

07.10.2021.
Item No. 18.
Court No.13
ap

**W.P.A. No. 16985 of 2021
(Through Video Conference)**

**Ganesh Gon
Versus
The State of West Bengal & Ors.**

Mr. Siddhartha Banerjee,
Mr. Supratim Dhar,
Mr. Kunal Ganguly,
Mr. Dhananjay Nayak.

..For the petitioner.

Mr. Amitesh Banerjee, Id. Sr. Standing Counsel,
Mr. Tarak Karan.

...For the State.

Affidavit-of-service filed in Court today be taken
on record.

The writ petitioner is aggrieved by an order
dated 4th August, 2021 passed by the Chief Medical
Officer of Health, Howrah directing the Life Care
Nursing Home to shut shop.

The Chief Medical Officer of Health, Howrah
found that the licence of the establishment had
expired on 22nd November, 2020.

It is submitted that the matter of expiry of
licence had evaded the attention of the Authority. It is
further submitted that the matter becomes all the
more murkier in view of certain other facts.

By an order dated 26th July, 2021 passed in
Case Reference No. INT/HOW/2021/319 (Mr.
Rameswar Biswas – Vs. – Life Care Nursing Home,
Howrah), the West Bengal Clinical Establishment

Regulatory Commission directed the Chief Medical Officer of Health, Howrah to look into the allegations that the Nursing Home had engaged personnel as Doctors, who did not possess any Medical Degrees. Certain Homoeopath Doctors, who have been passed off as Allopathic Doctors also issued death certificates in respect of a patient treated by Allopathic Medicine.

Prima facie finding irregularities committed, the Commission directed the Chief Medical Officer of Health, Howrah to look into the affairs of the petitioner and submit a report. The petitioner was, however, restrained from admitting any further patient. The existing patients in the Hospital were required to be treated by Allopathic Doctors.

The Chief Medical Officer of Health, Howrah in course of investigation and enquiry, found that the petitioner's licence had expired on 22nd November, 2020. The aforesaid fact appears to have been suppressed from the Commission.

It is submitted by the Counsel for the petitioner that an application for renewal has been filed during the pendency of the proceeding before the Commission. The factum of such application also does not appear to have been informed to the Commission.

Apart from committing gross impropriety and suppression of facts before the Commission, the

petitioner also appears to have committed the illegalities complained before the Commission.

This Court is, therefore, not inclined to interfere with the order dated 4th August, 2021 notwithstanding the submissions made by the Counsel for the petitioner that the order of closure impugned is in violation of Section 21 of the West Bengal Clinical Establishment Act, 2017, particularly under Section 21(b) thereof.

It is argued by the Counsel for the petitioner that Section 21 of the Act of 2017 conceived of a show-cause to be issued to the petitioner first and the petitioner getting an opportunity to rely before any final order is passed.

It is now well-settled that even on a prima facie finding of gross illegality by an organization engaged in essential services like a Medical Establishment, interim orders of closure and stoppage of function may be passed. The said order would be necessary to prevent further illegality and impropriety.

In the instant case, this Court finds that the Chief Medical Officer of Health, Howrah has not committed any illegality in ordering the Establishment to forthwith close down.

The patients already admitted into the CE shall be dealt with in the manner as already specified by the Ld. Commission.

The report as directed by the Commission shall be furnished by the Chief Medical Officer of Health, Howrah and the proceeding before the Commission shall go on in accordance with law. The Commission shall also be entitled to, in terms of the Statute, determine the questions relating to penalties and other punishment as provided for under the Statute.

The Commission also shall be entitled to entertain any other prayers of the petitioner, if available under the Statute and at in its sole discretion notwithstanding such Statute.

With the aforesaid observations, the instant writ petition shall stand dismissed with costs assessed at Rs.21,000/- (Rupees twenty one thousand only) payable by the writ petitioner to the Department of Health, Government of West Bengal.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)