

**13.10.2023**

**Sl. No. 21**

Court no.2

**BM**

**CALCUTTA HIGH COURT  
In the Circuit Bench at Jalpaiguri  
Appellate Side**

**WPA 704 of 2023**

**+**

**IA No.: CAN 1 of 2023**

**Papiya Saha**

**vs.**

**Siliguri Municipal Corporation & Ors.**

Mr. Avrojoyti Das

Ms. Pratusha Dutta Chowdhury

Mr. Rajdeep Das

... for the petitioner

Mr. Raja Saha

Mr. Subham Chanda

... for the SJDA

Mr. Subir Kumar Saha

Mr. Bedashruti Bose

... for the State

Mr. Deborshi Dhar

... for Siliguri Municipal Corporation

Affidavit of service filed be kept with the record.

Learned counsel for the petitioner and the  
learned counsel for the respondents are present.

IA No.: CAN 1 of 2023 is moved by the learned  
counsel for the respondent nos.10 and 11 praying for  
necessary action on the reasoned order dated  
05.11.2023 vide memo No.36/SMC/Com passed by the  
Commissioner of the Siliguri Municipal Corporation as

directed by a Division Bench of this court in MAT 151 of 2023 vide order dated 19.09.2023.

From paragraph 18 of the said order, it is evident that the court had directed the Siliguri Municipal Corporation to give a fresh opportunity of hearing to all the parties connected to the writ petition and decide the matter regarding issuance of licence and called for a report accordingly.

Admittedly, the above reasoned order was in compliance to the direction of the Division Bench.

The petitioner has submitted before this court along with supporting documents to show that the copy of notice dated 22.09.2023 directing the parties to appear for hearing was on 27.09.2021 at 1 PM before the office of the Commissioner, Siliguri Municipal Corporation along with relevant documents.

Learned counsel for the petitioner has filed a copy of the track report in respect of the said notice sent through Speed Post from which it is clear that the notice was received by the petitioner at 16.46.31 hours on 27.09.2023, well after the time for hearing had passed.

**It is submitted by the petitioner that as such there was no way that the petitioner could be present at the time of hearing.**

On perusal of the reasoned order dated 05.10.2023 of the Commissioner, Siliguri Municipal

Corporation, it appears that the Commissioner has categorically noted as follows :-

*“ Pursuant to the order dated 19.09.2023 passed by the Hon’ble High Court in MAT 151 of 2023 an opportunity of hearing is given to all the necessary parties on 27.09.2023. **Be it mentioned herein that at the time of hearing Sri Sanjib Saha was present but despite service of notice upon Papiya Saha, neither she nor any person on her behalf appeared for the hearing.**”*

As such, it is apparent that only the respondent no.10 has been heard in the said matter, though the service in the said case was not due service.

**Considering the said circumstance, the reasoned order being Memo No.36/SMC/Com of the Commissioner, Siliguri Municipal Corporation, is set aside.**

In view of the liberty granted by the Hon’ble Division Bench at paragraph 19 of the order, it is directed that the Commissioner, Siliguri Municipal Corporation shall fix a fresh date of hearing and follow all formalities diligently as to service and conduct and otherwise a fresh hearing in presence of all the parties and pass a reasoned order in accordance with law. The same to be completed by 30<sup>th</sup> November, 2023.

IA No.: CAN 1 of 2023 accordingly disposed of.

Matter to appear in the monthly list of December, 2023.

**( Shampa Dutt (Paul), J. )**