

16.12.2021.
Court No.13
Item No. 24
ap

**W.P.A. No. 20354 of 2021
(Through Video Conference)**

**Bhartiay Janta Party
Versus
The State of West Bengal & Ors.**

Mr. S.K. Kapur, Id. Sr. Advocate,
Mr. Kallol Mondal,
Mr. Dhiraj Trivedi,
Mr. Partho Ghosh,
Mr. Nilanjan Bhattacharya,
Mr. Rajdeep Mazumder,
Mr. Billawadal Bhattacharyya,
Mr. Anish Mukherjee,
Mr. Vikash Singh,
Mr. Rahul Sharma.

...For the petitioner.

Mr. S.N. Mookherjee, Id. Advocate General.
Mr. Anirban Ray, Id. Government Pleader,
Mr. Raja Saha,
Mr. Nilotpal Chatterjee.

...For the State.

Mr. Ratnanko Banerji, Id. Sr. Advocate,
Ms. Sonal Sinha,
Mr. Kanishka Kejriwal.

...For the State Election Commission.

Mr. Y.J. Dastoor, Id. Additional Solicitor General
Mr. Phiroze Edulji.

..For the UOI.

The writ petition is filed seeking deployment of
Central Forces during the forthcoming Elections to
Kolkata Municipal Corporation.

It is stated that four several candidates of the
petitioner, had addressed, complaints to the
Commissioner of Police Kolkata on 30th November,
2021 and 1st December, 2021 which have not been
attended to. Complaints by the petitioner addressed to

the State Election Commission and to the Governor are also placed.

The petitioner had moved the Hon'ble Supreme Court of India under Article 32 of the Constitution of India seeking similar reliefs. The Hon'ble Supreme Court of India had directed the petitioner to approach this Court.

Reference is made to a decision of the Hon'ble Supreme Court of India in the case of ***All India Trinamool Congress & Anr. – Vs. – State of Tripura & Ors.*** being ***W.P. (Criminal) No. 455 of 2021***. By, inter alia, order dated 25th November, 2021, a large number of directions were given to the Government of Tripura and Central Forces were directed to be deployed for the Municipal Elections to be conducted thereat.

It is submitted that the complaints of the four petitioners are more than just mere apprehensions, given the violence that occurred during the Assembly Elections in May, 2021. It is further submitted that the petitioner has no faith in the State Police providing security to them. It is therefore prayed that Central Forces should be deployed for the Election at the Kolkata Municipal Corporation to be held on 19th December, 2021.

The State was represented by the learned Advocate General, who has submitted that all

complaints have been attended to and several meetings have been held with the State Election Commission to ensure that the elections are conducted free of violence and in a fair and transparent manner.

The learned Advocate General also refers to the order passed on 14th December, 2021 by a Division Bench of this Court in a Public Interest Litigation being W.P.A. (P) No. 340 of 2021 wherein CCTV cameras have been ordered to be installed in each polling booth for the aforesaid Elections.

Counsel for the State Election Commission, Mr. Ratnanko Banerji, has submitted a report in the form of a note to its Counsel along with a set of documents which have been circulated. The said report is set out below:

“1. The State Election Commission is committed to conduct free and fair election. It takes all steps to ensure proper deployment of force.

2. A meeting was taken by the Commissioner on 13.11.2021 with the Chief Secretary, ACS Home, DGP and ADG (LW) to discuss security arrangements amongst other issues. Minutes of the meeting is enclosed (Annexure – I).

3. The Commissioner, West Bengal State Election Commission also wrote to the Chief Secretary in reference to the earlier meeting reminding the latter that it was assured in the said meeting that adequate security arrangements will be made by the State Government during the entire election period of the Kolkata Municipal Corporation,

especially during the poll and counting phases. The Commissioner asked the Chief Secretary to immediately inform whether adequate security forces were available and would be deployed so as to ensure a free and fair election vide No.859-SEC/3L-10/2021 dated 04.12.2021. (Annexure – II) The State Government in its reply stated that “adequate police force is available with Kolkata Police for the conduct of free and fair polls to the Kolkata Municipal Corporation. Further, this will be supplemented from the police personnel, as may be required, from the West Bengal Police” vide their No. 1417-Home(Cons.)/R1M/80/2020 dated 04.12.2021 (Annexure – III)

4. A tentative security plan was provided by the Kolkata Police and there was discussion on the plan between the Commission and the Kolkata Police. Thereafter, Kolkata Police submitted modified plan vide their No. 16/HQ/KMC/Elec dated 06.12.2021. (Annexure – IV) The West Bengal State Election Commission considered the proposal and agreed to it. The Commission communicated its decision vide No. 890-SEC/3L-10/2021 dated 06.12.2021. (Annexure – V) This plan ensured deployment of armed forces in each premises and deployment of armed sector force, RFS/RT Mobile, HRFS, Cluster Mobile/QRT, NAKA, PS & Divisional Striking Force and River Patrol. Later, on 10.12.2021 the Joint CP provided a further elaboration on the security plan wherein it was informed that they will take assistance of three bordering CsP (Howrah, Bidhannagar & Barrackpore) and two SsP (Baruipore & Diamond Harbour PD) regarding border security and sealing issues. Apart from the above arrangements, various security measures have

already been taken up since the date of notification. Day to day NAKAs have already been placed at strategic points throughout the city. Special drive against pending Warrant is going on day to day basis. Divisional DCs are taking measures under preventive section of law to maintain peace and tranquility in their respective zones.

5. The Commissioner of Police, Kolkata has been instructed to cause immediate enquiry into cases where candidates, etc. were complaining about their security threats and provide security to them where necessary vide Nos. 914-SEC/9C-16/2021 dated 07.12.2021 & 1036-SEC/9C-16/2021 dated 13.12.2021 (Annexure – VI). The police are taking actions accordingly and sending action taken reports. For example, on 11.12.2021 they reported that they provided PSO to 13 contesting candidates till then, which includes four complainants mentioned in the writ (page 8-9) (Annexure – VII).

6. The police were asked to take certain preventive steps to ensure free and fair elections which includes execution of non-bailable warrants, bounding down trouble-mongers, deposition of arms etc., the updated report on which is received by the Commission on daily basis. A copy of the said report dated 13.12.2021 is enclosed (Annexure – VIII).

7. In 144 constituencies (wards) of KMC 958 valid nominations were filed of which only 8 withdrew, 2 of them were from BJP, 1 from CPI(M) and the rest independent candidates (Annexure – IX).

8. In PIL No. WPA (P) 340 of 2021 the Hon'ble Division Bench of High Court was pleased to

direct the Commission to provide CCTV cameras in all the main and auxiliary polling booths as also in strong room where EVMs will be kept. Thus, there will be an additional vigil on all booths on the poll day (Annexure – X).

9. *So far there has not been any major incidence of law & order pertaining to this election. Twenty Observers have also been appointed by the Commission, each to look after specified number of constituencies.”*

In the case of ***Basabi Raichoudhury – s. – The State of West Bengal & Ors.*** reported in **2013 SCC OnLine Cal 15463**, a Division Bench of this Court has held that the deployment of Central Forces in a Municipal Election has to be at the decision of the State Election Commission. Such Commission has approached this Court in the past for such deployment by the State.

The steps taken and the views of the State Election Commission as set out herreinabove are clear and explicit. There is no need for Central Forces in the Elections to the Kolkata Municipal Corporation to be held on Sunday.

The facts situation in which the Hon’ble Supreme Court had passed detailed directions for security and other measures in the Tripura decision (supra) are not available here.

A communication from the Commissioner indicates that one police constable duly armed have been provided to each of the four petitioners.

This Court notices that three of the complaints are in the same text mechanically reproduced.

Having heard the Counsels appearing on behalf of the respective parties, this Court is of the view that the Commissioner of Police has taken steps. Security has been provided to the four petitioners. Additional and further security, if necessary, shall also be provided by the Commissioner of Police, Kolkata after reviewing the four cases before the day of Election.

It is also directed that the Commissioner shall forthwith attend to any other complaints from other complainants and based on the threat perception ensure appropriate security as also other measures. All steps must be taken to facilitate exercise of franchise by citizens and free, fair and peaceful Elections are held.

This Court is, therefore, of the view that the assurances of the learned Advocate General, are sufficient in the light of the views of the State Election Commission.

Since the State Election Commission does not see the requirement of deployment of Central Forces, this Court is not inclined to accede to the prayer of the petitioner on that score.

Documents produced by the State Election Commission may be kept with the record.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)