

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

MAT 726 of 2021
With
IA CAN 1 2021

(Through Video Conference)

Reserved on: 10.11.2021
Pronounced on: 16.11.2021

M/s. EMGEE @ EMGEE Ashutosh Nurshing Home

...Appellant

-Vs-

Mihir Kumar Banerjee & Ors.

...Respondents

Present:-

Mr. Goutam Chakraborty,
Mr. Debasish Sarkar,
Mr. Kartick Kumar Roy, Advocates
... for the appellants.

Mr. Atarup Banerjee,
Md. Golam Nure Imrohi, Advocates
... for the respondent no. 8

Mr. Amar Nath Sen,
Mr. Malay Dhar,
Mr. Pranab Kumar Ghosh, Advocates
... for the respondent nos. 1 and 2

Ms. Chaitali Bhattacharya,
Ms. Sanjukta Samanta, Advocates
... for the State.

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the order of the learned
Single Judge dated 12.07.2021 whereby WPA No. 10741 of 2021 has

been dismissed taking note of the fact that the writ petitioner has a remedy before the West Bengal Clinical Establishment Regulatory Commission and restraining the appellant from admitting any patient for treatment of covid 19 or any other purpose other than maternity and child care. The respondent Nos. 1 and 2 herein had filed the writ petition making certain allegations against the appellant's nursing home in respect of violation of norms and admitting covid patients without specific permission.

2. So far as the restriction imposed by the learned Single Judge about treatment of patients is concerned, there is a consensus between the counsel for the parties that the appellant is entitled for treatment in accordance with the licence issued under the West Bengal Clinical Establishments Act. Hence, the restriction imposed by the learned Single Judge upon the appellant in respect of admitting patient for treatment for any purpose other than maternity or child care is modified and the appellant is permitted to admit patients for treatment as permitted by the licence issued to it.

3. So far as the argument raised by the appellant that the remedy under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 is not available. We have examined the provisions of the Act and the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Rules, 2017 (referred as Rules). Having regard to the provisions contained in Section 38 of the Act and considering that the breach of Rules 5, 21 and requirement of Schedule IV of the Rules is alleged by the writ petitioner, we are of the opinion that no error has been committed by the learned Single Judge in reaching to the conclusion that the

Commission may go into the complaint/representation of the writ petitioner and pass suitable orders.

4. Thus we dispose of the appeal with the limited modification of the order of the learned Single Judge as indicated above.

5. No costs.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
16.11.2021

PA(SS)