

SYNOPSIS

[1]. At the outset, it may be pointed out that in the State of West Bengal, there were internal disturbances in two districts. Considering the prevalent situation at the relevant point of time, the Central Government, by way of executive decision, deployed certain para-military forces diverting them from their regular duty. Depending upon the situation, the para-military forces were also increased. The disturbances which was caused due to an on-going agitation affecting the said two districts namely Darjeeling and Kolinpong, substantially reduced as the agitation was called off.

Resultantly, having found that the situation is now capable of being controlled by regular policing of the State police, an executive decision was taken on the administrative side of the Central Home Ministry to withdraw the para-military forces so that they can be deployed where their requirement is more. This decision of the Central Home Ministry which is based upon an objective assessment of the fact situation on the ground is interfered with by the impugned order and the Hon'ble High Court is pleased to stay the decision of the Central Government withdrawing the para-military forces in spite of the change of situation.

As enumerated in the questions framed hereunder, the moot question requiring examination of this Hon'ble Court is as to whether it would be within the domain of the Court to take a judicial decision on a subject which can be addressed only by way of an administrative decision based upon the fact situation at the ground level.

The present petition raises following substantial question of law of general importance as to:-

[A]. "Whether High Court while exercising its power of judicial review, could act as an Appellate Court and whether in the matters affecting the policy and requiring technical expertise should not be left to the decision of those who are entrusted and qualified to address the same"?

[B]. "Whether in assessing the propriety of a decision of the Government the Court could interfere, if a second view is possible from that of the Government and whether the correctness of the reasons which prompted the Government in decision-making, taking one course of action instead of another could be a matter of concern in judicial review"?

[C]. "Whether the policy decision should not be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles and whether Court is appropriate forum for such investigation"?

[D]. Whether under the Indian Constitutional jurisprudence, courts could express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country, which policy should be adopted and how the national security of the Country is maintained and how the Armed forces should be deployed"?

[2]. On the above mentioned proposition of law that the Court should not interfere in such cases, especially when the issue of deployment of

armed forces are involved, the petitioner is placing reliance on the following decision of this Hon'ble Court:-

[A]. State of Orissa v. Gopinath Dash, (2005) 13 SCC 495:

"5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Asif Hameed v. State of J&K*¹ and *Shri Sitaram Sugar Co. Ltd. v. Union of India*².) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."

[B]. Kuchchh Jal Sankat Nivaran Samiti v. State of Gujarat, (2013) 12 SCC 226:

"12. We have given our most anxious consideration to the rival submissions and we find substance in the submission of Mr Divan. We are conscious of the fact that there is wide separation of

powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise or wisdom to analyse the same. It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the Court is entitled to analyse the legal validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other. We are of the opinion that the matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the constitutional laws or is arbitrary or irrational.”

[C]. Ekta Shakti Foundation v. Govt. of NCT of Delhi, (2006) 10 SCC 337:

“11. “5. While exercising the power of judicial review of administrative action, the court is not the Appellate Authority and ‘[t]he Constitution does not permit the court to direct or advise the executive in [the matter] of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory powers’. (See *Asif Hameed v. State of J&K*, SCC p. 374, para 19, *Shri Sitaram Sugar Co. Ltd. v. Union of India*.)

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or [is violative of] the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is

not a matter of concern in judicial review and the court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt (sic decide) which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental rights is not shown the courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Co. v. City of Chicago*: (L Ed p. 734)

‘The problems of Government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review.’ ” (See *State of Orissa v. Gopinath Dash*, SCC p. 497, paras 5-8.)”

[D]. *Delhi Science Forum v. Union of India*, **(1996) 2 SCC 405**:

“7. xxxx The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of

accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations — because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision.

[E]. State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639:

“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh v. State of U.P.*, *Villianur Iyarkkai Padukappu Maiyam v. Union of India* and *State of Kerala v. Peoples Union for Civil Liberties*.)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.”

[F]. Networking of Rivers, In re, (2012) 4 SCC 51:

“74. The Court can hardly take unto itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction of river linking channels under that programme. The Court is not equipped to take such expert decisions and they essentially should be left for the Central Government and the State concerned. Such an attempt by the Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal.”

[3]. It is submitted that the impugned judgment of the Hon'ble High Court is contrary to the ratio of the above mentioned decisions of this Hon'ble Court. In present case, taking into consideration the national security of the Country, the petitioner took a conscious decision to withdraw the deployment of 10 Coys of Central Armed Police Forces [herein after CAPFs] by leaving 5 Coys to meet the exigencies in two Districts of the State of West Bengal i.e. Darjeeling and Kalimpong. In this respect it is submitted that the Central Government receives several requests from various States and Centre endeavours to extend support to them; however, it is very pertinent to mention here that the internal security situation cannot be ignored before taking any decision of deployment to States. There are onerous responsibility of CAPFs of Border Guarding, deployment in Left Wing Extremists [LWE] areas, volatile security scenario in J&K. It is submitted that number of companies of CAPFs are constant, therefore deployment to the States are done very carefully, to ensure that serious and sensitive internal situations are duly factored. Thinning of CAPFs from such theatres as NE, J&K, LWE areas is fraught with danger to the internal security and therefore, Centre cannot prolong deployment of its forces on demand from the States ignoring such critical considerations relating to internal security. There is a need to have a total perspective of how grave are the situations in other States where deployment of CAPFs is much more pressing for territorial integrity and sovereignty. Absence of such a

perspective may lead to a situation of underestimating the vulnerability from the point of view of Internal Security. It is further submitted that requirement of mobilization of forces for upcoming elections as required by Election Commission of India and advised to MHA for deployment of **65 Coys** for election in Himachal Pradesh and **725 Coys** in Gujarat is also a factor to be considered. It is humbly submitted that these are not a matter of judicial review and the Hon'ble High Court by exceeding its jurisdiction passed the impugned order by directing continued deployment of the CAPFs in two Districts of West Bengal by ignoring the National Internal Security scenario. In view of the above mentioned facts and circumstances the impugned order of the Hon'ble High Court is liable to be stayed forthwith and leave may be granted in the matter.

CHRONOLOGY OF EVENTS

08.06.2017: That strike/bandh was called by Gorkha Janmukti Morcha for their political demands in the Districts of Darjeeling & Kalimpong of the State of West Bengal.

09.06.2017: A PIL writ Petition was filed before Hon'ble High Court of Calcutta praying that the bandh may be declared illegal and direction may be issued commanding State Authorities to maintain law & order. The true and correct copy of the memo of writ petition No.15306 [W] of 2017 filed before Hon'ble High Court of judicature at Calcutta is enclosed herein and marked as **Annexure P-1**. [Page No. to]

10.06.2017: When the law & order situation deteriorated the Additional Chief Secretary, West Bengal, vide letter dated 10.06.2017 request to provide 10 companies (coys) of Central Reserve Police Forces (CRPF) for law and order (L&O) duties in Darjeeling. The true and correct copy of the letter dated 10.06.2017 written by Additional Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-2**. [Page No. to]

11.06.2017: That in response to the said letter, the Central Government had provided 6 companies of CAPFs, with three companies of CRPF, including two women battalions and three companies of Sashastra Seema Bal (SSB), on June 11, 2017 to the State of West Bengal for period from 11.06.2017 to 27.06.2017. It is submitted that apart from the aforesaid 6 companies, 4 companies of CRPF were already remained deployed in the Darjeeling Region. Thus, total deployment became 10 Coys effectively. The true and correct copy of the message dated 11.06.2017 from M/o Home Affairs addressed to Additional Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-3**. [Page No. to]

15.06.2017: That a further request was received from the Additional Chief Secretary, West Bengal, on 15.06.2017, for providing additional four companies of CAPFs. The true and correct copy of the letter dated 15.06.2017 written by Additional Chief Secretary, Government of West Bengal is enclosed herein and marked as **Annexure P-4**. [Page No. to]

18.06.2017: That considering the situation and the requirements, an additional Women (Mahila) Company of CRPF was deployed to the State Government for a period of from 18.06.2017 to 27.06.2017 making total deployment in two Districts of State of West Bengal as 11 Coys. The true and correct copy of the message dated 18.06.2017 from M/o Home Affairs addressed to Additional Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-5**. [Page No. to]

23.06.2017: The tenure of deployment of all these 11 Coys was extended from time to time by the petitioner. The State of West Bengal assessed the law & order situation and informed the Petitioner that the situation in the area was assessed to be relatively under control, however normalcy in daily life to full extent is yet to be restored. It was requested by the State of West Bengal to continue the deployment of the forces for a further period of 1 Month beyond 27.06.2017. The true and correct copy of the letter dated 23.06.2017 written by Additional Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-6**. [Page No. to]

28.07.2017: That considering the situation the M/o Home Affairs decided to extend the deployment aforesaid forces 7 11 Coys beyond 27.06.2017 i.e. upto 03.07.2017 for maintaining law & order. The true and correct copy of the message dated 28.06.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-7**. [Page No. to]

30.06.2017: The State Govt. of West Bengal made a request for replacement of Mahila Coys & SSB coys and asked for additional coys. The true and correct copy of the letter dated 30.06.2017 written by Principle Secretary; Government of West Bengal is enclosed herein and marked as **Annexure P-8**. [Page No. to]

03.07.2017: In response to letter dated 28.06.2017 of the State of West Bengal, the Central Government extended the deployment unto 10.07.2017. The true and correct copy of the message dated 3.07.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-9**. [Page No. to]

06.07.2017: The Principle Secretary to the Government of West Bengal sent a letter addressed to Special Secretary Government of India stating that now the situation is peaceful and well under control, although there is some tension in the area. A request was made to replace the Mahila Coys by male CRPF Coys. The true and correct copy of the letter dated 06.07.2017 written by Principle Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-10**. [Page No. to]

10.07.2017: It is submitted that in the meanwhile PIL in question [W.P.No.15306 [W] of 2017 and connected matters were filed before Hon'ble Calcutta High Court and several orders were passed from time to time. The Hon'ble High Court directed for a meeting between State Govt. officials and Central Govt. officials. Accordingly, a meeting under the Chairmanship of Special Secretary (Internal Security), was convened on July

10, 2017, where the Government of West Bengal were represented by the Additional Director General (Law & Order), to take decisions on the issues being considered by Hon'ble High Court. In the meeting, the situation regarding deployment of forces, issues of law and order, blockade on the National Highway-10, disruption of essential supplies to Sikkim, vacancies in the State police (40-50%) were discussed and reviewed. It was also decided to extend the deployment 25.07.2017. The true and correct copy of the letter dated 10.07.2017 of the M/o Home Affairs along with minutes of the meeting dated 10.07.2017 and the copy of the letter dated 10.07.2017 addressed to Ld. ASG, Calcutta and message of M/o Home Affairs dated 10.07.2017 are enclosed herein and marked as **Annexure P-11**. [Page No. to]

13.07.2017: That the matter was taken up by the Hon'ble High Court from time to time and as per direction the petitioner filed a detailed affidavit before the Hon'ble High Court regarding ground situation and the deployment of the central forces. It was stated that the deployment of CAPFs has been extended till 25.07.2017. It was also mentioned that the Central Government has to meet several important security commitments including International Borders, anti-naxal operation etc. The true and correct copy of the affidavit dated 13.07.2017 filed by the petitioner before the Hon'ble High Court in W.P. N.15306 [W] of 2017 is enclosed herein and marked as **Annexure P-12**. [Page No. to]

14.07.2017: the matter was taken up by the Hon'ble High Court and after hearing the Hon'ble High Court was pleased to pass following directions:-

"Considering the situation in the Hills and the averments in the affidavit filed, in our opinion, the Central Govt. must take a pro-active stance and deploy 04 more Companies of CRPF in Darjeeling and Kalimpong districts within 48 hours from today. The Central Govt. is expected to co-operate with the State Govt. to ensure that normalcy is restored in these two districts. We hope that the State Govt. also will not be adamant and will co-operate with the Central Govt. regarding deployment of Central Forces in the two districts, namely, Darjeeling and Kalimpong. The State shall also deploy additional forces in the Hills from the State Armed Police Forces within a period of 48 hours from today".

The true and correct copy of the order dated 14.07.2017 passed by the Hon'ble High Court of Calcutta in W.P. No.15306 [W] of 2017 is enclosed herein and marked as **Annexure P-13.** [Page No. to]

14.07.2017: It is submitted that the State of Sikkim also filed a W.P. [C] No.516 of 2017 before this Hon'ble Court titled State of Sikkim V/s Union of India & Others, with a prayer to direct the State of West Bengal and UOI to ensure that Sikkim bound transport vehicles carrying food grains from FCI Godown and those vehicles carrying food grains and other essential items and vegetables from markets in and around Siliguri and oil tankers carrying petroleum products and trucks carrying LPG

are not prevented from transporting them to Sikkim and adequate security be provided for the same. The matter was taken up for hearing on 14.07.2017, and Ld. Attorney General appeared on behalf of Union of India and made statements. This Hon'ble Court disposed off the writ petition with a direction that "the 11 companies that have been deployed and the 04 additional companies which are going to be deployed shall only be utilized by the State of West Bengal for the purpose of keeping Law & Order situation regard being had to its primacy in these two Districts, namely, Darjeeling & Kalimpong. The Companies shall not be used or diverted for any other purpose".

The true and correct copy of the order dated 14.07.2017 passed by this Hon'ble Court in W.P. [C] No.516 of 2017 is enclosed herein and marked as **Annexure P-14**. [Page No. to]

15.07.2017: Accordingly, being a time bound direction of Court, Central Government directed and deployed 04 more companies of CRPF in both the Districts in the State of West Bengal on 15.07.2017. Total deployment of CAPFs as on 15.07.2017 onwards in the Districts of Darjeeling and Kalimpong in the State of West Bengal were re as under:-

- i) CRPF – 12 Coys (includes 04 Mahila Coys)
- ii) SSB - 03 Coys TOTAL : 15 Coys

The true and correct copy of the message dated 15.07.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-15**. [Page No. to]

25.07.2017: Thereafter, on the request letters of State Government of West Bengal received by the Ministry of Home Affairs the period of deployment of all 15 Coys of CAPFs (CRPF-12 & SSB-03) deployed in the District of Darjeeling & Kalimpong, West Bengal was extended upto 09.08.2017. The true and correct copy of the message dated 25.07.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-16**. [Page No. to]

25.07.2017: The State Government of West Bengal vide letter dated 25.07.2017 further requested to extend the deployment for one Month. The true and correct copy of the letter dated 25.07.2017 of State of West Bengal is enclosed herein and marked as **Annexure P-17**. [Page No. to]

09.08.2017: The State Government of West Bengal vide letter dated 09.08.2017 further requested to extend the deployment for one Month. The true and correct copy of the letter dated 09.08.2017 of State of West Bengal is enclosed herein and marked as **Annexure P-18**. [Page No. to]

21.08.2017: Thereafter, on the request letters of State Government of West Bengal received by the Ministry of Home Affairs, the period of deployment of all 15 Coys of CAPFs deployed in the District of Darjeeling & Kalimpong, West Bengal was extended upto 30.08.2017. The true and correct copy of the message dated 21.08.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-19**. [Page No. to]

29.08.2017: The State Government of West Bengal vide letter dated 29.08.2017 further requested to extend the deployment for one Month. The true and correct copy of the letter dated 29.08.2017 of State of West Bengal is enclosed herein and marked as **Annexure P-20**. [Page No. to]

30.08.2017: On the request of State Government of West Bengal, the Ministry of Home Affairs, extended the period of deployment of all 15 Coys of CAPFs deployed in the District of Darjeeling & Kalimpong, West Bengal upto 14.09.2017. The true and correct copy of the message dated 30.08.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-21**. [Page No. to]

13.09.2017: On further request of State Government of West Bengal, the Ministry of Home Affairs, extended the period of deployment of all 15 Coys of CAPFs deployed in the District of Darjeeling & Kalimpong, West Bengal upto 30.09.2017. The true and correct copy of the message dated 13.09.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-22**. [Page No. to]

25.09.2017: Further on the request of State Government of West Bengal, the Ministry of Home Affairs, extended the period of deployment of all 15 Coys of CAPFs deployed in the District of Darjeeling & Kalimpong, West Bengal upto 15.10.2017. The true and correct copy of the message dated 25.09.2017 from M/o Home Affairs addressed to Chief Secretary Government of

West Bengal is enclosed herein and marked as **Annexure P-23**. [Page No. to]

27.09.2017: That the leaders of GJMM called off the strike after a gap of 104 days from the date of its rising.

06.10.2017: After call off the strike, it was found that all the commercial activity in the two Districts has started and situation is normal but the conflict between rival groups may not be ruled out.

10.10.2017: Another assessment was done on the basis of input received from other Agencies and the ground situation was prepared.

15.10.2017: The State of West Bengal requested that the petitioners to extend the deployment of CAPF in Darjeeling and Kalimpong for a further period of 2 Months. The true and correct copy of the letter dated 15.10.2017 written by Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-24**. [Page No. to]

16.10.2017: There was requirement of Force for upcoming Assembly Election in State of Himachal and State of Gujarat and the Election Commissions directive has been received for deployment of the forces. A True and correct copy of the message dt. 16.10.2017 from Election Commission of India addressed to JS (P.II) is enclosed herein and marked as **Annexure P-25** [Page No. to]

17.10.2017: The petitioner informed the State Government that there are other pressing commitments and there is requirement of Force for upcoming Assembly Election in State of Himachal and State of Gujarat and the Election Commissions directive

has been received. However the petitioner allowed 3 Coys of SSB to continue. Thus total deployment was 8 Coys [SSB-03 & CRPF-05] and message was also sent to the Chief Secretary State of West Bengal.

The true and correct copy of the letter dated 17.10.2017 issued by M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-26.** [Page No. to]

The true and correct copy of the message dated 17.10.2017 from M/o Home Affairs addressed to Chief Secretary Government of West Bengal is enclosed herein and marked as **Annexure P-27.** [Page No. to]

17.10.2017: It is submitted that on the same day an application by the State of West Bengal respondent was filed assailing the orders of Central Government [CAN 9837 of 2017] The true and correct copy of the application CAN 9837 of 2017 filed by State of West Bengal is enclosed herewith and marked as **Annexure-P-28.** [Page No. to]

17.10.2017: The matter was taken up on the same day at 2 PM by the Hon'ble High Court. After hearing their Lordships were pleased to pass following order:-

" In the facts of the present case, therefore it would be appropriate to permit the parties to the litigation to file their respective affidavits. In the meantime however, considering the gravity of the situation and the averments made in the application particularly in paragraph 13 thereof, it would be appropriate to stay the impugned writing dated October 15,

2017 until October 27, 2017 or until further order whichever is earlier. It is clarified that the Central Government will continue to keep all fifteen companies of Central Armed Police Forces deployed in the two Districts of the State of West Bengal till October 27, 2017 or until further orders in the same manner as it had done prior to the issuance of the impugned writing dated October 15, 2017.

Let the two writings dated October 17, 2017 be kept with the record.” [Impugned Judgment]

26.06.2016: Hence the present Special Leave Petition.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ORDER XXI RULE 3(1)(a) OF THE SUPREME COURT RULES
PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. _____ OF 2017
WITH PRAYER FOR INTERIM RELIEF

Position of the

BETWEEN:

	PARTIES NAME IN THE HIGH COURT	IN THIS HON'BLE COURT
IN THE MATTER OF: Union of India Through Secretary, Ministry of Home Affairs, North Block, New Delhi.Respondent	...Petitioner

VERSUS

The State of West Bengal & Ors, ..Respondent No.1 ...Respondent No.1

TO

HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

The Special Leave Petition of the Petitioner,

MOST RESPECTFULLY SHOWETH:

1. That the petitioner herein is preferring the petition under article 136 of the Constitution of India for grant of special leave to appeal against the interim judgment and order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in in CAN 9837 of 2017 in W.P.15306 [W] of 2017; wherein the Hon'ble High Court allowed the main prayer at admission stage.

2. QUESTIONS OF LAW:

The present petition raises substantial question of law of general importance as to:-

[A]. "Whether High Court while exercising its power of judicial review, could act as an Appellate Court and whether in the matters affecting the policy and requiring technical expertise should not be left to

the decision of those who are entrusted and qualified to address the same”?

[B]. “Whether in assessing the propriety of a decision of the Government the Court could interfere, if a second view is possible from that of the Government and whether the correctness of the reasons which prompted the Government in decision-making, taking one course of action instead of another could be a matter of concern in judicial review”?

[C]. “Whether the policy decision should not be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles and whether Court is appropriate forum for such investigation”?

[D]. Whether under the Indian Constitutional jurisprudence, courts could express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country, which policy should be adopted and how the national security of the Country is maintained and how the Armed forces should be deployed”?

3. DECLARATION IN TERMS OF RULE 2(2):

The petitioners state that no other petition seeking leave to appeal has been filed by against the interim judgment and order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in in CAN 9837 of 2017 in W.P.15306 [W] of 2017.

4. DECLARATION IN TERMS OF RULE 4:

The Annexures P-1 to P-28 produced along with the S.L.P. are true copies of its original and annexure P-1, P-12, P-13, P-28 were placed on records of the case in the High Court against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

Leave to appeal is sought for on the following grounds:

- [A].** Because the interim Judgments & orders of Hon'ble High Court is contrary to the facts and circumstances of the case hence bad in law liable to be set aside.
- [B].** Because the Hon'ble High Court failed to appreciate that while exercising its power of judicial review, the Court could not act as an Appellate Court and in the matters affecting the policy and requiring technical expertise should be left to the decision of those who are entrusted and qualified to address the same.
- [C].** Because the Hon'ble High Court failed to appreciate that in assessing the propriety of a decision of the Government the Court could not interfere, even if a second view is possible from that of the Government and the correctness of the reasons which prompted the Government in decision-making, taking one course of action instead of another could not be a matter of concern in judicial review.
- [D].** Because the Hon'ble High Court failed to appreciate that the policy decision should be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles and Court is not an appropriate forum for such investigation.

- [E].** Because the Hon'ble High Court failed to appreciate that under the Indian Constitutional jurisprudence, courts could not express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country, which policy should be adopted and how the national security of the Country is maintained and how the Armed forces should be deployed.
- [F].** Because the Hon'ble High Court failed to appreciate that in present case, taking into consideration the national security of the Country, the petitioner took a conscious decision to withdraw the deployment of 10 Coys of CAPFs by leaving 5 Coys to meet the exigencies in two Districts of the State of West Bengal i.e. Darjeeling and Kalimpong.
- [G].** Because the Hon'ble High Court failed to appreciate that the strike call given by GJMM on 08.06.2017 was lifted on 27.09.2017, after appeal of the Home Minister and thereafter the stock of the situation was assessed on the basis of several intelligence inputs including I.B and other National Agencies.
- [H].** Because the Hon'ble High Court failed to appreciate that the Central Government receives several requests from various States and Centre endeavours to extend support to them; however, it is very pertinent to mention here that the internal security situation cannot be ignored before taking any decision of deployment to States. There are onerous responsibility of CAPFs of Border

Guarding, deployment in Left Wing Extremists [LWE] areas, volatile security scenario in J&K.

- [I].** Because the Hon'ble High Court failed to appreciate that number of companies of CAPFs are constant, therefore deployment to the States are done very carefully, to ensure that serious and sensitive internal situations are duly factored. Thinning of CAPFs from such theatres as NE, J&K, LWE areas is fraught with danger to the internal security and therefore, Centre cannot prolong deployment of its forces on demand from the States ignoring such critical considerations relating to internal security.
- [J].** Because the Hon'ble High Court failed to appreciate that there is a need to have a total perspective of how grave are the situations in other States where deployment of CAPFs is much more pressing for territorial integrity and sovereignty. Absence of such a perspective may lead to a situation of underestimating the vulnerability from the point of view of Internal Security.
- [K].** Because the Hon'ble High Court failed to appreciate that the requirement of mobilization of forces for upcoming elections as required by Election Commission of India and advised to MHA for deployment of 65 Coys for election in Himachal Pradesh and 67 Coys in Gujarat is also a factor to be considered.
- [L].** Because the Hon'ble High Court failed to appreciate that these are not a matter of judicial review and the Hon'ble High Court by exceeding its jurisdiction passed the impugned order by directing continued deployment of

the CAPFs in two Districts of West Bengal by ignoring the National Internal Security scenario.

[M]. Because the impugned order of the Hon'ble High Court is contrary to the ratio of the decision of this Hon'ble Court reported in (2005) 13 SCC 495; (2013) 12 SCC 226; (2006) 10 SCC 337; (1996) 2 SCC 405; (2012) 4 SCC 51.

6. GROUNDS FOR INTERIM RELIEF:

Because the Hon'ble High Court failed to appreciate that while exercising its power of judicial review, the Court could not act as an Appellate Court and in the matters affecting the policy and requiring technical expertise should be left to the decision of those who are entrusted and qualified to address the same. If the stay is not granted, the petitioner will suffer irreparable loss.

7 MAIN PRAYER

In these premises, it is most respectfully prayed that this Hon'ble Court may be pleased to:

[A] Grant Special Leave to Appeal against the interim judgment and order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in CAN 9837 of 2017 in W.P.15306 [W] of 2017;
AND/OR

B] Pass such other or further order or orders as may be deemed appropriate in the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEF:

It is most respectfully prayed that this Hon'ble Court may be pleased to:-

[a] grant ad-interim ex-parte stay of the operation of the interim judgment and order dated 17.10.2017 passed by the High

Court of Judicature at Calcutta in CAN 9837 of 2017 in W.P.15306

[W] of 2017; AND/OR

[b] pass such order or further order as may deem fit and proper under the circumstances of the case.

FOR THIS ACT OF KINDNESS, THE PETITIONER
AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

FILED BY:

S.WASIM A.QADRI
ADVOCATE
314-C.K.Daphtary Block,
New Lawyers Chambers,
Supreme Court
NEW DELHI.

[B.V. Balramdas]
Advocate-on-Record
for the Petitioner

DRAWN ON:20.10.2016

FILED ON : 00.10.2016.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A.NO._____OF 2017

IN

SPECIAL LEAVE PETITION (C) NO._____ OF 2017

IN THE MATTER OF:

Union of India

....Petitioner

Versus

State of West Bengal & Ors.

....Respondents

APPLICATION FOR PERMISSION TO FILE

ADDITIONAL DOCUMENTS

TO

HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

The humble petition of the
petitioners abovenamed,

MOST RESPECTFULLY SHOWETH:

1. That the petitioners herein have filed the above mentioned special leave petition against the impugned the interim judgment and order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in in CAN 9837 of 2017 in W.P.15306 [W] of 2017 and they have every hope of its success before this Hon'ble Court.
2. That the detailed facts and circumstances of the case leading upto the filing of the present application have already been stated in the Special Leave Petition and the same are not being repeated here for the sake of brevity and to avoid repetitiveness. However, the petitioners crave leave of this Hon'ble Court to refer and rely upon the same at the time of hearing of the instant application.
3. That the petitioners herein are filing the present application seeking permission of this Hon'ble Court to file the accompanying Additional Documents [all the annexure except annexure No.P-1, P-12, P-13, & P-28] in the aforesaid matter, as the same were relied but were

not part of the record of the Court below and these documents are of vital importance for proper adjudication of the case.

4. That the aforesaid Additional Documents are true copies of their respective originals and are necessary for effective adjudication of the present matter.

P R A Y E R

It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to allow this application; and:-

- [a] permit the Petitioners-applicants herein to file the aforesaid Additional Documents i.e. Annexure-P-2 to P-11 and P-14 to P-27 and the same be taken on record; AND/OR
- [b] Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS,

AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN BY:

FILED BY:

S.WASIM A.QADRI
ADVOCATE
314-C.K.Daphtary Block,
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Supreme Court
NEW DELHI.

[B.V. Balramdas]
Advocate-on-Record
for the Petitioner

DRAWN ON:20.10.2016

FILED ON : 00.10.2016.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A.NO._____OF 2017

IN

SPECIAL LEAVE PETITION (C) NO._____ OF 2017

IN THE MATTER OF:

Union of India

....Petitioner

Versus

State of West Bengal & Ors.

....Respondents

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED
COPY OF THE IMPUGNED ORDER

TO

HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

The humble petition of the
petitioners abovenamed,

MOST RESPECTFULLY SHOWETH:

1. That the petitioners herein have filed the above mentioned special leave petition against the impugned the interim judgment and order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in in CAN 9837 of 2017 in W.P.15306 [W] of 2017 and they have every hope of its success before this Hon'ble Court.
2. That the detailed facts and circumstances of the case leading upto the filing of the present application have already been stated in the Special Leave Petition and the same are not being repeated here for the sake of brevity and to avoid repetitiveness. However, the petitioners crave leave of this Hon'ble Court to refer and rely upon the same at the time of hearing of the instant application.
3. That the petitioner herein is filing the present application along with plain copy of the order as the certified copy has not been furnished to the advocate for the petitioner and in view of the

urgency the present application for exemption from filing certified copy is being filed.

P R A Y E R

It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to allow this application; and:-

- [a] permit the Petitioners-applicants herein to file the plain copy of the impugned order dated 17.10.2017 passed by the High Court of Judicature at Calcutta in in CAN 9837 of 2017 in W.P.15306 [W] of 2017 and take the same on record; AND/OR
- [b] Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS,

AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN BY:

FILED BY:

S.WASIM A.QADRI
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Supreme Court
NEW DELHI.

[B.V. Balramdas]
Advocate-on-Record
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DRAWN ON:20.10.2016

FILED ON : 00.10.2016.

