

15.04.2024

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PG/KS

Ct. No.1

**M.A.T. 465 of 2024
With
IA No. CAN 2 of 2024**

**The District Magistrate, Malda
Versus
Malda Apollo Nursing Home represented by its sole
proprietor Md. Anarul Hoque & Ors.**

Mr. Sudip Ghosh Chowdhury
Ms. Shreyeta Mitra

.....for the appellant

Mr. Samit Sanyal
Ms. Salma-S-Shah

.....for the respondents/writ petitioners

Mr. Jahar Lal De, Ld. A.G.P.
Mr. Rudranil De

.....for the State

1. This intra-Court appeal by the District Magistrate is directed against the order dated 31st August, 2023 in W.P.A. 29134 of 2022. By the impugned order, the learned Single Bench has granted an order of stay of the order passed by the Additional District Magistrate (General), Malda & District Key Manager, Swasthya Swathi, Malda primarily on the ground that the show-cause notice dated 21st November, 2022 was dated subsequent to the decision of sealing and imposing penalty on the writ petitioners.
2. After elaborately hearing the learned advocates for the parties, we note that there is a slight factual discrepancy, which appears to have not been placed

before the learned Single Bench. The decision taken and communicated by the Additional District Magistrate (General), Malda & District Key Manager, Swasthya Swathi, Malda under the scheme is dated 14th November, 2022, wherein certain deficiencies have been pointed out, penalty has been imposed and the writ petitioners/nursing home were directed to be suspended from the scheme till they deposit the penal amount. Further, there is an observation that the nursing home is to be sealed.

3. The show-cause notice, which is also impugned in the writ petition is dated 21st November, 2022, which has been issued by the Chief Medical Officer of Health, Malda, who is the competent authority for granting the license to the hospital under the provisions of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Rules, 2017.
4. Therefore, both the proceedings are independent of each other and hence, we are of the view that the order passed by the Additional District Magistrate (General), Malda cannot remain stayed for the reasons set out by the Hon'ble Single Bench in paragraph 5 of the impugned order dated 31st August, 2023.
5. Further, it is pointed out that order passed under the relevant enactment is an appealable order. That apart, the learned advocate appearing for the writ petitioners submitted that challenging a subsequent order passed

by the authority, the writ petitioners have filed an independent writ petition being, W.P.A. 22870 of 2023 and the same is also pending.

6. The learned advocate appearing for the writ petitioners would submit that they have also serious grievances against the authorities, who are implementing the provisions of the scheme and that the amounts due under the scheme have not been settled to the writ petitioners/nursing home.
7. These issues can be considered in the writ petition after the affidavit is filed by the respondents in the writ petition and for which the direction has already been issued by the learned writ court.
8. Accordingly, the appeal along with the connected application (IA No. CAN 2 of 2024) stand allowed and the order passed by the learned Single Bench dated 31st August, 2023 is set aside.
9. Since the affidavits have already been filed, let the writ petition be listed before the appropriate bench within two weeks from date along with W.P.A. 22870 of 2023.
10. It is contended by the learned advocate for the respondents/writ petitioners that the Additional District Magistrate (General), who is the District Key Manager under the scheme has no jurisdiction to pass an order or to seal the nursing home.
11. The learned advocate for the appellant/District Magistrate points out that both the proceedings are by

different authorities under different enactments viz. one is under the scheme formulated by the State Government and another is as per the Clinical Establishments Act and the Rules framed thereunder and both are independent of each other. In any event, the respondents/writ petitioners being a nursing home, they have to steer clear of all the allegations, which have been made against them and this is required to be done so in public interest.

12.No costs.

13.Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)