

**12.07.2023**

Item Nos.4, 5 & 6

Ct. No.1

PG/KS

**W.P.A.(P) 339 of 2023**

**Farhad Mallick**

**Vs.**

**The West Bengal State Election Commission & Ors.**

**With**

**W.P.A.(P) 353 of 2023**

**Suwendu Adhikari & Anr.**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P.A.(P) 354 of 2023**

**Priyanka Tibrewal**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Guru Krishna Kumar, Sr. Adv.

Mr. Soumya Majumdar

Mr. Srijib Chakraorty

Mr. Kaber Shankar Bose

Mr. Lokenath Chatterjee

Mr. Sayak Chakraborti

Mr. Anish Kumar Mukherjee

Mr. Suryaneel Das

Mr. Chiranjit Pal

.....for the Petitioners in **(W.P.A.(P) 353 of 2023)**

Mr. Shamik Bagchi

Mr. Rameshar Sinha

Ms. Salma S. Shah

Mr. S. Hossain

.....for the Petitioner in **(W.P.A.(P) 339 of 2023)**

Ms. Priyanka S. Tibrewal

.....for the Petitioner in **(W.P.A.(P) 354 of 2023)**

Mr. S. N. Mookherjee, Ld. A.G.

Mr. Anirban Ray, Ld. G.P.

Mr. Amal Kumar Sen

Ms. Sahima Sumi

.....for the State

Mr. Ashoke Kumar Chakraborti, Ld. A.S.G.

Mr. Billawadal Bhattacharyya, Ld. DSGI

Mr. Tirtha Pati Acharya

Mr. Ayanabha Raha

.....for the Union of India

Mr. Jishnu Saha, Sr. Adv.

Ms. Sonal Sinha

Mr. Tarun Kumar Chatterjee

Mr. Sujit Gupta

Mr. Sayan Datta

Mr. Soumen Chatterjee

.....for the State Election Commission

1. There are three writ petitions, which have been listed today, the second of which being W.P.A.(P) 353 of 2023 in which the petitioners seek to quash the decision of the State Election Commission consequent upon the large-scale violence and electoral malpractice, which occurred during the Panchayat Elections on 8<sup>th</sup> July, 2023. The petitioners also prayed for a direction upon the State Election Commission to conduct re-polling at the booths, which have been mentioned in the petitioners' letter dated 9<sup>th</sup> July, 2023. The petitioners also seek for a direction upon the Director, Central Bureau of Investigation to register a First Information Report and conduct a thorough investigation into the large-scale violence and electoral malpractices committed during the entire election process; to direct an independent Central Agency to conduct forensic audit of the video footages of the polling booths as well as the forensic examination and audit of the ballot papers and other polling paraphernalia and submit a report before this Court; to direct the Secretary, Department of Home and Hill Affairs,

Government of West Bengal to forward a report to the Central Government with regard to the incidences of bomb blasts that occurred during the election on 8<sup>th</sup> July, 2023.

2. In paragraph 12 of the writ petition, the petitioners have stated several instances, which according to the petitioners are serious electoral malpractices and violence, which were perpetrated during the entire election process and more specifically on 8<sup>th</sup> July, 2023.
3. In W.P.A. (P) 339 of 2023 though the prayer sought for in the writ petition was regarding deployment of Central Forces for the conduct of the election and for other allied reliefs, the petitioner has filed a supplementary affidavit in the said writ petition and in paragraphs 15, 19 and 22, the petitioner has set out certain details and seeks for appropriate direction for re-polling in 50,000 booths in West Bengal. Along with the supplementary affidavit, annexures have been filed to substantiate his allegation in the writ petition that there were large-scale violence, which was perpetrated during the elections. Copies of the representation sent to the State Election Commission has also been appended to the affidavit.

4. In W.P.A.(P) 354 of 2023, in which the petitioner appears in person, in paragraph 4 of the writ petition, the petitioner has narrated about the large-scale violence, which took place at the behest of the workers of the ruling dispensation and specific instances have been pointed out in the said paragraph. The petitioner, therefore, seeks for direction upon the State Election Commission to conduct re-poll at the places mentioned in paragraph 4 of the writ petition. The petitioner also seeks for a direction to the Director, Central Bureau of Investigation to register a First Information Report and conduct a thorough investigation into the large-scale violence and electoral malpractices committed during the elections on 8<sup>th</sup> July, 2023 and also to investigate into the incidences of bomb blast that occurred at the counting centres situated at Fakir Chand College.
5. The copy of the writ petition in WPA (P) 353 of 2023 was served on the respondents including the State Election Commission on 11<sup>th</sup> July, 2023 and copy of the supplementary affidavit filed in W.P.A.(P) 339 of 2023 was served on the learned Standing Counsel for the State Election Commission today. Let a copy of the writ petition in W.P.A.(P) 354 of 2023 be served on the learned

Standing Counsel, for the respondents/State Election Commission.

6. After we have heard the learned senior advocate appearing for the petitioners in W.P.A.(P) 353 of 2023 and the learned advocate appearing for the petitioner in W.P.A. (P) 339 of 2023 and the petitioner appearing in person in W.P.A.(P) 354 of 2023 as well as the learned senior advocate appearing for the State Election Commission and the learned Deputy Solicitor General representing the Union of India, we are of the prima facie view that the response from the State Election Commission is not adequate. Even today, there is not a single officer of the State Election Commission present in Court to give necessary instructions to the learned Standing Counsel. It is not clear as to why the State Election Commission is not pro-active especially when the Court had been monitoring the entire process and the first of the judgments rendered by the Court was on 13<sup>th</sup> June, 2023.
7. The learned Deputy Solicitor General submitted that the Central Forces will be filing a report in the contempt applications, which will be heard by the Court today and wherein certain instances with regard to the non-cooperation of the State Election Commission are to be highlighted.

Admittedly, re-polling has been ordered in 698 booths. If the State Election Commission thought fit to order re-polling in 698 booths, it goes without saying that there should be some basis on which a decision was taken to order re-poll in 698 booths.

8. The petitioners in W.P.A.(P) 353 of 2023 in their representation dated 9<sup>th</sup> July, 2023 have given a list of about 5,000 booths. The said representation has been acknowledged by the State Election Commission on 9<sup>th</sup> July, 2023, as could be seen from the date seal of the Commission. Therefore, the State Election Commission should respond as to whether the said representation was considered and whether any exercise was conducted to examine as to whether re-polling has to be done in the various polling booths, which have been mentioned in the said representation. Equally, the State Election Commission also has to respond to the other areas, which were pointed out in the supplementary affidavit filed in W.P.A.(P) 339 of 2023 as well as the instances, which have been pointed out in paragraph 4 of the writ petition in W.P.A.(P) 354 of 2023.
9. The Court is surprised to note that even after the declaration of the results, the State is not able to

control the violence, which has erupted in several places. Various allegations have been made in all the three writ petitions as to how the liberty of the citizens have been compromised and the police have not been extending a helping hand to the innocent citizens, who are being affected even after the declaration of the results. The responsibility to ensure that there is no breach of peace lies with the State Government. If the State Government is not in a position to safeguard its citizens, then it is a very serious matter to be taken note of.

10. In the light of the above, we direct the State Election Commission, the appropriate authority of the State Government and the appropriate authority of the respondent/Central Government to file their affidavits dealing with all the allegations, which have been made in all the three writ petitions and the Court will consider as to what relief the petitioners are entitled to in these writ petitions. The affidavits directed to be filed by the respondents shall be filed not later than 18<sup>th</sup> July, 2023 after serving advance copies on the learned advocates appearing for all the parties.
11. As observed by this Court in the series of orders that this Court has been monitoring the entire

process and in fact, after dismissal of the Special Leave Petitions filed by the State Election Commission and the State Government challenging the orders passed by this Court on 13<sup>th</sup> June, 2023 and 15<sup>th</sup> June, 2023, the Court had been passing other orders supplementing the directions passed in the two earlier orders. This was made clear in the orders, which were passed in the other matters. Therefore, when the Court is seized of the matter, it goes without saying that whatever has been done thus far, that is for the conduct of the elections and the declaration of the results will be subject to the ultimate orders that may be passed in these writ petitions. This aspect should be made note of by the State Election Commission to all the candidates, who have been declared elected and inform that their declaration of having been elected is subject to further orders to be passed by this Court in these writ petitions as well as in the connected matters.

12. The petitioners in W.P.A.(P) 353 of 2023 has displayed a collection of video footages in Court to show that there was rampant malpractices committed on the date of the polling. The video footages were played in the open Court and we direct the learned advocate appearing for the said writ petitioners to furnish a copy of the said video



footages to the learned Standing Counsel for the State Election Commission as well as to the counsel appearing for the State of West Bengal as well as to the learned Deputy Solicitor General by 13<sup>th</sup> July, 2023. Similarly, if any other documents, which are available with any of the petitioners, the copies of the same shall also be furnished to the aforementioned parties by 13<sup>th</sup> July, 2023.

13. The State Election Commission in their response, which have been directed to be filed shall also deal with the instances, which have been pointed in the video footages as well as in the documents that may be served upon them.
14. The learned Additional Solicitor General has placed before this Court a copy of the fax message from the Ministry of Home Affairs to the Inspector General, BSF (HR/LOG), Force Coordinator stating that 822 companies of CAPFs/SAPs/IR Bns shall remain deployed in the State of West Bengal for a period of 10 days from the date on which the results are declared. The said fax message is taken on record.
15. The petitioners are uniform in their submissions expressing serious apprehension as regards preservation of the ballot papers and the other records concerning the election as well as the

CCTV footages. The State Election Commission is duty bound to preserve all records concerning the election including the CCTV footages and it shall be solely responsible for the safety and security of all the records and the video footages. This direction shall be scrupulously adhered to.

16. In W.P.A.(P) 339 of 2023 in the supplementary affidavit, one more issue, which has been highlighted by the petitioner is the damage sustained by the educational institutions, which were requisitioned for the polling. The State Election Commission as well as the State Government shall immediately collect necessary information from all such educational institutions and where damage has been occurred to the property of the institutions, the same shall be immediately repaired and restored and the costs shall be borne by the State Government at the first instance and thereafter after identification of the persons involved in the damage of the furniture and equipment of the institutions, the amount shall be recovered from such persons.

17. List all these matters on 20<sup>th</sup> July, 2023.

**(T. S. SIVAGNAM)  
CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**