

17.09.2025
Item No.03
Court No.11
Avijit Mitra

WPA (H) 56 of 2025

Sanjoy Krishna Paul

-versus-

The State of West Bengal & ors.

Mr. Sagnik Mukherjee,
Mr. Ratikanta Pal,
Mr. Alminhaz Karim

....for the petitioner

Mr. Kishore Dutta, Ld. Advocate General,
Mr. Amitabrata Roy, Ld. GP,
Ms. Sumita Shaw,
Mr. Soumen Chatterjee

....for the State

Mr. Rajdeep Mazumder, Ld. D.S.G.

....for the respondent no.2

During infancy and impressionable age, the care and warmth of the parents are required for the welfare of the child. However, in the instant case, two persons have failed to discharge their mutual obligations and are not even agreeable to set right their broken home for the sake of their child, who is presently suffering from hyperactivity and possible autism spectrum traits.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the petitioner married the respondent no.7 on 28th April, 2017 and they were blessed with a male child on 26th July, 2018. However, subsequent thereto, the respondent no.7 left her matrimonial house along with her child. The petitioner was neither apprised of the steps taken towards the

treatment of the child nor was allowed to meet with him. Complaints to that effect were lodged before different authorities but in vain and as such the petitioner was constrained to file the present application.

The respondent no.7 appears in-person and denies and disputes the allegations levelled against her by the petitioner and submits that she is attending to all the medical needs of the child, however, the petitioner is not paying any amount towards such treatment.

Mr. Mazumder, learned Deputy Solicitor General appearing for the respondent no.2 submits that when the said respondent was approached by the petitioner, the complaint was duly forwarded to the concerned District Magistrate with necessary directions. In support of such contention he has drawn our attention to the document annexed at page 81 to the writ petition.

Ms. Shaw, learned advocate appearing for the State respondents submits that the child is presently residing along with his mother at 300/3, Banamali Banerjee Road, Haridevpur, Kolkata-700082 and as such it cannot be argued that the child had been illegally detained.

When the matter last appeared before this Court on 30th July, 2025, it was contended on behalf of the petitioner that he is ready and willing to bear all expenses towards the treatment of his child.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well settled that for determination of the issue of custody of children, it is not the right of the parties but welfare of the children which is of determinative significance. In child custody matters, the ordinary remedy lies only under the Guardians and Wards Act. There are significant differences between the enquiry under Act VIII and the exercise of powers by a Writ Court which is summary in nature. The allegations and counter allegations levelled by the parties need to be examined with reference to evidence.

In view thereof, we are unable to issue directions upon the respondent no.7 to hand over custody of the child to the petitioner moreso when the child is suffering from severe ailments.

However, the respondent no.7 cannot deprive the petitioner of his right to visit his minor child and as such we direct that the petitioner would be at liberty to visit the child on every Monday and Friday of the month during the period from 5.00 p.m. to 7.00 p.m. at the residence of the respondent no.7 and during such visit, the respondent no.7 shall ensure the comfort of the petitioner.

In the event such visitation right is denied to the petitioner, the State authorities shall provide necessary aid to the petitioner.

It is further directed that every month the petitioner shall pay an amount of Rs. 10,000/- every month for the treatment and education of his child to the respondent no.7.

The above directions shall be subject to any order that may be passed in custody proceedings, if initiated before the appropriate forum by the parties. It is also made clear that the competent forum would decide the said proceedings without being influenced by the observations made in this order.

With the above observations and directions, the writ petition being, WPA (H) 56 of 2025 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)