

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 21883 of 2023

Khukumani Mondal and others

vs.

The State of West Bengal and others

For the petitioner

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee

For the State

Mr. Sk. Md. Galib
Mr. Tamal Taru Panda

For the Union of India

Mr. Ashoke Kumar Chakraborti, Id. ASG
Mr. Arun Kumar Maity (Mohanty)
Mr. Tirtha Pati Acharyya

For the Intervening party

Mr. Sudipto Moitra
Mr. Abhijit Singh

Heard on

08.09.2023

Judgment on

08.09.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the
Constitution of India praying for direction upon the respondent

authorities to provide protection to the petitioners for the formation of board of members of Sthayee Samiti of Khejuri-II Development Block as and when scheduled, to take action under the Explosive Substances Act on the complaints lodged by the petitioners, to preserve the CCTV footages and to properly investigate the case on the complaints of the petitioners and other aggrieved persons.

Affidavit of service filed in Court is taken on record.

A report filed by the State is also taken on record.

A vakalatnama filed on behalf of the Intervener is also taken on record.

Learned counsel for the petitioners submits as follows. The petitioners are the winning candidates belonging to the opposition political party in the panchayat election of 2023. Three of them are pachayat pradhans, one is a zilla parishad member and others are panchayat samiti members. They were supposed to participate in a meeting of Sthayee Samiti on 5th September, 2023 at 12 noon at the Meeting Hall of Khejuri-II Panchayat Samiti. Apprehending that the miscreants belonging to the ruling political dispensation would try to prevent them from doing so, they moved a writ petition before this Court. By an order dated 04.09.2023 passed in WPA 21535 of 2023, this Court, inter alia, directed the respondent authorities to keep a

sharp vigil at the locale so that no breach of peace takes place and to provide police escort to the petitioners therein, so that they can travel to the meeting hall. The entire travel was to be videographed. In addition, the petitioners were granted relief of “not to arrest” in respect of Khejuri PS Case No.25 dated 20.01.2021, till 06.09.2023. However, the police personnel failed to maintain peace. Inside the meeting hall, the petitioners were attacked by the miscreants with arms. There was a chaos. The petitioners as well as the BDO were assaulted. The meeting could not be held and had to be postponed. More importantly, outside the meeting hall violent attacks were orchestrated by the miscreants. Bombs were hurled. In spite of all these and despite there being complaints filed by the petitioner No.7, no action was taken. It is learnt that later on, an FIR was lodged, but without any provision of the Explosive Substances Act. This is a deliberate attempt by the police authorities to somehow keep away the National Investigating Agency from coming into the picture. The provision of the Explosives Act that was included was absolutely irrelevant. On this, reliance is placed in a decision passed by a Division Bench of this Court in *Arijit Majumder vs. State of West Bengal* reported at 2022 SCC OnLine Cal 4433. The police are still trying to prevent the truth from coming out. Therefore, FIRs may be lodged also under the provisions of the Explosive Substances Act and the meeting be

conducted under the CRPF protection. The petitioners also pray for changing the venue of the meeting.

Learned senior advocate for the Intervenor submits as follows. The Intervenor is an octogenarian Member of the Parliament of the local constituency. He has a right to participate in the meeting and vote. His right was also infringed because of such unruly behaviour and inability of the police authorities to prevent the turmoil. While the Intervenor was returning from the meeting, his car was pelted with stones by miscreants. The car was severely damaged. They were somehow rescued by the CRPF. Despite the fact that the intervenor is a "Y" Category Protectee, no FIR has been lodged in this regard.

Learned advocate for the State relies on the report and submits as follows. The allegations made in the petition are denied. The State employed as many as 29 SI/ASI, 95 constables/HG/NVF, 6 Sec. RAF, 1 Sec. Lady RAF, 30 LC/LHG/LNVF/LCV and 142 CV/VP for traffic duty. Therefore, the deployment of personnel was quite adequate. In spite of this, the situation went beyond control. This was an unforeseen incident. However, the police would take adequate steps and deploy more personnel on the next date that would be fixed for such meeting. So far as the incidents that took place on the particular day, two FIRs were lodged and one FIR was also lodged in respect of the attack on the MP. Bombs, if any, were

hurled outside the area in which order under Section 144 of the Code was promulgated. It could be that due to the inadvertence, instead of the Explosive Substances Act, FIRs were registered under the Explosives Act. However, it does not mean that the police had any ulterior motive. In respect of the FIR lodged regarding the stone pelting on the car, the investigation is continuing and two persons have already been arrested. In respect of the two other cases, six accused have been arrested as yet. The police authorities are agreeable to shift the venue of the meeting to the Office of the District Magistrate. In his FIR, the BDO has mentioned that the fight took place between the elected members.

Learned senior counsel representing the Union of India submits that as per Section 6 of the NIA once the charges under the Explosive Substances Act are added in a case, it is the duty of the State to inform the Central Government who would have to decide whether the NIA would investigate the matter.

I have heard the submissions of the parties and have perused the writ petition and the report filed by the State.

It appears that despite an earlier order passed by this Court requiring the respondent authorities to maintain peace, the meeting of the Sthayee Samiti for Khejuri-II Panchayat Samiti could not be taken place. There were attacks by armed miscreants outside the venue hall. Bombs were allegedly hurled.

However, it also appears that the police authorities had deployed quite a number of personnel to ensure security.

So far as the FIRs relating to the violence that took place at or outside the venue of the meeting are concerned, only charges under the provisions of Explosives Act were imputed, but not under the applicable Explosives Substances Act.

As regards the FIR regarding the attack on the octogenarian MP, the issue is very serious and can better be dealt with in a separate application. As of now, the police authorities shall investigate the matter with diligence and promptitude.

As has already been agreed by the respondent authorities and for ensuring that the proposed meeting can be held peacefully, let the venue of the meeting be shifted to the Office of the District Magistrate.

On the date that would be fixed for the meeting the Superintendent of Police, Purba Medinipur district shall deploy adequate number of police personnel which shall not be less than what was deployed on the earlier occasion. They shall also seek help of the CRPF who shall upon their request deploy adequate number of personnel for the purpose of ensuring security on the particular day.

Considering the gravity of the situation and the lapses already committed by the present investigating officer, let the cases, for the present, be investigated by the concerned SP himself.

As had already been discussed, the investigating agency shall add relevant provisions of the Explosives Substances Act in the array of charges in the two FIRs.

With the aforesaid observations, the writ petition is disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Jay Sengupta, J)