

ORDER SHEET
WPO NO. 3 OF 2019
IA No. GA/2/2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DR. KUNAL SAHA
Versus
THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION & ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 25th February , 2021

Appearance :
Dr. Kunal Saha, appears in person
for the petitioner.

Mr. Sudipto Panda,
Mr. Anand Fermania, Advs.,
for the respondent.

The Court : As it appears from the supplementary affidavit filed by the petitioner pursuant to a previous direction of this Court, the petitioner has been rendering voluntary assistance to victims of medical negligence for a considerable time. Apart from that, the petitioner has been working with a non-governmental charitable organisation, namely, "People for Better Treatment" (PBT). It is further stated in the supplementary affidavit that the petitioner and the said organisation have developed a close relationship due to the similar nature of work done by them and that the petitioner has been helping several victims of medical negligence over a long period of time and has been appearing before several forums in that regard.

Certain instances of such cases where the petitioner appeared have been mentioned in the supplementary affidavit as well. The petitioner appears, from the statements made on oath in the supplementary affidavit, to have been helping the society at large for betterment of the health care delivery system and to bring justice to the victims of medical negligence selflessly. As it appears from Annexure P-8 of the writ

petition as well as averments made in the supplementary affidavit, the petitioner has been helping the said victims, in particular the proforma respondent no.4, without any financial benefit, solely on humanitarian ground. Such contention has been corroborated by the proforma respondent no.4 himself in writing.

The petitioner has also been appearing *pro bono* in public interest litigations for such victims of medical negligence. In such view of the matter, I am satisfied that the petitioner fulfills the qualifications stipulated in the Consumer Forums (Regulations) 2014 and, as such, is entitled to appear before the consumer forum for the case of victims of medical negligence and the like.

It has been categorically alleged in the writ petition that when the petitioner attempted to approach the State Consumer Disputes Redressal Commission, that is, the respondent no.1, with a case to argue on behalf of the proforma respondent no.4, the petitioner was labelled with abusive adjectives and was prevented from appearing before the said forum by advocates practising in the said forum as well as others.

Such obstruction squarely violates the fundamental right of equality before the law of the petitioner to represent the case of victims and to advance the same before any judicial or quasi-judicial forum on an equal footing with members of the bar.

Learned Counsel for the respondents submits that the petitioner has been appearing before the respondent no.1 on several occasions even after filing of the writ petition. That apart, a preliminary objection with regard to maintainability of the writ petition is taken in view of an equally efficacious alternative remedy being available under Section 21(b) of the Consumer Protection Act.

However, since the present writ petition relates to violation of fundamental rights of the petitioner in representing the case of victims of medical negligence and to further the case of people who might not have the opportunity or the financial capability to approach judicial or quasi-judicial forums, and since no order or inaction of the State

Consumer Disputes Redressal Commission has been challenged in the writ petition, the contention of the respondents regarding maintainability is turned down.

Regarding the submission that the petitioner has appeared before the respondent no.1 even after filing of the writ petition, the same cannot be a bar in passing a direction, as prayed for by the petitioner, by this Court, in view of the constant apprehension of obstruction to the justice delivery system, which the petitioner is trying to assist. Such apprehension has to be allayed and for the same reason, the occasional appearance of the petitioner on subsequent occasions cannot be an impediment to the reliefs claimed in the present writ petition.

In view of the aforesaid observations, WPO 3 of 2019 alongwith the connected application is disposed of by allowing the petitioner to appear before the respondent no.1 and directing the respondent no.3, being the Officer-in-Charge of the New Market Police Station, to provide adequate assistance to the petitioner in the event the petitioner approaches the respondent no.3 with a complaint of being obstructed from appearing before the respondent no.1. The police authorities will act on the communication of the petitioner and/or the learned Advocate for the respondents without insisting upon prior production of a certified copy of this order.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

