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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1796 of 2021

With

CAN 1 of 2021

(Via Video Conference)

Moumita Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Debasish Banerjee

... For the petitioner.

Mr. Samrat Sen,

Ms. Sutapa Sanyal

... For the State.

Mr. Pradyumna Sinha

.... For the applicant in CAN 1 of 2021

The petitioner claims to be the sole proprietrix of M/s. K. G. Medicare (Mulit Speciality Hospital), situated at Hospital Road, Harishan Dighi Market Complex, Paschim Medinipur, 721101, (hereinafter referred to as the said hospital) which entered into a partnership with Dishari Health Point Private Limited (in short, 'Dishari'). The petitioner says that 'Dishari' is a strategic partner and a partnership deed was executed by and between the petitioner and the said 'Dishari'. The petitioner applied for renewal of licence to operate the said hospital on 28th June, 2020 under the provision of Clinical Establishment Act, 1950. The registration and licence was, however, rejected in view of objection raised by 'Dishari' and other non-compliance. By a letter dated 7th January, 2021 the Chief

Medical Officer of Health, Paschim Medinipur, directed suspension of operation of the said hospital from 15th January, 2021. This letter has been challenged in the writ petition. It also appears that by a letter dated 2nd November, 2020 addressed to the Chief Medical Officer of Health (CMOH), Paschim Medinipur, the petitioner informed the said CMOH that the deed of partnership entered between M/s. K. G. Medicare and Mr. Pritam Sarkar and others which according to the petitioner is a previous partnership deed stands cancelled and infructuous. The petitioner now seeks appropriate registration and licence to operate the hospital under the name and style M/s. K. G. Medicare, Super Speciality Hospital as a full-fledged Covid hospital and prays for renewal of licence and registration.

Although 'Dishari' is not a party to the proceeding, it is submitted on behalf of Dishari that an application for addition of party, being CAN 1 of 2021 is pending.

Be that as it may, it is clear that there are *inter se* disputes between the partners i.e. the petitioner and the said Dishari. It is also admitted by the petitioner that she had entered into partnership of 'Dishari'. In this backdrop any mandatory order for renewal of licence to operate cannot be passed in favour of the petitioner or in the name of the said hospital under the Clinical Establishment Act, 1950, to allow the petitioner to operate the hospital as a Covid hospital. The disputes *inter se* between the petitioner and

the 'Dishari' appears to be such that there can be no amicable resolution of the same at this stage to enable operation of the hospital by renewing the licence. Serious disputed questions of fact encircling the respective rights of the partners under the partnership deed are in issue which unless resolved gives no room for renewal of the licence even taking into consideration the present situation.

In these facts and circumstances, the writ petition is not maintainable inasmuch as the renewal of licence or registration under the Clinical Establishment Act, 1950 can only be processed if the partners are *ad idem* on the issue of renewal of licence and operation of the said hospital.

The writ petition is, thus, dismissed along with the connected application, being CAN 1 of 2021 without any order as to costs.

The dismissal of the writ petition will, however, not prevent the parties from jointly applying before the State for the said hospital being run and operated as a Covid hospital exclusively by the State and not by any of the individual partners. I am told that the hospital building is situated on a leasehold property of the local municipality and it is ready in all respects for being operated as an exclusive Covid hospital even though it is not in operation since 15th January, 2021. The State can also make an endeavour to operate such hospital as a Covid hospital with

the co-operation of the parties in this hour of crisis, owing to the pandemic.

Since I have not called for any affidavits, the allegations contained in the writ petition and the connected application are deemed to have not been accepted by the adversary.

(Arindam Mukherjee, J.)