

Ct. 05
Item No.
174(ML)
22.09.2022
(Suvendu)

WPA 21218 of 2022

**Sk. Asraf Ali & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Partha Sarathi Bhattacharyya
Mr. Moniruzzaman
Mr. Raju Bhattacharyya
Ms. Ashika Daga
.....for the petitioners
Mr. Raja Saha
Mr. Prantik Gorai
.....for the State
Ms. Sabnam De
....for the respondent nos. 4 & 5
Ms. Anindita Banerjee
...for the respondent nos.10 & 11
Mr. Vivekananda Bose
Ms. Deblina Chattaraj
.....for the respondent nos. 9

The affidavit of service is taken on record.

The petitioners are practicing advocates and members of the Katwa Lawyers Bar Association, Purba Bardhaman. The petitioners seek to challenge an election called by the Election Officer on 26th August, 2022 for election of the office bearers-cum-members of the Executive Committee for the period 2022-2024.

The election is scheduled to be held tomorrow, i.e. 23rd September, 2022. The

petitioners seek cancellation of the Notice calling for the election on the ground that there are several irregularities and improprieties which have been committed by the Secretary who is one of the members of the Executive Committee.

Learned counsel appearing for some of the members as well as the State take a point of maintainability primarily on the West Bengal Societies Registration Act 1961 and the Bengal General Clauses Act, 1899. However, none of the provisions relied upon go to the root of the matter with regard to the maintainability of the writ petition. The provisions at best are peripheral provisions which are not specific to the present case.

The essential question is whether the petitioners can maintain any action against the Katwa Bar Association. There is nothing on record to show that the Katwa Bar Association is either a person or an authority under Article 226 of the Constitution of India or an entity under Article 12 of the Constitution. It is fundamental that mere infraction of a right under Part III of the Constitution will not sustain an action under Article 226, unless the violation is by or at the behest of an entity amenable to the jurisdiction of a High Court under Article 226 of the

Constitution. In essence, the violation must also be with reference to existence of a legal right and a corresponding legal duty of the entity who is amenable to writ jurisdiction, (refer to the Constitution Bench judgment of the Supreme Court, *AIR 1962 SC 1210*).

The present writ petition does not fulfil the benchmark of an action being maintainable under the writ jurisdiction of the High Court.

WPA 21218 of 2022 is accordingly dismissed without any order as to costs.

Needless to say, the petitioners can approach an appropriate forum for relief.

The private respondents are to file Vakalatnama by 4.30 p.m. today.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)