

HIGH COURT OF TRIPURA
AGARTALA

WA 109 OF 2022

1.Sri Prashanta Kumar Pal,

S/o Late Pijush Kanti Pal, R/o Joynagar, Agartala,
West Tripura, Pin-799001.

2.Sri Jayanta Majumdar,

S/o Sri M.K.Majumder, R/o Opposite West Gate near
Colonel Chowmohani, Agartala, West Tripura, Pin-799001.

3.Ms. Rajashree Purkayastha, D/o Smti Rina Bhattacharjee &
Sri Biprajit Purkayastha, R/o Ramnagar Road No.4, Agartala,
West Tripura.

.....**Appellants.**

Vrs.

1. Bar Council of India,

Represented through its Secretary, having office at 21,
Rouse Avenue International Area, Near Bal Bhawan,
New Delhi-110002.

2. Bar Council of Tripura,

Represented through its Secretary, having office at
Tripura High Court Complex, Lichubagan, Agartala, West Tripura,
Pin-799006.

**3. Bar Council of Assam, Nagaland, Mizoram, Arunachal Pradesh &
Sikkim,** Represented through its Secretary, having office at
Gauhati High Court Building, 2nd Floor, (Old Guwahati), Asasm-781001.

4. Tripura High Court Bar Association,

Represented through its Secretary, having office at Tripura High Court
Complex, Lichubagan, Agartala, West Tripura, Pin-799006.

11.Sri Siddhartha Shankar Dey,

Ld. Senior Advocate, Notices to Respondent No.11 to be served through
Tripura High Court Bar Association, having office at Tripura High Court
Complex, Lichubagan, Agartala, West Tripura, Pin-799006.

.....**Respondents.**

Present:

For the appellants : Mr. Somik Deb, Sr. Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

For the respondents : Mr. Debalay Bhattacharya, Sr. Advocate.
Mr. Arijit Bhowmik, Advocate.
: Mr. Soumyadeep Saha, Advocate.
Mr. S. Dey, Advocate.

Date of hearing : **25.04.2023**

Date of delivery of judgment & order : **18.05.2023**

Whether fit for reporting : No

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

[Arindam Lodh, J.]

The instant writ appeal is directed against the impugned judgment and order dated 19.07.2022, passed by the learned Single Judge in WP(C) No.485 of 2022 whereby the learned Single Judge has dismissed the writ petition.

2. Brief facts of the case of the appellants (here-in-after referred to as the petitioners) are that the original petitioners are the Advocates and the members of the Tripura High Court Bar Association having their voting rights and the cause of action arose to file the writ petition when the election of the High Court Bar Association for the year 2022 was commenced. In the month of February, 2022 the respondent no.4 had

sought the draft voter list from the Bar Council of Tripura, for the purpose of conducting election of the Bar Association of the year 2022. On 10.03.2022 the respondent no.2, i.e. the Bar Council of Tripura had sent one supplementary draft voter list to the Bar Association, i.e. the respondent no.4 incorporating the name of Sri Siddhartha Shankar Dey, learned Senior Advocate, respondent no.11 at Sl. No.1 along with another name. Accordingly, the respondent no.4 had published the draft voter list. After the draft voter list being published, the petitioners found that the name of the learned Senior Advocate is not enrolled with the Bar Council of Tripura, which is a prima facie condition for being a 'Member' of the Bar Association with voting right and for this, the petitioners have raised objection before the High Court Bar Association against such incorporation of name. Subsequently, the High Court Bar Association vide letter dated 28.04.2022 had requested the Bar Council of Tripura, the respondent no.2 as to whether Sri Siddhartha Shankar Dey, learned Senior Advocate has been enrolled as a member of Bar Council of Tripura, if so, from which date and whether he had exercised his option to cast his vote in the Tripura High Court Bar Association, if so, from which date. In reply to such letter, the respondent no.2 vide letter dated 07.05.2022 informed/confirmed the Bar Association that the name of respondent no.11 was not enrolled with the Bar Council of Tripura. Thereafter, the Executive Body of the Tripura

High Court Bar Association by resolution dated 20.05.2022 had resolved to keep the name of the respondent no.11 in the final voter list and had also sent the same to the respondent no. 2 on 30.05.2022 for approval and publication of final voter list. On the above perspective, the petitioners had challenged this resolution of incorporation of the name of respondent no.11 in the final voter list by way of filing a writ petition before this court but the said writ petition was dismissed and accordingly they have preferred the instant appeal with the following reliefs:

- I. *ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a writ of Certiorari or in the nature thereof shall not be issued thereby quashing the resolution dated 20.05.2022 passed by the Respondent No.4 (Annexure-6) thereby resolving to incorporate the name of the Respondent No.11 in the Final Voter list.*
- II. *ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a writ of Certiorari, and/or in the nature thereof, thereby quashing the decision of the Respondent No.4 to finalise the Voter list keeping the name of the Respondent No.11 and thereupon forwarding of the same to the Respondent No.2 for approval;*
- III. *ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a writ of Mandamus, and/or in the nature thereof, for directing the Respondents to delete the name of the Respondent No.11 from the Resolved Voter list;*
- IV. *ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why a writ Prohibition or in the nature thereof shall not be issued thereby refraining the Respondents, Respondent No.2 and 4 in particular, from acting in any manner in furtherance of the resolution dated 20.05.2022 and the forwarding of the approved voter list by the Respondent No.4 to the Respondent No.2 for publication of the final voter list;”*

3. Mr. Somik Deb, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the original petitioners at the time of hearing submitted that Clause II(i) of the Constitution of the Bar Association under the Chapter ‘Membership’ clearly mandates *“Every Advocate who has been enrolled as an Advocate under the Bar Council to which the State of Tripura falls and practicing at Agartala shall be entitled and eligible to be a member of this Association on payment of Admission fee subject however, to the condition as provided hereunder.”* He has referred to Clause II(ii) wherein it speaks that- *“Every Advocate who does not practice in the High Court but intends to become a Member of this Association may be enrolled as a non-resident Member of this Association on payment of prescribed fee.”* Mr. Deb, learned senior counsel further submitted that on a conjoint reading of Membership Chapter and Rights of the Member Chapter, these two chapters clearly reveal that to qualify for the status of voting Member of this Association, an Advocate has to be enrolled with the Bar Council of Tripura as a pre-condition; in absence of which he/she cannot be treated as a Member of this Association, with voting right. So from the enrollment of Sri Siddhartha Shankar Dey, learned senior counsel, respondent no.11, it is apparent that neither he is enrolled with the Bar Council of Tripura nor he has transferred his enrolment to the Bar Council of Tripura from the Bar Council of

Assam. Mr. Dey, learned senior counsel by virtue of his post of Advocate General is an *ex officio* member of the Bar Council of Tripura. So, the *ex officio* capacity of any post and individual capacity are completely different in the eye of law having altogether different legal bearing and implication. With the above submissions, Mr. Deb, learned senior counsel has strongly contended that Sri Sidhhartha Shankar Dey, learned senior counsel cannot be a Member of this Association and therefore, his name cannot be included in the Final Voter list.

4. Mr. Debalaya Bhattacharya, learned senior counsel appearing on behalf of the respondent no.2, Bar Council of Tripura contended *inter alia* that the respondent no.11 was enrolled as an Advocate under the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh vide Enrollment No.147 of 1985 on 16.08.1985. For all intent and purposes, the said Bar Council at that relevant point of time was acting as ‘the Bar Council’ to which the State of Tripura falls, as is required under the Membership requirements stipulated under the MEMBERSHIP eligibility of the High Court Bar Association Constitution. As per records of respondent no.4 itself, the membership was conferred upon the respondent no.11 by the respondent no.4 vide Sl. No.441, dated 30.01.2012. His further submission is that the respondent no.11 being not a “non-resident member”, as per the Constitution of High Court Bar

Association, the resolution adopted by the Executive Committee of the Tripura High Court Bar Association cannot be faulted with at any date. It is reiterated by Mr. Bhattacharya, learned senior counsel that neither any of the Constitutional or any other legal rights guaranteed to the petitioners as may be enforceable under law has been shown to have been violated giving rise to any cause of action within the ambit of Article 226 of the Constitution of India. Hence, the instant appeal is absolutely frivolous and is liable to be dismissed.

5. Mr. Arijit Bhowmik, learned counsel appearing on behalf of the respondent no.4, i.e. the Tripura High Court Bar Association submitted that before separation of the establishment of the Tripura High Court from Gauhati High Court, respondent no.4 was under Gauhati Bar Council and at that time respondent no.11 was a member under respondent no.4. After setting up of the establishment of Tripura High Court, respondent no.2 has been constituted as its own. All the Advocates practicing within the jurisdiction of High Court of Tripura have been enrolled as members of respondent no.2. It is contended that before the constitution of the Bar Council of Tripura (respondent no.2), the respondent no.4 was within the jurisdiction of common Bar Council in Gauhati as it stood at that time. As per relevant rules, any Advocate who was not practicing within the jurisdiction of the High Court of Tripura could however get his name

transferred to become a member under the respondent no.2 in accordance with the rules of the respondent no.1. Mr. Bhowmik, learned counsel further agitated that in compliance with the communication dated 21.09.2015 (Annexure-B to the counter affidavit), Final Voter list of 2018 of Tripura High Court Bar Association, Agartala was published on 03.05.2018 which also included the names of all the Senior Advocates as well as Advocates. The name of the respondent no.11 does not find place in the said Final Voters' list 2018 published by the respondent no.2, neither did the respondent no.11 raise any claim to exercise his voting right in the said election held in 2019. Drawing attention to para 15 of the counter affidavit filed by the respondent no.4, it is contended that the respondent no.2 published its Final Voters' list of Tripura High Court Bar Association both for Senior Advocates and Advocates under No. BCT/F2/SBC/BAR/E/L/457/222 dated 02.06.2022 wherein the name of respondent no.11 appears at Sl.No.15 of the list of Senior Advocate voters of the respondent no.4. It is apposite to mention herein that before the communication dated 16.03.2022, in none of the voters' list, either draft or final, the name of respondent no.11 does not find place.

6. During the course of hearing, learned counsel appearing for the petitioners as well as the respondents expressed quietus to the controversy in issue. However, learned counsel appearing for the

petitioners contended that the observations made in the judgment of the learned Single Judge dated 19.07.2022 and the directions thereupon should not be used as precedence for future litigations, if any. In other words, the order of the learned Single Judge should be confined to the Bar Association election held in the year 2022 only, which would not have any impact in future.

7. This submission of learned counsel for the petitioners has been generously conceded to by the learned counsel appearing for the respondents.

8. In view of the submissions made by learned counsel for the parties and as agreed upon by them, the instant writ appeal stands disposed of maintaining the quietus to the controversy raised in this writ appeal with further direction that the observations and directions made by learned Single Judge in the order dated 19.07.2022, passed in WP(C) No.485 of 2022 will not be treated as precedence in any future controversy, if arises out of Tripura Bar Association election.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ