

ASR 29.
Ct. no. 24.
15.1.2025

WPA 28550 of 2024

Sabina Yesmin

Vs.

State of West Bengal & Ors.

**Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das**

....for the petitioner

**Ms. Sonal Sinha
Ms. Ashmita Chakraborty**

....for the State

**Mr. Sagar Bandyopadhyay
Ms. Sona Kar Ghosh**

...for the respondent no. 7

The instant writ petition was preferred by the petitioner with an innocuous prayer that, by an earlier writ petition being no. WPA 21720 of 2023, a coordinate bench of this court has directed District Magistrate, Murshidabad to hear out the parties and to pass a reasoned order.

The reasoned order was passed by the District Magistrate on 16th May, 2024.

It is the case of the petitioner that he received the notice of hearing from the District Magistrate which was fixed on 13th March, 2024. It is the further case of the petitioner that he was admitted to the hospital on 11th March, 2024 and discharge at the evening of 13th

March, 2024. Consequently, he could not appeared before the learned District Magistrate on the fixed date when the matter is called on hearing.

However, he made representation to District Magistrate before passing of the order but his representation was not considered and the District Magistrate has passed impugned order. It is the submission of Mr. Saha Ray, learned Senior counsel appearing on behalf of the petitioner that the matter may be remanded back to any authority to decide the issue afresh in terms of the direction of this court vide W.P.A no. 21720 of 2023.

Mr. Sagar Bandhopadhyya, learned Senior counsel on behalf of the respondent no. 7, raised objection to the fact that the impugned order does not mention that the petitioner was absent. He submits that representative of the petitioner may have present at the time of hearing.

Learned counsel appearing on behalf of the state authority submits that the impugned order passed by the District Magistrate is very specific and on the basis of the materials, documents and report issued by the SCFS concerned.

Having heard learned counsel for the petitioner also considering the document regarding admission and discharge of the petitioner from Government hospital (as it appears from discharge certificate dated

13.03.2024 issued by the Pritimoyee R.H. rural hospital, Tehatta II, Palashipara, Nadia).

It appears that there are reasons to believe that the petitioner was not present at the time of hearing before the Magistrate, when the hearing was taken placed on 13.03.2024. The cause for his absence appears to me sufficient. Considering the circumstances, I think it fit to remand the matter to the District Magistrate with a direction to rehear the matter in presence of the petitioner, private respondent and other concerned officers. Accordingly principle of “audi alteram Partem” one should have given sufficient opportunity of hearing.

Accordingly, the instant writ petition is disposed of with a direction to the District Magistrate is directed to rehear the matter in terms of the order of this court in W.P. 21720 of 2023. The District Magistrate shall hear out the matter in presence of the petitioner, private respondent and others and communicated the order to the petitioner after taking the decision within two weeks thereafter.

The District Magistrate shall complete the above mentioned exercise within eight weeks from the date of communication of this order by the petitioner.

Result thereof, the order impugned, dated 16th May, 2024, is set aside.

As affidavit are not exchanged, allegation made in the writ petition shall be deemed to have been not admitted.

I make it clear that this court has not enter into the merit of this case. District Magistrate is to consider and dispose of the matter, according to the law, without being influenced by any observation made in this order.

[Subhendu Samanta, J]