court in the writ petition, we were led to believe that already sufficient number of Force has been requisitioned from the State of Odisha, Jharkhand, Bihar, Punjab and Tamil Nadu. The Court was of the view that such requisition has been made and the Forces are required to be present till the entire election process is completed. Surprisingly, the

instructions given to the learned Senior Counsel for the State Election Commission is contrary what has been written by the Additional Secretary to the Government of West Bengal, to the Principal Secretary, Department of Home Affairs and Justice, Government of Punjab dated 12.06.2023. This also appears to be an attempt to mislead the Court as the Court even in the order passed in the earlier writ petition had made it clear that the requisition of Central Forces was to cover the entire Election Process not on the date of polling alone.

6. Therefore, we are of the view that such deployment of the Forces from other States to be in place on the date of polling will not yield the desired result. Therefore, de hors the number of Police Forces which may have been requisitioned from other States, the State Election Commission shall independently assess the requirement and as observed earlier the assessment should be honest and bearing in mind that the State Election Commission has constitutional obligation to ensure free and fair election and to preserve the purity of the entire Election Process. We hope and trust that the directions be complied with effectively and immediately without loss of time.

7. List the matter on 23.06.2023 for further consideration.

(T. S. Sivagnanam)
Chief Justice

(Uday Kumar, J.)

