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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

WPA 14798 of 2024

Suvendu Adhikari

-vs-

The State of West Bengal & ors.

Mr. Billwadal Bhattacharyya
Mr. Anish Kumar Mukherjee
Mr. Suryaneel Das
Mr. Tamoghna Pramanik

..for the petitioner

Mr. Amajit De, Spl.PP
Mr. Arka Bhattacharyya

...for the CBI

Mr. Samrat Sen, AAG
Mr. Swapan Banerjee
Mr. Suman Sengupta
Mr. Arindam Mondal

...for the State

The petitioner is the member of the West Bengal Legislative Assembly. He has filed the instant writ petition challenging the action of the State police in conducting illegal raid at his office and residence in Kolaghat. Allegation is that his fundamental right has been infringed. His election campaign is being disturbed.

Reference has been made to the order passed by a Co-ordinate Bench of this Court in WPA 11803 of 2021 on 06.09.2021 and order dated 19.05.2022 in WPA 9033 of 2022. It has been submitted that a formal notice ought to have been given prior to the raid be conducted.

Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of Mukesh and another -vs- State (NCT of Delhi) and others, reported in (2017) 6 SCC 1 paragraph 15.

Reliance is also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of Mahmood Ali & others -vs- State of U.P. & others reported in 2023 SCC OnLine SC 950 paragraph 13.

The Modified Standard Operating Procedure for Flying Squads and Static Surveillance Teams published by the Election Commission of India has also been relied upon.

It has been submitted that the police ought to have intimated the flying squad as the Model Code of Conduct is currently in force in view of the ensuing Parliamentary Election.

Prayer has been made to stay the proceedings for the time being and further restraining the police not to conduct any such raids till one week after the result of the election is declared.

The prayer of the petitioner has been vehemently opposed by the State respondents. It has been submitted that the petitioner does not have the locus to move the instant writ petition. The place which was raided by the police does not belong to the petitioner. There is no document to show that the petitioner is anyway connected to the said place.

Case diary has been produced before this Court where leave and licence agreement dated 1st April, 2022 entered

into in between one Gopinath Ghorai and Biswanath Ghorai, the lessors and Mr. Surojit Das, the lessee in respect of the said place has been annexed.

It has been submitted that the leave and licence agreement is valid till date. The name of the petitioner is nowhere appearing in the leave and licence agreement and, accordingly, the police was unaware that the petitioner is connected with the said place in any manner whatsoever.

It has been submitted that immediately upon receiving the information at 5 PM on 21st May, 2024, the police intimated the Block Development Officer with request to send the Flying Squad Team to the subject place for taking necessary action. As there was a delay, the police rushed to the spot.

The suo moto complaint lodged by the Officer in Charge of Kolaghat Police Station on 22nd May, 2024 has been annexed to the supplementary affidavit that has been filed by the petitioner in Court today. The First Information Report is also annexed to the supplementary affidavit.

Learned advocate representing the petitioner as well as the State respondents have placed relevant paragraphs of the suo moto complaint filed by the police and the FIR. It appears therefrom that a search was done inside the building and the search process was videographed. A nil seizure list was prepared as nothing objectionable could be located due to continuous resistance from the agitators. The complaint lodged by the Officer in Charge mention that only two members were inside the house.

As the matter is at a very preliminary stage and the election is due to be held tomorrow (25.05.2024), accordingly, relying upon the direction passed in favour of the petitioner filed earlier before this Court, as an interim measure, the Court is inclined to restrain the police from proceeding further with the subject FIR that has been lodged till 17th June, 2024 or until further order whichever is earlier. The matter is directed to appear in the list on 10.06.2024 before the Regular Bench.

In the event there is any urgency in taking any step against the petitioner for conducting the election in a peaceful manner and declaration of the result thereof, then the State may approach the Court for obtaining leave.

The original copy of case diary that has been produced in Court today is returned after retaining photocopy of the same.

The issue of maintainability raised by the respondents is kept open to be decided at the time of further hearing.

(Amrita Sinha, J.)