

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

WPA 14482 of 2023

The National Investigation Agency & anr.

-vs-

State of West Bengal & ors.

For the Petitioners

Mr. S.V. Raju, Ld. ASG
Mr. Ashok Kumar Chakraborti, Ld. ASG
Mr. Billwadal Bhattacharyya, Ld. DSG
Mr. Bhaskar Prasad Banerjee
Mr. Samrat Goswami
Mr. Debasish Tendon

For the State

Mr. Amitesh Banerjee, Ld. Sr. St. Counsel
Ms. Ipsita Banerjee
Mr. Suddhadeb Adak

Heard on : 31.07.2023

Judgment on : 31.07.2023

Jay Sengupta, J.:

This is an application under Article 226 of the Constitution of India, *inter alia*. praying for a direction upon the respondent authorities to comply with the provisions of Section 6 (6) and Section 9 of the

National Investigation Agency Act, 2008 and take consequential steps to immediately hand over all the investigation files as requested by the petitioners and the documents mentioned in prayer 'c' of the writ petition in compliance with the order passed by a Division Bench of this Court on 27.04.2023 in WPA (P) No. 151 of 2023 as affirmed by the Hon'ble Apex Court by its order dated 24.07.2013 in SLPs (Criminal) Nos. 6283-6286 of 2023.

Learned senior counsel representing the petitioners submits as follows. Applications filed by the respective petitioners praying for direction upon the National Investigation Agency to investigate into the cases started in respect of the violence that erupted after the Ram Navami celebrations of 2023. After hearing the parties, a Division Bench of this Court passed a judgment and order dated 27.04.2023 disposing of the writ petition by directing the concerned police authorities to ensure that all the FIRs, documents, materials seized, CCTV footage etc. be immediately handed over to the appropriate authority of the National Investigation Agency, who on receipt of all the entire materials, shall commence investigation and proceed in accordance with law. The direction was to be complied with within two weeks from that date. Despite requests made by the petitioners, the directions were deliberately not complied with on the ground that the State was contemplating moving the Hon'ble Supreme Court against such order. Finally, some applications were moved. By an order dated 24.07.2023 passed by the Hon'ble Apex

Court, the Hon'ble Apex Court disposed of the Special Leave Petitions by recording that they were not inclined to entertain the Special Leave Petition for the reasons indicated. Even then, the directions were contumaciously not complied with. Incidentally, on 22.06.2023, when the instant matter had been taken up for hearing, a further direction was passed by this Court to comply with the order of the Division Bench. Therefore, now there is no ploy left to the State not to deliver the relevant documents to the NIA.

Learned senior standing counsel representing the State submits as follows. The prayer of the petitioners is vehemently opposed. It is further submitted that the State has already filed a writ petition, *inter alia*, challenging the vires of the National Investigating Agency Act and certain order passed by the Ministry of Home Affairs. According to him, both ought to be heard together.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition and the order dated 24.07.2023 passed by the Hon'ble Supreme Court.

By an order dated 27.04.2023 passed by this Court on a Division Bench in WPA (P) 151 of 2023, it was directed as follows.

“ In the result, the writ petitions are disposed of by directing the concerned police to ensure that all the FIRs, documents, materials seized, CCTV footage etc. be immediately handed over to the appropriate authority of the National Investigation Agency who

on receipt of all the entire materials shall commence investigation and proceed in accordance with law. The respondent authorities are directed to comply with the direction of handing over all the material to NIA within a period of two weeks from the date of receipt of the server copy of this order. No Costs.”

Even after such directions were passed, the State did not adhere to the same. The petitioners requested the concerned authorities to comply with the order.

On 22.06.2023, when the present petitioners moved the present application, this Court directed the State to comply with the order.

It further appears that finally the State preferred Special Leave Petition before the Hon’ble Apex Court.

After hearing the parties, by an order dated 24.07.2023, the Hon’ble Apex Court held that they were not inclined to entertain the Special Leave Petition for the reasons recorded. Accordingly, the Special Leave Petitions were disposed of. The order of the Division Bench was affirmed.

Yet, till date the directions passed by the Division Bench of this Court, as affirmed by the Hon’ble Apex Court, have not been complied with by the State.

The State had not raised any plea before the Hon’ble Division Bench, *inter alia*, challenging the vires of the National Investigating Agency Act. This issue was apparently not taken up by the State

during hearing of the Special Leave Petitions before the Hon'ble Apex Court.

If the State wants to take up such new issue before this Court, the same can fairly be contemplated by filing an appropriate application in due course. But, this cannot come in the way of complying with the directions passed by the Hon'ble Division Bench of this Court as affirmed by the Hon'ble Supreme Court.

The directions were to be complied within two weeks from the date of judgment of the Hon'ble Division Bench i.e., 27.04.2023. At least after the pronouncement of the verdict by the Hon'ble Supreme Court on 27.04.2023, the same should have been immediately complied with.

Any further delay in complying with the solemn directions would be absolutely contemptuous.

In view of these, this Court can not even have the luxury of extending the time for compliance, except for fixing a fair and practicable timeline for physical transmission of the documents.

Therefore, this Court directs the State respondents to comply with a directions passed by the Hon'ble Division Bench of this Court, as affirmed by the Hon'ble Apex Court, and immediately hand over all the investigation file of the cases as mentioned in prayer 'C' of the writ petition. The directions passed by the Hon'ble Division Bench shall positively be complied with by tomorrow i.e. 01.08.2023 at 12.00 PM.

With these observations, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible

(Jay Sengupta, J.)