

WPA(P) 326 of 2022
Nabendu Kumar Bandyopadhyay
Vs.
State of West Bengal and Others

Mr. Swatarup Banerjee,
Mr. Lokenath Chatterjee,
Mr. Sukanta Ghosh,
Mr. Ramen Bose,
Mr. Partha Chakaborty,
Mr. Subit Majumder,
Ms. Hasi Saha,
Ms. Tanusree Ghosh,
Mr. Subhajit Das,
Ms. Aishwarya Rajyashree, Advocates
... for the petitioner

Mr. S.N. Mookherjee, Id. AG
Mr. A. Ray, Id. GP
Md. T.M. Siddiqui,
Mr. D. Ghosh,
Mr. Yash Singhi, Advocates
... for the State

Mr. Saptanshu Basu, Sr. Advocate
Mr. Sanjay Basu,
Mr. Piyush Agarwal,
Ms. Shrivalli Kajaria,
Ms. Utsha Dasgupta, Advocates
... for the respondent No.12
Mr. Billwadal Bhattacharyya, Ld. Assistant Solicitor
General of India
Mr. Kallol Mondal, Advocate
... for the CBI

In this public interest petition, at the instance of a member of the ruling political party at the Centre, an issue has been raised about the statement by the respondent No.12 Chief Minister of West Bengal on 28th June, 2022 while addressing a public gathering in Asansol and declaring 21st June, 2022 as a day of Jihad

against the petitioner's political party. It is also disclosed that on 21st of July, 2022, every year the ruling party in the State organizes a rally calling the Martyrs Day (Shahid Divas). It is alleged that such a statement has been made and political workers of the respondent No. 12 party have been incited to display violence against the members of petitioner's political party and that there is great apprehension of violence as an attempt has been made to instigate a particular community to commit violence against the supporters of the petitioner's political party. The earlier instance of post-poll violence after the Assembly election on 2nd of May, 2021 has been highlighted and Full Bench judgment of this Court dated 19th of August, 2021 in WPA(P) 142 of 2021 in the case of Susmita Saha Dutta vs. The Union of India and Ors. and other connected petitions has been relied upon in support of the plea of apprehension of violence on 21st of July, 2022. A plea has also been raised that though the complaint was made by the petitioner but no action has been taken.

Learned Counsel for the petitioner has raised a submission that on account of the provocative speech of the respondent No.12, there is apprehension of violence, therefore, similar protective order be passed as was passed by this Court on 15th of June, 2022 in WPA(P) 258 of 2022 in the case of Niladri Saha vs. The State of

West Bengal and Others. He has also referred to various documents enclosed with the petition in support of his plea.

Learned Advocate General has raised a preliminary objection that as required by Rule 26 of the Rules of High Court at Calcutta Relating to Applications Under Article 226 of the Constitution (for short, 'the Rules'), no advance notice has been served upon the State and the service of notice to the Advocate General cannot be treated to be proper service in view of the Division Bench judgment in matter of **State of West Bengal & Ors. vs. Arjun Kumar Izaddar & Ors.** reported in **(2005) 3 CHN 603** and Single Bench judgment in the matter of **Sanjit Jana vs. State of West Bengal and Others** reported in **2012 SCC OnLine Cal 2240**. He has submitted that no advance notice of 48 hours has been served, therefore, the petition should be dismissed. He has also raised an objection that there is no pleading of breach of any fundamental right in the writ petition and that the speech of one political party against another political party is not actionable and that in the writ petition it has been projected as if ruling party in the State is for one particular community and the petitioner's party is for another community which is not correct and it is only a phrase which was used in the political speech and proper arrangements for traffic

movement and police have been made. Questioning the maintainability of the petition, he has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Tehseen Poonawalla vs. Union of India and Another** reported in **(2018) 6 SCC 72** and in the matter of **Rajiv Ranjan Singh 'Lalan' (VIII) and Another vs. Union of India and Others** reported in **(2006) 6 SCC 613**. He has also submitted that another writ petition being WPA(P) 296 of 2022 in the case of Nazia Elahi Khan vs. The State of West Bengal and Others was filed which was adjourned because affidavit was not filed.

Learned Counsel for the respondent No.12 has also questioned the maintainability of the petition by submitting that writ petition for political cause cannot be maintained and that no proper notice to respondent No. 12 was served and there is no prayer for dispensation for service of notice in the petition. In support of this, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Dattaraj Nathuji Thaware vs. State of Maharashtra and Others** reported in **(2005) 1 SCC 590** and the judgment in the matter of **Kushum Lata vs. Union of India and Others** reported in **(2006) 6 SCC 180**.

We have heard the learned Counsel for the parties.

During the course of argument, it has not been disputed that a rally of large gathering is going to be organized tomorrow on 21st of July, 2022 on the occasion of the Martyrs Day (Shahid Divas). The utterance made by the respondent No. 12 about the Jihad against a particular political party have not been disputed. In this view of the matter, the only concern of this Court at this stage is about the maintenance of peace and law and order during the gathering and the rally which is going to be held on 21st of July, 2022 and its aftereffects. This Court is not required to go into the political rivalry between the two political parties.

So far as the preliminary objection about non-service of advance notice in terms of the Rule 26 of the Rules is concerned, this Rule requires service of 48 hours advance notice for interim order and when the State is a party the notice is required to be served on Legal Remembrancer/Government Pleader, therefore, we find substance in the argument of the learned Advocate General based upon the judgments of this Court in the matter of **Arjun Kumar Izaddar & Ors. (supra)** and **Sanjit Jana (supra)** that proper 48 hours advance notice has not been served upon the State.

The proviso to Rule 26 empowers the Court to allow moving of the application and entertaining the prayer for interim relief without such advance notice by

recording reasons. In the present case, there is an urgency as the rally and gathering is to take place tomorrow and the petitioner cannot be directed to wait for 48 hours as that would render the petition infructuous. That apart, the concerned respondents are duly appearing in the matter and they have also raised their submissions, therefore, non-compliance of Rule is now a mere technicality. The petitioner in prayer 'a' of the writ petition has sought dispensation of requirement of Rule 26, hence in the circumstances of the case and for the reasons recorded above, we allow the prayer 'a'.

So far as the objection raised by the respondents about the maintainability of the petition based upon the judgment of the Hon'ble Supreme Court in the matter of **Tehseen Poonawalla (supra)**, in the matter of **Rajiv Ranjan Singh 'Lalan' (VIII) and Another (supra)**, in the matter of **Kushum Lata (supra)** and in the matter of **Dattaraj Nathuji Thaware (supra)** on the ground that it is a politically motivated petition raising personal dispute is concerned, we again make it clear that we do not intend to go into any of the politically motivated allegation in the petition and the oral argument advanced in this regard.

In the public interest, this Court is entertaining this petition for the limited purpose to ensure that peace and law and order is maintained during the forthcoming

gathering and rally tomorrow in which lacs of people are expected to gather.

At the earlier occasion, when after some unruly persons had destroyed public property in the name of protest against the unwanted comment against one person, this Court by the order dated 13th of June, 2022 passed in WPA(P) 258 of 2022 in the case of Niladri Saha vs. The State of West Bengal and Others considering the issue of large gathering and disturbance of peace had issued following directions:

“In the meanwhile we express hope that the State authorities will take all possible steps to ensure that no untoward incident takes place and peace is maintained. In case, the State Police is unable to control the situation at any place then State authorities will take immediate steps to call the central forces. Concerned State authorities will also collect the video footage of the incident so that the miscreants can be identified and appropriate action can be taken against them. Learned Advocate General will also make the stand of State clear on the issue of grant of compensation to those who have suffered loss of property in the untoward incidents.”

The above directions were further modified by this Court by order dated 15th of June, 2022. Hence, we express hope that with the object to prevent any untoward incident and to maintain peace and law and order, the State authorities will duly take into account

and comply with the above directions in the present case also.

The petition is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)