

**2023 STPL(WEB) 26 SC
SUPREME COURT OF INDIA**

(B.V. NAGARATHNA AND MANOJ MISRA, JJ.)

STATE OF WEST BENGAL AND OTHERS

Appellant

VERSUS

SUVENDU ADHIKARI AND OTHERS

Respondent

Special Leave Petition(C)No. 12294 of 2023 with SLP(C)Nos.12303-12305 of 2023 and SLP(C)No.12296 of 2023-Decided on 20-06-2023

For purity of Elections, Calcutta High Court order for deployment of Central forces during local bodies election in Bengal, upheld by Supreme Court

Cases Referred
Bharatiya Janata Party, West Bengal vs. State of West Bengal & Ors., reported in (2018) 5 SCC 365
Smt. Indira Nehru Gandhi vs. Raj Narain, 1975 Supp SCC 1
T.N. Seshan vs. Union of India, (1995) 4 SCC 611

Advocate(s): Ms. Meenakshi Arora, Sr. Advocate, Mr. Devadatt Kamat, Sr. Advocate, Mr. Kunal Chatterji, Advocate, Ms. Maitrayee Banerjee, Advocate, Mr. Rohit Bansal, Advocate, Ms. Kshitij Singh, Advocate, Mr. Siddharth Aggarwal, Sr. Advocate, Mr. Sanjay Basu, Advocate, Mr. Sirsatya Mohanty, Advocate, Mr. Piyush Agrawal, Advocate, Ms. Utsha Dasgupta, Advocate, Ms. Shrivalli Kajaria, Advocate, Ms. Anju Thomas, Advocate, Ms. Mantika Haryani, Advocate, Mr. Himanshu Chakravarty, Advocate, Ms. Ripul Swati Kumari, Advocate, Mr. Bhanu Mishra, Advocate, Ms. Astha Sharma, Advocate, for the Appellant;

Ms. Bansuri Swaraj, Advocate, Mr. Siddhesh Shirish Kotwal, Advocate, Ms. Ana Upadhyay, Advocate, Mr. Nihar Dharmadhikari, Advocate, Ms. Mahamaya Chatterjee, Advocate, Mr. Rahul Sharma, Advocate, Ms. Manya Hasija, Advocate, Mr. Lokenath Chatterjee, Advocate, Mr. Bikram Banerjee, Advocate, Mr. Sudipto Dasgupta, Advocate, Mr. Vivek Tankha, Sr. Advocate, Mr. Rauf Rahim, Advocate, Mr. Koustav Bagchi, Advocate, Mr. Ali Asghar Rahim, Advocate, Ms. Priti Kar, Advocate, Mr. Ritzu Ghosal, Advocate, Mr. Mrityunjoy Chatterjee, Advocate, Mr. Kuldeep Rai, Advocate, Mr. Mintu, Advocate, Mr. Mehebur Rehman, Advocate, Mr. Jugal Kishor Gupta, Advocate, Mr. Ankur Jain, Advocate, Mr. Ranjan Nikhil Dharnidhar, Advocate, Mr. Harish Salve, Sr. Advocate, Mr. Maninder Singh, Sr. Advocate, Mr. Guru Krishna Kumar, Sr. Advocate, Mr. Gaurav Pachnanda, Sr. Advocate, Mr. Kabir Shankar Bose, Advocate, Mr. Amit Mishra, Advocate, Ms. Bansuri Swaraj, Advocate, Mr. Siddhartha Sinha, Advocate, Mr. Abhijeet, Advocate, Mr. Tathagat Sharma, Advocate, Ms. Mitakshara Goyal, Advocate, Ms. Nikita Jaitley, Advocate, for the Respondent.

ORDER

1. These Special Leave Petitions are directed against the Orders passed by the Calcutta High Court dated 13.06.2023 and 15.06.2023.

2. We have heard learned senior counsel appearing for the petitioners, who are the State of West Bengal and the State Election Commission of the State of West Bengal as well as the learned senior counsel appearing for the respondents as well as learned counsel for impleading applicants before the High Court and have perused the materials placed on record.

3. The Writ Petitions, out of which these Special Leave Petitions arise, were filed by way of Public Interest Litigation before the Calcutta High Court seeking several directions with regard to the conduct of free and fair elections to the 75000 seats through 61000 polling booths throughout the State of West Bengal insofar as the local bodies are concerned. The Public Interest Petitions sought inter alia, the following reliefs, which are encapsulated as under:-

'(i) 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 the 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 Paramilitary 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;

(ii) 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 offices of the SDOs;

(iii) 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.'

4. Learned senior counsel, Sri Siddharth Aggarwal, Ms. Meenakshi Arora as well as Sri Kamat appearing for the State of West Bengal as well as the State Election Commission advanced arguments. They drew our attention to the observations of the High Court in Paragraph 16 and the consequent direction issued in Paragraph 17 of the Order dated 15.06.2023. For the sake of immediate reference, the said paragraphs are extracted as under :-

'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 identify 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.'

5. Thus, by issuance of the aforesaid direction, the State Election Commission was directed to requisition the deployment of Central Forces and the direction was to be complied with within a period of 48 hours from the date of receipt of a copy of the said Order.

6. There were other Orders dated 09.06.2023 and 13.06.2023 passed prior to the said date, which can be usefully extracted as under:-

'15. With regard to the deployment of Central Forces, if in the opinion of the State Election Commission it would augur well to seek for deployment of Central Forces so that the State Police Force can work along with the Central Forces so as to preserve and maintain law and order situation, it is for the State Election Commission to take a decision in that regard. We, therefore, call for the response from the State Election Commission on such issue.'

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48. 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 Bidhan nagar 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 Bidhan nagar. 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 paramilitary 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 on 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.'

7. Learned senior counsel appearing for the State Election Commission as well as the State of West Bengal contended that the direction for requisition of the deployment of the Central Forces for all the Districts in the State of West Bengal was wholly unwarranted and, therefore, the same ought to be interfered with by this Court. More particularly, learned senior counsel Ms. Meenakshi Arora, contended that it is not within the jurisdiction of the State Election Commission to requisition the deployment of Central Forces for the conduct of an election in the State.

8. Learned senior counsel appearing for the State of West Bengal also submitted that no doubt, there may arise a need for additional police forces for the conduct of a free and fair poll on 08.07.2023 and for the processes leading up to the said date, however, the additional forces to be summoned or requisitioned is a matter within the discretion of the State Government. The State Government, in addition to the police forces already under its command could requisition or plan to requisition the forces from the neighbouring States, but the impugned direction which has been issued by the High Court has taken away that discretion and hence, he submitted that the said direction ought to be quashed.

9. Per contra, Sri Harish Salve, learned senior counsel appearing for respondent No. 1 on caveat, supported the Order of the High Court and submitted that this is not the first time that the High Court has issued such a direction. Even on previous occasions, similar directions had been passed by the High Court in order to ensure that free and fair polls are conducted in the State. It was further submitted that in the instant case, having regard to the earlier directions, issued by the High Court not being complied with by the State Election Commission, the observations at Paragraph 16 were made and therefore, the consequent direction at Paragraph 17, does not call for any interference in these Special Leave Petitions.

10. By way of reply, Ms. Meenakshi Arora, learned senior counsel, drew our attention to the Judgment of this Court in the case of Bharatiya Janata Party, West Bengal vs. State of West Bengal & Ors., reported in (2018) 5 SCC 365 and contended that any grievance that the candidates or the voters or any other person concerned may have, could be ventilated by making appropriate representations to the State Election Commission, which would have the authority to consider the same, as it is the duty of State Election Commission to ensure that there is a fair Election process conducted in the ensuing election. She, thus, submitted that the direction to the State Election Commission to requisition the deployment of Central Forces was not required at all and is beyond its jurisdiction.

11. We have considered the submissions made on behalf of the rival parties and have given our anxious consideration to each of those submissions.

12. It is significant to note that members belonging to different political parties had voiced a common concern and had sought similar reliefs in the writ petitions filed before the High Court.

13. At the outset, we find that the Order dated 15.06.2023 for deployment of Central Forces for all the Districts in the State of West Bengal has been preceded by earlier Orders passed by the High Court, which we have referred to hereinabove. In the Order dated 15.06.2023, the High Court has noted that earlier a direction was issued to the State Election Commission to review the assessment plan submitted by the State and wherever there was any inadequacy of the State police, the State Election Commission in all such areas was to requisition the deployment of the Para-Military forces forthwith and on receipt of such a request, the appropriate authorities of the Central Government were directed to deploy the required strength on charges to be borne by the Central Government. However, the State Election Commission failed to identify the sensitive areas and as observed by the High Court, the State Election Commission had not requisitioned the deployment of Central Forces till the writ petitions were heard finally. It is further observed by the High Court that there was no due diligence in the implementation of the directions issued by the High Court in the earlier writ petition in its letter and spirit. Considering the sensitivity of the issue, the High Court noted that the State Election Commission had dragged its feet in not complying with the direction of the High Court even though a decision was taken in a meeting on 09.06.2023 for identification of the sensitive areas from the point of view of law and order. In light of the above observations, the High Court finally concluded at Paragraph 16 as quoted above and issued the direction in Paragraph 17 by its order dated 15.06.2023.

14. It is relevant to observe that this is not for the first time that a direction for deployment of Central Para-Military forces has been ordered by the High Court, in Paragraph 48 of the Order dated 13.06.2023, there is a discussion on the earlier occasions in which the High Court had directed the deployment of Para-Military forces as and when the situation so demanded. It is in the above background that the direction was issued to the State Election Commission to send the requisition for deployment of the central forces in areas which, in the opinion of the State Election Commission had been declared as sensitive forthwith. Therefore, we find that it was directed in the earlier Order that there must be identification of the sensitive districts. But bearing in mind the fact that the State Election Commission had not complied with the earlier directions of the High Court in identifying the sensitive areas, we find that the High Court was left with no option but to direct the State Election Commission to requisition the deployment of Central Para-Military forces for the entire State. When the observations in Paragraph 16 of the Impugned Order dated 15.06.2023 are viewed in light of the earlier Order of the High Court not being complied with, we do not think they are unjustified. In fact, the directions issued by the High Court must be viewed from the point of view of the electorate of West Bengal who should be enabled to exercise their franchise in a free and fair manner and not be in fear of the safety of their life and property.

15. The fact remains that the tenor of the Order of the High Court is ultimately to ensure that there is a free and fair election conducted in the State of West Bengal. Moreover, the State is conducting local body election on a single date. The High Court has also based its decision after considering the number of seats which are going to the polls and the volume of polling booths that are being set up for holding the said polls.

16. It is needless to observe that the central forces would act in an appropriate manner bearing in mind the emerging situations and for aiding in a free and fair conduct of election in the State.

17. We further observe that democratic nations burgeon on the strength of purity and impartiality in elections and India, being a colossal democracy demands such a process. This Court has repeatedly underscored the importance of free and fair elections. The following observations of a Constitution

Bench of this Court in T.N. Seshan vs. Union of India, (1995) 4 SCC 611 laying stress on the importance of free and fair elections in a democracy, may be referred to as under:

"Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process it was thought by our Constitution-makers that the responsibility to hold free and fair elections in the country should be entrusted to an independent body which would be insulated from political and/or executive interference."

18. In Smt. Indira Nehru Gandhi vs. Raj Narain, 1975 Supp SCC 1, this Court adverted to the importance of elections in a democracy as follows:

'Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that election are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.'

19. The sentiment that free and fair elections are at the heart of democracy has been echoed by this Court in several other judgments.

20. The endeavour of the Respondents (writ petitioners before the High Court) appears to be to 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 aforestated 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.

21. 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.

22. 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.

23. In view of above, the Special Leave Petitions stand dismissed.

24. Pending interlocutory application(s), if any, is/are disposed of.
