

D/L
Item No. 10
22-03-2021
debajyoti/kole

WPA (P) 81 of 2021

Samrat Ghosh
-Vs-
Union of India & Ors.

Mr. Dilip Kumar Samanta,
Mr. Anindya Sundar Das,
Mr. Biswajit Hazra,
Mr. Debapriya Samanta

...for the petitioner.

Mr. Phiroze Edulji,
Mr. Ajay Chaubey

...for UOI.

Mr. Dipayan Choudhury,
Mr. Suvradal Choudhury,
Mrs. Priyanka Choudhury

...for respondent no.2.

Ms. Sonal Sinha

...for respondent no.5.

1. This matter is instituted as Public Interest Litigation alleging that the respondent no.9 has made certain remarks which are derogatory, defamatory and amounting to class abuse of a particular community.

2. The petitioner has invoked the writ jurisdiction and has instituted this Public Interest Litigation on the basis of the allegations attributed to the respondent no.9 of having made alleged defamatory remarks on 15-02-2021. Learned counsel for the Election Commission of India submits that the Model Code of Conduct came into force on 26-02-2021 and, therefore, the allegations against the respondent no.9 are not matters which could be taken cognizance of, by the

Election Commission of India or any officer under it, on the premise that the election to the West Bengal Assembly has been declared.

3. Learned counsel appearing for the respondent no.5, West Bengal Election Commission, submits that it has no authority whatsoever in relation to the matter since no election declared and controlled by that authority is going on or was declared on or before 15-02-2021.

4. For the aforesaid reasons, we do not see that any direction needs to be issued to the Election Commission of India or the West Bengal State Election Commission in the case in hand.

5. Learned counsel for the petitioner, in answer to our query, points out that the class of citizens whose cause the petitioner seeks to espouse are visited with breach of fundamental rights under Articles 15, 19, 29 and other provisions of the Constitution of India. He points out that in such situation, the matter could be treated as Public Interest Litigation.

6. We have given our thoughtful consideration to the submission that this matter may be treated as Public Interest Litigation. We remind ourselves that even in Public Interest Litigation, what the High Courts exercise is, essentially, writ jurisdiction under Article 226 of the Constitution.

Fundamentally, therefore, any allegation against the respondent no.9, who is a private individual, of having made certain derogatory or defamatory remarks; even if it were against a class of persons of a community; that is not an issue which would fall for cognizance and consideration under Article 226 of the Constitution. We cannot be called upon to issue any writ as against that person who is alleged to have committed. It is also not for us to call upon the respondent no.9 and admonish him. We do not see that the writ jurisdiction needs to be extended.

7. Be that as it may, on the basis of the submissions made at the bar, it appears that the petitioner may have other remedies open in appropriate jurisdictions either through the courts or with the jurisdictional police. Remedies may be under the criminal laws or may be under the law of torts or other enabling laws. We reserve all remedies which may be available to the petitioner in accordance with law otherwise.

8. Subject to what is stated in the immediate preceding paragraph, this writ petition is dismissed.

(Thottathil B. Radhakrishnan, C.J.)

(Aniruddha Roy, J.)