

(2011) 01 CAL CK 0036
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction AST 8 and 10 of 2011

Bar Association High Court and Another, Krishnendu Bhadra
and Asish Das

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (2011) 1 CALLT 359 : (2011) 2 CHN 442

Hon'ble Judges : J.N. Patel, C.J.; Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Sukhendu Sekhar Roy, Somenath Bose, Rana Mukherjee, Sanjoy Bardhan, Benoy Kr. Panda, Ashok Banerjee, Uttam Mazumder, Shakeel Md. Akhtar, Jaydip Banerjee, Arijit Ganguly, Swagata Dutta, Arindam Sen, Animesh Bhattacharjee, Mousumi Biswas, Gargi Roy Biswas and Hiranlal Majumder, in AST 8/11, Kalyan Bandyopadhyay, Pratik Prakash Banerjee, Anisur Mondal, Rajdeep Majumdar, Sumon Sengupta and Subabrata Datta, in AST 10/11 and Party in Person in AST 10/11, for the Appellant; Balai Chandra Ray, Ld. Advocate Gen., Pratik Dhar and Ritwik Pattanayak for State, Farook M. Razack, A.S.G. and O.P. Dubey, for Union of India, for the Respondent

Final Decision : Allowed

Judgement

The judgment of the Court was as follows:

1. Heard learned Counsel for the parties.

Rule:

Heard on interim Relief

These two petitions are filed in public interest for the cause and benefits of the villagers of Netai village, P.S. Lalgargh, Paschim Medinipore. The Petitioners seek a writ of mandamus against the Respondent State to hand over the investigation to CBI in respect of the incident which occurred at about 9.30 hrs. on 7.1.11 in Netai village which led to the death of 7 persons and injured 20 persons, to pay

compensation to the victims of Netai carnage and to direct the Respondent to dismantle the camps allegedly at the behest of CPI(M) and ensure that no camp exists for the purpose of storing arms and weapons by and/or at the behest of any political party.

2. In both the petitions reliance is placed on media (both print and electronics) reports and correspondence between Home Minister of the Central Government and the C.M. of West Bengal and so also the press statement issued by Sri M.K. Narayanan, Governor of West Bengal on 7.1.11.

3. On the earlier date, i.e., on 10.1.11 this matter was moved before the Court and taken up for hearing, the learned Advocate General placed before us a copy of the first information report and on going through the same we found that the FIR of the case came to be registered at Lalgarh P.S. on 7th January, 2011 at 20.06 hrs. in respect of the incident which occurred at 9.30 a.m. on the said day. Therefore, in order to ascertain the correct state of affairs we call upon the learned Advocate General to procure the copy of the case diary for perusal of the Court and seek instruction from the Deputy Inspector General of Police. CID, Operations, West Bengal, as to within how, much time all the suspects in the case would be arrested and the investigation against them would be completed.

4. We further wanted to know what steps the State Government has taken against the Police Officers of the Lalgarh P.S. as well as against the Senior Police Officers of the District - Paschim Medinipore for their dereliction of duty for delay in taking cognizance of the offences as seen from the FIR that in spite of repeated phone calls made to the Lalgarh P.S., the Police Officers of the Lalgarh P.S. did not respond till written FIR in the matter came to be lodged. On the next date i.e. on 11.1.11, learned Advocate General placed before us the report on Netai village incident forwarded by the Superintendent of Police, Paschim Medinipore and so also the case diary of the State CID as well as the local P.S., Lalgarh in respect of FIR No. 04/11 dated 7.01.11 relating to the incident of Netai village. Thereafter on hearing the learned Counsel for the parties we thought it proper that the Respondent State files an affidavit-in-opposition of the Principal Secretary (Home), Govt, of West Bengal so that the Court can adjudicate on the issue as to whether investigation in the case is required to be handed over to the CBI or not. Secondly, whether the Court can issue necessary direction or pass orders to dismantle the camps alleged to be conducted at the behest of C.P.I. (M.), a political party and thirdly, this Court would like to hear the learned Counsel for the parties on the issue of awarding interim compensation to the victims of the "Netai Carnage". Accordingly, the learned Advocate General has filed affidavit-in-opposition of Gyan Dutt Goutama, Additional Chief Secretary Uncharge) - Home Department, Govt, of West Bengal on behalf of Respondent 1, 3, 4 and 5 in AST No. 08/11.

5. Learned Counsel appearing in AST 10/11 filed list of location and other details of armed camps of "Harmads" in District of Paschim Medinipore, Bankura and Purulia. Copy of this is furnished to the learned Advocate General and the

learned Additional Solicitor General who represent the Respondent State and Central Government. The learned Additional Solicitor General also tenders before us authentic copies of the correspondence between the Home Minister, Govt, of India and C.M. of West Bengal and submitted that the correspondence is available in public domain.

6. We have heard the learned Counsel for the parties at a great length and have taken into consideration the various decisions cited before us. As we do not propose to finally dispose of these petitions we are not referring to the authorities cited before us. Suffice to say, that under Articles 226 and 227 of the Constitution, this Court has ample powers to issue appropriate writ to protect the fundamental rights of the citizens and people residing in this country and within the jurisdiction of this Court. The Petitioners have insisted that this Court should forthwith transfer the investigation of the case from the State CID to Central Bureau of Investigation (CBI for short) as they have no faith in the State police for the reason that the perpetrators of the crime in Netai village carnage were harboured in the house of Rathin Dandapat, a CPI(M) leader and that armed miscreants were holed up and residing there with the help of Abani Singh and Subhendu Mondal both resident of the village Netai along with others who have been named in the FIR. The police feigned ignorance and did not take any steps to arrest them which could have prevented the unfortunate incident. According to the learned Counsel for the Petitioners this inaction on the part of the police was due to the fact that the C.P.I.(M), a political party, is the ruling party in the State. It is further submitted that though the incident took place in the morning of 7.1.11 the police in spite of receiving the information failed to rush to the Netai village in order to arrest the armed miscreants who left the village after having shot dead 7 persons and injuring 20 or more villagers and, therefore, they do not expect Justice would be meted out to the victims of "Netai Carnage".

7. On the other hand, the learned Advocate General pointed out to us from the report placed before this Court by the Superintendent of Police, Paschim Medinipore and the affidavit-in-opposition filed by the Additional Chief Secretary (in-charge) Home Department that the police have taken immediate action in the matter after learning about the incident through telephonic information. It is submitted that immediate action was taken by Police Officer in-charge, Lalgah P.S. and that the joint team of the local P.S. and CRPF 50 battalion reached the place of occurrence and conducted the necessary inquiry and investigation into the incident. Having regard to the gravity of the situation the State of West Bengal vide Order No. 43/CS dated 8.1.11 directed that the investigation be handed over to the Criminal Investigation Department, i.e., the State CID. The learned Advocate General pointed out to us by referring to the case diary that whatever possible steps were required to be taken in the investigation of the case were taken by Lalgah P.S. as well as the State CID and they were successful in arresting the suspects. Therefore, it cannot be said that the State has failed in its duty to take necessary steps. It has been pointed out by the learned Advocate General from the report of the Superintendent of Police that

during investigation of the case the following facts emerged:

(a) About 22-25 days back some CPI(M) supporters at Netai village along with armed miscreants came to the house of one Rathin Dandapat and started staying there with the help of Abani Singh and Suvendu Mondal both of village Netai. The villagers also alleged that some CPI (M) leaders named in the FIR also visited this house occasionally. The armed miscreants used to threaten the villagers and create pressure on the villagers. This caused lot of resentment among the villagers.

(b) On 07.01.2011 at about 08:00 hrs more than 2000-2500 villagers including women and others assembled near the house of Rathin Dandapat for discussion with the CPI(M) supporters. However, when the discussion were going on some sound of firing along with crackers and large sound of crude bomb came from eastern side of the village. After that some miscreants standing on the roof top of the house of Rathin Dandapat also started firing. This incident led to death of seven persons and injuries to 20 persons.

8. The above report would go to show that the police have discharged their duty in a fair and impartial manner. The learned Advocate General also submitted before us that the police did not wait for the written FIR to be filed at the Police Station but immediately acted on the telephonic information and the delay, if any, in reaching the place of occurrence was due to following of the "Standard Operating Procedure" which is mandatory in the region within the jurisdiction of Lalgarh P.S. as it is well-known that jurisdiction of Lalgarh is highly infected by Naxal activity and there have been several incident of attack on armed forces by C.P.I. (Maoist) supporters. The learned Advocate General also drew our attention to the fact that as directed by this Court IC Lalgarh P.S. was asked to explain the reason of delay In reaching Netai village along with forces and he has given the following reasons:

a. When the information about the problem at Netai village is reached at Lalgarh PS at about 09:30 hrs at that time the operational force was out for duty vide GDE No. 232 dated 07.01.11.

b. This force returned back to Lalgarh PS at about 10:15 hrs, after the force and officers were asked to return back by IC Lalgarh PS.

c. CRPF was intimated about the information and the forces of Lalgarh PS reached at CRPF camp at about 10:40 hrs for joint briefing. Joint briefing was required as per the standard operating procedure because there were reports of large scale gathering of people at Netai village and serious law & order problem was apprehended. Considering the history of Lalgarh movement and several attacks on security forces in last two years in Lalgarh PS area and other areas of Paschim Medinipur district the help of CRPF was requisitioned.

d. As Lalgarh PS is highly affected by Naxal activities therefore, the movement from Lalgarh PS to Netai village (approx. 3.5 km) was done on foot.

9. The learned Advocate General drew the attention of this Court to the fact that in Paschim Medinipore District several attacks on joint forces have taken place in the last 2 years and that is why there are specific directions to follow "Standard Operating Procedure" on receiving such information. He submitted that the investigating team has not only arrested some of the suspects but has also conducted search and seizure and examined more than 40 witnesses including the injured persons. It is submitted that a team of experts from the Forensic Sciences Laboratory has visited the place of occurrence on 11.1.11 and their report is awaited. He has further pointed out from the affidavit of the Additional Chief Secretary (Home) that in order to assist the Investigation Officer in the investigation of the case, 4 teams consisting of senior officers of CID, West Bengal have been formed to look into the following aspects of investigation:

(1) To liaise with the FSL experts for their visit to the place of occurrence and submission of report.

(2) To examine all the injured persons to ascertain the actual facts.

(3) To establish the identity of persons, who were camping in the house of Rathin Dandapat.

(4) To establish the identity of persons who mobilized the local villagers to assemble near the camp.

(5) To study the Call Details Records (CDR) of accused persons, establish their identity and ascertain the conspiracy, if any, behind the incident.

(6) To establish the identity of accused persons, who attacked the villagers from Birkar Village.

(7) To send the seized alamats to the Forensic Science Laboratory for opinion.

10. He, therefore, contended that the writ Petitioners have sought for handing over the investigation to CBI without verifying the true state of affairs or facts.

11. There cannot be any dispute that the investigating agency must act in efficient and vigilant manner without being pressurized. On going through the case diary of Lalgah P.S. as well as the State CID, it cannot be said that the investigating agency has not worked in an effective way. On going through the report of the Superintendent of Police, Paschim Medinipore and the facts brought out on record in the affidavit of Additional Chief Secretary (Home), Govt. West Bengal it is clear that the investigating agency found that the C.P.I. (M) supporters of Netai village along with armed miscreants came to the house of one Rathin Dandapat and were residing there with the help of a named suspect in the FIR Abani Singh and Subhendu Mondal and that the armed miscreants used to threaten the villagers and created pressure on the villagers which caused lot of resentment among the villagers and when on 7.1.11 at about 8.00 hrs. more than 2,000 to 2,500 villagers including women and others assembled near the house of Rathin Dandapat, the armed miscreants standing on rooftop of the

house of Rathin Dandapat started firing which resulted in death of 7 persons and injured 20 persons and today we are informed that one more injured has succumbed to injuries and died in the hospital. The investigation so far carried out goes to show that the investigating agency is not under any pressure and have been able to discharge its function fairly and impartially. At this crucial stage it would not be proper for this Court to hand over the investigation to the CBI or any other agency than the State police.

12. The learned Counsel appearing for the Petitioners in order to support their contention that the investigation should be handed over to CBI rely on the correspondence between the Home Minister, Government of India and the Hon"ble CM, West Bengal to show in spite of the Home Minister, having forewarned the CM of West Bengal the State under his stewardship failed to take any step to contain private armed militia referred to as "Harmads" in the correspondence of Home Minister, organized by C.P.I.(M) cadres and that in spite of being informed the Chief Minister of the State has failed to take any steps to dismantle such camps and disarm persons and if the Chief Minister would have acted in time "Netai Carnage" could have been prevented. The learned Counsel for the Petitioners has also read out to us the press statement issued by the Governor of West Bengal. Insofar as the press statement dated 7.1.11 issued by the Governor of West Bengal is concerned all right thinking people in the State of West Bengal share the anguish and sentiments of His Excellency Governor of West Bengal. It is unfortunate that political parties on the eve of Assembly Election in the State have resorted to political violence with the aid of mercenaries and as expressed by His Excellency, the Governor of West Bengal: "With unfailing regularity, each day begins and ends with news of political clashes in different areas of the State".

13. In our considered opinion, in such a situation prevailing in the State we must have faith and confidence in the police force and Central force deployed in the State to meet the situation, rather than demoralize them. The incident in Netai village is not an isolated incident and in our opinion merely because persons suspected to be involved in such incident belong to political parties cannot be a reason to hand over investigation to CBI; otherwise in the State of Bengal all such incidents referred to by His Excellency, the Governor of West Bengal, are political clashes will have to be as a policy assigned to the CBI for investigation.

14. In State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, the Supreme Court while dealing with the issue observed in para 70:

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is

concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

15. Therefore, after considering the materials on record we do not think that at this stage the investigation is required to be handed over to CBI but considering the background facts of the case as revealed from the report of the Superintendent of Police, we propose to monitor the investigation which has been carried out by the State CID by keeping it under our observation so that a fair, impartial and thorough investigation takes place, culprits are arrested and charge sheet is filed within time and guilty are punished in accordance with law.

16. We make it clear that in future if this Court is not satisfied with the investigation of the case it may consider the prayer of the Petitioners to hand over the investigation of the case to CBI or any other competent agency than the State Police. In the present situation we are more concerned about the human and fundamental rights of the victims in the case. From the report and the case diary it is revealed that the victims in this case are the villagers of Netai village and belonged to poorest of poor in the society. Most of them belonged to backward classes and they were virtually under seize of the armed miscreants who not only exploited them for so many days but when on the day of incident they tried to protest in peaceful manner and for that purpose assembled near the house of Rathin Dandapat the armed miscreants opened fire at them standing on the rooftop of the house of Rathin Dandapat which led to the death of 7-8 persons and injured 20 persons. No civilized society governed by the rule of law can tolerate such incident and we have no hesitation to come to the conclusion that the State has failed to protect their human and fundamental right to life and personal liberty. Therefore, in our opinion the victims deserve to be compensated. For the said purpose we need not wait till the investigation is" completed or the trial is concluded to facilitate the authorities to decide whether the incident happened due to clash between private parties having no role or support of State and in that event State may not be liable to pay any compensation save and except any statutory compensation. We, therefore, direct the State to pay a sum of Rs. 2,00,000/- to next of kin of the victims who have been shot dead or succumbed to their injuries in the incident, a sum of Rs. 1,00,000/- to be paid to the victims who suffered grievous hurt and a sum of Rs. 50,000/- to the victims who have suffered hurt in the incident. The State would

constitute a Medical Board consisting of the Director of Health Services and two Senior Medical Officers of the State concerned with the field who shall further examine the victim and their medical case papers and certify whether the victim has suffered grievous hurt or hurt as defined in the Indian Penal Code in order to determine the compensation to be paid to the said victims.

17. We further direct that the interim compensation awarded to the deceased as well as injured would be in addition to the expenses, if any, incurred by the State in their treatment.

18. The State would pay the interim compensation within a period of 7 days from the date of this order by depositing the same in the nearest Post Office or Nationalised Bank by opening an account in the name of next of kin of the deceased and/or the injured persons. In case the next of kin of the deceased is a minor, the amount should be deposited in the name of the minor through the District Magistrate or any Gazetted Officer nominated by the District Magistrate as guardian of the minor and in case of injured through his natural guardian and in absence of a guardian in the name of the District Magistrate or any Officer appointed by the District Magistrate as guardian. In case the person eligible for compensation as ordered by this Court and is HC: 24 in urgent need of any sum of amount by way of subsistence he/she will be entitled to withdraw the same after being so certified by the Collector or any Gazetted Officer nominated for the said purpose and in case any person is aggrieved by such decision, he may approach this Court through the High Court Legal Aid Committee of which due information and assistance would be given by the Collector of the District. Rest of the amount will be invested in the monthly income scheme of the Post Office or the Nationalised Bank as the case may be with a lock in period of 3 years. The choice of getting the money deposited in the Post Office or nationalized Bank would be that of the beneficiaries.

19. As regards dismantling of the camps and disarming of armed cadres whether having any allegiance to political parties or not, this Court directs the State Police Force as well as the Central Police Force which are deputed in the State for maintaining law and order as well as public order, to carry out joint operations in the State and particularly in the region where such camps are operating and armed persons have taken shelter and they be dealt with in accordance with law. The list furnished by the Petitioners in W.P. No. 10/11 of the armed camps may be forthwith verified and necessary action be taken. We are now adjourning the two writ petitions (AST 08 of 2011 and AST 10 of 2011) along with the writ petition filed by Asish Das to 4th February at 10.30 am to enable the State to place before us the progress report along with the affidavit of a Chief Investigating Officer of the investigating agency so far as the investigation into Netai incident is concerned so also of the Additional Chief Secretary in-charge Home, West Bengal as regards the dismantling of armed camps and the areas where armed camps have been operating in the State. Let the matter appear before this Court on 4th February, 2011.

Later:

Learned Counsel appearing for the Petitioners, Bar Association, tenders supplementary affidavit in support of their case. Copy of the same has already been given to the Respondents. Let the same be taken on record.

Learned Counsel for the Respondents want time to file their respective affidavit-in-opposition to the supplementary affidavit tendered today.

Time is granted to file such affidavit by a week before the next date of hearing.

Let the matter appear in the list on 4th February, 2011:

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties on usual undertaking.

Let photostat certified copy of this order be given to the parties during the course of the day.