

63 **26.03.**
2025
Ct. No. 28

Ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27585 of 2024

Santosh Karmakar
Vs.
The State of West Bengal and others.

Mr. Koustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar.

... for the writ petitioner.

Mr. Biswabrata Basu Mallick, Ld. AGP,
Mr. Biman Halder.

... for the State.

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

Leave is sought by the petitioner to add the Additional Director (Personal) Special Secretary, Directorate of Health Service (Health and Family Welfare Department) as party to the writ petition. Such leave is granted.

The writ petitioner seeks quashment of Memo No. OCMOHN/LGLMA-106/7625 dated August 27, 2024 issued by the Chief Medical Officer of Health, North 24-Parganas, wherein it has been recorded that consent had been given by Mr. Santosh Karmakar, husband of Smt. Mousumi Karmakar, in the form of left thumb impression on May 17, 2021 for tubal ligation operation. The said Memo dated August 27, 2024 also refers to an enquiry report based on which the conclusion that consent had been given by Mr. Santosh Karmakar was arrived at.

The petitioner submits that he is literate and that there was neither any occasion nor any reason for him to append his thumb impression in place or stead of his signature. It is his specific submission that it is a case

of forgery and that no consent was ever given by him for tubal ligation operation of his wife. He further submits that no copy of the enquiry report, as indicated in the Memo dated August 27, 2024 was ever supplied to him. It is further submitted on behalf of the petitioner that he has made a representation indicating all his grievances to the Additional Director (Personal) Special Secretary, Directorate of Health Service (Health and Family Welfare Department) on July 11, 2024 (page 33 and 34 of the writ petition), but the said authority has not taken any decision on the said representation as yet.

Learned Advocate for the State respondents submits that it would appear from the Memo dated August 27, 2024 that the petitioner had indeed given his consent and that a copy of the enquiry report had been supplied to the petitioner. He further submits that the issue of putting or appending thumb impression by the petitioner is one, which falls within the domain of disputed questions of fact and the same cannot be gone into by this Court.

This Court is of the view that the writ petition may be disposed of with the following directions.

(a) Firstly, a direction upon the respondents to supply a copy of the enquiry report, even if the same had been supplied earlier, would not prejudice anybody and, as such, the respondents are directed to supply a copy of the enquiry report referred in the Memo dated August 27, 2024 to the petitioner forthwith.

(b) Secondly, the added respondent to the writ petition is directed to take a decision on the representation dated July 11, 2024 made by the petitioner (Annexure-P6 at page 33 -34 thereof) upon giving an opportunity of hearing to the petitioner. The said authority shall be free to devise its own procedure to assess the correctness of the enquiry report, which

has been referred to in the memo dated August 27, 2024 and reach a conclusion thereafter.

The aforesaid exercise will be completed within a period of four weeks from the date of communication of this order.

The writ petition is disposed of with the aforesaid observations.

Since this writ petition is being disposed of by directing the added respondent to decide the petitioner's representation, no opinion is expressed either on the merits of the petitioner's claim or the reliefs prayed for by the writ petitioner in the instant writ petition. Similarly, no opinion is expressed on the respondents stand as well. The Court has not gone into the merits of the case and all points are left open.

Since the respondents have not been called upon to file their Affidavits, the allegation made in the writ petition would be deemed not to have been admitted.

(Om Narayan Rai, J.)