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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 16953 of 2023

Midland Nursing Home
Pvt. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharyya,
Mr. Kaushik Chatterjee,
Mr. Sparshamoni Saha Podder
...for the petitioners

Mr. Vimal Mukar Shahi,
Mr. S.C. Dhara
...for the State

Mr. Atarup Banerjee
...for the respondent no. 2

Mr. Jayanta Narayan Chatterjee,
Ms. Moumita Pandit,
Mr. Supreem Naskar,
Ms. Jayashree Patra
...for the respondent no. 3

1. Learned counsel for the petitioners contend that the present challenge pertains to compensation awarded against the petitioner no. 1/ Clinical Establishment (CE) with regard to the unfortunate demise of an 18-year old boy.

2. It is contended that a chain of events took place on the relevant date. First, the patient was apparently taken to the ESI Hospital, Kamarhati at around 5.30

a.m. as per the complaint lodged by the complainant, who is the unfortunate mother of the deceased.

3. Upon the ESI Hospital having referred the patient to the petitioner no. 1 Establishment, the said patient was brought to the petitioner no. 1 at around 10.00 A.M. According to the petitioners, the petitioners found out upon a test that the patient was Covid Positive. Since the petitioner no. 1 was not equipped properly to deal with Covid cases at that juncture, the petitioners could not admit the patient, upon which the patient was taken to the Calcutta Medical College and Hospital. Prior to taking there, the patient was also taken to the Sagore Dutta Medical College and Hospital where he was refused admission as well. Ultimately, the patient met his unfortunate demise in the Calcutta Medical College and Hospital. It is submitted that the petitioners had no role to play regarding the alleged negligence, for which the patient died.
4. Learned counsel for the petitioners seeks to assail the order of the West Bengal Clinical Establishment Regulatory Commission (for short “the Commission”) on several grounds.
5. First, it is argued that no proceeding was drawn up against the other hospitals and the entire brunt of the allegations was made against the petitioners, which had no role to play.

6. Learned counsel also places reliance on the materials on record to indicate that there is no clear explanation as to why the patient was not admitted at the ESI Hospital. Moreover, it is argued that the affidavit filed by the Calcutta Medical College and Hospital shows that the said patient was admitted nearabout 4.00 p.m. there. It defies logic, it is submitted, as to what took the parents of the patient so long to bring the patient to Calcutta Medical College and Hospital. It is also contended that the distance between the ESI Hospital, Kamarhati and the petitioner no. 1-Establishment is not much and it could not take the family of the patient four and half hours from 5.30 a.m. to 10.00 a.m. to bring the patient from E.S.I. to the petitioner no. 1 Establishment. As such, it is argued that the compensation imposed on the petitioner is unjustified.
7. By placing reliance on certain portions of the impugned award of compensation by the Commission, learned counsel submits that the petitioner no. 1 has been singled out to impose compensation, whereas it had no role to play at all.
8. Learned counsel appearing for the complainant (mother of the unfortunate deceased) submits that the complainant has run from pillar to post. The private respondent no. 3 herein, who is the complainant and mother of the deceased, contends that the family of

the patient took the patient to several Hospitals but to no effect. In fact, it is submitted that Midland, that is, the petitioner, did not have any infrastructure or examination kit for a proper Covid examination of the patient.

9. It is further submitted that admittedly the petitioner no. 1 undertook the purported Covid test within two minutes, which could not have been done by the petitioner no. 1.

10. The petitioner no.1, it is argued, kept the patient waiting outside its precincts and never admitted the patient, which led to the harassment of the patient party. More importantly, it is strenuously argued that only due to the faulty Covid report issued by the petitioner no. 1-Establishment, without having actually tested the patient properly, several other hospitals refused to admit the patient, which ultimately led to the inordinate delay in the patient being treated properly and also led to the demise of the patient. As such, it is argued that it is the apathy and faulty report of the petitioner no. 1 which led to the unfortunate demise of the patient.

11. The two reports filed by the Government Hospitals involved herein, namely, the Sagore Dutta Hospital and the Calcutta Medical College Hospital, are nothing but an exercise to pass the buck regarding the cause of death of the patient.

12. The Calcutta Medical College and Hospital, without referring to the reason for keeping the patient waiting from around 1.30 p.m. to 4.00 p.m., straightaway addresses the issue of the patient having been taken to the General Emergency at 3.39 p.m. on the fateful day, that is, July 10, 2020. It has been alleged that some medical procedure was undertaken by the Calcutta Medical College and Hospital to the best of their efforts. However, the patient could not be saved.

13. Insofar as the Sagore Dutta Hospital is concerned, it has gone one step further and has alleged in paragraph 5 that as per the records of the patients available in the record section of the College of Medicine & Sagore Dutta Hospital, Kamarhati, no such patient was found at all on July 09, 2020. It is to be noted that the allegations in the present case pertain to the next day, that is, July 10, 2020 when, purportedly the patient was taken to Sagore Dutta Hospital at around 5.30 a.m. Moreover, the patient was not admitted and, as such, his name need not feature in the records of the hospital, particularly since it refused to treat him at the outset.

14. Thus, this Court is not satisfied at all with the explanations given by the College of Medicine & Sagore Dutta Hospital, Kamarhati as well as the Calcutta Medical College and Hospital with regard to

the role played by them in the sad demise of the 18-year old boy.

15. Reverting back to case at hand, the petitioners allege that the petitioner no. 1 undertook a Covid test and found out that the patient was Covid positive, which led to the issuance of a Covid positive certificate by the petitioner no. 1. The matter had gone up to the Chief Medical Officer of Health, North 24-Parganas upon a police complaint lodged by the parents of the patient against all the hospitals.

16. From a show-cause letter dated July 24, 2020, annexed at page 63 of the writ petition, it is evident that one question posed in the show-cause letter against the present petitioner-Establishment was that the petitioners could not produce any evidence of medical intervention for stabilizing the patient before returning back to Kamarhati ESI Hospital. It is further alleged in the show-cause letter that the petitioner no. 1-Establishment had failed to produce any documents of approval for commencement of the said test from the competent authority as well as the evidence of performing the said test.

17. By way of a written explanation thereto (reply to the show-cause), the petitioners stated that the patient being referred by ESI Hospital comes with referral quotation with an advice of ICU ventilation for each patient and there was no difference in the case of the

patient concerned, that is, Subhrojit Chattopadhyay, since deceased. It was further stated that the patient had already been stabilized in ESI Hospital and had come in full support and guidance of ESI Hospital, Kamarhati. On being informed by the petitioeners regarding non-availability of bed, the said patient was allegedly summoned back by the ESI authority without delay, for which reason the petitioners were not authorised to conduct any medical intervention and so were not able to provide any evidence of the same to the investigation authority. By way of further explanation, the petitioners stated in the said reply that for this particular case as a special case, the Covid Kit check was undertaken, allegedly in discussion with ESI Hospital, Kamarhati and the "visual understanding of Covid-KIT" was only shared with ESI Hospital, Kamarhati for the benefit of the patient. The petitioners also stated in the said reply that it was not using Covid-Kit for a single case other than this and are doing RT-PCR Test only for detection of infection in collaboration with Government approved center. Such explanation of the petitioners, however, regarding the Covid Test is not sufficient, even *ex facie*. If the petitioners do not use the Covid Kit for a single case other than the present case, it defies logic as to what prompted the petitioners to undertake the said test in the present case. That

apart, the allegation of visual understanding of Covid Kit only being shared with the ESI Hospital, Kamarhati is extremely vague.

18. However, from a comprehensive perusal of the reply of the petitioners, it is seen that even apart from the Covid test, purportedly conducted by the petitioners, there was another ground for not admitting the patient, the same being that all the beds in the petitioner no.1-Establishment were full. As Annexure-P-16 at page-82 of the writ petition, the petitioners have annexed a chart indicating the bed profile and the patient names on the fateful day when the patient-in-question met with his demise, that is, on July 10, 2020, which indicates apparently that all the beds and CCU units were full, being occupied by patients on the said date. However, the said list does not find place in the discussion of the Commission and, apparently, was not produced by the petitioners before the Commission.

19. It is seen from the observations of the Commission that the incriminating evidence against the petitioners, which was considered by the Commission, was that when the patient reached the petitioner no.1-Establishment, it was the bounden duty of the Establishment to examine the patient in the Emergency. The fact that the patient was not allowed to go inside was not in dispute, it was observed, the

Establishment could only dispute the Covid positive report. The Commission held that even if full credence was given to the same, it would not find any plausible explanation why the said authority could refuse preliminary medical aid to a patient. The plea of absence of vacancy was also considered by the Commission and it was observed that it was taken for the first time at the final hearing on March 15, 2021. The Commission recorded that there was a specific assertion on the part of the complainant to that effect on affidavit and the CE was given opportunity to file counter but they did not avail the same. Mere verbal submissions, that too, on the final day of hearing, it was observed, would not impress the Commission. On such premise, it was also observed that a completely different stand was taken by the CE, according to the Commission, that would rather corroborate the complaint. However, sufficient clarification does not find place in the observations of the Commission regarding the difference in stand taken by the petitioners before this court and the Commission. The Commission lastly proceeded on the premise that a young boy of 18 years was deprived of even primary medical aid and was impressed by the contention made by the patient's parents that the golden hour was lost.

20. Upon a comprehensive perusal of the materials on record, it is *prima facie* evident that the petitioners were not solely responsible for the plight of the patient on the said date.

21. The Calcutta Medical College and Hospital as well as the Sagore Dutta Hospital cannot also absolve themselves from liability, necessitating scrutiny by an appropriate authority in that regard as well.

22. The complainant cannot be entirely blamed for not prosecuting further against the said Hospitals since it may be difficult for an individual, particularly who is suffering bereavement from the demise of their young son, to run from pillar to post in pursuing their allegations against all the Clinical Establishments.

23. Insofar as the present petitioners are concerned, its liability is limited to two aspects - one, issuance of a Covid positive certificate without having any proper infrastructure to do so and secondly, not examining the patient in its Emergency or giving preliminary treatment, prior to refusing admission on the ground of absence of vacancy.

24. The Commission considered such issues and observed that the petitioner no.1-Establishment could very well examine the patient in its Emergency. In fact, even if the petitioner no.1-Establishment did not have any specialized Emergency Unit as such, it is well-settled that no Hospital or Clinical Establishment can refuse

treatment to a patient who has come to the Establishment, merely on the ground that there is no availability of outdoor or Emergency facility. Even if there were no vacancies in petitioner no.1-Establishment, it was the duty of the petitioner no.1 at least to examine the patient in its outdoor/emergency, thereby rendering at least preliminary medical assistance to the patient, instead of refusing the patient from the outside of the precincts of the Establishment. Insofar as the issuance of Covid positive result is concerned, the same also is vitiated, since there was no occasion for the petitioner no.1 all on a sudden to resort to a test which was which, admittedly, is one-of-a-kind case and was not applied by the petitioner no.1 on any other patient. On such premise as well, the doubt cannot be dispelled that such Covid positive result was a pretext to refuse admission. The said report was a deterrent to the patient being admitted in other hospitals before ultimately being taken in by the Calcutta Medical College.

25. The question is not whether the patient was suffering from Covid or not. The issue is, whether the petitioner no. 1 was properly equipped to conclusively observe that the patient was suffering from Covid, sufficient to deter the petitioner from being admitted to most hospitals. Moreover, the petitioner no.1 could not

shirk its responsibility, as a CE, of at least administering preliminary treatment to the patient, in view of his critical condition. Irrespective of the delay occasioned by the family of the patient in taking the patient from ESI to the petitioner no.1, we are only concerned with the specific window of consideration during which the petitioner no.1 had an interaction with the patient. Having found so, I do not find any gross irregularity or illegality in the decision-making process of the Commission in granting a meagre compensation of Rs.5 lakh to the petitioners, in view of its limited but undeniable role of the petitioner no. 1-CE in the plight of the patient on the fateful day.

26. Accordingly, there is no scope of interference with the impugned order of the Commission. However, before parting with the matter, it must be ensured as a court of equity, that not only the patient gets justice but there is also some deterrent on Clinical Establishments and Hospitals, private or government-run, in treating patients nonchalantly, leading to their death.

27. Accordingly, WPA No. 16953 of 2023 is disposed of without interfering with the impugned order, but with the following observations:

i) The respondent no.3 is granted liberty to approach the Director of Health Services, Government of West Bengal, with a server copy of this order,

reiterating her complaint against the two Government Hospitals, that is, the Calcutta Medical College and Hospital and the College of Medicine and Sagore Dutta Hospital, for undertaking an enquiry/investigation and taking appropriate action against the recalcitrants regarding the demise of the son of the respondent no. 3.

ii) As and when so approached, the said authority shall look into the matter and initiate appropriate enquiry into the role of the said Hospitals in the demise of the said deceased and take appropriate action in that regard, completing the entire exercise at the earliest, preferably within four months from the approach being made by the mother of the deceased.

iii) It is made clear that the merits of such enquiry/investigation, which shall be undertaken at the behest of the Director of Health Services pursuant to this order, have not been gone into by this court and it will be open to the appropriate authorities to come to their findings in that regard.

iv) In the event the respondent no.3 is aggrieved with the outcome of such action or enquiry/investigation initiated on the basis of her complaint in that regard, it will be open to the respondent no.3 to approach this court for further reliefs.

28. There will be no order as to costs.

29. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)