

20th July,
2022
(AK)
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W.P.A 15668 of 2022

Lila Hospitals Private Limited
Vs.
State of West Bengal and others

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani
...for the petitioner.

Mr. Avik Ghatak
Ms. Afreen Begum
...for the respondent nos.2 & 3.

Mr. Amal Kr. Sen
Mr. Jaladhi Das
...for the State.

The petitioner has prayed for setting aside of an order dated 19.02.2021 passed by the office of the West Bengal Clinical Establishment Regulatory Commission. The impugned order was passed on a complaint made by the father of the deceased patient who was admitted to the petitioner-Hospital. The type of complaint was negligent treatment. The complaint was made both against the petitioner-Hospital and the attending medical professional.

By the impugned order, the petitioner-Hospital was made liable for the imposed penalty of Rs. 3 lacs as an interim measure and the petitioner was directed to transfer the amount to the account of the child of the deceased within two weeks from date. The impugned order further gave liberty to the complainant to approach

the Commission for final compensation if the complainant succeeded before the West Bengal Medical Council.

The issue in the present writ petition is whether the impugned order complied with the relevant provisions of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. The Commission has been given wide powers under the said Act to regulate its own procedure and not be bound by the procedure laid down in The Code of Civil Procedure, 1908. Section 44(2) gives the Commission the same powers as that of a civil court.

The documents annexed to the present writ petition start with the complaint filed on 08.10.2020 followed by the reply of the petitioner on 24.11.2020. The only other document is the impugned order.

The impugned order passed by the Commission indicates that the Chairperson and the four other expert doctors merely narrated the facts leading to the unfortunate death of the daughter of the petitioner. The narration concludes with the opinion of the experts to the effect that had the complication being detected on time, the life of the patient could have been saved by appropriate measures. The imposition of penalty follows immediately thereafter.

As in all adjudication which culminates in an order, there must be a bridge between the facts and the conclusion. The bridge, in essence, is the body of reasons which leads to the conclusion. This court has been unable to find any such bridge or link between the facts

and the penalty. Giving of reasons is essential in all matters but is non-negotiable where the result is punitive against a particular person or entity. The person who is at the receiving end of the direction/order must know the reasons for which the penalty has been imposed. Section 44(1) of the Act mandates that the Commission shall be guided by the principles of natural justice and discharge its functions under the enabling powers vested in a civil court (44)(2). Read together, the legislative intent mandates that the Commission upholds the parties' right to a fair hearing before taking a decision.

Section 32 contains certain guidelines which the Commission shall have regard to in the matter of assessment of the quantum of penalty. The five guidelines make it evident that the Commission has to consider the factors for assessing the quantum of penalty.

The Commission has also fallen short on this account as well since the penalty of Rs.3 lacs has been imposed without any reference to the guidelines or any reflection of the same in the impugned order. There is also no basis for the compensation awarded. Section 33 of the Act provides for Clauses of compensation giving rise to the presumption that reasons must be given for awarding one class of compensation to the exclusion of the other. The impugned order is cryptic and does not reflect consideration of the relevant provisions of the governing statute.

Admittedly, the petitioner was not given a chance to resort to the enabling provisions of Section 44(2) in

being given an opportunity to provide evidence in support of its contentions or cross-examine the opponent. This was necessary since the petitioner had refuted the complaint.

This court is hence of the view that the impugned order passed by the Commission cannot be sustained under the provisions of the 2017 Act or the Regulations framed thereunder 2017.

The impugned order is set aside for the above reasons. The Commission shall be at liberty to call for affidavits or other corroborative evidence from the petitioner and the complainant. The Commission is directed to pass a fresh order upon hearing the parties. The Commission shall endeavour to complete the hearing and pass the order within six weeks from the date of communication of this order. The petitioner and the concerned respondents shall file their respective affidavits within two weeks from date.

WPA 15668 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)