

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 4553 of 2020

**Asok Kumar Chatterjee
Vs.
The Union of India & Ors.**

Mr. Pratip Kumar Chatterjee,
Mr. Gautam Banerjee,
Ms. Chumki Das Banerjee
... for the petitioner

Ms. Chama Mookherjee,
Ms. Susnita Saha
...for the State-respondents

The petitioner contends that the petitioner's son was a patient of Thalassaemia. While in matrimony with the respondent no. 4, the said son died. During his lifetime, the petitioner's son had had his sperm stored with the St. Stephen Hospital, Tis Hazari, New Delhi. After the demise of the son, the petitioner approached the said hospital for releasing such sperm in favour of the petitioner on the ground that the petitioner is the father of the deceased donor.

The Hospital, in its communication dated January 19, 2019 (Annexure P-7 at page 26 of the writ petition), disclosed, among other things, that the further usage of sperm, that is, for providing pregnancy to the donor' wife, donation to someone else or

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discarding, can be decided only after permission of the patient's wife (marriage proof required).

Upon such intimation, the petitioner urged the respondent no. 4, being the wife of the deceased son, to issue a 'no-objection' to the petitioner for collecting the aforesaid sperm.

Learned counsel appearing for the petitioner submits that the respondent no. 4 did not give any reply to the said communication; rather, it is alleged that, the respondent no. 4 refused to acknowledge the receipt of the said communication.

Learned counsel relies on the parental relationship of the petitioner and the deceased to assert the petitioner's right to collect such sperm, irrespective of the permission of the wife of the deceased. In the alternative, counsel submits, the respondent no. 4 ought to be directed to give her 'no-objection' or, at least, to respond to the request of the petitioner.

However, the petitioner's prayers have to be refused on both counts.

As far as the alleged right of the petitioner to collect such preserved sperm of his son, contrary to the arguments advanced by counsel, the petitioner does not have any 'fundamental right' to such permission, merely by dint of his father-son relationship with the deceased. The sperm preserved at the St. Stephen Hospital belonged to the deceased and, since the

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deceased was in matrimonial relationship with the respondent no. 4 at the juncture of his demise, the only other person, apart from the deceased, having any right to it is his wife, that is, the respondent no. 4. The father-son relationship of the petitioner and the deceased does not entail any such right of the petitioner to the progeny of his son. As such, the right espoused by the petitioner for himself is illusory and non-existent.

As far as the prayer for a direction upon the respondent no. 4 to respond to the petitioner's communication is concerned, the same is beyond the scope of the writ court, since the matter does not involve any violation of fundamental or statutory right, nor does the respondent no. 4 come within the definition of 'State' as envisaged under Article 12 of the Constitution of India.

Hence, the writ petition is not maintainable on such score either.

Accordingly, W.P.A. No. 4553 of 2020 is dismissed.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

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