

D/L.4.
April 15, 2024.
MNS.

WPA No. 17668 of 2023

Sri Tapan Kar
Vs.
The State of West Bengal and others

Mr. Debabrata Sen,
Mr. Amal Krishan Samanta,
Mr. Arun Kumar Das

... for the petitioner.

Sk. Md. Galib,
Ms. Jyotsna Roy Mukherjee

...for the respondents.

1. Affidavit-in-opposition of the respondent no. 6 and affidavit-in-reply of the petitioner filed in Court today be kept on record.
2. Elaborate bills have been annexed to the affidavit-in-reply by the petitioner to substantiate the petitioner's claims of hiring charges for ambulances and staff cars supplied to the respondent authorities.
3. Learned counsel for the State disputes that the Chief Medical Officer of Health (CMOH) is the paying authority. It is submitted that since the hospitals-in-question and the work done is attached to the Superintendent, Haldia Sub-Divisional Hospital, it is the said authority who is to pay the amounts to the petitioner.
4. However, it is argued that upon a detailed scrutiny of the bills produced by the petitioner,

the respondent authorities came to a conclusion at two different hierarchical levels that the petitioner has not substantiated his claims properly to entitle him to the payment of the alleged dues.

5. It is evident from the purported decisions of the respondent authorities taken against the petitioner, as annexed to the affidavit-in-opposition of the respondent no. 6, that those were taken without prior notice of hearing being given to the petitioner. Hence, such unilateral decision is itself palpably vitiated for contravention of the basic tenet of natural justice - *audi alteram partem*.
6. A dispute arises as the CMOH disowns the liability to make the payment, as it is submitted that the Superintendent is to make the payment upon getting the allotment of the funds from the Additional Director (AA & V) Section.
7. There is substance in such contention of the State, as it appears from Annexure P11 at page 37 of the writ petition itself that the Superintendent had communicated to the Additional Director (AA & V), Health & Family Welfare, Government of West Bengal regarding the hiring charges bills for ambulances and staff cars, which are pending

from February, 2019 till date. The liability documentation was also given by way of a chart in the said communication.

8. Learned counsel for the petitioners places reliance on the said communication and argues that in view of the Superintendent having asked for payment of the said bills, there cannot be any further impediment in paying the amounts to the petitioner.
9. However, certain disputes regarding the petitioner's entitlement have been raised by the respondents, which are beyond the pale of the writ court to decide since evidence is to be adduced to ascertain the veracity of such defence by the respondents. Although the Superintendent has sent the liability documentation, the same could not said to have been a final and conclusive admission of the claim of the petitioner, particularly in view of categorical disputes raised by the respondents.
10. Since such disputed questions have arisen, it is for the respondent authorities to assess the bills afresh by revisiting the issues upon giving an opportunity of hearing to the petitioner and an opportunity also to explain his bills.
11. Since no such opportunity was given while taking the decisions by the respondent

authorities to refuse such payment to the petitioner, all action taken by the respondents, including the decisions to refute the payment of the petitioner unilaterally, are hereby set aside.

12.WPA No. 17668 of 2023 is disposed of by directing the respondent no. 6 to ensure that a fresh hearing is given to the petitioner, granting opportunity to the petitioner to substantiate the bills raised by the petitioner for supply of ambulances and staff cars to the respondent no. 6.

13.Upon such hearing being given, the respondent no. 6, by himself or through the enquiry committee appointed for such purpose, shall take a decision on the veracity of the claims of the petitioner. Such entire exercise shall be concluded within an outer limit of six weeks from date. Immediately after such conclusion, the outcome of the consideration shall be communicated to the petitioner.

14.The amount, if any admitted after such hearing, shall be remitted in favour of the petitioner within a fortnight thereafter. In such case, it will be open to the petitioner to challenge the non-admitted amount before the appropriate forum.

15. In the event the entire claim of the petitioner is refuted, it will be open to the petitioner to challenge the said order and make the petitioner's claim before a competent civil court.

16. If such an approach is made by the petitioner, the concerned Civil Court shall decide all the issues in accordance with law without being influenced in any manner by any of the observations made herein.

17. There will be no order as to costs.

18. 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.)