

**(2021) 06 CAL CK 0089**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 225 Of 2021**

Nilanjana Ghosal

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

**Date of Decision :** 30-06-2021

**Acts Referred:**

Guardians And Wards Act, 1890 — Section 9, 39

**Citation :** (2021) 06 CAL CK 0089

**Hon'ble Judges :** Shivakant Prasad, J

**Bench :** Single Bench

**Advocate :** Saurabh Guhathakurata, Rituparna Ghosh, Sourav Sardar, Uday Sankar Chattopadhyay, Suman Sankar Chatterjee, Pronoy Basak, Arindam Sen, Amitesh Banerjee, Ipsita Banerjee

## Judgement

In compliance of this Court's order dated 22nd June, 2021 the State Legal Services Authority has submitted report. The report reflects that by

following the principles laid down in Clause 9 of NALSA (Child Friendly Legal Services to Children and Their Protection) Scheme, 2015. The authority

had taken necessary action in the interest and welfare of the son of the writ petitioner.

On 14.5.2021 the State Legal Services Authority, West Bengal received an e-mail from Sabyasachi Bhattacharjee attaching a hand written letter from

Sri Sagnic Bhattacharjee wherein the child had made several serious allegations against his mother and her friend Vivek Gupta.

On 17.5.2021 the said authority received an e-mail from CWC, Kolkata wherein it was stated that based on the appeal of Sri Sagnic Bhattacharjee,

CWC, Kolkata has initiated the process and will do the needful.

On 4.6.2021 the State Legal Services Authority, West Bengal an e-mail from Sri

Sabyasachi Bhattacharjee was received stating that the CWC

Official had went to his ex-wife's house to collect the information for making a report but could not enquire into the matter properly owing to the

non-co-operation of his ex-wife and being worried about the safety and security about his son Sagnic, he requested the State Legal Services Authority,

West Bengal to look into the matter. On receipt of this e-mail the Registrar cum Deputy Secretary, State Legal Services Authority, West Bengal

forwarded the mail to CWC, Kolkata for taking appropriate steps in accordance with law and a report was called for from CWC, Kolkata on or

before 07.06.2021. But no report was received from CWC, Kolkata till date.

However, the State Legal Services Authority, West Bengal has received certain e-mails from Sri Sabyasachi Bhattacharjee enclosing copy of divorce

decree and other documents and appealed for school admission of his son Sagnic Bhattacharjee on the ground that while he was in the custody of his

mother, his education was discontinued after completing 5th standard in the year 2018 and presently Sagnic Bhattacharjee is school dropout. So, the

State Legal Services Authority, West Bengal in the obligation to follow the principles laid down in Clause 9 of NALSA (Child Friendly Legal Services

to Children and their Protection) Scheme, 2015 took steps for his safe home. Report be kept on record.

It would appear that adhering to the guidelines under the Clause 9 of the Scheme 2015 and for the best interest and welfare of the child, to ensure the

dignity of the child and for the safety of the child, the Authority has suitably taken steps to keep Sagnic Bhattacharjee in a safe home so that he is not

subjected to any home abuse and neglect.

A photo copy of the hand written complaint of Sagnic Bhattacharjee has been supplied to the learned counsel for the petitioner and shown to the writ

petitioner being the mother of the said Sagnic Bhattacharjee present in Court to verify whether the writing appearing in the complaint is that of her

son. The petitioner has raised a doubt in respect of hand written complaint with contention that it is all done at the instance of her ex-husband to get

the custody of the child. Learned counsel for the petitioner submits that the custody of the child in shelter home and action taken by the Authority

concerned is not in accordance with the provision of Section 39 of Guardians and Wards Act, 1890 which provides for removal of guardian. The

petitioner has disputed allegation of harassment to her son as leveled against her. The Court which can deal with removal of a guardian declared by

the Court appointed in terms of the order of mutual divorce. It is submitted that the petitioner was given the custody of the child in terms of the mutual

decree of divorce and for the reason of ill-treatment or neglect to take proper care of the child, if allegation so made, the ex-husband of the petitioner

could apply before the District Court for custody of the her son because the father of the son ought to have made an application for such removal of

the guardian mother under Section 9 of the Guardians and Wards Act, 1890 as the father and mother both being natural guardians are alive ergo, there

is no justification for keeping the child in a safe home.

Learned counsel for the petitioner has relied on a unreported decision in Dr. Sharmistha Kar Purokayastha Vs. State of West Bengal & Ors. dated

02.11.2010 based in WP No. 21904(W) of 2020 which was also a case pertaining the substantial allegation that petitioner mother of the child was ill-

treating the child and as a result the child was severely shocked and pained.

It would appear that the allegation of torture meted out to the child is required to be ascertained as the petitioner has denied the written complaint

having been written in the hand writing and signature of her son.

Mr. Uday Sankar Chattopadhyay learned Advocate for the ex-husband of the petitioner submits to implead the father of the child as respondent in the

writ application such prayer is allowed for just and fair decision since, the welfare of the child is paramount consideration for the custody of the child.

Mr. Banerjee, Senior learned counsel for the State respondent is requested to do the needful in the matter of safe production of the son of the

petitioner before this Court to ascertain the real allegation.

Let the matter appearing on 2nd July, 2021.