

8
05.07.2023
ssi
Ct 14

WPA 15600 of 2023

Subhankar Mahata
-vs-
State of West Bengal & ors.

Ms. Chandreyi Alam (Gupta)
Mr. Subhajit Das
...for the petitioner
Mr. Amitesh Banerjee
Ms. Ipsita Banerjee
Mr. Tarak Karan
...for the State

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to ensure that the petitioner is able to participate in the ensuing elections without obstruction, to provide adequate police protection and for restraining the respondent no.4 from functioning during the oncoming Panchayat Election.

Supplementary affidavit filed on behalf of the petitioner is taken on record.

Copy of the same is handed over to the learned counsel for the other side.

Learned counsel for the petitioner submits as follows. The petitioner is a candidate of a political party for the post of Zila Parishad member in the ensuing West Bengal Panchayat Election, 2023. He is a cancer patient and is undergoing treatment for the same. The petitioner has come

to know that a candidate of another political party lodged a FIR against him on 26.06.2023. In connection with the same, the Officer in Charge of Sankrail Police Station Khandakar Safiuddin Ahmed along with some others accosted the petitioner while he was campaigning for the election. He was not in uniform. He picked up an altercation and thereafter started assaulting the petitioner. The petitioner fell down on the ground and was seriously injured. A passerby had taken photographs copies of which annexed in the supplementary affidavit. The petitioner was admitted in the hospital for treatment and was there for 3 days. It appears that the police authorities started another suo moto case in respect of this. As regards the assault on the petitioner, the wife of the petitioner lodged a complaint which was not acted upon.

Learned Senior Standing Counsel representing the State files a copy of the report, which is taken on record, and submits as follows. It was on a complaint of a lady who is also a candidate in the ensuing election that the first case was started against the petitioner. On the particular day, when the Officer in Charge happened to meet the petitioner, it was the petitioner who first held the police officer at his collar and started abusing the officer in religious line. When he jumped on the officer, the latter fell down on the ground. Both sides might have suffered some injuries. So far as the complaint made by the petitioner's wife is concerned, action is being taken in this regard and inquiry is going on as there

is a doubt about whether a cognizable offence is made out or not.

I have heard the learned counsels for the parties and have perused the writ petition and the report filed by the State.

From the photographs annexed with the supplementary affidavit, the injury report and the sequence of events as narrated by the petitioner, the petitioner has made out prima facie case for being granted protection in respect of the two FIRs. In fact, he was the one who was hospitalized after the altercation.

So far as the allegations made by the wife of the petitioner are concerned, she would be at liberty to file appropriate application before the learned jurisdictional Magistrate.

However, considering the alleged involvement of the Officer in Charge of the concerned police station, the officers of the Police Station shall not investigate the two cases.

In view of the above, I am inclined to pass the following directions:

- (i) No coercive steps shall be taken by the Investigating Agency against the petitioner in respect of the two cases being Sankrail Police Station Case No. 45 dated 26.06.2023 and Sankrail Police Station Case No. 46 dated 27.06.2023 till four weeks from this date.
- (ii) However, investigation in the said cases will

continue and will be conducted by an officer of the rank of the DSP as would be nominated by the concerned Superintendent of Police in this regard.

- (iii) It is clarified that the police would maintain vigil and keep peace at the locale.

List this matter for hearing after a fortnight.

Parties shall act on a server copy of the order obtained from the official website of High Court at Calcutta.

(Jay Sengupta, J.)