

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 530 of 2024
I.A. No. : CAN 1/2024, CAN 4/2024, CAN 5/2024 & CAN 6/2024

Secretary Alipore Bar Association
Vs.
Subir Sengupta & Ors.

<i>For the Appellant</i>	:	<i>Mr. Joydip Kar, Sr. Adv.</i> <i>Mr. Sankha Biswas, Adv.</i>
<i>For the Respondent No.1</i>	:	<i>Mr. Subir Sanyal, Adv.</i> <i>Mr. Sukanta Chakraborty, Adv.</i> <i>Mr. Srijib Chakraborty, Adv.</i> <i>Mr. Lokenath Chatterjee, Adv.</i> <i>Mr. Sukanta Ghosh, Adv.</i> <i>Mr. Rivu Dutta, Adv.</i> <i>Mr. Chandan Kr. Saha, Adv.</i> <i>Mr. Pradip Kr. Mondal, Adv.</i> <i>Mr. Sankarshan Majumder, Adv.</i> <i>Mr. Arghya Chatterjee, Adv.</i> <i>Ms. Falguni bandhyopadhyaya, Adv.</i>
<i>For the respondent no.10</i>	:	<i>Mr. Debabrata Saha Roy, Adv.</i> <i>Mr. Neil Basu, Adv.</i>
<i>For the applicant (CAN 5 & 6 of 2024)/: Intervenor</i>	:	<i>Mr. Abhratosh Majumdar, Sr. Adv.</i> <i>Mr. Sayan Sinha, Adv.</i> <i>Mr. Kaushyeo Roy, Adv.</i> <i>Mr. Nilanjan Bhattacharya, Adv.</i>
Heard on	:	15.03.2024 and 05.04.2024.
Judgment on	:	10.04.2024.

1. Mr. Majumdar, learned Counsel appearing for the proposed intervenors, has filed two interim applications vide CAN 5 and 6 of 2004 to allow intervention of the person who has filed nomination for the post of Secretary, Alipore Bar Association. Both these interim applications were filed on 08.04.2024. Pending disposal of the intervention applications, we allow Mr. Majumdar to advance his argument in favour of the proposed intervenor.

2. The sole question that falls for our determination in the present appeal is whether election to the Bar Association (Alipore Bar Association here), is amenable to the writ jurisdiction of this High Court under Article 226 of the Constitution of India.

3. It is submitted by Mr. Joydip Kar, learned senior Counsel appearing for the appellant that two writ petitions relating to the self-same subject pertaining to election to Alipore Bar Association have already been disposed of vide WPA 5250 of 2022 on 24.03.2022 concerning the election for the year 2021 and WPA 28560 of 2023 on 19.12.2023 concerning election for the year 2023. The present writ petition is concerned with election to the self-same Bar Association for the year 2024-25. It is further submitted by Mr. Joydip Kar, learned senior Counsel appearing for the appellant that the question of maintainability of the writ petition was raised before Hon'ble Single Judge but said contention has not been answered in the impugned judgment.

4. Having heard learned counsel for the parties, we expressed our view to confine the submissions of learned counsels for the parties to the question of

maintainability making it clear and loud that if we hold the writ petition to be maintainable then only we shall proceed to hear the appeal on merit.

5. With the consent of learned counsel for the parties therefore we take up the question of maintainability as the preliminary and first issue.

6. The fact of the case relevant for disposal of this appeal is in a narrow compass. On 25th January, 2024 final voter list for the election of the Alipore Bar Association was published. The present executive committee on 27th February, 2024 issued the notice of election to the Bar Association. In the said notice 28th February to 4th March, 2024 was fixed for issuance of nomination; 4th March, 2024 was fixed to be the last date of filing of nomination paper; 5th March, 2024 was the date for scrutiny of nomination papers from 1 p.m. to 4 p.m. 5th March, 2024 at 4 p.m. according to the notice dated 27.02.2024 the publication of list of valid candidate was fixed to be done; 6th March, 2024 was fixed for withdrawal of nomination till 5 p.m.; 7th March, 2024 was fixed for publication of final list of valid candidates who shall be allowed to contest; 19th March, 2024 was the date of election. The said notification dated 27.02.2024 was challenged in the present writ petition, *inter alia*, on the ground that (i) there is no gap of one month time between publication of final voter list and the date of election and (ii) seven days time was not given to the contesting candidates from the date of notification to the final date of filing of nomination.

7. Hon'ble Single Judge negatived the first point raised *supra* by the writ petitioner but held that inclusion of some of the voters who have cleared their dues in the meantime after the final publication of voter list is not permissible.

Secondly, it was held by Hon'ble Single Judge that seven days time gap from the date of publication of notice till the final date of filling nomination may not be sufficient time in view of order dated 19.12.2023 passed in the case of ***Sankarshan Majumder vs. State of West Bengal & Ors.***; WPA 28560 of 2023 disposed of on 19.12.2023. Hence, the present appeal on the question of maintainability as well as merit.

8. Mr. Joydip Kar, learned senior Counsel appearing for the appellant relies on the case of ***Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.***; (2002) 5 SCC 111 to substantiate his contention that any Bar Association does not come within the purview of Article 12 of the Constitution of India. On the question of jurisdiction of the High Court under Article 226 of the Constitution of India once election process is initiated or started, Mr. Kar has relied on the case of ***West Bengal State Election Commission & Ors. Vs. Communist Party of India (Marxist) & Ors.***; (2018) 18 SCC 141 and ***Election Commission of India through Secretary Vs. Ashok Kumar & Ors.***; (2000) 8 SCC 216.

Mr. Kar would submit that in no stretch of imagination or State of jurisprudence as it stands now on the point of meaning of State occurring in Article 12 of the Constitution of India, a Bar Association comes within the definition of State or "other authority" or "agency or instrumentality of State" occurring therein. Even if the argument is stretched to a most liberal extent also, a Bar Association cannot be held to be either an "agency or instrumentality of the State" only on the corollary that the advocates assist the judiciary in reaching a just conclusion in a litigation and the judiciary is nothing but a pillar of the State.

Mr. Kar further submitted that the Bar Association whatever be the duty spoken of it, cannot be held to be discharging sovereign function and statutory duties. It is further submitted by Mr. Kar that election law in India has been settled to a great extent on march of democracy in our nation for 75 years now. It is trite law that by invoking jurisdiction under Article 226 of the Constitution of India election process should not be interdicted or made to suffer in any manner. The Hon'ble Supreme Court under Article 32 or the High Court, for that matter under Article 226 of the Constitution of India may interfere if such interference is sought for merely to correct or smoothen the progress of the election process and proceedings. Mr. Kar, learned Senior Counsel would further submit that a Bar Association may be made a party in a writ proceeding along with other Statutory Authority like Bar Council for the limited purpose that the order passed by the Writ Court shall be binding on that particular Bar Association and nothing more. But in no stretch of imagination and play of ingenuity an election to a Bar Association as a dispute can be a subject matter in a writ proceeding in view of the complexities of facts involved.

9. Mr. Chakraborty, learned Counsel appearing for the writ petitioner/respondent no.1 submits that Alipore Bar Association being a Court annexed Bar Association constitute a separate class different from other lawyers' association. Court annexed Bar Associations function as part of the machinery for administration of justice and therefore, the election to such Bar Associations is amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India. To substantiate his contention Mr. Chakraborty relies on

Supreme Court Bar Association & Ors. Vs. B.D. Kaushik; (2011) 13 SCC 774 (paragraph 27, 28 and 29), **Shri Chandrakant Vs. Karnataka State Bar Council;** WA No. 100141 of 2020 (disposed of on 30.11.2020). **P.K. Dash Vs. Bar Council of Delhi & Ors.;** WP(C) 8106 of 2010 (disposed of on 31.05.2016). **St. Mary's Education Society Vs. Rajendra Prasad Bhargava;** (2023) 4 SCC 498.

10. Mr. Majumdar, learned Counsel appearing for the proposed Intervenor relies on **R. Muthukrishnan Vs. High Court of Madras;** (2019) 16 SCC 407 (paragraph 16) to highlight that independence of Bar and the autonomy of the Bar Council has been ensured to preserve the very democracy itself and to ensure that judiciary remains strong. Mr. Majumdar also relies on **Andi Mukta Sadguru Vs. V. R. Rudani;** (1989) 2 SCC 691 (paragraph 17 to 20) to delineate the meaning of “other authority” occurring in Article 12 of the Constitution of India. Lastly, Mr. Majumdar relies on **Kuldeep Kumar Vs. U.T. Chandigarh & Ors.;** 2024 SCC online SC 175 wherein Hon’ble Supreme Court interfered with the election process to save the same from the vice of corrupt practices. It is lastly submitted by Mr. Majumdar that in reaching the conclusion in the aforesaid case of **Kuldeep Kumar,** Hon’ble Supreme Court followed with approval the classical ruling of Krishna Iyer J. in the Constitution Bench decision in **Mohinder Singh Gills Vs. Chief Election Commissioner;** 1978 (1) SCC 405. Mr. Majumdar taking us through the decision of Hon’ble Constitution Bench in the case of **Pradeep Kumar Biswas** would submit that the law laid down in **Andi Mukta Sadguru** to the extent that the term “authority” used in Article 226 of the Constitution of India must receive a liberal meaning unlike other terms in Article 12 and writ

jurisdiction could be invoked against an authority discharging public function. The ratio laid down in ***Andi Mukta Sadguru*** *supra* remains untrammelled even after pronouncement of judgement by the Constitution Bench in the case of ***Pradeep Kumar Biswas***. Mr. Majumdar further submits that as the election dispute of the Bar Association is a dispute of public character the meaning of “authority” under Article 12 should be liberally constituted.

11. Coming to the fact of the case it is admitted at the bar that Alipore Bar Association is a society registered under the West Bengal Society Registration Act. It is neither a creature of any statutes nor it is discharging any statutory duty. It is an Association of advocates working in the vicinity of Alipore Court and other areas. The Article of Association or the by-law of the Bar Association, on perusal, does not reflect any public duty to be performed by the Bar Association except the fact that it is an association to maintain discipline regarding payment of enrolment fees etc. by its members. Nowhere in the Article of Association or the by-law any statutory duty has been enjoined to any of the member, office bearer or committee of the Bar Association. It would be gainsaid that election to any of the authority coming within the ambit of Article 12 and discharge of public duty by such authority are two different things. To our knowledge and experience we have seen “election dispute” relating to election to senate and syndicate of government universities used to be filed in civil court for the simple reason that for the complexity of the issue that may arise in an “election dispute” jurisdiction under Article 226 of the Constitution of India is not an appropriate jurisdiction to come to a just conclusion and to do complete justice. If there is infraction or

arbitrariness in discharge of public duty by an authority coming within the ambit of Article 12, necessary and competent remedy is a petition under Article 226 of the Constitution of India but so far as “election dispute” is concerned we do not think the High Court is competent authority to delve into such issue. We shall elaborate our discussion after thorough discussion of the judgments cited by learned Counsels for the parties.

12. Reliance of Mr. Joydip Kar, learned senior Counsel appearing for the appellant in the Constitution Bench decision of Pradeep Kumar Biswas *supra* is the last word so far as meaning of “other authority” occurring in Article 12 of the Constitution is concerned inasmuch as the aforesaid judgement being rendered by a Constitution Bench of seven Judges with a majority of 5:2 has not been touched subsequently by any larger Bench. The case of ***Sabhajit Tewary Vs. C.S.I.R.***; 1975 (1) SCC 485 held the field for a long time. The legality and otherwise of the dictum in ***Sabhajit Tewary*** *supra* came to be considered in ***Pradeep Kumar Biswas*** *supra*. Hon’ble Supreme Court per majority in ***Pradeep Kumar Biswas*** overruled ***Sabhajit Tewary*** and held that C.S.I.R. is an agency/instrumentality of the State. Taking into consideration a number of decisions on the point Hon’ble Supreme Court per majority in paragraph 7 of the judgement held thus:

“The decisions on this point may be categorised broadly into those which express a narrow and those which express a more liberal view. In the ultimate analysis the difference may perhaps be attributable to

different stages in the history of the development of the law by judicial decision on the subject.”

In paragraph 11 of the judgement in ***Pradeep Kumar Biswas*** referring to ***Praga Tools Corporation Vs. C.A. Imanuel***; 1969 (1) SCC 585 Hon’ble Supreme Court held thus:

“Initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read *ejusdem generis* with the authorities mentioned in the definition of Article 12 itself. The next stage was reached when the definition of “State” came to be understood with reference to the remedies available against it. Thus, a statutory corporation with regulations framed by such corporation pursuant to statutory powers was considered a State and the public duty was limited to those which were created by statute.”

12.1. In the famous case of ***Ajay Hasia***; 1981 (1) SCC 722 challenge was under Article 32 regarding admission made to a college established and administered by a society registered under the Jammu & Kashmir Registration of Society Act, 1898. The contention of the society was that even if there were an arbitrary procedure followed for selecting candidates for admission and that this may have resulted in denial of equality to the petitioners in the matter of admission in violation of Article 14, nevertheless Article 14 was not available to the petitioners

because the society was not a State within the meaning of Article 12 of the Constitution of India.

12.2. In paragraph 22 of the judgement in **Pradeep Kumar Biswas** Hon'ble Supreme Court held thus :

“Side-stepping the majority approach in Sabhajit Tewary [Sabhajit Tewary v. Union of India; (1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616 : AIR 1975 SC 1329], the 'drastic changes' in the perception of 'State' heralded in Sukhdev Singh [Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] by Mathew, J. and the tests formulated by him were affirmed and amplified in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628]. Although the International Airport Authority of India is a statutory corporation and therefore within the accepted connotation of State, the Bench of three Judges developed the concept of State. The rationale for the approach was the one adopted by Mathew J. in Sukhdev Singh [Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] : (SCC p. 506, para 13)

In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of

the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government".

12.3. Again in paragraph 23, it is held thus:

“From the perspective the logical sequitur is that as far as **Sabhajit Tewary** *supra* is concerned it was explained and distinguished in **Ramana** *supra* saying:

"The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an 'authority', but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an 'authority' within the meaning of Article 12. This decision does not lay down any principle or test for the purpose of

determining when a corporation can be said to be an 'authority'. If at all any test can be gleaned from the decision, it is whether the Corporation is 'really an agency of the Government'. The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an 'authority' ".

12.4. The test propounded by Hon'ble Justice Mathew J. in ***Sukhdev Singh*** *supra* were elaborated in ***Ramana*** and were reformulated two years later by Constitution Bench decision in ***Ajay Hasia Vs. Khalid Mujib Sehravardi***; (1981) 1 SCC 722.

In paragraph 27 of the Judgement Hon'ble Supreme Court in ***Ajay Hasia*** formulated the following six principles so as to reach a conclusion whether a particular entity is coming within the ambit of Article 12 or not:

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."

(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."

(4) "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government." If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

12.5. After discussion of different cases in extenso Hon'ble Supreme Court in **Pradeep Kumar Biswas** *supra* in paragraph 40 held thus:

"The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established,

the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

On the basis of the aforesaid discussion Hon’ble Supreme Court came to hold that C.S.I.R. is a State within the meaning of Article 12 of the Constitution of India.

13. We have already discussed the manner of constitution of the Bar Association as a body, the duty of the Bar Association as provided in the by-law/article of association and the fact that the advocates forming an association are there to assist the court in day-to-day administration of justice.

Coming to the last duty as emphasized by Mr. Chakraborty and Mr. Majumdar, learned Counsel for respondent no.1 and proposed intervenor respectively, we are of the view that an advocate is an officer of the court only so far as he is in court to assist the court in a particular litigation. Once he comes out of the court his duty as an officer of the court ceases. An advocate cannot be said to be an officer of the court if he commits a crime or something not expected from an advocate in his individual capacity. All advocates of the Bar Association functions in their individual capacity and conducts themselves in their individual capacity therefore the Bar Association even if a court annexed Bar Association

cannot be said to be an office of the court but it is a private space of the Bar Association for their relaxation and other works. Furthermore, no court has any sort of control nay pervasive control either over any Bar Association or any individual advocate. They are completely independent of Court's control. The Bar Association cannot be, therefore, held to be an instrumentality of the function of dispensation of justice by court though an individual advocate while assisting the court in court room itself is an officer of the court, for that limited purpose only.

13.1. We are constrained to take the aforesaid view especially after taking into cognizance the constitution, function and duties of the Bar Association as culled from the by-law/article of association and putting the same to test formulated by Hon'ble Supreme Court in the case of **Ajay Hasia & Pradeep Kumar Biswas** *Supra*.

14. We feel persuaded to mention here that in CAN Nos. 4 and 5 though we have not yet allowed the same allegations have been made regarding massive violence in course of election. Such a fact, in the fitness of things, cannot be gone into properly in a petition under Article 226 of the Constitution of India as the facts alleged needs to be proved by cogent evidence.

15. Coming to the decisions relied on by Mr. Chakraborty and Mr. Majumdar, Mr. Majumdar has relied on **Supreme Court Bar Association & Ors.**; 2011 (13) SCC 744. The aforesaid decision is delivered in a civil appeal which arose from the order of the Court of Civil Judge, Delhi in a civil suit and Hon'ble Supreme Court has not specifically held that Bar Association is coming within the ambit of "other authority" occurring in Article 12 of the Constitution of India. It simply dealt with

the question of “one Bar one vote” dictum of the Bar Council of India. However, Hon’ble Supreme Court in the aforesaid case in paragraphs 43 and 60 to 63 has held that in any body governed by democratic principles, no member has a right to claim an injunction to stall formation of governing body or association; no such right exists in election matters as exercise of a right conferred by a rule is always subject to qualifications prescribed and limitations imposed thereunder; further once election processes is started court should not ordinarily interfere therewith by granting injunction because injunction granted has propensity to intervene and interfere with election process which had already started and had very wide repercussion. Further it was held by Hon’ble Supreme Court that suits having not been filed in a representative capacity, relief granted by blanket injunctions restraining appellants from implementing resolution in respect of all advocates and not only in respect of advocates who had filed suits, was not warranted.

15.1. The decision of Hon’ble Supreme Court in ***Supreme Court Bar Association*** *supra* rather goes against respondent no.1 and proposed intervenor. In WPA 28560 of 2023 *supra* disposed of on 19.12.2023, the writ petitioner/respondent no.1 did not file nomination and he had not moved the court in representative capacity. This time also the petitioner has moved the instant writ petition not in representative capacity but has filed nomination for the post of Assistant Secretary within the time notified. The earlier two writ petitions were filed in individual capacity and the present writ petition has also been filed in individual capacity. Hon’ble Single Judges were not assisted properly so far as the dictum of the

Hon'ble Supreme Court in the case of ***Supreme Court Bar Association*** *supra* is concerned. Any person of any association coming in individual capacity does not have a right to stall the entire process of election or for that matter implementation of resolution for that purpose i.e. election to the body and in such a case no injunction or stay can be granted. If there is any dispute regarding voter list, violence in course of election or otherwise or any tampering in the ballot paper an "election dispute" can very well be raised before the competent civil court and not the High Court. The decision of Hon'ble Supreme Court in ***Supreme Court Bar Association*** instead of supporting the proposed intervenor rather supports the stand of Mr. Kar, learned Counsel for the appellant.

15.2. Another decision relied on by Mr. Chakraborty is ***Chandrakant Vs. Karnataka State Bar Council & Ors.*** *supra* wherein Hon'ble Karnataka High Court quoted elaborately paragraphs 16 to 29 in the case of ***R. Muthukrishnan Vs. Registrar General, High Court at judicature at Madras;*** 2019 (16) SCC 407. Hon'ble Karnataka High Court held that writ petition against the Bar Association is maintainable but the fact in that case is totally different and exceptional. In the said case the elected President, namely, A.G. Mulawadmath passed away after being elected as a President. Thereafter the Managing Committee of the Bar Association co-opted a non-elected member i.e. a person who was defeated by Mulawadmath to act as president of the Bar. The writ petition was filed alleging callousness on the part of the Bar Council of Karnataka respondent no.2 therein and action of the Bar Association respondent no.3 therein

which allowed delegation of work and duty of the late President to an unauthorised person beyond the scope of the by-law/Article of Association of the Bar Association. It was a fit case for the Hon'ble Court to interfere under Article 226 and it was not related to an election of the Bar Association. While coming to the conclusion that the Bar Association is amenable to the writ jurisdiction of the High Court, Hon'ble Karnataka High Court relied on catena of case law of Hon'ble Supreme Court. In all the cases discussed by Hon'ble Karnataka High Court, we find that duty of lawyer to assist the Court has been louded and their conduct in the dispensation of justice has been emphasised. Further they being affiliated under the respective Bar Council are held to be a body under a statutory body. In many of the decisions emphasis has been laid on "authority and person" as occurring in Article 226 has been stressed to mean that any "authority or person" discharging public function is amenable to the writ jurisdiction of the High Court. On the aforesaid analogy Hon'ble Karnataka High Court has held the Bar Association to be amenable to the writ jurisdiction of the High Court and the conclusion to the effect "Bar discharge public functions" is based on **Obiter** of various case law relied on.

15.3. We however do not feel persuaded to agree with the same view inasmuch as reality is much more different than precepts. We may say many high things about the importance of an advocate and the importance of the Bar Association being a society registered under respective Society Registration Act of a State but the Bar Association is totally independent from control of the court, be it High Court, District Court, Subordinate Court or Taluk Court. No duty is enjoined to an

individual member of the Bar to conduct himself in a particular way or manner in the society. An Advocate is an officer of the Court for the limited purpose of assisting the court in disposal of a particular matter. Therefore, an advocate cannot be said to be an officer of the Court for 24 x 7 x 365. After the court's work is over, an advocate is free to conduct himself according to his free will. Only because an advocate functions as an officer of the court for a limited time, an association of advocates cannot be said to be discharging public functions. The case of which Hon'ble Karnataka High Court was seized of, could have been brought even in the civil court also on proper reading of Section 9 C.P.C. for more effective and efficacious remedy instead of such a matter being brought to the High Court quoting liberally from different judgements about the working of advocates and the relationship of the Bench and Bar Hon'ble Karnataka High Court held the Bar Association to be amenable to the writ jurisdiction though the quotation relied on by Hon'ble Karnataka High Court were not the "ratio" of those cases. Furthermore, we found in different decisions of Hon'ble Supreme Court relied on by Hon'ble Karnataka High Court that the word "person" occurring in Article 226 has not been defined anywhere but it is clear from the decisions that any authority or person performing public function shall be amenable to the writ jurisdiction of the High Court. It would be gainsaid to say here that the word "person" might have been used with "authority" in Article 226 in view of the nature of writ of *habeas corpus* and *quo warranto* but this having not yet been examined by any Court so far, we desist ourselves to say anything more on this aspect and leave it

to future for decision in appropriate case. We, however, disagree with the decision rendered by Hon'ble Karnataka High Court.

15.4. Another case relied on by Mr. Chakraborty is that of **P. K. Dash** *supra* by the Delhi High Court where also the observation of Hon'ble Supreme Court in **Muthukrishnan's case** *supra* has been referred to but the said case relates to allotment of chamber to advocates in Delhi and such allotment was under the administrative control of Delhi High Court and the Court issued direction for change of rule for the purpose. Said judgement is also therefore, not applicable to the fact of the present case.

15.5. In **St. Mary's Education Society** case *supra* the Hon'ble Supreme Court in paragraph 75 has summed up the principle as follows:

“75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.*

75.3. *It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the*

societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of nonteaching staff is

regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

On discussion as aforesaid Hon’ble Supreme Court held that the writ petition was not maintainable. The aforesaid decision, in no way, helpful to displace our view taken *supra*.

15.6. Lastly, it is argued by learned Counsel for the respondent/writ petitioner that West Bengal Advocate Welfare Corporation Act 2012 Section 2(a) provides for financial assistance to advocates and therefore, the Bar Association is to be held as receiving fund from the government. Taking a cue from the preamble part and Section 4 of the said Act we are of the view that it is a benevolent Act enacted by the government of West Bengal for the Welfare of the individual advocate and members of the Welfare Committees are all state authorities. It does not make the Bar Association to be a body funded solely by the Government. Therefore, this argument is also negatived.

16. Coming to the submission advanced by Mr. Majumdar, learned Counsel for the proposed intervenors, he has referred to the case of ***R. Muthukrishnan Vs. Registrar General, High Court at judicature at Madras***; 2019 (16) SCC 407 to submit that independence of the Bar has been ensured to preserve the very democracy itself and to ensure that judiciary remain strong; Bar plays a significant role in maintaining the rule of law and therefore, discharging public function; role of the Bar in the legal system is significant as Bar will be spokes person of the judiciary as Judges do not speak; the Bar is an integral part of judicial administration; independent Bar and independent Bench form the backbone of democracy; the Bar is the mother of judiciary and consist of great jurists.

Taking cue from the aforesaid observation in ***R. Muthukrishnan***, Mr. Majumdar would submit that regard being had to the law laid down by Hon'ble Supreme Court, it is quite apparent that Bar Association discharge public functions as they are integral part of the justice delivery system. In the aforesaid case vires of amended rules of the rules of High Court of Madras was under challenge. While discussing the importance of Bar in the administration of justice from paragraphs 23 to 32, Hon'ble Supreme Court has laid emphasis on importance of the Bar but such observation being not ratio of the case cannot be stretched to hold that the Bar Association discharges public function.

17. Mr. Majumdar thereafter relies on ***Andi Mukta Sadguru***; 1989 (2) SCC 691 especially paragraphs 17 and 20 to submit that the term "authority" used in Article 226 of the Constitution of India in the context must receive a liberal

meaning than Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 however, confers power on High Courts to issue prerogative writs for enforcement of fundamental as well as non-fundamental rights. The expression “any person or authority” used in Article 226 should not therefore, be confined only to statutory authority and instrumentality of state and no matter by what means the duty imposed, if a positive obligation exists mandamus cannot be denied. This matter arose out of a case relating to non-payment of salary to school teachers. Students who had been taught by teachers in educational institutions and by discharging the duties of a teacher, teachers were discharging public duties and mandamus was issued for payment of salary to them. The ratio in the case of **Andi Mukta Sadguru**, therefore, is not applicable to the fact of the present case in view of our discussion in the light of judgement of the Hon’ble Supreme Court in **Pradeep Kumar Biswas** *supra*.

18. The last decision relied on by Mr. Majumdar is the case of **Kuldeep Kumar Vs. U.T. Chandigarh**; 2024 SCC online SC 175. The case relates to alleged electoral malpractice by the Presiding Officer who conducted the election to the post of Mayor at the Chandigarh Municipal Corporation. Taking the case to be an exceptional case, Hon’ble Supreme Court took cognizance of the matter and bypassing the mechanism for “election disputes” granted relief to the petitioner, perhaps by invoking their jurisdiction under Article 142 of the Constitution of India. This case having arisen out of an exceptional circumstance cannot be taken into consideration to hold that the Alipore Bar Association is a state or authority

and any exception can be taken under Article 226 of the Constitution of India to interfere in or monitor the election process in the said Bar Association.

19. Regard being had to our discussion *Supra* we feel constrained to hold here that the Alipore Bar Association being not a state “other authority” or “agency or instrumentality” of the state within the meaning of Article 12 and “authority or person” discharging public function within the meaning of Article 226, writ against Alipore Bar Association that too in the matter of election to the Bar Association is not maintainable. In other words Alipore Bar Association is not amenable to the writ jurisdiction of this Court. We would like to clarify here that a Bar Association can be made party in a writ petition along with other statutory authority/authorities discharging statutory/sovereign function for the limited purpose that the order passed under writ jurisdiction shall be binding on that Bar Association. If we follow the matter of the Bar Association as emphasis laid in different decisions by Hon’ble Supreme Court and different High Court as discussed *supra*, in the same corollary can we say that the employees association of different court including High Court are amenable to the writ jurisdiction of the High Court only because the members of such association are indispensable for delivery of justice.

20. For the benefit of elucidation, we feel persuaded to reproduce here the finding of the Hon’ble Supreme Court in the case of ***Election Commission of India through Secretary vs. Ashok Kumar & Ors.***; 2000 (8) SCC 216 where in paragraph 32 it is held thus:

“For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or

arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention

having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

[emphasis supplied by us]

21. From the aforesaid conclusion of Hon’ble Supreme Court, it is clear where it is open for the Court to interfere in election process. Beyond what is elucidated in point no. 4 *supra* no court has any jurisdiction to interfere in the process of election to any institution, may it be the Bar Association, if the process of election is a democratic process. Same is the view of Hon’ble Supreme Court in ***Supreme Court Bar Association*** *supra*.

22. Having held that the writ petition under Article 226 against the Bar Association is not maintainable, saving the exception discussed *supra*, we do not propose to embark on discussion regarding merit of the case. The appeal is, therefore, allowed and the impugned order is set aside. The writ petition having held to be not maintainable all the orders passed in the writ petition and the interim order passed in this appeal become *non-est* in the eye of law. The election having been held as per schedule in the notice dated 27.02.2024, the result of the election be published by the Election Officer forthwith.

23. Any party aggrieved by result of the election or any party desirous of raising an “election dispute”, if so advised, may move the common law forum i.e. the competent Civil Court for redressal of his/their grievance within the time limited by law.

24. We feel persuaded to mention here that any observation made in the judgment passed by this court in WPA 5250 of 2022 and WPA 28560 of 2023 shall be a guidance for the concerned competent civil court who may hear the election petition but the observation therein being not ratio decidendi shall not be binding on that court.

25. The CCTV footage received from the Collector and District Magistrate, Alipore and the report received from the District Judge, Alipore in sealed cover be returned to the District Judge, Alipore by a special messenger forthwith and District Judge, Alipore is directed to get the materials kept in safe custody of an officer of his choice for one year from today. The matters be preserved for the purpose of production at the time of election dispute if any filed in the meantime.

26. The appeal is accordingly allowed.

27. There shall be, however, no order as to costs.

28. In view of the Judgement, CAN 1/2024, CAN 4/2024, CAN 5/2024 & CAN 6/2024 are also disposed of.

29. Dictated in open Court on this day i.e. 10th day of April, 2024.

30. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

(Chitta Ranjan Dash, J.)

(Patha Sarathi Sen, J.)