

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

08.12.2022
Sl. No.145(DL)
srm

W.P.A. No. 3279 of 2022

Hotel Monarch Aachal

Versus

The State of West Bengal & Ors.

Mr. Joyjit Choudhury,
Mr. Ajay Singhal

...for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

...for the State-respondents.

Affidavit-of-service is taken on record.

The only dispute to be decided in this proceeding is whether a sum of Rs.1,82,58,022/- is still due and payable to the petitioner. The petitioner-hotel was requisitioned by the Health Department to accommodate the doctors and nurses during the lockdown. The agreed rate for such payment @ was Rs.2,000/- per person, per day. Such rate was fixed following the Health Department's instructions dated August 7, 2020.

The petitioner submits that only an amount of Rs.51,15,706/- had been paid, which was far below the

amount billed by the petitioner. It is stated that the amount, which was paid by the authorities, was for a limited period and not for the entire period. The hotel was de-requisitioned. In spite of such de-requisition, it is submitted that the hotel was continuously used by the doctors and nurses on a request made by the Chief Medical Officer of Health, Darjeeling. The order of de-requisition was issued on July 24, 2020. The effective date of such de-requisition was July 30, 2020. Learned Counsel for the petitioner urges that even after the hotel was de-requisitioned by the government, the doctors and nurses continued to use the property. It is further alleged that the Assistant Chief Medical Officer of Health, Darjeeling had issued a certificate with the calculation of the amount due and payable to the petitioner from April 7, 2020 to December 15, 2020, but the bills were not paid.

Aggrieved, the petitioner moved this Court and a direction was issued upon the District Magistrate, Darjeeling to decide the matter. By the order impugned dated August 24, 2022, the District Magistrate denied the claim of the petitioner over and above the amount of Rs.51,15,706/-.

Mr. Choudhury, learned Advocate appearing on behalf of the petitioner, submits that Rs.51,15,706/- had been paid.

Mr. Choudhury raises the following questions with regard to the calculations:

- (a) Even assuming that the payment was made by the State authorities at the rate of Rs.2,000/- per person, per day upto July 30, 2020, the amount calculated was incorrect and would be more than Rs.91 lakhs.
- (b) The District Magistrate did not take into account the fact that despite the order of de-requisition, the authorities continued to use and possess the property for the doctors and nurses on and from August, 2020 to December, 2020.
- (c) As the said occupation by doctors and nurses went on even after the hotel had been de-requisitioned, the hotel was entitled to charge the normal tariff rate and also the normal rates for the food.

Mr. Ghosh, learned Advocate appearing on behalf of the State-respondents submits that there is nothing on record to show that the authorities once again requisitioned the

property for further use by the doctors and nurses. He next submits that the accepted government rate as per the instructions issued by the Health Department should only be applied in this case. He denies that the property was once again used after being de-requisitioned. Mr. Ghosh has categorically stated that after the property was de-requisitioned, the Chief Medical Officer of Health, Darjeeling did not have any authority to request the hotel to continue to render the service, unless he had taken approval from the higher authorities.

Upon hearing the learned Advocates for the respective parties, the Court comes to the following conclusions:-

- (a) The order impugned does not disclose anything about the user of the property by the doctors and nurses after the same was de-requisitioned by an official order.
- (b) Such issue even if raised by the petitioner was not decided by the authority. The Chief Medical Officer of Health, Darjeeling appeared before the District Magistrate, Darjeeling and made his submissions. The issue raised by Mr. Choudhury in this writ petition with regard to non-payment of

the bills raised at the usual rate for food and lodging for occupation and other services rendered by the hotel even after the order of de-requisition, has not been decided.

- (c) Whether the hotel was asked by the Chief Medical Officer of Health, Darjeeling to continue to host doctors and nurses without any written order has not been considered. The authority of the Chief Medical Officer of Health, Darjeeling to make such a request to the hotel is a question which has to be decided on appreciation of facts and documents available on record. These factual disputes cannot be decided by a writ court.

In the order impugned, the calculation arrived at by the authorities to justify the amount payable to the petitioner at Rs.51,15,706/- has not been stated. The impugned order is silent on the method of calculation and the rate applied. The order impugned is set aside. The mode of calculation of the amount of Rs.51,15,706/- and also the issue with regard to the continuous use of the hotel by the doctors and nurses after the property was de-requisitioned, shall be decided afresh.

The matter is remitted to the District Magistrate, Darjeeling for a *de novo* hearing on all the points raised by the petitioner in this writ petition and which have been summarized hereinabove. On the first day of hearing, the petitioner shall be handed over the relevant government circulars and memoranda relating to requisition of hotels and other property and the rates of payment etc. during the Covid-19 pandemic.

A reasoned order shall be passed and thereafter communicated to all. The petitioner and the Chief Medical Officer of Health, Darjeeling shall be heard. There are allegations that the said authority continued to use the property for the doctors and nurses even after the same was de-requisitioned. The order shall be more detailed and contain the details of the occupants, rates, method of calculation, etc. The petitioner will also be required to substantiate the claims with supporting documents and bills.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)