

IL 2-3 12.06.
2024

Ct. No. 08

Akd,
Nandy,ab,
sayandeep

WPA (PIL) 240 of 2024

**Suvenu Adhikari and another
Vs.
State of West Bengal and others.**

With

WPA (PIL) 245 of 2024.

**Priyanka Tibrewal
Vs.
State of West Bengal and others.**

**Mr. Soumya Majumdar,
Mr. Billwadal Bhattacharyya,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Chiranjit Pal,
Mr. Tamoghna Pramanick.**

**... for the petitioners in
WPA (PIL) 240 of 2024.**

Ms. Priyanka Tibrewal.

**... the petitioner (in person)
in WPA (PIL) 245 of 2024.**

**Mr. Kishore Dutta, Ld. AG,
Mr. Amitesh Banerjee, Ld. SSC,
Mr. Anirban Ray, Ld. GP,
Mr. Debangshu Dinda.**

... for the State.

**Mr. Ashoke Kumar Chakraborty, Ld. ASGI,
Mr. Dhiraj Kumar Trivedi, Ld. DSGI,
Mr. Kumar Jyoti Tewari,
Mr. Tirtha Pati Acharyya.**

... for the Union of India.

“Democracy digs its grave where passions, tensions and violence, on an over powering spree, upset results of peaceful polls, and the law of elections is guilty of sharp practice if it hastens to legitimate the fruits of lawlessness. The judicial branch has a sensitive responsibility here to call to order lawless behavior. Forensic non-action may boomerang, for the court and the law are functionally the bodyguards of the People against bumptious power,

official or other”, reminded us the onerous responsibilities and duties cast upon the citizenry as well as the Courts to prevent any violence, pre, during, post the election, which appears to us the basic foundation of the grievance raised in the instant Public Interest Litigations.

The aforementioned enlightening observations made by an illustrious Jurist V.R. Krishna Iyer in case of **Mohinder Singh Gill vs. Election Commissioner**, reported in **(1978) 1 SCC 405** is the exposition of the basic rights of a people of the country in a democratic polity exercising the franchise guaranteed under the Constitution of India.

The moral matrix and the administrative culture must nurture the power process and maintenance of law and order at every stage of the election process including the period after the declaration of the results. The election is a mechanical guarantee of democracy and chooses the political party to govern the country or the State, as the case may be, on the opinion of the people of the country, which must be embraced to uphold the Rule of Law, which is a hall-mark of an orderly society.

The election ensures the majority opinion of the citizen of the country and its faith and allegiance to a political party to administer and maintain the various facets of the people for their betterment and development, which goes without saying that there is no space for any violence in a democratic polity.

The present Public Interest Litigations have been launched at the behest of the public spirited person raising serious issues concerning the alleged violation after the declaration of the results relating to the mandate of the peoples in choosing the candidate.

Several incidents have been highlighted lucidly and vividly to project the violence after the declaration of the results and the safety and security of the persons are alleged to have been at risk. The apathy of the State

Police Administration in combating such violence at the behest of the ruling party has also been projected in the sense that several persons, who adorn the adverse political ideologies, have been rendered homeless and in the sense of fear of their life and limb are residing at distant place.

Both the Public Interest Litigations have been taken together for the purpose of convenience for the simple reason that certain incidents have been disclosed and the complaints have been lodged through electronic modes because of such apprehension in the event they approached the concerned Police Station.

One of the Public Interest Litigation being WPA (PIL) 240 of 2024 is at the behest of the two public spirited persons, one of whom has the political affiliation, raising a serious issue concerning the safety and security of the electoral voted against or in favour of the wining candidates and the apathy of the State Police Administration in not tackling the situation unless the Central Forces deployed during the election process is allowed to remain for a certain period of time in order to ensure the peace and safety of such peoples.

The second Public Interest Litigation being WPA (PIL) 245 of 2024 is filed by another public spirited person disclosing several complaints having lodged through e-mail and the allegation as to inaction on the part of the State Police Administration to take immediate steps.

Though the learned Advocate General is critical in his submission on the *locus standi* of such petitioners but pith and substance of the submission can be reasonably ascertained that there is no fetter on the part of a person having political affiliation to institute a Public Interest Litigation with a rider that the political scores should not be permitted to be settled by using the tools and machinery of the judicial system. The reliance is placed on a judgment of the Apex Court in case of

Sachidanand Pandey and another vs. State of West Bengal and others, reported in **(1987) 2 SCC 295**, **Ramjas Foundation and others vs. Union of India and others**, reported in **1993 Supp. (2) SCC 20** and **Tehseen Poonawalla vs. Union of India and others**, reported in **(2018) 6 SCC 72**.

The learned Advocate General further submits that though he is not abandoning the plea of locus but because of the paucity of time between the service of the instant petition proper instruction could not be secured and, therefore, he may be permitted to file an affidavit/report, if directed by the Court to disclose the steps taken by the police administration in relation to those complaints.

On the other hand, learned Additional Solicitor General submits that there has been a large number of incidences reported after the completion of the poll and there is no impediment on the part of the Central Government to retain the existing Central Forces for a limited period if directed by the Court.

The Counsel for the petitioners have echoed what has been stated in the petition and showed their anguish and apprehension in the event, those persons are left without any security and/or protection and reiterated their stands of retaining the Central Forces for a limited period.

We have been taken to several orders passed in a writ-petition filed on the eve of the date fixed for declaration of the results and even thereafter. The Coordinate Bench in WPA (P) 237 of 2024 passed an order on June 6, 2024 taking into account that the incidences of post-poll violence are not unprecedented in the State and took the matter seriously upholding the notion of primary concern by the Court to ensure the registration of the complaints relating to post-poll violence irrespective of the political affiliations.

The coordinate Bench being conscious of the

provisions of law relating to the registration of an FIR directed a separate avenue bearing in mind that large number of complainants may not be in a position to register the complaints in physical form and further directed the Director General of Police and Inspector General of Police, West Bengal to open e-mail addresses where those persons may lodge their complaints.

There has been a spate of complaints in the said e-mail address which cannot be overlooked and the incidences as reported, warrants serious intervention to protect the life and limbs of a person in pursuit of justice. Obviously the learned Advocate General could not make any dissent on the lodging of the complaints in such e-mail address but the real issue boils down to one fact whether any prompt and immediate action have been taken thereupon. Obviously, because of the scanty time, the learned Advocate General is not in a position to apprise the Court of an action taken thereupon to which we feel that the State should file a comprehensive report on/or before Friday i.e. 14.06.2024 disclosing the actions and/or steps taken upon the aforesaid complaints.

The seminal issue relates to the safety, security, protection and the prevention of the violence as alleged in both the petitions. The Coordinate Bench directed both the State Police and the Central Force to cooperate with each other to ensure the safety and security of the citizens to which we also feel is the order of the day. Taking a serious view on the allegations as disclosed in the aforesaid Public Interest Litigations and the role of the Police to be ascertained on the basis of the report to be filed on the day as directed above, we feel that the Central Forces deployed in the State as on this date should continue till Friday week i.e. 21.06.2024.

The aforesaid direction is passed keeping in view that the Central Forces were deployed for ensuring fair and transparent election to be conducted and having not

been completely withdrawn as of now.

We have passed the interim order to meet the exigencies as projected in the aforesaid Public Interest Litigations keeping the point open whether Entry 2A of List I in 7th Schedule overrides the Entry I of List II of the 7th Schedule of the Constitution of India, as it is a primary duty of the State to maintain the law and order.

List the matter on 18th June, 2024.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)