

21.09.2022

**MAT 1420 of 2022
With
CAN 1 of 2022**

**Sri Palash Goswami
Vs.
The State of West Bengal & Ors.**

Ms. Sanghamitra Nandi

... ... for the appellant

Mr. Santanu Kumar Mitra

Mr. Mirza Kamruddin

... ... for the State

By this intra-court appeal writ petitioner has challenged the order dated 3rd August, 2022 whereby learned Single Judge has disposed of the WPA 8051 of 2022 expressing that the appellant's prayer for compensation against the NRS Medical College and Hospital cannot be granted in the writ petition in the present form.

Record reflects that the writ petitioner had approached the Writ Court with the plea that the writ petitioner's wife Smt. Rita Goswami was admitted in the NRS Medical College and Hospital and after the treatment she had expired on 26th April, 2021. Hence in the writ petition a prayer was made to command the respondents to complete the enquiry proceedings which were already initiated and submit the report before the competent authority and to take appropriate steps to punish the doctors and staff of NRS Medical College and Hospital if they are found to be negligent and also to grant

compensation to the appellant for untimely death of his wife.

Record further reflects that the respondents had filed a report in the form of affidavit as per the direction of the learned Single Judge and had disclosed that the enquiry Committee was constituted to inquire into the allegation of medical negligence in respect of the death of the appellant's wife and that the said enquiry Committee had submitted the report on 7th January, 2022. A copy of the enquiry report was placed on record as Annexure R-1. Appellant had also filed exception to the report.

Learned Single Judge has duly examined the report and the exception and has reached to the conclusion that the compensation as claimed by the appellant against the NRS Medical College and Hospital cannot be granted in the writ petition in the present form.

For claiming the compensation the appellant is first required to establish the medical negligence and thereafter on the basis of the findings so recorded the quantum of compensation can be determined. For establishing medical negligence appellant is required to produce all the relevant documents and prove it. As the same was lacking in the writ petition and while exercising the jurisdiction under Article 226 of the Constitution the Court normally refrains from entering into the field of factual controversy, therefore the learned Single Judge has not committed any error in refusing to go into the

issue of compensation in the writ petition on the basis of pleadings and materials placed before her in the writ petition. If the appellant wishes to challenge the findings of enquiry report, liberty has also been granted to do so by filing separate petition.

Thus, we find no error in the order of the learned Single Judge and no case for interference is made out in this appeal which is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)