

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 1373 of 2025

Vishva Hindu Parishad, Dakshinbanga & Anr.
Vs.
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Subir Sanyal, Sr. Adv. Mr. Partha Sarathi Deb Barman, Adv. Mr. Osman Mallick, Adv. Ms. Sumouli Sarkar, Adv. Mr. Anindya Sundar Das, Adv. Mr. Sourojit Mukherjee, Adv. Mr. Anup Dasgupta, Adv. Mr. Syed Ali Afzal, Adv. Ms. Paromita Mondal, Adv. Mr. Suman Halder, Adv. Mr. Pronoy Basak, Adv. Mr. Sujit Bhuniya, Adv. Mr. Bipul Mondal, Adv. Mr. Dinesh Pari, Adv. Mr. Sagnik Roychowdhury, Adv. Mr. Avijit Mitra, Adv.
For the State	:-	Mr. Kishore Datta, Ld. AG Mr. Anirban Ray, Ld. GP Mr. Sirsanya Bandopadhyay, Adv. Mr. Anand Farmania, Adv. Ms. Indumoli Banerjee, Adv.
For the respondent nos. 8 & 9	:-	Mr. Anirudhha Chatterjee, Sr. Adv. Mr. Suprotim Laha, Adv. Mr. Suman Kumar Mukherjee, Adv. Mr. A.D. Mullick, Adv. Ms. Esha Majumder, Adv. Mr. B. Sadhu, Adv.
For the BMC	:-	Mr. Sirsanya Bandopadhyay, Adv. Mr. Arka Kumar Nag, Adv. Mr. Tirthankar Dey, Adv.
Heard on	:-	20.01.2025 & 21.01.2025
Judgment on	:-	24.01.2025

Amrita Sinha, J.:-

1. The petitioner no. 1 is a Society registered under the West Bengal Societies Registration Act, 1961 and the petitioner no. 2 claims to be the Honorary Vice President of the petitioner no. 1. The petitioner no. 1 claims to be a social, religious and philanthropic organization aimed at consolidating and strengthening the global Hindu fraternity and working for the welfare of humanity. The Society claims to promote educational activity and provide medical aid and relief to the poor.
2. The petitioner no. 1 claims to be a seller and publisher of several books and magazines. Visva Hindu Varta, the monthly magazine of the Parishad, is registered under the Press and Registration of Books Act, 1867. The Society claims to sell around eight hundred different books as well as posters and calendars. The Society, since 2011, is a regular participant in the International Kolkata Book Fair held annually. It sets up stall in the said fair for selling books and magazines.
3. In response to an advertisement published by the Publishers and Booksellers Guild (hereinafter referred to as 'the Guild') seeking interested participants to apply in their letterhead for allotment of stall in the 48th International Kolkata Book Fair to be held from 28th January, 2025 to 9th February, 2025, application was made by the petitioner no. 2, within the time as stipulated in the advertisement, with request to provide a stall of 600 sq.ft. As no communication was made about the application filed by the petitioner, a request for

intimation about the allotment of stall was made by the petitioner no. 2 in January, 2025. As no response was forthcoming, the instant writ petitioner has been filed.

4. In support of the submission that the writ petition will be maintainable against the Guild, the petitioner has annexed several documents to show that the State is directly promoting and supporting the event and also spending huge sum of money from the public exchequer for the benefit of the Guild in holding the fair. It is contended that the Guild has to be taken as a body akin to the State and necessary direction ought to be passed upon the Guild to permit the petitioner no. 1 to set up a stall in the fair.
5. It has been argued that the fair has achieved the status of a public event because of the sponsoring and the financial aid provided by the State and refusal to allot stall in favour of the petitioner no. 1 in the said fair is discriminatory, mala fide and in violation of the fundamental right guaranteed under Articles 14, 19 (1) (a) and 21 of the Constitution of India.
6. To fortify the aforesaid submission learned senior counsel representing the petitioners place reliance on the judgments delivered by the Hon'ble Supreme Court in the matter of ***Zee Telefilms Ltd. & Anr. -vs- Union of India & Ors.*** reported in ***(2005) 4 SCC 649*** and in the matter of ***Board of Control for Cricket in India -vs- Cricket Association of Bihar & Ors.*** reported in ***(2015) 3 SCC 251***.

7. Reliance has also been placed on the Press Registration of Books Act, 1867 to highlight that the term 'publisher' is not defined therein. The expression 'publisher' has been used in Section 3 of the Act of 1867 which mentions that every book or paper printed within India is required to print the name of the publisher and the place of publication.
8. It has been asserted that Visva Hindu Varta is the newspaper owned by the petitioner no. 1 which is registered under the Act of 1867 and the registration certificate discloses the name of the publisher, editor and the place of publication. The Guild, since 2011, permitted the petitioner no. 1 to set up stall in the book fair ground relying on the said certificate of registration of the newspaper of the petitioner no. 1. No issue was ever raised with regard to the name of the publisher not being mentioned in the application made in response to the advertisement published by the Guild.
9. Detailed argument has been made by the learned senior counsel representing the petitioners to establish the point that the Guild is performing a public duty and, hence, writ petition against the Guild will be maintainable. The petitioners contend that freedom of speech and expression is being throttled by not allotting the stall to the petitioners from where the petitioners can spread the message of Hinduism.
10. Prayer has been made to direct the Guild to issue letter of allotment of 600 sq.ft. stall in favour of the petitioner no. 1 in the forthcoming Book Fair.

11. Learned Advocate General appearing on behalf of the State submits that apart from providing the basic infrastructural facility and supporting the Guild to hold the event, there is no other role of the State in respect of the fair. The State has no control over any of the functions or activities of the Guild.
12. It has been submitted that the writ petition will not be maintainable against a private body which cannot be treated as a 'State' under Article 12 of the Constitution of India. Only to avail the remedy under Article 226 of the Constitution of India, the petitioners have impleaded the State as party respondent in the instant writ petition even though the State is in no way connected with the subject fair.
13. It has been explicitly made clear that the fair is not the function of the State. The ground where the fair will be held is available on rent and the said ground is made available to an applicant subject to payment of ground rent and compliance of other formalities. There is no public law element in the dispute sought to be raised. The dispute, if any, is a private one in between the petitioners and the Guild but the State has been deliberately dragged into the fray to invoke jurisdiction of the writ Court.
14. Learned senior counsel representing Guild vehemently opposes the submission of the petitioners that the writ petition would be maintainable against the Guild. It has been contended that the Guild is a Society registered under the Societies Registration Act. The State Government does not have any control, be it financial or otherwise, over the acts and action of the Guild. The State neither advises nor is

connected with any of the affairs of the Guild. The Guild is managed by the team comprising of its members. Mere promotion of an event by the State does not mean that the event is a State event and the writ court may come to the aid of an aggrieved party.

15. It has been argued that the Guild is not interfering with any of the rights of the petitioners. None of the fundamental rights of the petitioners are interfered with by the Guild. The provisions of Part III of the Constitution of India cannot be made applicable to the Guild which is a private entity.
16. It has been argued that being a private body, the Guild has every right to select the participants in the events conducted and organised by the Guild. The petitioners cannot press upon the Guild to allot a stall in their favour. The Guild is not answerable to the petitioners for rejecting their application for allotment of stall in a private event organised by the Guild.
17. It has been submitted that the Guild adopted a resolution in the year 2024 not to allot any stall in favour of any organisation in the forthcoming fair and in line with the said resolution the request for allotment of stall made by the petitioner has not been acceded to. The Guild has the right to frame its own policy and the Guild is not bound to provide explanation for its conduct to anybody.
18. It has been submitted that all arrangements in connection with the book fair are solely made by the office bearers of the Guild. The invitations to the foreign dignitaries are made from the end of the Guild. It has been admitted that apart from providing the bare

minimum infrastructural facility, there is no role of the State Government in the fair which is solely managed by the Guild.

19. The respondents pray for dismissal of the writ petition.
20. I have heard and considered the submissions and the documents relied upon by both the parties.
21. The very first issue that arises for consideration in the instant writ petition is whether the writ petition will be maintainable against the Guild. Only if the said issue is answered in the positive, then the second issue would be whether the relief sought for by the petitioner can be granted or not.
22. The fact that the Guild is a registered Society is admitted by the parties. Whether the said Society will be amenable under Article 226 of the Constitution is to be adjudicated.
23. According to Article 226 of the Constitution, the High Court has the power to exercise jurisdiction to issue to any person or authority directions, orders, or writs for the enforcement of any of the right conferred by Part III and for any other purpose.
24. All along the thrust of the petitioners' argument is that even though the Guild cannot be treated as 'the State' under Article 12 of the Constitution of India but the functions of the Guild are 'akin to the State' and, as such, writ petition against the Guild will be maintainable. To augment the aforesaid submission the minority view expressed by the Hon'ble Supreme Court in the matter of Zee Telefilms (supra) has been highlighted.

25. Article 12 of the Constitution stipulates that 'the State' includes the Government and Parliament of India and the Government and legislature of each of the States and local or other authorities within the territory of India or under the control of the Government of India. The parties are more or less *ad idem* on the issue that the Guild cannot be treated as 'the State' but the Guild qualifies under the expression 'local or other authority' and their functions are akin to the State.
26. In *Zee Telefilms* (supra) two of the Hon'ble Judges of the five Judge Bench framed the question as to whether the Board of Control for Cricket in India answers the description of 'other authorities' within the meaning of Article 12 of the Constitution. The minority view was that a writ not only lies against a statutory authority, it will also be maintainable against any person or a body discharging public function which is performing duties under a statute. A body discharging public functions and exercising monopoly would also be an authority and writ may lie against it.
27. The test to ascertain as to whether the body discharges public function or performs public duties is to see whether the function is State protected and of public importance or not. The Hon'ble Supreme Court referred to the tests to determine whether the body comes within the purview of 'other authorities' as held in the matter of ***Ajay Hasia vs. Khalid Mujib Sehravardi*** reported in **(1981) 1 SCC 722**.

28. The Court observed that the issue has to be resolved keeping in view further other tests, for example; whether the authority exercises *de facto* or *de jure* monopoly, whether the State outsources its legislative power in its favour or whether the event has a positive obligation of public nature. A body which carries on monopolistic function and whose core function is to promote an event which is a symbol of national identity and a medium of expression of national pride must be held to be carrying out Governmental functions. A highly arbitrary or capricious action on the part of such a powerful body would attract the wrath of Article 14. When the function of a body is identifiable with the State function, its actions would be State actions.
29. Questions framed by the Court in paragraph 20 of the judgment in the matter of BCCI (supra) have been placed. The Court held that BCCI may not be 'State' under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution. The Court arrived at the said finding after noting that BCCI performs public functions no matter that the said authority is registered as a Society under the Registration of Societies Act.
30. In the matter of BCCI (supra) the Court took note of the view expressed in the matter of Zee Telefilms (supra) wherein the Hon'ble Supreme Court clearly held that the activities of the Board can be said to be akin to public duties or State functions and if there is any violation of any Constitutional or statutory obligation or rights of other citizens, the aggrieved party can always seek a remedy under

the ordinary course of law by way of a writ petition under Article 226 of the Constitution.

31. In the matter of Zee Telefilms (supra) and BCCI (supra) the issue was at a national level. Here the action of the Guild is in connection with a fair which is held annually in the State's capital, Kolkata. The event is being organised uninterruptedly for quite some time and, as per the Guild, this will be the 48th year of the event. The event has gained enough popularity and its magnitude has increased over a period of time. There has been participation from various foreign countries.
32. The clinching difference between BCCI and the fair is the mode and manner in which the two authorities function. The former is the sole authority to take decisions and handle the sports event throughout the country and beyond. Its decision may make or break a player's sporting career. The authority is the only gateway to represent the country at the international level. Such is not the case in respect of the fair. Kolkata is widely known and recognized for literary works. There are similar fairs and events, may not be of the same scale, organized in various parts of the State. The petitioners would be hardly prejudiced if they are not able to participate in the subject fair. The petitioners can always showcase their books and news articles elsewhere and there is absolutely no restriction in doing so. The petitioners can also take and spread their ideas, thoughts and belief at a national and international level in any manner according to their choice.

33. A private entity certainly has the right to select and choose the participants in its own function as per its own preference and none has a vested right to intrude upon and claim participation against the wish and desire of the organizer. It will be an absolute anomaly if the State is permitted or directed to interfere and meddle in the affairs of a private party. The same is illegal, impermissible and cannot be supported in law.
34. As per the list of allottees placed before the Court, this year 1050 stalls are being set up in the fair. From the list of allottees it appears that there are several governmental bodies and its undertakings who have been allotted stalls in the said fair. The petitioners allege that as the Guild permitted the petitioners to set up stalls since 2011, accordingly, this year also a stall should be allotted in their favour. The petitioners claim to have fulfilled all the requisite formalities for being allotted a stall in their favour.
35. The petitioners have relied upon quite a few articles published in various local dailies mentioning that the State Government is providing certain financial aid to the fair and also to the participants of the fair. Tender notice floated by the departments of the State for setting up infrastructural facilities in the fairground has been referred to develop the argument that the State has huge financial and pervasive control over the fair.
36. On a perusal of the tender documents it reveals that a certain department of the State floated tender inviting bids to set up stall in the fair ground as space was allotted in favour of the said

department. Floating of tender is in no way connected with organising the fair. Several departments of the State have been allotted space for putting up stall in the fair. The State Legal Services Authority has also been provided space in the fair. The same does not mean that the fair becomes the event of the State or the fair is in any manner controlled by the State.

37. The initiative taken by the State for revamping the fair-ground or for upgrading the infrastructural facilities may be for the purpose of the fair but the same does not mean that after the fair is over, the infrastructural facilities will be removed. Several events are held at the same venue. The facilities will remain and may be availed of by any other organiser of another fair or event at the said place.
38. Only because foreign dignitaries are participants in the fair and the fair has gained immense popularity, it does not mean that the organiser of the fair has to be elevated and transposed to the status of a body 'akin to the State'. There are instances where events organized by the State do not draw enough crowd nevertheless, the said event will be treated as a State function as the same was organized by the State. The magnanimous scale, popularity or footfall are not the tests to ascertain whether the event is a public event or a private one.
39. There may be various reasons for the State to promote and act as facilitator of the said event. As the event attracts huge footfall, the State ought to develop the infrastructural facilities and arrange for public conveniences so that the event may, in turn, encourage

tourism and other allied businesses. The event provides a window for learning, exchange of ideas, show casing of literary works, developing bilateral tie and a lot more. The fair acts as a launch pad for several little magazines, authors, writers and poets. Without the support of the State, an event of such level may not be smoothly possible.

40. According to the Constitution, India is a welfare State and it is the duty of the State to take care of the welfare of its subjects. It does not appear that the Guild is infringing upon any of the rights of the petitioners as it is not standing in the way of the petitioners from publishing their books or newspapers. The fair held by the Guild is not the only book fair that is being held in the State. There are several fairs held by several authorities. The fair held by the Guild may be highly popular and may attract maximum footfall but only because an event has gained such amount of popularity the same cannot be termed as a public event and the authority organising the said event cannot be treated as 'other authorities' under Article 12 of the Constitution.
41. It is not the case that if the petitioners are not allotted any stall in the fair, then their right to business or their freedom of speech or expression will be infringed in any manner. The book fair is just a platform from where the participants get an opportunity to advertise their books or magazines. The petitioners can always avail other platforms to advertise their works. It is not that this is the only platform for advertisement. The Guild does not hold any monopoly

for organising such fair. Book fairs are held by several other bodies and organizations.

42. There may be valid reason(s) for the petitioners to be aggrieved by the act of the Guild. There may be legitimate expectation of the petitioners that as they were allotted stall for the past so many years, this year also stall will be allotted in their favour. The petitioners may feel that they have been wronged. All wrong cannot be cured by the writ Court. The Constitution prescribes the areas where writ remedy is available. However, the same does not imply that an aggrieved party will remain remediless. Private law remedy is always open.
43. The parties have advanced argument on the issue whether the petitioner no.1 can be treated as a publisher or not but the Court consciously refrains from deliberating on that issue leaving it open for the parties to agitate the same before the appropriate forum. The Court is of the considered opinion that the remedy of the petitioners does not lie before the writ court.
44. In view of the discussions made hereinabove, no relief can be granted to the petitioners in the instant case. The writ petition fails and is hereby dismissed.
45. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)