

**(2023) 10 CAL CK 0057**

**In the Calcutta High Court**

**Case No :** CPAN No. 831, 841, 905, 907, 948/2023 In WPA(P) No. 250, 286, 287, 301 Of 2023

Suvendu Adhikari And Anr.

APPELLANT

Vs

Rajiva Sinha, State Election Commissioner

RESPONDENT

**Date of Decision :** 13-10-2023

**Acts Referred:**

Calcutta High Court Contempt of Court Rules, 1975 — Rule 14, 19, 26

**Citation :** (2023) 10 CAL CK 0057

**Hon'ble Judges :** T.S. Sivagnanam, CJ;Uday Kumar, J

**Bench :** Division Bench

**Advocate :** Soumya Majumder, Srijib Chakraborty, Kabir Shankar Bose, Anish Kumar Mukherjee, Suryaneel Das, Amit Kumar Mishra, Chiranjit Pal, Lokenath Chatterjee, Sukanta Ghosh, Arghya Chatterjee, Mrityunjoy Chatterjee, Debapriya Majumder, P. S. Raman, Kishore Datta, Jishnu Sinha, Sonal Sinha, Avishek Prasad, Sayan Dutta, Ashoke Kumar Chakrabarti, Billwadal Bhattacharyya, Ayanabha Raha, Tirtha Pati Acharya, Sirsanya Bandopadhyay, Piyush Agarwal, Arka Nag, Utsha Dasgupta, Shrivalli Kajaria, Riddhi Jain, Bikram Banerjee, Sudipta Dasgupta, Sagar Dey

**Judgement**

1. The alleged contemnor in CPAN No. 831 of 2023 is Mr. Rajiva Sinha, the State Election Commissioner of West Bengal. In CPAN No. 948 of 2023, the alleged contemnors are Shri Rajiva Sinha, the State Election Commissioner, Shri Hari Krishna Dwidhi, Chief Secretary, Government of West Bengal, Shri B.P. Gopalika, Principal Secretary, Department of Home and Hill Affairs, Government of West Bengal and Shri Manoj Malaviya, Director General and Inspector General of Police, West Bengal.

2. CPAN No. 831 of 2023 has been filed alleging willful and deliberate violation of the judgment and order dated 15.06.2023 in WPA (P) No. 301 of 2023. CPAN No. 948 of 2023 has been filed alleging willful and deliberate violation of the judgments and orders dated 21.06.2023, 23.06.2023, 28.06.2023, 03.07.2023 and 06.07.2023 passed in CPAN No. 831 of 2023 as well as the judgment and

order dated 15.06.2023 in WPA (P) No. 301 of 2023. The contempt petition was heard on various dates and orders were passed from time to time. The first order was passed on 21.06.2023, the following observations were made:-

3. After elaborately hearing the arguments of the learned counsel for the parties, we have no hesitation in our mind to hold that the order and direction has not been complied with in its letter and spirit. We fail to understand as to why the State Election Commission is still not taking any independent decision in the matter and the learned senior counsel for the State Election Commission on instruction stated that the Election Commission will abide by the directions issued by this Court. In the first order passed by this Court, the Court reposed confidence on the State Election Commission and directed to make an assessment of the sensitive Districts but we found that this direction has not yet been taken and the matter was being dragged which necessitated the Court to issue direction for deployment of the Central Forces for the entire State which order has also been affirmed by the Hon'ble Supreme Court. On instructions, the learned senior advocate for the State Election Commission submitted that "one Company of the Central Force has been requisitioned for each of the 22 Districts". It is submitted by the learned advocate for the petitioners that one Company consists of 80 active persons and the total number of such personnel of the Central Force would be 1700, which in our view is thoroughly inadequate. We are justified in taking such stand in the light of the requisition which was made for deployment of Central Forces during the Panchayat Elections conducted in the State of West Bengal in 2013. In this regard, we refer to the decision of the Hon'ble Supreme Court in the case of West Bengal State Election Commission Vs. State of West Bengal and others reported in (2013) SCC on line 1283. It is interesting to note that the State Election Commission was the petitioner before the Hon'ble Supreme Court resisting the decision of the State of West Bengal in the matter of deployment of Central Forces for the year 2013 Panchayat Election. If that was the manner in which the State Election Commission had acted in the year 2013, we are at a loss to understand as to what has happened to the independency and supremacy of the State Election Commission during the ensuing election. In the said order of the Hon'ble Supreme Court it has been recorded that the Panchayat Election 2013 was to be conducted in five phases from 11th July to 25th July, 2013 and interestingly deployment of State Police was 1,05,000 and Central Forces was 82,000 and, more particularly, at the relevant point of time there were only 17 Districts in the State of West Bengal as against 22 Districts at present. Therefore, if the State Election Commission is not pro-active and not inclined to implement the order passed by this Court in its letter and spirit, we are of the prima facie opinion that the State Election Commission is attempting to make the orders passed by this Court unworkable to which they are not entitled to, more particularly, when the Hon'ble Supreme Court has affirmed the order. This will also lead us to a prima facie conclusion that there has been deliberate violation of the order and direction which was directed to be complied with in its letter and spirit. In the light of the

submissions made by the learned senior counsel for the State Election Commission that the Commission will abide by the directions issued by this Court, we are inclined to issue the following directions which are ancillary and supplementary to the orders passed in the earlier two writ petitions.

4. The State Election Commission shall within 24 hours requisition sufficient number of Central Forces to be deployed to all the Districts and the number of Companies/Battalion which are to be requisitioned shall be not less than the forces which was requisitioned for the 2013 Election and it has to be definitely more than the same as the number of Districts have increased and the Electorate would have definitely increased between 2013 and 2023, in these ten years. Therefore, we expect that the State Election Commission to take note of this direction in a proper and effective manner and this Court hopes that the direction will be complied with in its letter and spirit and any attempt to make the order unworkable may result in adverse consequences.

5. It is pointed out by the learned counsel for the petitioners that in the Special Leave Petition filed before the Hon'ble Supreme Court, a copy of the letter addressed by the Additional Chief Secretary, Home and Hill Affairs Department, Parliamentary Affairs Department, Government of West Bengal, to the Principal Secretary, Department of Home Affairs and Justice, Government of Punjab dated 12.06.2023 was annexed. On going through the letter, we are surprised to note that the requisition which was made to the Government of Punjab was to provide Police Force to reach the designated location by 6th July, 2023 morning. When the submissions on behalf of the State Election Commission was heard by this Court in the writ petition, we were led to believe that already sufficient number of Force has been requisitioned from the State of Odisha, Jharkhand, Bihar, Punjab and Tamil Nadu. The Court was of the view that such requisition has been made and the Forces are required to be present till the entire election process is completed. Surprisingly, the instructions given to the learned Senior Counsel for the State Election Commission is contrary what has been written by the Additional Secretary to the Government of West Bengal, to the Principal Secretary, Department of Home Affairs and Justice, Government of Punjab dated 12.06.2023. This also appears to be an attempt to mislead the Court as the Court even in the order passed in the earlier writ petition had made it clear that the requisition of Central Forces was to cover the entire Election Process not on the date of polling alone.

6. Therefore, we are of the view that such deployment of the Forces from other States to be in place on the date of polling will not yield the desired result. Therefore, de hors the number of Police Forces which may have been requisitioned from other States, the State Election Commission shall independently assess the requirement and as observed earlier the assessment should be honest and bearing in mind that the State Election Commission has constitutional obligation to ensure free and fair election and to preserve the purity of the entire Election Process. We hope and trust that the directions be

complied with effectively and immediately without loss of time.

3. A reading of the above paragraphs will show that the court was of the opinion that the order and direction issued in the writ petition has not been complied with in its letter and spirit. To be noted this order was passed in CPAN No. 831 of 2023. On the next hearing date namely 23.06.2023, the court took note of the orders passed by the Hon'ble Supreme Court dated 20.06.2023 dismissing the special leave petitions filed by the State and the State Election Commission as against the orders passed in the writ petition and took note of the submissions made by the learned Senior Counsel and the following observations/directions were issued:-

13. After we have heard the submissions on behalf of the learned advocates appearing for the parties, we are of the view that in order to decide as to whether there has been any wilful non-compliance of the directions issued by this court in its order dated 15.06.2023 which, in fact, was ancillary and supplementary to the earlier order dated 13.06.2023, we are of the view that affidavit needs to be filed by the State Election Commission. The crucial question would be as to whether the submission made on behalf of the State Election Commission that there is no willful delay on the part of the Commission as they have complied with the orders on 22.06.2023, soon after the Special Leave Petition filed by them was dismissed by the Hon'ble Supreme Court on 20.06.2023.

14. The question would be as to how the delay has to be computed as observed in the order dated 15.06.2023, the said order was in continuation of the earlier order dated 13.06.2023 in which also timelines were fixed. Therefore, the order dated 13.06.2023 for all purposes stands merged with the order dated 15.06.2023 and both these orders stand merged with the order passed in this contempt application dated 21.06.2023. Therefore, the court has to consider the cumulative circumstances to examine the conduct of the State Election Commission as to whether there was any willful disobedience of the order and directions issued from time to time or was there any attempt to make the order unworkable at different stages of time.

15. This issue cannot be decided without an affidavit being filed by the State Election Commission. So far as the direction issued to the Central Government is concerned, we find the same has been complied with pursuant to the requisition made by the State of West Bengal and in the assessment of the Ministry of Home Affairs 315 Companies would be adequate and it is higher than what was provided in the 2013 Panchayat Election which we had indicated in our order dated 21.06.2023.

16. Needless to state, as emphasised by this court time and again that it is the assessment of the State Election Commission which is paramount. In fact, the court used the expression that the State Election Commission should make an honest assessment. Therefore, if, according to the State Election Commission,

315 Companies as deployed by the Central Government is not adequate, then the State Election Commission shall not fight shy to make additional requisition to the Central Government. This observation is made after taking note of the submissions made on behalf of the State Election Commission that the Commission will do all within its means to ensure free and fair election and to preserve the purity of the election process. It was also submitted on behalf of the State Election Commission that individual grievances are before this court being heard and decided by the learned Single Benches. However, we have pointed out to the learned senior advocate appearing for the appellant that even today before the regular court there were two writ petitions which were filed as public interest litigations and in one of those writ petitions it was reported that 273 seats in Canning-I Block have remain uncontested and it is voters/public who have come to court to state that they have right to choose the candidate and a prospective candidate cannot be prevented from filing the nomination that the State Election Commission has not taken any pro-active step in this regard. A direction has been issued in the said writ petition to the State Election Commission for their response. Even the totality of circumstances and that not only the Regular Bench of this court but two Single Benches and one another Division Bench or all being engaged in matters concerning in the ensuing Panchayat Election.

17. Therefore, we are of the view that strict monitoring is required to be done in the matter for which affidavit has to be filed after which the court will consider as to whether there has been willful disobedience of the directions issued by the court in all the three orders and such other matters. With regard to the appointment of Observers are concerned, since the court in its initial order in the first order dated 13.06.2023 declined to accede such a prayer and in the present proceedings a prayer has been made to renew the said prayer, such a request can be considered only after an affidavit is filed by the State Election Commission in this regard.

18. We expect the State Election Commission to answer to the prayer on merits without raising any technical objection in this regard as we have observed that the orders passed by the court from time to time are incidental and ancillary to each other and the object behind passing such order is to ensure free and fair election and to preserve the purity of the election process.

19. We direct the State Election Commission to file their affidavit covering all the above aspects by 27.06.2023.

20. Let the matter be listed on 28.06.2023 at 2.30 p.m.

4. To be noted that the above order was passed in CPAN No. 831 of 2023. On the next hearing date that is on 03.07.2023, CPAN No. 841 of 2023 was listed along with CPAN No. 831 of 2023 and certain directions were issued with regard to the deployment of contractual employees for election duty etc. When the matter was next heard on 06.07.2023 on which date, the State Election Commission was to

respond to the allegations, the court also took into consideration the submissions made by the Learned Additional Solicitor General with regard to the manner in which the State Election Commission was functioning causing inconvenience to the central forces. Taking note of the submissions on either side, the following observations/directions were issued in the order dated 06.07.2023 which is to the following effect:-

14. As this court has been time and again pointing out that duty cast upon the constitutional body, namely, the SEC is to ensure free and fair election and to protect the purity of election. The election process would stand concluded only after the publication of the results. So therefore, until then the SEC should ensure that all is done to prevent any complaints from any corner and it goes without saying the safety and security of the receiving stations where the ballot boxes will be kept after it is being received from the respective polling stations and also during the counting process and till the declaration of the results. Therefore, the officers of the SEC shall hold discussion with the Inspector General, BSF, the State Nodal Officer with regard to the deployment of the Central Forces while ballot boxes are being transported to the receiving stations to safeguard the ballot boxes in the receiving stations and when the counting takes place and also till the results are declared. Clear plan of action be chartered out in this regard and the advice given by the Inspector General, BSF, the State Nodal Officer shall be taken into consideration so that the deployment and other aspects goes on seamlessly.

16. Therefore, this court has considered the said aspect and examined as to what directions have to be issued. It is not in dispute that there were large scale post poll violence soon after the earlier Panchayat Election as well as the election of the Legislative Assembly. Though it may not be right for the court to predict any such violence soon after the ensuing elections, yet the apprehension in the minds of the applicant cannot be brushed aside. As observed by this court in its earlier orders, it is the electorate which needs to be protected and soon after the elections and declaration of the results if any violence erupts it is the public will be affected. Therefore, this court is of the view that the Central Forces shall continue to remain in the State of West Bengal for a period of ten days from the date on which the results are declared and in this regard the Ministry of Home Affairs, Government of India shall issue necessary orders and instructions to the State Nodal Officer, namely, the Inspector General, BSF. All other subsidiary issues which are being brought to the notice of the SEC or to any of the control rooms which have been established throughout the State or to any of the Observers who have been nominated by the SEC, the same shall be taken serious note of and examined and appropriate steps be taken to redress all such genuine grievances. All that the court can hope is that the elections of the Panchayat to be held on 8th July, 2023 is peaceful and the public will be entitled to cast their vote without any fear in their mind.

17. It is pointed out by the learned Deputy Solicitor General that the Commission

by communication dated 04.07.2023 has given district wise plan for deployment of companies of the Central Forces. The number of companies to be deployed have been mentioned in the said communication. As observed earlier the arithmetics has to be left to be done by the expert and we have entrusted the said exercise to be done by the Inspector General, BSF, the State Nodal Officer who will undoubtedly ascertain the views of the Commission and also that of the State Police.

5. The matter was thereafter heard on 12.07.2023 and the report submitted by the Inspector General, BSF, Force Coordinator was taken on record and on perusal of the report, the court found very serious allegations have been made against the State Election Commission and in several places in the report it has been stated that the support and response of the State Election Commission and the state authorities was on a number of occasions was wanting. The court observed that if the allegations set out in the report ultimately turn out to be true then it would tantamount to clear case of willful disobedience of the orders and directions issued by this court. The court made it clear that these are all prima facie observations made by the court as the court will take a decision after the State Election Commission files the response to the report of the IG, BSF. The court also noted that there are allegations against the State Government of non-cooperation etc. The relevant portions of the order are hereunder:-

In the earlier part of this order we have pointed out that the allegations made in the report submitted by the Inspector General, BSF are very serious and damaging. Therefore, before we take a decision we expect proper response from the State Election Commission to all the allegations made in the report as well as the appropriate authority of the State Government.

6. The matter was thereafter heard on 26.07.2023 on which date the affidavit filed by the State Election Commission as well as the State Government was taken on record and liberty was granted to file exception to the affidavit/report.

The matter was thereafter heard on 22.08.2023 on which date the court took into consideration the submission made by the learned Additional Solicitor General. From 24.08.2023, the court commenced the hearing of the submissions of learned Senior Counsel appearing for the applicants in the contempt application. In the order dated 05.09.2023, the court took note of the submission of the learned Senior Counsel for the applicant placing reliance on Rule 19 of the Calcutta High Court Contempt of Court Rules, 1975 (The Rules) and submitted that the Rule contemplates three scenarios, the first of which is that the court may issue Rule NISI or summarily reject the petition or make such order thereupon as thought fit. The submission of the learned Senior Advocate was that the earlier orders passed in the contempt application were in the nature of the third scenario or in other words the third limb of Rule 19 and presently the court has to consider and issue rule as per the first scenario provided for under Rule 19. In this regard, Form No. 1 Appendix 1 to the Rules was referred.

7. Further it was submitted by the learned Senior Counsel that on going through the response filed by State Election Commission, it is seen that the same is the mere denial and the response is absolutely vague and it tantamounts to saying as if nothing has happened for initiation of contempt. Serious objection was taken to the exception filed by the State Government more particularly, in paragraph 11 and it was submitted that the State Government could not have stated that the deployment of the CAPFs/SAPs had been undertaken pursuant to the orders passed by the court from time to time and the purported challenge faced by IG, BSF in implementing the orders passed by the court have no relevance for the purpose of the report. It was submitted that such a statement could not have been made by the State Government and ought not to have been made. During the course of his submissions, the learned Senior Counsel for the petitioner contended that the respondent/alleged contemnors are not required to be heard in the matter for the purpose of the court deciding as to whether, Rule NISI has to be issued in terms of Rule 19. However, we had opined and passed an order that the respondents will be heard and they will be afforded an opportunity. In support of his contention, learned Senior Counsel placed reliance on the decision in *Heinz India Private Limited and Others Versus Glaxo Smithkline Consumer Healthcare Limited* (2005) SCC Online Cal 429 (DB). Subsequently the matter was heard on 22.09.2023 on which date the learned Senior Counsel for the petitioner concluded his submissions.

8. On 11.10.2023, we have heard the submissions of Mr. P.S Raman, the learned Senior Advocate of State Election Commission and the submissions of the learned Advocate General for the state.

9. The basis of the orders passed by the court from time to time was to ensure free and fair elections to be conducted in the state to ensure that the State Election Commission discharged its duties and responsibilities with the aid of the state machinery and to ensure that the same is effectively discharged. The directions were issued for timely action by the State Election Commission as timely action was heart of the matter in an election process which had already commenced. For the court to satisfy that Rule has to be issued, the court has to consider whether there was any attempt to frustrate the object of the directions issued by the court from time to time both in the writ petitions. Whether the compliance which has been reported by the State Election Commissioner in their response to the report of the IG, BSF, Force Coordinator was a mere eye wash to show as if there has been an compliance. Was there inaction on the part of the State Election Commission and if so, was the inaction deliberate and willful and lastly whether the representations which were made by the State Election Commission were true and correct.

10. In the previous paragraphs of this order, we have extracted the various observations which were made from time to time. In writ petition namely WPA (P) No. 301 of 2023 dated 15.06.2023, the inaction on the part of the State Election Commission was flagged and the court observed that the action of the

State Election Commission should be considered to be deliberate violation of the order and direction issued in the earlier writ petitions which orders were supplementary and ancillary to the orders passed in the subsequent writ petitions.

11. At every stage of the matter, the State Election Commission had been dragging its feet without any precise and concrete steps being initiated and this was noted in the order passed in the writ petition dated 15.06.2023 in paragraph 11 after taking note of the minutes of the meeting convened by the State Election Commission on 09.06.2023 with the Chief Secretary, Government of West Bengal and Director General of Police, West Bengal and it was submitted that necessary arrangements have been made to comply with the directions of the court in the earlier writ petitions and it may take few days to identify the sensitive areas. The following findings were recorded in the said order after elaborately considering the submissions of the learned Advocates for the parties:-

After we have elaborately heard the learned advocates for the parties and carefully considered the materials placed by the State Election Commission, it is clear that the State Election Commission has not taken any proactive and diligent steps with a view to implement the directions issued by this Court in the earlier writ petition in its letter and spirit. We say so because in the minutes of the Meeting dated 9.06.2023 convened by the Commission with the Chief Secretary and the Director General of Police with regard to the identification of the sensitive areas from law and order point of view it has been stated that the District Magistrates and Superintendent of Police have initiated the process of identification of sensitive areas from law and order point of view. Though such was the decision was on 09.06.2023 till today, (15.06.2023) such identification has not been made. This is clear from the communication sent by the State Election Commission to the Chief Secretary, Government of West Bengal dated 14.06.2023 wherein it is stated the Chief Secretary has been requested to submit assessment plan and deploy of forces for the ensuing panchayat general election at the earliest so as to enable the Commission to further necessary action in the matter. Thus it is seen that more than 5 days no action had been initiated and no assessment plan has been submitted to the Commission which clearly shows that there is a slackness on the part of the administration in promptly reporting by identification of sensitive areas from the law and order point of view. In fact it is the submission made on behalf of the Commission today that it may take a few more days for the identification of the sensitive areas. This in our view is not appreciable because of the fact that today (15.06.2023) is the last date for filing of nominations and the next will be a crucial event where the last date of withdrawal of nomination have been fixed.

Therefore, considering the sensitivity of the problem, the Court in the earlier writ petition had directed the State Election Commission to forthwith requisition the Central forces. However, the matter has been dragged on and we find that the State authorities have not extended the due support though a decision was taken

as early as 09.06.2023 for identification of the sensitive areas from law and order point of view. Therefore, we are of the view that we will be well justified to issue appropriate directions which to our mind is absolutely essential in order to ensure free and fair elections. We wish to emphasize that a direction in this regard is required to be issued bearing in mind the electorate, the people of West Bengal, who will exercise their franchise in the ensuing election.

12. Ultimately in paragraph 16, it was held as follows:-

In the light of the observations in the preceding paragraphs and also taking note of the fact that no appreciable steps have been taken ever since the order was passed in the earlier writ petitions and till date no effective steps have been taken to identify sensitive areas from law and order point of view and in the light of the submission on behalf of the commission that it may take a couple of more days to do so, we are of the view that waiting any longer will cause more damage to the situation and will not aid in protecting the purity of the election process.

In the result, this writ petition is disposed of by directing the State Election Commission to requisition the deployment of Central Forces for all Districts in the State of West Bengal and this direction shall be complied with by the State Election Commission within 48 hours from the date of the receipt of the server copy of this order. On receipt of the requisition the appropriate authority of the Central Government shall deploy the required number of Central Forces and the cost to be borne by the Central Government and no part of it to be charged to the Government of West Bengal. The State Election Commission shall issue a circular that all officers who have been assigned for election duty shall display their identity cards prominently and whenever any of the observers or any authority calls upon to prove their identity, they should readily and immediately produce their identity card and establish their identity. With the above observation the writ petition stands disposed of. No costs.

13. The writ petition was disposed of on 15.06.2023 directing the State Election Commission to requisition the deployment of central forces for all the districts in the State of West Bengal and the directions to be complied with by the State Election Commission within 48 hours from the date of the receipt of the server copy and several direction were issued as to what is required to be done by the Central Government on such request by the State Government making it clear that the cost of such deployment should be borne by the Central Government and no part of it to be charged to the Government of West Bengal. Though such was the order passed in 15.06.2023 which required the State Election Commission to requisition the central forces within 48 hours, the first requisition was made only on 20.06.2023. In the various orders it has been clearly brought on record that this requisition was for the minimum number which was grossly inadequate and therefore we are of the view that the State Election Commission has sought of feigned compliance of the directions and to make believe as if the order has been complied with. This is in our view, would be a deliberate violation

of the order or in other words their action to make the order passed in the writ petition unworkable. It is no doubt true that the State Election Commission and the State Government preferred appeal to the Hon'ble Supreme Court, however in the interregnum no prayer was made before the court for extension of time for compliance of the directions which was directed to be made within 48 hours. Therefore, the requisition of 22 companies of central forces at the first instance has done by the State Election Commission cannot be construed to be compliance of the order as the State Election Commission was fully aware that the 22 companies of central forces will be grossly inadequate to take care of the Panchayat elections in the entire State of West Bengal. This again is an act of contempt. This also brings to light that the State Election Commission did not make a proper assessment or was it a deliberate attempt to make an under-assessment just to hoodwink the Court that order and direction has been complied with. The Hon'ble Supreme Court had dismissed the special leave petition by judgment dated 20.06.2023 in the interregnum the State Election Commission has not identified the sensitive booths, there was no centralized deployment plan put in place and there was no centralised plan for logistic support to be provided for the central forces for their expeditious deployment. However, submissions were made before the Court as if action has already been taken. At this juncture, it would be relevant to refer to the preliminary report filed by the Inspector General, BSF/ Force Coordinator dated 12.07.2023. In Paragraph 12(a) of the report the efforts made by the Force Coordinator for smooth conduct of elections have been set out. In sub-para (vii) it has been stated that the force coordinator met the State Election Commissioner on 30.06.2023, 04.07.2023, 05.07.2023, 06.07.2023 and 08.07.2023 to discuss about deployment plan and requested to give the list of sensitive polling booths name wise. However, the response received from the State Election Commission was totally non-cooperative. Further, it has been mentioned that various letters are addressed to the State Election Commission on 24.06.2023, 25.06.2023, 03.07.2023, 04.07.2023, 05.07.2023, 06.07.2023 and 08.07.2023 time and again requesting that the State Election Commissioner has only provided the number of 4834 polling stations in 22 Districts without giving actual location of polling booths. Reply was received from the State Election Commission on 08.07.2023 requesting to collect the list of sensitive polling booths from the District Magistrate and the District Polling Officers of the District concerned. On receipt of such communication the Force Coordinator requested the State Election Commission by letter dated 08.07.2023 to intervene immediately by getting in touch with the District authorities and take appropriate action so that the forces are deployed at suitable vulnerable booths and there was no reply from the State Election Commissioner. The Force Coordinator has further gone on record to state that there has been constant non-cooperation by the State Election Commission in each and every stage for effective implementation of the orders passed by this Court. It is submitted that several companies of central forces were made to sit idle in the respective barracks till the late hours of 07.07.2023 and finally at 10.55 P.M. a letter was received from the State Election

Commission stating that the Commission has accorded its principal approval to the proposed deployment plan of CAPFs and field level consultation may be done with the District Magistrates, Commissioners of Police and Superintendents of Police. There were instances of lack of detailment of vehicles for the moment of tours from Jalpaiguri to South Bengal and it is stated that only after the Force Coordinator telephonically contacted the State Election Commission, vehicles were provided as a result of which the moment was delayed for 2 to 3 days. Further, the report states that despite all efforts the State Election Commission only gave the number of polling booths District wise without giving actual name wise list and subsequent deployment was done in consultation with the State Election Commission as per the direction of this Court in its order dated 06.07.2023. The Force Coordinator has further stated that instead of providing the detailed deployment plan, the Election Commission kept on requesting the Ministry of Home Affairs for the remaining 485 companies out of their original requisition of 800 companies. The State Election Commission did not make ready the District wise deployment plan prior to sending the requisition and it goes without saying that unless a proper deployment plan was made ready or at least a draft deployment plan, the proper basis for requisitioning 800 companies of central forces could not have been made. In conclusion the Force Coordinator stated that despite the full cooperation extended by the Force Coordinator the support and response of the State Election Commission and the State authorities was found wanting on number of occasions. It was reiterated that the most important core issue was the non-cooperation of the State Election Commission by not providing the list of sensitive polling stations with name and location of 22 Districts even till the date of the report to which could not be confirmed whether District Police authorities have correctly deployed the Central Forces in sensitive and vulnerable booths or otherwise as complaints were received that the Central Forces were not actually deployed in sensitive booths which should have been effectively manned and monitored closely. The State Election Commission has filed their response dated 25.07.2023 to the report of the Force Coordinator. On a perusal of the response we find that in several paragraphs the denial is absolutely vague except by stating that the allegations are denied. This is evidently clear on perusal of Paragraphs 4, 5 and 6 of the response. Surprisingly, the State Election Commission would state that the Ministry of Home Affairs and the Force Coordinator never asked for any deployment plan in advance. We fail to understand as to how the State Election Commission could have taken such a stand. The requisition of Central Forces was pursuant to the directions of this Court. Therefore, it goes without saying that whatever forces which have been requisitioned should be deployed in such a manner to best serve the purpose for which such deployment was directed by the Court. Therefore, it is a pre-requisite that the State Election Commission should have drawn up a deployment plan well in advance and shared the same with the Ministry of Home Affairs and the Force Coordinator without even waiting for the Force Coordinator to seek for the same. This in our view would clearly show that there has been every attempt to make the order and direction issued in the writ petition unworkable. The State Election

Commission has stated that the deployment has to be done in consultation with the District Magistrate, Commissioners of Police and Superintendents of Police. This in our view is a clear case of shirking the responsibility or shifting the responsibility on a subordinate who will not be in a position to handle the situation. It was the duty of the State Election Commission to discuss with the respective DMs/ CPs/ SPs and draw up the deployment plan and forward the same to the Force Coordinator. It is thereafter when the forces are deployed any minor adjustment or changes can always be made by the respective DMs/ CPs/ SPs in consultation with the senior officer who was in charge of that company which has been deployed to a particular District. This again in our view is a clear step which has made the order and direction in the writ petition unworkable. In the response, the State Election Commission has stated that in certain cases the commanders of the companies were asked to take locations from the local police. This again is the clear case of transferring the responsibility. Thus, we find the response given by SEC thoroughly lacking and in spite of various observations made in the orders passed in the writ petition as well as the earlier writ petition, we find that the State Election Commission was not pro-active to ensure the effective compliance of the order and direction issued by the Court. The identification of the sensitive booths was directed to be done by the State Election Commission and there is no other way out and the State Election Commission could not have delegated the same to any other subordinate authority. This again is a clear act of contempt.

14. It is the submission of the learned Senior Advocate for the State Election Commission that at this juncture the question of issuing rule may not arise as already the Court has proceeded with the matter by adopting the third option available to the Court under Rule 19 and the parties have already filed their responses/ affidavits and the contempt petitions are to be heard and at this stage Rule NISI as provided for in the first scenario is not required to be issued. Therefore, it is submitted that this Court may consider as to whether it is necessary to issue Rule as already the allegations have been answered and in effect there would be no necessity to issue a rule. The learned Senior Advocate referred to paragraph 6 of the decision in *Heinz India Pvt. Ltd.* which was relied on by the learned Senior Counsel for the petitioner/ applicant and referred to and referred to paragraph 6.3 of the judgment wherein the Court had explained about Rule 19 of the said Rules. Reliance was also placed on the decision in *Bomkesh Chandra Jana & Ors. Versus State of West Bengal & Ors.* 2001 SCC Online Cal 4 and *Samantha Fay Versus Sallo Chaudhury & Ors* 2009 SCC Online Cal 1990. Therefore, it is submitted that this Court can hear the submission of the State Election Commission and the State and dispose of the contempt petition themselves. The learned Advocate General appearing for the State submitted that the State Government is not a party in CPAN 831 of 2023 and therefore, the question of issuing rule to the State or its authorities would not arise. In CPAN 948 of 2023, the parties are the Chief Secretary, the Home Secretary and the Director General and Inspector General of Police who have

been impleaded by name and perusal of the contempt petition would show that there is no specific allegation against the concerned persons who have been shown as proposed contemnors of having willfully and deliberately violated the orders passed by the Court. Further, it is submitted that though there may be a few allegations in the petition, all such allegations are absolutely vague. The learned Advocate General submitted that in any event if the Court is of such a view unconditional apology is being tendered and that he will be able to substantiate before this Court as to how effectively the State Government had acted the matter and referred to the five volumes of documents filed along with the affidavit of the State Government in response to the report the Force Coordinator. The learned Advocate General referred to Rule 14, 19 and 26 and explained the scheme of the rules and the purpose and purport of the issuance of Rule NISI. Reliance was placed on the decision in Calcutta Corporation Teachers Association & Anr. Versus Calcutta Municipal Corporation & Ors. 1991 SCC Online Cal 114 (DB) and Ramrao s/o Mahadeo Girhe & Ors. Versus Dr. Shrikant Jichakar, M.L.C. & Ors 2003 SCC Online Bom 1179 (DB).

15. In the light of the above discussion and after having elaborately heard the submissions of the respective parties, we are of the clear view that there is deliberate violation of the order and direction passed by this Court and therefore this is a fit case where Rule NISI has to be issued in terms of Rule 19 of the Calcutta High Court contempt of Court Rules, 1975 to the State Election Commission, the respondent contemnor in CPAN 831 of 2023.

16. Accordingly, let rule be issued to the respondent contemnor in CPAN 831 of 2023.

17. So far as CPAN 948 of 2023 is concerned, after hearing the submissions on either side, we are of the view that a case has not been made out for issuance of rule against the respondent contemnors and the Court will hear the contempt application and take a decision on merits.

I agree.