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WPA(P) 142 of 2021
With
CAN 1 of 2021
Susmita Saha Dutta
Vs.
Union of India & Ors.
With
WPA (P) 143 of 2021
Anindya Sundar Das
Vs.
Union of India & Ors.
With
WPA(P) 144 of 2021
Priyanka Tibrewal
Vs.
The State of West Bengal & Ors.
With
WPA (P) 145 of 2021
Pradipta Arjun
Vs.
Union of India & Ors.
With
WPA(P) 146 of 2021
Aparajita Mitra
Vs.
Union of India & Ors.
With
WPA(P) 147 of 2021
Kuntal Mojumder
Vs.
Union of India & Ors.
With
WPA(P) 148 of 2021
With
CAN 1 of 2021
Susheel Kumar Pandey
Vs.
State of West Bengal & Ors.
With
WPA(P) 149 of 2021
Marufa Bibi & Ors.
Vs.
State of West Bengal & Ors.
With
WPA(P) 167 of 2021
Kashinath Biswas
Vs.
Union of India & Ors.
(Through Video Conference)

Ms. Priyanka Tibrewal (Through VC)
..Petitioner (in person) in
WPA(P) 144 of 2021.

Saloni Bhattacharya (Through VC)
..for the Petitioner in
WPA(P) 142 of 2021.

Mr. Bikash Ranjan Bhattacharya,
Senior Advocate with
M/s Uday Sankar Chattopadhyay,
Debapriya Samanta,
Pronoy Basak and
Santanu Maji, Advocates (Through VC)
..for the Petitioner in
WPA(P) 143 of 2021.

Mr. Dhiraj Kumar Trivedi with
Mr. Debu Choudhury, Advocates (Present in
Court)
..for the Petitioner in
WPA(P) 145 of 2021.

Mr. Sukanta Ghosh, Advocate (Through VC)
..for the Petitioner in
WPA(P) 146 of 2021.

Mr. J. Sai Deepak with
Mr. Rishav Kumar Singh, Advocates (Through VC)
..for the Petitioner in
WPA(P) 148 of 2021.

Mr. Bikash Ranjan Bhattacharya,
Senior Advocate with
Mr. S. Ahammed and
Ms. Saloni Bhattacharya, Advocates (Through VC)
..for the Petitioner in
WPA(P) 149 of 2021.

Mr. Rabi Sankar Chattopadhyay,
Advocate Present in Court,
Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chattopadhyay,
Mr. Santanu Maji,
Mr. S. Banerjee and
Ms. Payel Some, Advocates (Through VC)
..for the Petitioner in
WPA(P) 167 of 2021.

Mr. Kishore Dutta, Advocate General with,
M/s Sayan Sinha and
Debasish Ghosh, Advocates (Through VC)
..for the State.

Mr. Y.J. Dastoor,
Additional Solicitor General with
M/s Phiroze Edulji,

Bhaskar P. Banerjee
Arijit Majumder and
Ms. Amrita Pandey, Advocates (Through VC)
..for the Union of India.

M/s Arvind Datar,
Sidhant Kumar
Manyaa Chandok
Dipayan Chaudhury and
Suvrodal Choudhury, Advocates (Through VC)
..for the ECI.

* * * *

1. Vide order dated May 31, 2021 passed by this Court, taking note of the contentions raised by Ms. Priyanka Tibrewal, who was the candidate in the Assembly Elections from Entally Constituency, that number of persons in her Constituency had been made to run away from their houses to save their lives and are not being allowed to come back, we had given liberty to send complaints to the official e-mail ID of the West Bengal State Legal Services Authority. Reinstatement was to be done in the presence of a Committee of the officers nominated by National Human Rights Commission and the West Bengal State Human Rights Commission and the Member Secretary of the West Bengal State Legal Services Authority. As per the report dated June 3, 2021 from the Member Secretary of the West Bengal State Legal Services Authority, number of persons were reinstated back to their houses. Some of them either did not want to come back as they are away on account of their employment. Some of the persons claimed that they do not want any indulgence as they

had changed their political affiliation. Another fact which had been noticed in the report submitted by the Member Secretary of the West Bengal State Legal Services Authority is that the officer from the National Human Rights Commission had joined the proceedings through video conference. In our view that was not the idea. It was not a normal meeting. Rather the officers were to see the ground realities and report to this Court. No representative from the West Bengal State Human Rights Commission had joined, though having office at Kolkata.

2. Ms. Priyanka Tibrewal further submitted that after the matter was taken up on the last date of hearing, she visited about 12-13 districts in this State herself. There are lot of issues which have not been addressed by the State despite raised in various petitions pending in this Court. People are facing difficulties. Even the persons, who have been reinstated back, are being threatened again, whereas some had still not being able to come back. The effect of this inaction on the part of the State is also that these people are not able to earn their livelihood and get benefits in terms of various employment schemes framed by the Central Government or the State Government. The complaints filed by them to the police are not being acted upon. Wherever the complaints already filed by them have been forwarded by the

National Human Rights Commission to the concerned police stations, they are being threatened with cross cases.

3. Similar contention is sought to be raised by Mr. Dhiraj Kumar Trivedi in WPA(P) 145 of 2021. He further added that some of the complainants are even pressurised to write that they never filed any such complaints. As regard, the effect of the livelihood of the affected persons, he sought to raise an issue that the street-vendors licences of a particular group of persons in Kolkata are not being renewed. Even statements of the victims under Section 164 of Cr.P.C. is not being got recorded.

4. In WPA(P) 167 of 2021 the petitioner, who is an Advocate and was a candidate in the recently concluded State Assembly Elections from Beliaghata Constituency, has referred to the photographs placed on record in his writ petition showing that his house was put on fire. Complaints made by him have not been responded to.

5. In WPA(P) 148 of 2021 learned counsel for the petitioner sought to raise an issue regarding migration of number of persons from the State of West Bengal to the neighbouring States on account of post poll violence. He raised an issue that nothing has been done by the State in this regard. The instances are increasing day by day. These have not stopped, as was claimed by the Advocate General initially. The post poll

violence cannot be taken to be only physical in nature. Affecting a person or depriving him of his opportunities to earn his livelihood also has direct relation with that, as it will be in violation of Article 21 of the Constitution of India. Once the persons have been pressurised to remain out of their houses, as a consequence they are not able to earn their livelihood. In the affidavit filed by the State general statement is being made that all these petitions have been filed by politically motivated persons, instead of any specific replies.

6. In WPA(P) 149 of 2021 learned counsel for the petitioners has referred to supplementary affidavit dated June 4, 2021. The photographs attached with the aforesaid affidavit show that entrance to his shop has been blocked by constructing a bricks wall. He further submitted that the complaints made to the police have met deaf ears as no action was taken. He further submitted that the response of the police is that you have gone to the High Court, so High Court only will take care of you. He has also referred to list of number of persons annexed to the affidavit, who are the affected at different place after the polls in the State.

7. The aforesaid are some of the arguments raised by learned counsel for the petitioners in the bunch of petitions listed before us today.

8. Mr. Kishore Datta, learned Advocate General, referred to the report submitted by the Member

Secretary of the West Bengal State Legal Services Authority dated June 3, 2021 stating that the State is making all efforts to reinstate all the persons who had allegedly been displaced after the State Assembly Polls. Efforts are also being made to take further steps wherever any report is received. For the allegations made by Ms. Priyanka Tibrewal in the affidavit filed by her and may be in other petitions, he will file response. Investigation in the cases registered is in progress. Some arrests have also been made. He further submitted that it is difficult to respond to the allegation that after reinstatement of the persons who are allegedly displaced some threat has been made to them.

9. We may also notice that another report has been received from the Member Secretary of the West Bengal State Legal Services Authority along with the communications dated June 10, 2021 in which various complaints received by the West Bengal State Legal Services Authority have been tabulated in six different categories, namely,

(A) property vandalised/ looted/ damaged by miscreants,

(B) threat by miscreants as a result of which the applicant(s) are out of his/their house and requires to be reinstated,

(C) assault/sexual assault by miscreants,

(D) grabbing/encroaching of property by miscreants,

(E) shop/business forcefully closed by miscreants and

(F) demand of ransom by miscreants. In the table attached to the report it is mentioned that the number of persons who had reported suffering is 3,243 with reference to the complaints received till 12 noon on June 10, 2021. He further mentioned that in number of cases the complaints were referred to the concerned Superintendent of Police or the police stations but no response has been received.

10. The report is taken on record. Soft copy thereof be supplied by the Registry of this Court to the office of the Advocate General.

11. If there are any other complaints received by the West Bengal State Legal Services Authority, the same may be compiled and placed before the Court.

12. After the order was passed by this Court on May 31, 2021 constituting a Committee consisting of officers from the National Human Rights Commission, the West Bengal State Human Rights Commission and the Member Secretary of the West Bengal State Legal Services Authority for reinstatement of the persons who were displaced from Entally Constituency, certain action was taken. However, still on the next date of hearing when the matters were taken up on June 4, 2021, it was noticed that the issue did not pertain to one Constituency or one place in the State as at

different places similar position was there. Grievance was also raised that when they went to the police station, they were not allowed to lodge their complaints. On our request, learned Advocate General had provided us the e-mail ID on which the complaints could be submitted. In addition to that, the complaints could be sent to the official e-mail ID of the West Bengal State Legal Services Authority. A compilation of the complaints received till June 10, 2021 has been received from the West Bengal State Legal Services Authority. Against some of the complaints the remarks are that no response has been received from the authority concerned. In a case like where the allegation is that life and property of the residents of the State is in danger on account of alleged post poll violence, the State cannot be allowed to proceed in the manner it likes. The complaints required immediate action. But somehow from the facts as are available on record and are sought to be projected by the petitioners, such an action is missing. It is the duty of the State to maintain law and order in the State and inspire confidence in the residents of the State.

13. Though action should have been taken by the State but despite matter being pending in Court apparently no concrete steps have been taken.

14. Affidavits after affidavits being filed by the petitioners raising grievances which have briefly been

noticed in the arguments of the learned counsel for the petitioners. Where it is alleged that though they have been reinstated back to their houses but are being threatened again with cross cases being filed against them or they are compelled to write that they have not made any complaints or their right to livelihood is sought to be effected in the manner noticed above. In our view, this exercise of filing of affidavit and counter affidavit will continue. It may not lead us anywhere because State from the very beginning had been denying everything but the facts as have been placed on record by the petitioners and also as is evident little bit from the report dated June 3, 2021 filed by the Member Secretary of the West Bengal State Legal Services Authority, are different.

15. Under these circumstances and keeping in view the fact that there is infrastructure available with the National Human Rights Commission and the instances sought to be projected by the petitioners are large in number and certainly allege violation of human rights, we request the Chairperson of the National Human Rights Commission to constitute a Committee of which the Member Secretary of State Legal Services Authority shall be a member, to examine all the cases, the complaints of which have already been received by the Commission or which may be received. Soft copy of the compilation of the complaints which have been received

by the West Bengal State Legal Services Authority as received vide communication dated June 10, 2021 be also forwarded to the National Human Rights Commission. In addition, if any other complaints are received by the West Bengal State Legal Services Authority, the same may be compiled and sent to this Court with copy to the National Human Rights Commission to be placed before the Committee as we have constituted. The Committee shall examine all the cases and may be by visiting the affected areas and submit a comprehensive report to this Court about the present situation and also the steps to be taken to ensure confidence of the people that they can peacefully live in their houses and also carry on their occupation or business to earn their livelihood. The persons prima facie responsible for crime and the officers who maintained calculated silence on the issue, be pointed out. A representative from the State Human Rights Commission, West Bengal also be associated by the National Human Rights Commission.

16. Needless to add that the State shall be duty bound to provide all logistic support to the Committee wherever and whenever they wish to visit any place. The State shall ensure there is no obstruction of any kind in this process. Such obstruction shall be viewed seriously, which may entail action under the Contempt of Courts Act besides others.

The State shall be at liberty to respond to the allegations made in the affidavits sought to be referred by learned counsels for the petitioners and also process the complaints referred to by the Member Secretary of the West Bengal State Legal Services Authority in compilation where no response was received from the State despite that the complaints were sent to the competent authority.

Adjourned to June 30, 2021.

[Rajesh Bindal, C.J.(A)]

[I.P. Mukerji, J.]

[Harish Tandon, J.]

[Soumen Sen, J.]

[Subrata Talukdar, J.]