

## Constitutional Writ

Present: The Hon'ble Mr Justice Jayanta Kumar Biswas

W.P.No.17899(W) of 2010  
 Judgment on 30.08.2010  
 Sri Mahadeb Brahmachari & Anr.  
 -vs-  
 The State of West Bengal & Ors.

## POINTS:

**SCOPE OF WRIT:** Petitioners have no legal or statutory right- Inaction on the part of Authority whether can be agitated in writ jurisdiction- **Constitution of India Art. 226.**

## FACTS:

The sixth respondent is a Bangladeshi national. He has illegally immigrated to India. Hence he is liable to be prosecuted for committing offences under the Indian Penal Code and also to be pushed back to Bangladesh. Petitioners submitted a complaint requesting the District Magistrate, Nadia to take action. District Magistrate has failed and neglected to take any action.

## HELD:

Admittedly, this is not a public interest litigation in which a citizen, even though not personally aggrieved by any action or inaction of the Government or its officials, may initiate proceedings before the Writ Court under art.226. Para 5

Admittedly, the petitioners did not lodge the complaint in exercise of their any legal or statutory right. Hence inaction, if any, on the part of the District Magistrate cannot make them aggrieved giving them a right to action before the High Court under art.226. Para 7

Mr. Supriya Roy Chowdhury                      ....for the petitioners

Ms. Abha Roy  
 Ms. Amrita Sinha                                      ....for the State

Mr. Asish Chakraborty  
 Mr. Manish Paul                                      ....for the sixth respondent

The Court : The petitioners in this art.226 petition dated August 20, 2010 are seeking a mandamus commanding the respondents to take steps against the sixth respondent under the Foreigners Act, 1946 read with the Foreigners Order, 1948.

2. Case of the petitioners is this. The sixth respondent is a Bangladeshi national. He has illegally immigrated to India. Hence he is liable to be prosecuted for committing offences under the Indian Penal Code and also to be pushed back to Bangladesh. They submitted a complaint

dated July 30, 2010 (at p.29) requesting the District Magistrate, Nadia to take action. Since the District Magistrate has failed and neglected to take any action, they have brought this petition.

3. The question is in exercise of what right the petitioners submitted the complaint to the District Magistrate seeking actions against the sixth respondent.

4. Counsel concedes that no law has conferred any right on the petitioners to lodge the complaint dated July 30, 2010 with the District Magistrate, Nadia seeking actions against the sixth respondent. His argument is that as citizens of the country the petitioners have a right to lodge the complaint.

5. I am unable to accept the argument. Admittedly, this is not a public interest litigation in which a citizen, even though not personally aggrieved by any action or inaction of the Government or its officials, may initiate proceedings before the Writ Court under art.226.

6. Here the petitioners have brought this petition alleging that inaction on the part of the District Magistrate has made them aggrieved. They were entitled to feel aggrieved only if they had a statutory or legal right to lodge the complaint.

7. Admittedly, the petitioners did not lodge the complaint in exercise of their any legal or statutory right. Hence inaction, if any, on the part of the District Magistrate cannot make them aggrieved giving them a right to action before the High Court under art.226.

8. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.