

24.07.2023
Item Nos.1 to 6, 8, 12,
18, 19 and 22
Ct. No.1
PG/KS/gd/ssd

(Via Video Conference)

WPA(P)/339/2023
IA NO: CAN/1/2023, CAN/2/2023, CAN/3/2023,
CAN/4/2023
FARHAD MALLICK
VS
WEST BENGAL STATE ELECTION COMMISSION AND
ORS.

with
WPA(P)/353/2023
IA NO: CAN/1/2023, CAN/2/2023, CAN/3/2023,
CAN/4/2023
SUVENDU ADHIKARI AND ANR.

VS
STATE OF WEST BENGAL AND ORS.

with
WPA(P)/354/2023
IA NO: CAN/1/2023
PRIYANKA TIBREWAL

VS
STATE OF WEST BENGAL AND ORS.

with
WPA(P)/356/2023
IA NO: CAN/1/2023
JAYDEEP MUKHERJEE

VS
STATE OF WEST BENGAL AND ORS.

with
WPA(P)/351/2023
IA NO: CAN/1/2023, CAN/2/2023, CAN/3/2023,
CAN/4/2023
ADHIR RANJAN CHOWDHURY

VS
THE WEST BENGAL STATE
ELECTION COMMISSION AND ORS.

With
WPA(P)/361/2023
MOUSUMI HAZRA
VS
UNION OF INDIA AND ORS.

with
WPA(P)/364/2023
IA NO: CAN/1/2023
VIVEKANANDA BAURI
VS
UNION OF INDIA AND ORS.

with
WPA(P)/369/2023
IA NO: CAN/1/2023

JYOTIRMAY SINGH MAHATO
 VS
 STATE OF WEST BENGAL AND ORS.
with
 WPA(P)/386/2023
 GOUTAM SARDAR
 VS
 STATE OF WEST BENGAL AND ORS.
with
 WPA(P)/387/2023
 ANINDYA SUNDAR DAS
 VS
 STATE OF WEST BENGAL AND ORS.
with
 CPAN/944/2023
 SARKARI KARMACHARI PARISHAD
 PASCHIM BANGA
 VS
 RAJIVA SINHA STATE ELECTION
 COMMISSIONER AND ANR.
in
 WPA(P)/335/2023
 SARKARI KARMACHARI PARISAD AND ORS.
VS
 STATE OF WEST BENGAL AND ORS.
in
 WPA(P)/336/2023
 SANGRAMI JOUTHA MANCHA AND ANR.
VS
 STATE OF WEST BENGAL AND ORS.

Mr. Shamik Bagchi,
 Mr. Rameshar Sinha,
 Mr. Rafiqul Islam,
 Ms. Ankita Dey
for the Petitioner in WPA(P) 339 of 2023.

Mr. Sougata Mitra,
 Ms. Soma Chakraborty
for the Applicant in CAN 1 of 2023 and
 CAN 2 of 2023 in
 W.P.A.(P) 339 of 2023.

Ms. Salma Sultana Shah
for the Applicant in CAN 4 of 2023 in
 W.P.A.(P) 339 of 2023.

Mr. Guru Krishna Kumar, Sr. Adv.
 Mr. Soumya Majumdar,
 Mr. Srijib Chakraorty,
 Mr. Kabir Shankar Bose,
 Mr. Sayak Chakraborty,

Mr. Anish Kumar Mukherjee,
 Mr. Suryaneel Das,
 Mr. Chiranjit Pal
for the Petitioners in W.P.A.(P) 353 of 2023.

Mr. Pratip Kumar Chatterjee,
 Mr. Mrityunjoy Chatterjee,
 Mr. Debapriya Majumder
for the Petitioners in W.P.A.(P) 351 of 2023.

Mr. Anindya Bose
for the Petitioner in W.P.A.(P) 364 of 2023.

Ms. Priyanka S. Tibrewal
 Petitioner-in-person in W.P.A.(P) 354 of 2023.

Mr. S.N.Mookherjee, Ld. A.G.
 Mr. Anirban Ray, ld. G.P.
 Mr. Samrat Sen, ld. AAAG,
 Mr. Amal Kumar Sen,
 Mr. Sirsanya Bandhopadyay,
 Mr. Piyush Agarwal,
 Mr. Arka Nag,
 Mr. Piyush Kr. Ray,
 Ms. Utsha Dasgupta,
 Ms. Shrivalli Kajaria,
 Ms. Ridhi Jain,
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Mr. Ashoke Kumar Chakraborti, Ld. A.S.G.
 Mr. Billawadal Bhattacharyya, Ld. DSGI,
 Mr. Tirtha Pati Acharya,
 Mr. Ayanabha Raha,
 Ms. Amrita Pandey,
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Mr. Jishnu Saha, Sr. Adv.
 Ms. Sonal Sinha,
 Mr. Tarun Kumar Chatterjee,
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 Ms. Sonal Sinha,
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 Mr. Sujit Gupta,
 Mr. Sayan Datta,
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for the State Election Commission in
 WPA(P) 351 of 2023.

Mr. Debottam Das,
Mr. Onkar Ganguly

.....for the Intervenor in
WPA(P) 339 of 2023,
WPA(P)353 of 2023,
WPA(P)354 of 2023 and
WPA(P)356 of 2023.

Mr. Mrityunjoy Chatterjee,
Mr. Debapriya Majumder

.....for the Intervenor in
CAN 2 of 2023 and
CAN 3 of 2023 in
WPA(P) 353 of 2023 and
WPA(P) 354 of 2023.

Mr. Bikash Ranjan Bhattacharyya, ld. Sr. Adv.,
Mr. Samim Ahammed,
Md. Nazimuddin Siddique,
Ms. Saloni Bhattacharjee,
Ms. Gulsanwara Pervin

.....for the Petitioner in
WPA(P) 356 of 2023.

Mr. Bikash Ranjan Bhattacharyya, ld. Sr. Adv.,
Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriiti Saha

.....for the Petitioner in
WPA(P) 361 of 2023.

Mr. Debasis Sur,
Mr. Goutam Sardar,
Mr. Goutam Malik

.....for the Petitioner in
WPA(P) 386 of 2023.

Mr. Sabyasachi Chatterjee,
Mr. Badrul Karim

.....for the Petitioner in
WPA(P) 387 of 2023.

Md. T.M. Siddiqui,
Ms. Amrita Panja Moulick

....for the State in
WPA(P) 387 of 2023.

Mr. Sanjay Basu,
Mr. Piyush Agarwal,
Ms. Utsha Dasgupta

....for the Respondent Nos.4 and 5 in
WPA(P) 387 of 2023.

Ms. Sonal Sinha,
 Mr. Tarun Kumar Chatterjee,
 Mr. Sujit Gupta,
 Mr. Sayan Datta,
 Mr. Soumen Chatterjee

.....for the State Election Commission in
 WPA(P) 387 of 2023.

Mr. Bikash Ranjan Bhattacharyya, ld. Sr. Adv.,
 Mr. Samim Ahammed,
 Ms. Saloni Bhattacharjee,
 Ms. Gulsanwara Pervin

.....for the Applicant in
 CAN 1 of 2023 in
 WPA(P) 351 of 2023.

In Re.:IA No. CAN 1 of 2023

In

W.P.A.(P) 351 of 2023

1. This application has been filed by one Jaydeep Mukherjee, who seeks to intervene in the said writ petition and the prayer sought for by the writ petition is to declare the election as void and fresh election should be conducted to the Panchayats in the State of West Bengal and to pay compensation for the persons, who have lost their lives and who have suffered grievous injuries in the pre-poll and post-poll violence.
2. Further, the applicant seeks for investigation by an independent agency into the entire election process and also for a direction upon the State Election Commission to preserve the records. It is rather unfortunate that Jaydeep Mukherjee though being a petitioner in W.P.A.(P) 356 of 2023, wherein a larger relief has been sought for

has thought it fit to press the intervening application when the writ petitions are taken up for hearing today.

3. In our considered opinion the attempt to press the application being, IA No. CAN 1 of 2023 filed by Jaydeep Mukherjee even today, is a clear abuse of the process of the Court fully knowing well that he himself has filed a separate writ petition in W.P.A.(P) 356 of 2023.
4. Therefore, we are left with no other option except to dismiss the application with a cost of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the applicant Jaydeep Mukherjee to the West Bengal State Legal Services Authority within 48 hours from the time on which the order is uploaded in the server.
5. After we have dictated the above order, the learned advocate appearing for the applicant would plead that the applicant Jaydeep Mukherjee be permitted to withdraw this application. Such permission cannot be granted after the aforesaid order was dictated.
6. Accordingly, IA No. CAN 1 of 2023 in W.P.A.(P) 351 of 2023 stands dismissed.
7. We have heard the learned advocates for the parties.

8. Supplementary affidavits have been filed in few of the writ petitions and copies of which shall be served on the learned Government Pleader appearing for the State of West Bengal and on the learned Standing counsel appearing for the State Election Commission and in the office of the learned Additional Solicitor General.
9. Whatever affidavits have been filed today or a few days earlier, the appropriate respondents are granted leave to file their affidavit-in-opposition and serve copies on the learned advocates, who are appearing for the writ petitioners/applicants. In the affidavit-in-opposition all the allegations and averments, which have been made in the affidavits/supplementary affidavits/affidavit along with the applications to intervene etc. shall be specifically dealt with.
10. Learned senior advocate appearing for the writ petitioner in W.P.A.(P) 353 of 2023 submitted that re-polling has been done in only 0.1 per cent of the total number of booths and it is not known as to what was the criteria adopted by the State Election Commission for determining as to in which of the Centers re-polling has to be done. It is pointed out that given the large number of booths and the decision has been taken by the State Election Commission in a short period of

time, it is impossible to believe that all the video footages of the various booths, where violence had taken place are viewed by the State Election Commission and conducting re-poll in 0.1 per cent of the total number of booths is only a make believe situation. In this regard, a supplementary affidavit has also been filed by the writ petitioner in W.P.A.(P) 353 of 2023. The respondents therein are directed to file their affidavit-in-opposition to the said allegations clearly dealing with the allegations in a precise manner. Similarly, in respect of the other supplementary affidavits filed in the other writ petitions shall also be examined and affidavit-in-opposition be filed.

11. The petitioner in W.P.A.(P) 354 of 2023 appearing in person submitted that several persons have been rendered homeless and they would submit that two of the ladies, who are humiliated and molested are present in Court and are unable to go back to their village/homes and prays for appropriate direction to enable them to reach their homes and live in peace. In this regard, if already complaint has been lodged before the concerned Police, there will be a direction to the concerned police to provide sufficient help to such of those persons, who have been driven out

from their houses to go back to their houses. The concerned Superintendent of Police of the District shall monitor the same so that the persons can safely reach their villages and live peacefully in their homes.

12. Learned Additional Solicitor General, on instruction, would submit that totally 215 complaints have been received via e-mail with regard to the poll related mal-practices, violence etc. Further, it is submitted in their affidavits filed by the Nodal Officer of the B.S.F., specific averments have been made with regard to the non-cooperation by the State Election Commission. Further, it is submitted that the Central Government has taken a decision to extend the period of stay of the Central Forces by a further period of ten days with a prayer that the Forces may be withdrawn in a phased manner.

13. The learned Advocate General appearing for the State of West Bengal while responding to the said submission would contend that already 136 Companies have been withdrawn out of the total number of 239 Companies and in this regard would refer to certain statistics, which have been furnished to the learned Advocate General by the officer concerned. In any event, unless and until, the State Election Commission shares the

requisite information with the Nodal Officer of the B.S.F., no useful purpose would be served in retaining the Central Forces.

14. Therefore, wherever in the opinion of the State Government and the State Election Commission still there is disturbance prevailing, such areas shall be identified so that the deployment of the remaining Central Forces can be made to such places and we allow the remaining Central Forces to continue for a period of ten days. It is well open to the Central Government to withdraw the Central Forces in a phased manner as per their plan of action.
15. It is made clear that no further supplementary affidavit shall be entertained and the writ petitions will be set down for hearing on the next hearing date. By then, all pleadings should be completed. The court expects that there should be no allegation made across the bar that copies have not been served. It is for the learned advocates appearing for the parties to ensure that copies are served in the appropriate office of the respondents and vice-versa and the matters will be heard on the next hearing date.
16. The Court has also taken note of the submissions of learned Advocate General with regard to the maintainability of the writ petitions.

17. Liberty to the petitioners/Intervenors to file the re-joinder in the affidavit-in-opposition filed by the respondents.
18. The State Government shall provide adequate logistic support to the Central Forces for their movement and when the Forces will be withdrawn, facilitate the travel arrangement etc. In this regard, the Committee, which was constituted earlier shall examine the matter scrupulously and ensure that when the Central Forces are withdrawn, the logistical support is seamlessly provided.
19. We have heard the learned advocate appearing for one Ms. Safaque Parvin and Rahul Amin and Others, who sought for permission to file a separate application for addition of party. However, considering the fact that the prayers sought for also pertain to the Panchayat Poll related issue, we have permitted the said applicants to intervene in the proceedings.
20. Let the copy of the petition be served on all the respondents within two days from date and the appropriate authority of the respondents shall file their affidavits to the allegations made in the said writ petition, which the petitioner has been permitted to intervene in the present proceedings.

21. One of the Interveners has produced the original ballot papers and submits that the said ballot papers contained the signature of the B.D.O.s and they were found strewned in the streets.
22. Liberty is granted to the said person to file an affidavit enclosing photocopies of the ballots and the same shall be served in the office of the Government Pleader as well as the learned Standing Counsel for the State Election Commission.
23. Similar submission was made by the petitioner appearing in person in W.P.A.(P) 354 of 2023, who was also granted similar leave to file affidavit enclosing photocopies of the ballot papers.

In Re.:- W.P.A.(P) 387 of 2023

24. By this writ petition the petitioner seeks for issuance of a writ of mandamus to direct the Director General and Inspector General of Police, West Bengal to treat the writ petition, which is alleged to be as Public Interest Litigation as a complaint and register the First Information Report against the respondent nos.4 and 5 for commission of alleged offences under the various provisions of the Indian Penal Code. Firstly, the prayer sought for is not only misconceived but not maintainable. In fact, the Hon'ble Division

Bench before which the matter came up on 20th July, 2023, had directed the writ petition to be returnable on 24th July, 2023 subject to the question of maintainability of the public interest Litigation. Firstly, In order to invoke the legal machinery and to register a complaint, there are procedures provided under the Code of Criminal Procedure. Admittedly, the petitioner has not resorted to such a procedure nor there is anything on record to show that a formal complaint was lodged before the Jurisdictional Police.

25. An identical issue was considered by this court in M.A.T. 1180 of 2023, wherein the Court took into consideration as to what are the procedures provided under the Code of Criminal Procedure, in the event, the jurisdictional police refuses to take action on the complaint lodged by a complainant. The Court has also examined the provisions of Section 156(3) of the Code of Criminal Procedure and apart from that the aggrieved person has also got adequate remedy under Section 200 of the Code of Criminal Procedure.

26. In the light of the above, the writ petition is held to be not maintainable and accordingly dismissed.

27. However, we make it clear that we have not gone into the allegations made in the writ petition. It would be well open to the writ petitioner to approach the appropriate forum for necessary relief.

28. List these matters on 14th August, 2023.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)