

05.04.2023
Item No. 1+55
RP/AN
Ct. No. 1

WPA (P) 151 of 2023
Sri Suwendu Adhikari
Vs.
The State of West Bengal & Ors.
with
WPA (P) 154 of 2023
Ambooj Sharma
Vs.
Union of India & Ors.

Mr. Soumya Majumder,
Mr. Srijib Chakraborty,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Chiranjib Pal

... for the petitioner.

Mr. Sabyasachi Chatterjee
Mr. Pintu Karar
Mr. Sandipan Das
Mr. Ankur Sharma
Mr. Badrul Karim
Mr. Dipankar Das

... for the petitioner
in WPA (P) 154 of 2023

Mrs. Priyanka Tibrewal

... for the Intervenor
in WPA(P) 162 of 2023

Mr. S. N. Mookherjee, Ld. A. G.,
Mr. Anirban Ray, Ld. G. P.,
Mr. Md. T. M. Siddique,
Mr. Nilotpal Chatterjee,
Mr. Debashis Ghosh,
Mr. Yesh Singhi

... for the State.

Mr. Asok Kumar Chakraborty, Ld. A.S.G.,
Mr. Sukumar Bhattacharya

... for the Union of
India.

Mr. Billwadal Bhattacharya, learned Deputy
Solicitor General of India

Mr. Debasish Tandon

... for the NIA.

Mr. Dhiraj Trivedi, learned D.S.G.I.

Mr. Amajit De, Special P.P., CBI
Mr. Shailendra Kr. Mishra

... for the CBI

1. Reference may be made to the order dated 3rd April, 2023 which reads as follows:

“This writ petition styled as a public interest litigation has been filed praying or issuance of a writ of mandamus to direct the Central Bureau of Investigation to register an FIR into the act of violence, arson and communal conflagration at Hourah and Dalkhola on 30th March, 2023 on the occasion of Ram Navami. The petitioner also prays for issuance of a writ of mandamus to direct the National Investigation Agency to conduct investigation, inter alia, into the use of explosive substances in the violence in the said areas on 30th March, 2023.

2. *The learned Advocate appearing for the writ petitioner has drawn our attention to the representation given by the petitioner to His Excellency The Hon’ble Governor of West Bengal on 30th March, 2023 and to the Hon’ble Union Home and Cooperation Minister, Ministry of Home Affairs, Government of India, New Delhi, which is also dated 30th March, 2023.*

3. *The concern expressed by the petitioner is that violence still continues in the said areas and there is an absolute failure on the part of the State police in bringing the situation under control. It is also pointed out that in certain areas, the internet connection has also been suspended.*

4. *There are other learned Advocates, who also seek to file similar writ petitions but, however, the Court made it clear that they will be heard in the matter so that the multiplicity can be avoided. It is submitted by the learned Advocate that in the procession, fire arms were used and this was not prevented by the State police, which led to lot of innocent people being severely injured.*

5. *The learned Advocate General appearing for the State would submit that the situation is under control and would like to highlight certain other issues such as how the conditions imposed by the Commissioner of Police, Howrah in the licence / permission granted were violated by the groups that joined the procession and also about the cases which have been registered, the arrests already made and statements that have been recorded under Section 161 of the Cr.P.C.*

6. *Let a comprehensive report be filed by the respondents/State covering all aspects with liberty to produce CCTV and video footages on the next hearing date. The respondents/State shall ensure that the public of the areas are not in any manner affected by any fresh incident of any violence or arson and the law and order should be kept under control. The safety of the school going children, the residents of the locality and the businessmen should be sufficiently safeguarded.*

7. *Needless to state that adequate deployment of police force shall be made so that peace and tranquility prevails in the said areas.*

8. *Let such report be filed not later than 5th April, 2023 after serving advance copies on the learned Advocates for the parties.*

9. *List this matter on 6th April, 2023 in the same position.”*

2. In terms of the directions made in the above order, report has been filed on behalf of the Commissioner of Police, Howrah Police Commissionerate, report on behalf of C.I.D regarding Shibpur Police Station Case No.113 of 2023, report on behalf of the Superintendent of Police, Islampur

and report on behalf of Commissioner of Police, Chandannagar Police Commissionerate. The reports appear to be elaborate along with annexures which are taken on record. The contents of the report will be examined on the next hearing date.

3. The issue which has been brought to our notice by the learned counsel appearing for the petitioners as well as the learned advocates, who are granted leave to make submission before this Court and after hearing submission of the learned Advocate General, learned Additional Solicitor General, learned counsel appearing on behalf of the National Investigation Agency, we are of the view that certain directions are required to be issued so as to ensure that Hanuman Jayanti to be celebrated on 6th April, 2023 is celebrated in a peaceful manner without any untoward incident.

4. The learned Advocate General has produced before us a copy of the application which the concerned organizing body has to submit before the Joint Commissioner of Police Headquarter, Kolkata for granting 'No Objection Certificate' for conducting meeting or rally or procession. Such form contains 27 conditions, which have been perused by us. We find that the conditions should be more stringent and it appears that the form is a common form for all processions, rallies and meetings and considering the

fact that during the Ram Navami festival several incidents had occurred in the neighbouring districts of Kolkata, more stringent conditions have to be imposed.

5. First and foremost is the accountability of the persons organizing the rally or procession should be made accountable for any untoward incident and requisite amendments be made in the form. The police authorities are at liberty to restrict the number of participants in the procession so that the procession is taken out with religious flavour without any political affiliations. The police shall ensure that at all vantage points barricades are erected and preferably a common route can be prescribed for the procession to proceed so that the police authorities will be able to control the crowd and prevent any untoward incident. The police shall also have the discretion to restrict the route considering the past events which took place, which are wholly unpleasant. The police authorities are directed to conduct a route march today (5.4.2023) to assure and reassure the public that the police are there to safeguard their interest. In areas where order under Section 144 of the Criminal Procedure Code have been promulgated no rally or procession should be conducted.

6. It is stated by the learned Advocate General that the organizations which have applied for permission to conduct procession would furnish the names of their volunteers. In our considered view, the volunteers who may assist the police will not be in a position to control any untoward incident. So the role of the volunteers should be made minimal and full details of the volunteers should be collected by the police and they should be given identity cards. Additional CCTV cameras should be installed apart from video graphing the vantage areas through which the procession will be taken through.

7. It is submitted by the learned Advocate General that as to how more than 160 applications have been received as of now for conduct of the procession. We are informed that a large number of police force has been deployed in those vantage areas to maintain law and order situation. Therefore, considering the largeness of the issue and in order to avoid any breach of peace, we are of the definite view that the State Government should requisition the assistance of paramilitary force from the Central Government. In fact, this was the observation, made by the Hon'ble Division Bench of this Court in the Case of WPA(P) 258 of 2022 dated 15th June, 2022. The assistance of the paramilitary force will definitely help the state police in maintaining the law and order situation

apart from assuring the general public that their safety and security will be taken care of.

8. That apart, the State will also be at liberty to take appropriate action under the provisions of West Bengal Maintenance of Public Order (Amendment) Act, 1972 as amended by the West Bengal Maintenance of the Public Order (amendment) Act, 2017 wherever it is necessary.

9. The purport and scope of this order and direction is to ensure that public are assured and reassured that they will be safe in their homes and they will not be affected by any riotous behaviour of miscreants.

10. The Registry of this Court has received a representation from the Additional District and Sessions Judge, Diamond Harbour, South-24 Parganas wherein he has lamented that he is unable to even get requisite police assistance for his family and himself, whose residence is situated in Rishra. This aspect is also to be taken into consideration and it should be ensured that any of these districts which are perceived to be the sensitive areas, the judges of the District Judiciary should be in a position to freely discharge their judicial functions and if there is any request made by the District Judiciary for adequate police help or protection to enable them to function peacefully or protection for their family, the same

shall be provided by the State without putting any fetters.

11. It goes without saying that if any of the local people apprehend any breach of peace in their locality and if the same is brought to the notice of the police authorities they should immediately act on such request and ensure that no untoward incident occurs in their area.

12. Thus, what is to be highlighted is that “prevention is better than cure”. Therefore, the State police are required to take all steps with the assistance of the paramilitary force or any other central force to prevent any untoward incident so that public are not put to jeopardy. The above directions shall be scrupulously complied with.

13. The learned counsel appearing for one of the writ petitioners submitted that in Rishra where rioting took place, stones were pelted from roof tops of the building. Had the intelligence wing of the police department been little more vigilant, such pre-planned attack could have been easily avoided. Therefore, the intelligence wing of State Police shall take all steps be taken to avoid any such pre-planned attacks or violence.

14. The above directions shall be scrupulously complied with and action taken report be submitted on the next date of hearing.

15. Considering the sensitivity of the problem, this Court directs that no person either a political personality or a leader or a common man shall make any statement in public or to the media concerning the festival to be celebrated tomorrow.

16. As we have directed the State to make request for deployment of paramilitary forces, the concerned authority of the Central Government shall take expeditious steps in deploying such force since the festival is to be celebrated tomorrow (i.e. 6th April, 2023).

17. List this matter on 10th April, 2023 for further consideration.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)