

05 **25.03.
2025**

Ct. No. 28

Ab

WPA 26161 of 2024

Monoranjan Pradhan

Vs.

The State of West Bengal and others.

**Mr. Sayan Banerjee,
Mr. S. Dutta.**

... for the writ petitioner.

**Mr. Anirban Ray,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal.**

... for the State.

The writ petitioner is aggrieved by non-payment of certain sums, which are allegedly due to him in respect of certain works done by him during the COVID, 2019 pandemic.

It has been submitted on behalf of the writ petitioner that the writ petitioner was the owner of an Ambulance, which was used for the purpose of transportation of suspected patients of COVID, during the COVID situation and that the bills pertaining to consumption of fuel and other charges, which have been submitted by the writ petitioner to the respondents from time to time, have not been cleared in full. It has been further submitted that the writ petitioner being aggrieved by the inaction on the part of the respondents in making payment of the dues to the writ petitioner, as aforesaid, the writ petitioner made representations before the authorities concerned. Such representations were not considered and, therefore, the writ petitioner approached this Court by filing WPA 28672 of 2023. The said writ petition was withdrawn by the writ petitioner on May 14, 2024. The order dismissing the writ petition as withdrawn is as follows:

“Petitioner seeks to withdraw the present writ petition.

WPA 28672 of 2023 is dismissed as withdrawn.”

Learned Advocate for the respondent at the very threshold submits that the writ petition is not maintainable because the earlier writ petition was withdrawn without liberty to file a fresh writ petition on the self same cause of action. He further submits that even otherwise a writ petition would not be maintainable in a case of the present nature inasmuch as there are seriously disputed questions of fact involved in it.

Having perused the material on record and having heard the learned Advocates appearing for the respective parties, this Court feels that in view of the law laid down by the Hon’ble Supreme Court in case of **Sarguja Transport Service vs. S.T.A.T.**, reported at **(1987) 1 SCC 5**, this writ petition cannot be entertained. Para 9 of the said report clearly instructs thus:

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

Even otherwise since the writ petitioner's claim is a money claim, a writ remedy would not be the appropriate remedy.

It will, however, be open to the writ petitioner to take recourse to such other remedies as may be available to him including the remedy of a suit before a competent Civil Court in accordance with law. It is needless to mention that in case the writ petitioner institutes a suit in a competent Civil Court, the writ petitioner shall in terms of Section 14 of the Limitation Act, 1963, be entitled to the exclusion of the period during which the two writ petitions being WPA 28672 of 2023 and the present writ petition being WPA 26161 of 2024 remained pending before this Court.

With these observations, WPA 26161 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 parties on priority basis.

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(Om Narayan Rai, J.)

