

27th September,
2023
(AK)
22

W.P.A 16320 of 2023

Eskag Sanjeevani Private Limited and another
Vs.
The State of West Bengal and others

Mr. Akash Dutta

...for the petitioners.

Mr. Pinaki Dhole

Mr. Md. Ziaur Rahaman

...for the State.

Mr. Atarup Banerjee

Mr. Rajdeep Pramanik

...for the respondent nos. 2 & 3.

1. The petitioner is a clinical establishment. The present grievance has been raised against an order passed by the West Bengal Clinical Establishment Regulatory Commission, whereby the petitioner no.1/establishment has been directed to refund a portion of the amount paid by way of medical expenses by the private respondent for the treatment of his mother.

2. Learned counsel for the petitioners contends that the mother of the private respondent no. 5 was admitted as a “cash patient”.

3. At that juncture, nothing was disclosed on behalf of the private respondent that the private respondent had the benefit of any health scheme as an employee of the State. Hence, such benefit was not extended to the private respondent.

4. As such, the impugned order is bad in law.

5. Having availed the treatment on the premise that the treatment would be paid by way of cash, the private respondent could not take advantage of the fact that he had a health scheme only at the time of discharge of the patient.

6. In any event, it is submitted that the private respondent did not make any complaint at any point of time to the petitioner-establishment.

7. The first time when the petitioner no.1 was made aware was by a communication from the Finance Department dated February 01, 2022, annexed at page-34 of the writ petition, which was to the effect that the petitioner no.1 is required to refund the amount of Rs. 1,23,195/-.

8. It is submitted that the Finance Department, Government of West Bengal, being merely the employer of the respondent no.5, has no *locus standi* to intervene into the matter and/or pass such direction on the petitioner no.1 at all.

9. That apart, the issue involved does not pertain to any deficiency of service and, as such, the Regulatory Commission acted palpably without jurisdiction in passing the impugned direction of refund of the amount.

10. Learned counsel for the State-respondent submits that the State-respondent interfered into the matter not merely in the capacity of the employer of the respondent no.5 but also since the Finance Department is the Disbursing Authority, which reimburses the amount covered by the health scheme, regarding which concession is given to the holders of the health cards.

10. It is argued that the respondent no.5, being an employee of the State and being the holder of a health card, was entitled to refund/adjustment of the amount of Rs. 1,23,195/- from the payments to be made by the private respondent.

11. Learned counsel appearing for the Regulatory Commission submits that the matter pertains to a service provided by the clinical establishment/petitioner no.1 and that the clinical establishment itself admitted before the Commission that the health card was produced at the time of discharge of the patient.

12. Hence, it is argued that nothing prevented the petitioner no.1 from honouring the said health card.

13. A perusal of the communication dated February 01, 2022 indicates that the same was not a direction by

the Finance Department of the Government of West Bengal but couched as a request to the petitioner no.1/clinical establishment to refund the amount-in-question to the respondent no.5.

14. The argument of the petitioners that the Finance Department had no role to play is misplaced, since it is the Finance Department of the Government of West Bengal which is the appropriate authority in respect of the West Bengal Health Scheme provided to the employees of the State.

15. The Finance Department reimburses the clinical establishment, once the benefit of the health scheme is given to the patients.

16. With regard to the question of jurisdiction of the Regulatory Commission, I cannot agree with the submission of the petitioners inasmuch as the question of whether a health scheme has to be honoured by a clinical establishment falls within the broad domain of service provided by the clinical establishment.

17. The charges and remunerations payable to a clinical establishment for treatment meted out by the establishment to patients falls within the domain of services provided by the clinical establishments.

18. As such, the Regulatory Commission had the authority to look into the matter.

19. A scrutiny of the observations made by the Commission clearly shows that the West Bengal Health Scheme Card was produced by the respondent no.5 at the time of discharge of the patient.

20. Hence, at least at the point of discharge, nothing prevented the petitioner no.1/establishment from honouring the same.

21. In fact, the petitioners do not have any proper cause of action to prefer that present writ petition in any event, since, even if the petitioners refunded the amount of Rs. 1,23,195/- to the respondent no.5 under the State Health Scheme, the said amount would be reimbursed to the petitioner no.1 by the Finance Department of the Government of West Bengal itself under the scheme.

22. Operating under the aegis of the legal framework of the State, it was for the petitioner no.1 to honour the State Health Scheme.

23. The only reason which might have prompted a clinical establishment not to honour a State Health Card if the same is produced at the time of discharge is that the billing would be proportionate to the fact as to whether there is a health scheme or not.

24. Such a situation is unhealthy for the medical atmosphere of the State, since the same would give a premium to inflated billing in the event a person is

covered by a scheme or insurance policy, as opposed to persons who pay in cash from their own pocket.

25. Such unhealthy system cannot be permitted to be introduced or perpetuated within the health infrastructure of the State.

26. Hence, nothing prevented the petitioners from honouring the health card even it was produced at the time of discharge.

27. Insofar as the veracity of the finding of the Commission that the functionary of the petitioner no.1 admitted that the WBHS card was produced at the time of discharge, the same cannot be reopened by the writ petitioner at the stage of hearing of an application under Article 226 of the Constitution of India, since any factual circumstance which might have transpired at the relevant point of time can only be challenged before the forum where the same transpired and not before a superior forum.

28. Having not so challenged before the Commission itself, the petitioners are now precluded from challenging the veracity of such finding that the WBHS card was produced at the time of discharge as per the admission of the employee of the petitioner no.1.

29. Seen from such perspective, there is no occasion to interfere with the impugned order of the Commission.

30. Accordingly, WPA No. 16320 of 2023 is dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)