

S/L. 6.
August 17, 2022.
MNS.

WPA No. 15154 of 2022

Lipika Sengupta
Vs.
The State of West Bengal and others

Mr. Srijib Chakraborty,
Mr. Francis Samson Correa,
Mr. Sunny Nandy,
Ms. Kiran Kumari Mahato,
Mr. Subha Pathak,
Mr. Tamal Singh Roy

... for the petitioner.

Mr. Amitesh Banerjee,
Mr. Suddhadev Adak

...for the State.

Mr. Anindya Bose,
Ms. Snigdha Saha,
Mr. Diptendu Mondal

...for the respondent no. 4.

At the outset, an objection has been taken by learned counsel for the respondent no. 4 to the filing and maintainability of the writ petition in the name of the Constituted Attorney of the aggrieved person.

It transpires from the pleadings in the writ petition that one Lipika Sengupta, acting as Constituted Attorney of her son, namely, Abhishek Sengupta, has filed the writ petition in her own name, couching the writ petition in such

a manner as if the cause of action pertains to the petitioner.

Learned counsel for the respondent no. 4 cites a Full Bench judgment of the Allahabad High Court reported at *AIR 2016 Allahabad 52 (Syed Wasif Husain Rizvi Vs. Hasan Raza Khand and others)* for the proposition that when a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, it was held, the application under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceeding is instituted before the Court.

At this juncture, learned counsel appearing for the petitioner submits that the petitioner be given liberty, in view of such technical errors, to withdraw the writ petition and file a fresh writ petition in the name of the son of the petitioner,

that is, Abhishek Sengupta, on the self-same cause of action.

Upon hearing learned counsel, WPA No. 15154 of 2022 is dismissed as withdrawn, with liberty to the writ petitioner to file an appropriate writ petition on the self-same cause of action in the name of the son of the present petitioner, that is, Abhishek Sengupta, in the capacity of a Constituted Attorney of the said Abhishek Sengupta.

Leave is granted to the petitioner to mention the matter for inclusion in the list immediately upon such fresh writ petition being filed.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)