

AD-59
Ct No.09
13.01.2023
TN

WPA No. 4102 of 2020

Mikhail Mondal and others
Vs.
State of West Bengal and others

Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee
.... for the petitioners

Mr. Niladri Saha
.... for the respondents

After the hearing is concluded, an adjournment is sought on behalf of the respondents.

However, the matter has been substantially heard and despite service, none appeared throughout the hearing on behalf of the respondents. As such, the matter is being taken up for hearing *ex parte*.

Learned counsel for the petitioners expresses the grievance of several petitioners who are villagers and local farmers and other persons living in the area between the Zero Point in the Indo-Bangladesh Border within the State of West Bengal and the barbed wire fencing which has been put up inside the Indian zone of the border area.

It is submitted that for several reasons, such people have to travel to and fro their houses which are

situated within the said zone. However, since the respondent-authorities are not maintaining the stipulated times for keeping the gates to the fencing open, as per the direction of a Division Bench passed on April 25, 2003 in W.P. No. 8985(W) of 2002, the villagers are facing immense problems. Moreover, it is contended that one person of the area met with his demise because he was not permitted to go through the gates although he required urgent medical attention. Such emergency situations, it is submitted, ought to be considered by the Border Security Force (BSF) personnel and the other respondents.

Upon perusal of the cited order of the Division Bench dated April 25, 2003, a true copy of which has been annexed to the present writ petition as Annexure P3, it transpires that the gates situated on the barbed wire fencing were scheduled to remain open during the following hours:

- i) 0600 to 0900 hours;
- ii) 1100 to 1300 hours;
- iii) 1500 to 1800 hours

Besides those timings, the Division Bench had directed that the gates shall be opened as and when requested by villagers in case of emergency. It was further recorded that, to check nationality, BSF is

maintaining a gate register. Every person who crosses the fence gate is required to show his identity, such as voter's identity card or other identity card issued by the Gram Panchayat Pradhan of the area. The entry in such regard is made at the gate register and the identity card is kept at the gate, which is returned at the time of the person returning across the said barbed wire fence.

The said modality also came for scrutiny subsequently, since there were allegations regarding the implementation of the same, upon which a coordinate Bench of this court, vide order dated July 28, 2006 passed in W.P. 6435(W) of 2003, had also recorded that the authorities were to maintain the norm of 450 feet, that is, 150 yards distance from the 'Zero Point' line from the border in India while constructing the barbed wire fencing except in places where a Graveyard, Mosque or Temple exists, where the barbed wire fencing may have to be curved to protect the said structures.

It is alleged that the said distance was also not maintained while erecting the barbed wire fencing. As a consequence, the houses and lands of several local villagers have fallen within the zone between the Zero Point and the barbed wire fencing. Claims of compensation are pending in the regard as well.

It is evident from the annexures to the writ petition that the arrangement directed by this court was acquiesced to by the respondent-authorities. A communication, being Annexure P7 at page-76 of the writ petition, in Hindi vernacular, indicates clearly that the BSF has been complying with the said direction.

However, since none appears today for the respondents despite service, there was no scope of hearing the version of the respondent-authorities.

Be that as it may, since there are uncontroverted allegations in the writ petition to the effect that the stipulations given in the two directions of the Division Bench and the learned Single Judge of this court are not being implemented properly, WPA No. 4102 of 2020 is disposed of by directing the respondent-authorities to ensure that the stipulated time-limits for keeping the gates open, as indicated in the Division Bench order of this court dated April 25, 2003 passed in W.P. No. 8985(W) of 2002, as indicated above, shall be strictly maintained by the respondents.

Inasmuch as the emergency situations are concerned, since the petitioners are citizens of India and are entitled within the contemplation of the Constitution of India to move freely within the

country, the respondent-authorities shall not prevent the petitioners and their relatives from moving to and fro through the gates on the barbed wire fencing even at times when the gates are otherwise closed in terms of the Division Bench order, of course, subject to reasonable restrictions as imposed by the BSF and as indicated in the order of the Division Bench.

Whenever an emergency occurs, the BSF shall open the gates to allow passage and keep a record in the gate register, which is being maintained by the BSF authorities, and every person who crosses the fence shall deposit his identity card with the BSF personnel, to be returned when they come back through the gate.

However, it is made clear that nothing in this order shall impede the Border Security Force from implementing necessary security measures in the case of National Emergency and/or if and when there is a War situation.

That apart, however, the directions stipulated in the Division Bench order shall be strictly complied with.

Insofar as the grievance regarding the barbed wire fencing having been constructed beyond the stipulated distance from the Zero Point, the said question is kept open, along with the question

whether the concerned residents of the area are entitled to get due compensation from the authorities, to be taken up and decided by competent forums designated for such purpose.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)