

Jyoti Priya Mallick and Others Vs State of W.B. and Others

Court: Calcutta High Court

Date of Decision: March 23, 2001

Acts Referred: Arms Act, 1959 â€” Section 25, 27

Penal Code, 1860 (IPC) â€” Section 143, 147, 148, 149, 307

Police Act, 1861 â€” Section 23

West Bengal Municipal Election Act, 1994 â€” Section 76

Citation: (2001) CriLJ 3101

Hon'ble Judges: Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Arunavo Ghose and Ananta Kr. Shaw, for the Appellant; Naranayan Gooptu, learned A.G., Tapan Dutta, Tarun Roy and Haridas Das for Respondents 1 to 4, M.C. Das and Subrata Barrierjee for Respondents No. 5 to 9, for the Respondent

Judgement

Ashok Kumar Mathur, C.J.

By this public interest litigation the petitioner has prayed that the respondent Nos. 1 to 10 be directed to act in

accordance with law and in accordance with Section 23 of the Police Act identifying the miscreants who resorted to wide spread violence on 2nd

July, 2000 at Bidhan Nagar, Saltlake, by identifying them from the news reports and picture from the television reports, arresting them and bring

ing them to book. It is also prayed that the respondents Nos. 1 and 10 be commanded by a writ in the nature of Mandamus not to give any

election duty in future to the respondents Nos. 3 to 9.

2. The brief facts which are necessary for disposal of this public interest litigation are that 25th June, 2000 was the date fixed for municipal election

for the Bidhan Nagar Municipality and the respondents Nos. 3 to 9 were deputed to see that the civic poll in Saltlake is held peacefully. On the

day of of the poll severe violence took place all around Saltlake and the respondent authorities have failed to maintain peace and law and order in

the area. It is alleged that it will be evident from the newspaper reports and from the television news. It is alleged that in Ward No. 16 of Bidhan

Nagar Municipality the electronic voting machine (EVM) at booth No. 3A became inoperative after polling was completed as a result of which the

ultimate decision of the electorate of that, booth could not be ascertained. The State Election Commission thereafter ordered for repoll which was

held on 2nd July, 2000. From the late night of 1st July, 2000 about 1000 miscreants were brought to Saltlake who started throwing bombs in the

late night of 1st July, 2000 and in the early morning of 2nd July, 2000. Bombing was resorted to scare away the voters which continued up till 2.00

a.m., of 2nd July, 2000. It is alleged that 2nd July, 2000 was a Sunday and polling in Booth No. 3A of Ward No. 16 of Bidhan Nagar

Municipality commenced at around 7. 00 a.m. in the morning and was concluded at 3 p.m. in the evening. At around 11.30 a.m. severe bombing

started and some of the miscreants even went to the extent of beating up Sri Tapan Sikdar, the Hon"ble Minister of State for Tele Communication,

Sri Ranjit Panja, Sri Sudip Bandopadhyay, Sri Bikram Sarkar and Sri Ananda Mohan Biswas, all Members of the Lok Sabha and Sri Jayanta

Bhattacharjee, Member of Rajya Sabha. It is alleged that others who were beaten were Sri Subrata Mukherjee, Sri Sobhandeb Chatterjee, Sri

Gopal Mukherjee and Sri Sanjay Bakshi, all MLAs. Several gun shots were fired in the air. It is alleged that all these took place in front of

respondents Nos. 2 to 9 that is the DGP, SP,, Sub-Divisional Magistrate and District Magistrate of the area and other officers, but they failed to

check the violence. As a result of these the genuine voters were prevented from going to the poll booth and exercise their franchise. It is alleged

that the respondents Nos. 2 to 8 failed to discharge their duties despite the fact that the incident has taken place, no effective measures were taken

to check this violence and nor any follow up action was taken by the police. Therefore, by this petition it is prayed that these respondents have

failed to discharge their duties, therefore, they should not be assigned any election duty in the forthcoming election. It is also prayed that the

respondents Nos. 2 to 9 should be directed to take effective steps in accordance with Section 23 of the Police Act and apprehend those

miscreants and culprits who resorted to this kind of violence.

3. An affidavit in opposition was filed by the respondents Nos. 1 to 9 which was affirmed by the respondent No. 9, the District Magistrate and a

preliminary objection was taken that the present public interest litigation is not a bona fide one and it is motivated by other considerations than that

of the public spirited one and there is remedy provided u/s 76 of the West Bengal Municipal Election Act, 1994. It is stated that on 2nd July, 2000

at Booth No. 3A of Ward No. 16 of Bidhan Nagar Municipality elaborate police arrangements were made and all precautions were taken to

prevent deterioration in any law and order situation particularly because there poll at the said Booth became highly sensitive as the final outcome of

the electoral process of Bidhan Nagar Municipality heavily depended on the same. It is alleged that for maintenance of law order additional forces

were brought from Howrah, 24 Paganas and State Armed Police, 9th Battallion, Krishnagar. It is alleged that apart from a few stray incidents, the

whole process ended peacefully on 2nd July, 2000. It is also pointed out that the administration did not receive any complaints from any bona fide

voters. It is also alleged that there was no complaint from any political party that he or she is a victim of the violence nor any Hon"ble Minister,

Members of Parliament or MLAs have lodged complaint: of the alleged assault on them. Only two complaints were received from the members of

the rival political party and a suo moto complaint was registered by the officer in charge of the Bidhan Nagar South Police Station which are

presently under investigation. It is also submitted that no credence should be given to the news reports as they are news reports not supported by

any affidavit. He denied that he failed to discharge his duty as an Administrative Magistrate and he denied all the allegations made in the petition.

4. An affidavit in reply was filed by the petitioner in which he denied the allegations made by the respondent No. 9 in his affidavit in opposition and

it is pointed out that about 300 miscreant in front of police created the problem and it is also reiterated that bona fide voters were driven out from

the polling station.

5. An affidavit in opposition was also filed on behalf of respondents Nos. 2 to 8 which was affirmed by one Kuldip Singh, Superintendent of

Police, North 24 Parganas District (respondent No. 4). He denied the allegations made in the petition and he submitted that effective policing was

done and he also challenged the maintainability of the public interest litigation. He said that few stray incidents in ward No. 4, 6 and 11 took place

and they were promptly attended to by the police and four specific criminal cases were registered and the total of 24 accused persons were

arrested in accordance with law. With regard to the allegation of serious law and order problem occurred on 2nd July, 2000 at booth No. 3A in

Ward No. 16 of Bidhan Nagar Municipality he submitted that no complaint was lodged in any police station. He also denied the allegation that

some of the Ministers, MPs and MLAs Were assaulted. It is also alleged that at about 11. a.m. a sound of bomb blast was heard from the FD

block side near Tank No. 11. Police rushed to the spot and found that a scuffling, brick batting, throwing of chairs were going on in between the

supporters of rival political parties in front of their camps. Police tried to stop this by way of cautioning them but they paid no heed, became more

violent, hurled bombs and even sound of gun firing was heard. Finding no alternative, police had to fire 6 rounds of gas and resorted to lathi

charge. As a result, the mob dispersed and normalcy was restored. It was also pointed out that Shri Tapan Sikdar, Union Minister with his security

guard came out from the BJP election camp and entered into an altercation with supporters of contesting rival parties and the mob became violent

and tried to attack the Union Minister and his security guard when the security guard fired one round from his service revolver for protecting and

for the safety and security of the Hon"ble Minister. It is alleged that a criminal case was registered under Bidhan Nagar South Police Station being

case. No. 112 dated 2nd July, 2000 under Sections 143, 323, 324 and 307 of I.P.C. on the complaint of Mrs. Aparna Gupta, Sabhadhipati,

North 24 Pargana Zilla Parishad against Shri Tapan Sikdar and others. It was also alleged that another criminal case in connection with the incident

of the repoll at Bidhan Nagar South Police Station have been registered being Case No. 113 dated 2nd July, 2000 under Sections 147, 148, 149,

323, 325 and 307, I.P.C. and under Sections 25 and 27 of the Arms Act against 300 unknown persons on a complaint of Shri B.K. Bagchi,

Officer in Charge of the police station himself. It is alleged that one complaint was also received from the petitioner against the three named district

CPI (M) leaders of North 24 Parganas. The said complaint was requested to be registered as FIR and that was recorded under G.D. Entry No.

140 dated 3rd July, 2000. However, it is alleged that the petitioner's complaint lacked in material particulars and at variance from the allegations

made by himself in paragraph 8 of the public interest litigation and he also withheld this factual averments of filing the FIR in his petition. It is alleged

that a letter was received from the learned counsel for the petitioner dated 3rd July, 2000 requesting that the miscreants shown in the T.V. news be

arrested. In pursuance of that letter a communication was sent to the Learned Counsel for production of copies of video cassettes, still

photographs or any other documents which can identify the miscreants. It is alleged that in pursuance of the case No. 113 dated 2nd July, 2000

one person has been arrested.

6. In this background the learned counsel for the petitioner strenuously urged before us that no effective step was taken by the police despite they

themselves have lodged the FIR about the incident thereafter they have failed to discharge their duties. In this connection the learned counsel has

invited our attention to Section 23 of the Police Act, 1861 which defines the duties of the police officers. As against this the learned counsel for the

respondent has submitted that this public interest litigation is not bona fide motivated and has invited our attention to a decision of the Supreme

Court in the case of S.P. Gupta Vs. President of India and Others, wherein their Lordships have observed :

But the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of

justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow

itself to be activated at the instance of such person and must reject his application, at the threshold, whether it be in the form of a letter addressed

to the Court or even in the form of a regular writ petition filed in Court.

7. We have considered the rival submissions of the parties. It is a fact that the incident took place on 2nd July, 2000 and the situation was very

tense. It is also admitted by the police that there was lathi charge and the police had fired tear gases cell (shell). It may be that there was no FIR of

any person who said to have been subjected to assault but the fact remains that the incident took place and it created a great law and order

situation. The police should not have waited for any formal FIR. They have registered a case and it is their duty to have investigated the matter and

brought the miscreants to book. It is admitted that that the case being No. 113 dated 2nd July, 2000 was registered by the police on their own of

the whole incident then this should have been sufficient, but, no prompt action was taken of identifying those miscreants and apprehending them

and bringing them to the book. It is the duty of the police to take effective action by apprehending those miscreants. Section 23 of the Police Act

mandates the duty of the police to maintain public peace and to prevent the commission of the offence and public nuisance, detecting and bringing

offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists.

Though it is admitted by the SP in his affidavit that the police has registered a case against 300 unknown persons on the complaint of B.K. Batchi,

officer in charge of Bidhan Nagar South Police Station under Sections 147, 148, 149, 323, 325 and 307, I.P.C. and under Sections 25 and 27 of

the Arms Act, still no effective arrest was made. Mere registration of a case for investigation is not the end of the matter when such a serious law

and order problem has taken place. It is necessary for the police to have effectively investigated the matter and bring the miscreants to the book.

Section 23 of the Police Act gives mandate to the police to prevent commission of such offences as well as to maintain public peace and to prevent

those who disturb the public peace. Simply registering a case does not mean that the police has effectively discharged their duties. Till the time of

the hearing of the matter it was not known that police has really apprehended miscreants who were involved in the matter. In this kind of law and

order problem a helplessness cannot be pleaded on behalf of the police, that only shows their lack of conviction to deal with the matter effectively.

It is true that this public interest litigation should not be permitted to be misused at the hands of the persons who are motivated other than the cause

of justice. Though, allegations have been made by the respondents that his public interest litigation is not bona fide motivated and it is actuated with

consideration other than public purpose. We do not want to comment on this part, however, the fact remains that the incident did take place and

the police registered a case against 300 unknown persons, but since then no serious investigation has been undertaken no arrest has been made

except one. That shows that the police has failed to bring the miscreants to the book. Therefore, we direct that the case which has been registered

by the police should be properly investigated and pursued by the concerned police official to see that those who are involved in the matter should

be brought to book at the earliest. Coming to the question whether those police officials and administrative officers who were entrusted to maintain

law and order for peaceful conduct of the election has failed in their duties and they should not be assigned any election duty is a matter which is

within the domain of the Election Commission and no direction for that part can be given. Every failure of the police officials does not mean that

they should not be entrusted to discharge their duties. This failure should be brought to book it cannot prevent them from discharging their duties.

However, it is expected that the District Magistrate, S.P. and other authorities who are entrusted to maintain law and order should keep a strict

vigil and impartiality in discharge of their duties. The election is a very sacrosanct in democracy and if the election process is being polluted by

persons who are entrusted to conduct the election impartially then this will affect the sustenance of Indian democracy. Therefore, it is expected

from the authorities who are supported to maintain law and order do their duties honestly, objectively, impartially and allow this stream of election

process to flow uninterruptedly without being polluted by irrelevant consideration. However, we dispose of this public interest litigation with a

direction to the authorities to complete investigation of the cases registered by them and bring the miscreants to book at; expeditiously as possible.

No order as to costs.

Girish Chandra Gupta, J.

I agree.