

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

WPA 516 OF 2023

28 12.4.2023
Sc Ct. no.2

Mrs. Sumana Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Arnab Saha

.... For the Petitioner

Mr. Bikramaditya Ghosh

Mr. Pretom Das.

.... For the State

Mr. Sourav Ganguly

.... For the Respondent
No.8

Affidavit-of-service, filed in Court today, is taken on record.

This writ petition has been filed by the mother of one allegedly partially disabled son suffering from about 90% loss of visibility. The dispute canvassed in this writ petition was really a matrimonial dispute between the son of the petitioner, viz. Abhishek Sarkar and the private respondent no.9, the husband and wife.

Drawing attention to a document dated **January 31, 2023, Annexure – P12 at page 59 to the writ petition**, Mr. Arnab Saha, learned counsel appearing for the petitioner submitted that, they applied before the **respondent no.4** but the said application had not yet received any consideration.

Drawing attention to a document, ***Annexure – P9 at page 44 to the writ petition***, Mr. Arnab Saha, learned counsel appearing for the petitioner also submitted that, they applied before the ***Sub-Divisional Executive Magistrate, The Siliguri Sub-Divisional Office, respondent no.5*** herein but the said application had not yet received any consideration.

Drawing attention to this Court to the provisions laid down under Sections 6 and 7 of ***The Rights of Persons with Disabilities Act, 2016***, learned counsel for the petitioner submitted that, under sub-Section (3) to Section 7 of the said Act the jurisdictional Executive Magistrate, the respondent no.5 herein on receipt of such information shall take immediate steps to stop or prevent the occurrence of any abuse, violence or exploitation over the sufferer. He submitted that, in the light of the said provisions the son of the petitioner must get attention of the appropriate authority under the said Act for redressal of his grievance.

Mr. Sourav Ganguly, learned counsel appearing for the respondent no.8 submitted that, all possible steps and attempts were ventured by the relevant Family Counseling Centre to resolve the dispute between the son of the petitioner and

the respondent no.9. However, for diverse reasons, the same had failed. The relevant Family Counseling Centre cannot do anything further on this issue.

Mr. Bikramaditya Ghosh, learned State counsel appeared in the matter and submitted that, this is purely a matrimonial dispute on which none of the provisions of the said Act shall apply and the State authority cannot act by invoking any provisions of the Act on the said issue. He further submitted that, regarding the complaint lodged by the son of the petitioner and/or his behalf against the respondent no.9, the jurisdictional police authority had taken care of by registering the necessary police case being ***Bhaktingar Police Station Case No.1338 of 2022 dated 15th December, 2022 and the necessary chargesheet has also been issued.*** The police authority are proceeding on the issue in accordance with law.

After considering the submissions made on behalf of the appearing parties and on perusal of the materials on record, to subserve justice, the ***respondent no.5*** is directed to consider the representation/application submitted by the petitioner being the mother of the said Abhishek Sarkar, the alleged sufferer, ***Annexure – P9 at page 44 to the writ petition,*** upon giving an

opportunity of hearing to the said Abhishek Sarkar who may be accompanied by his mother, the petitioner herein and the respondent no.9 and shall decide the issue with a reasoned order in accordance with law.

It is made clear that, this court has not gone into the merits of the claim or the rival claims of the parties, as recorded above. The said Abhishek Sarkar and the respondent no.9 shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records they wish to rely upon before the respondent no.5.

The **respondent no.5** shall also be at liberty to decide the issue whether in the facts and circumstances of this case the said provisions of ***The Rights of Persons with Disabilities Act, 2016*** shall be applicable or not but with reasons. The **respondent no.5** shall decide the issue and pass its reasoned order strictly in accordance with law.

The **respondent no.5** shall carry out and complete the entire exercise, as directed above, positively within a period of **six weeks** from the date of communication of this order and shall communicate its reasoned order to the petitioner and the respondent no.9 positively within a period

of ***one week*** from the date of the said reasoned order to be passed.

On the above terms, this writ petition, ***WPA 516 of 2023*** stands disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)