

February 24, 2023

ARDR  
(29)

**WPA 1845 of 2023**

Allarakha Shah & anr.  
Vs.  
The Union of India & ors.

Sr. Adv. Saptangsu Basu,  
Adv. Biswajit Konar,  
Adv. Ayan Banerjee,  
Adv. Arijit Mahinder,

...for the petitioners.

Adv. Kaustav Ch. Das,

...for the respondent no.1.

Adv. Manika Roy,

...for the NHAI.

None appears for the State respondents and  
respondent no.8.

Report in the form of affidavit filed on behalf of the  
National Highways Authority of India (hereinafter  
referred to as NHAI) and the reply thereto filed on behalf  
of the petitioners are taken on record.

Heard learned counsels for the parties.

At the outset, learned counsel for the NHAI has  
challenged the maintainability of the writ petition on the  
ground that in terms of the amended provisions laid  
down in Section 14 of the Control of National Highway  
(Land and Traffic) Act, 2002, the order impugned is  
appealable and the writ petition is not maintainable.

It is not in dispute that the order impugned dated  
18<sup>th</sup> January, 2023 was passed without an opportunity  
of hearing being given to the petitioners. Though notice

under Section 26(2) of the Control of National Highway (Land & Traffic) Act, 2002 was issued to the petitioners on 26<sup>th</sup> December, 2022 and the petitioners were granted liberty to make a representation within three days from the date of service of notice which would be heard within seven days of receipt of the notice, no date of hearing was informed to the petitioners by the authority and the hearing took place in their absence. In view of the same, this Court is inclined to hold that there has been violation of natural justice which entitles the petitioners to approach the writ court under Article 226 of the Constitution of India.

On merits, admittedly, pursuant to the notice issued upon the petitioners under Section 26(2) of the Act of 2002 representation was submitted by the petitioners on 29<sup>th</sup> December, 2022. The representation was taken into consideration and rejected by the order impugned passed on 18<sup>th</sup> January, 2023. No notice of such hearing was admittedly served upon the petitioners and the hearing was made without the petitioners being granted an opportunity of hearing before the authority.

In view of the above, without spending much words on the issue, this Court is inclined to hold that the order impugned is required to be set aside and the authority be directed to reconsider the representation of the petitioners upon granting reasonable opportunity of hearing to the petitioners, in accordance with law.

In view of the above, the order impugned passed on 18<sup>th</sup> January, 2023 is set aside. The writ petition is disposed of directing the 3<sup>rd</sup> respondent to reconsider the representation submitted by the petitioners dated 29<sup>th</sup> December, 2022 within a fortnight from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioners, in accordance with law.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.

With the aforesaid directions, WPA 1845 of 2023 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

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

**(Suvra Ghosh, J.)**