

**MAT 1182 of 2021
With
CAN 1 of 2021**

**Ganesh Gon
Vs.
The State of West Bengal & Ors.
(Through Video Conference)**

Mr. Kishore Datta, Sr. Advocate
Mr. Supratim Dhar
Mr. Kunal Ganguly

... ... for the appellant

Mr. Amitesh Banerjee, Sr. Advocate
Mr. Tarak Karan

... ... for the State

The appeal is directed against the order of the learned Single Judge dated 7th October, 2021 whereby WPA 16985 of 2021 has been dismissed with costs.

It is pointed out by the learned counsel for the appellant that the appellant is running a nursing home and that the writ petition was filed by the appellant challenging the show cause notice-cum-closer notice dated 4th August, 2021 and the learned Single Judge without proper consideration and without appreciating the correct position has erroneously dismissed the writ petition with costs.

Learned counsel has pointed out that so far as the licensing authority is concerned, under section 21 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 CMOH, licensing authority, has the power only to pass the prohibitory order and in terms of section 21(5) of the Act the said

prohibitory order is required to be renewed within six months by compliance of the conditions.

He has further submitted that the power of closer lies with the Commission under section 33(3) of the Act and that the impugned action has been taken against the appellant because he was operating even after expiry of the licence but in terms of section 19(1)(b) of the Act the renewal of the licence after the expiry is otherwise mandatory.

Learned counsel has further submitted that in response to the impugned show cause notice dated 4th August, 2021 the appellant had filed reply but no final order has been passed till now.

Learned counsel for the State fairly submits that there is nothing on record to show that the appellant had applied for renewal of the licence and that the respondents have no objection in considering the reply of the appellant within a time bound period and pass an order on the impugned show cause notice and also on any application for renewal of licence, if filed.

Having examined the matter, we are of the opinion that since the reply to the show cause notice dated 4th August, 2021 has already been filed, therefore, the licensing authority is now required to consider the entire issue including the issue of power and jurisdiction of the licensing authority to pass the order of closer under the Act. The application for renewal of licence, if already filed

or file in the meanwhile, is also required to be decided by the competent authority in accordance with law.

In the facts of the case we do not find any proper justification in imposing of costs while dismissing the writ petition by the learned Single Judge.

Hence, we set aside the impugned order of the learned Single Judge in respect of the imposition of costs and direct the competent authority to take an appropriate decision in respect of the closer/prohibition in pursuance to the show cause notice dated 4th August, 2021 within a period of four weeks from the date of receipt of the copy of this order. If any application for renewal of licence is filed the same may also be decided within the same period.

MAT 1182 of 2021 along with CAN 1 of 2021 is disposed of.

Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)