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16.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 11194 of 2024

Apollo Multispecialty Hospitals Ltd. & Anr.
Vs.
West Bengal Clinical Establishment
Regulatory Commission & Anr.

Mr. Deepan Kumar Sarkar,
Mr. Biswajit Kumar,
Ms. Mahima Chowdhury
...for the petitioners

Mr. Samrat Sen
...for the respondents

1. Affidavit of service filed today be kept on record.
2. Learned counsel for the petitioners argues that by the impugned order, the West Bengal Clinical Establishment Regulatory Commission directed the petitioner no. 1-Clinical Establishment to pay Rs. 2,600/- to the complainant on sharing of his bank details. Learned counsel for the petitioners argues that more than the quantum, the principle on which the charge has been levied, is under challenge.
3. The matter arose before the Commission on a complaint by the private respondent regarding overcharging.

4. The Commission held, inter alia, that the charge for Histopathology Biopsy of Rs.7,440/- had been billed rightly and there was no scope for interference. However, the Commission proceeded further to *suo motu* call into question the billing of Rs.13,000/- on account of consumables apart from the investigation cost, as mentioned above. The Commission held that the patient was a 'cash' patient and hence the Advisories of the Commission would squarely apply. As per Advisory no. 14, consumables would attract 20 per cent discount, which was not given by the petitioner no. 1, for which the impugned order was passed.

5. Learned counsel submits that the very Advisory, which was the premise of the impugned order, was under challenge before a coordinate Bench of this Court. The learned Single Judge, vide judgment and order dated June 14, 2023, allowed the said writ petition, bearing W.P.A. 3858 of 2022, thereby setting aside the advisories on the observation that those had been clearly issued in the absence of any statutory bulwark.

6. While allowing the writ petition, the learned Single Judge also declared that the advisories issued by the Commission to the extent of fixation of rates and charges to be made applicable for Clinical Establishments and for all patients irrespective of Covid were without authority of law

and contrary to the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. Accordingly, the Advisories were struck down.

7. Learned counsel appearing for the respondent-authorities controverts such contentions of the petitioners. It is argued that an appeal has been preferred against the order of the learned Single Judge, which is sub judice and on the verge of conclusion. That apart, learned counsel seeks to support the imposition of the restrictions by virtue of the Advisories on grounds of law and fact, particularly pointing out that those were issued keeping in mind the Covid situation.

8. Be that as it may, it transpires that the order of the learned Single Judge dated June 14, 2023 was unequivocal inasmuch as the same held all the Advisories under challenge there to the extent of fixation of rates and charges, including Advisory no. 14, to be irrational and violative of the petitioners' right under Article 19(1)(g) of the Constitution of India and were, accordingly, struck down.

9. It was also observed clearly by the learned Single Judge in paragraph no. 40 of the judgment that the Advisories issued by the Commission to the extent of fixation of rates and charges to be made applicable for Clinical Establishments also

came within the fold of such declaration and were accordingly struck down. Thus, the distinction sought to be made by the Commission in its impugned order between Advisory no. 14 and the rest, is palpably irrational and contrary to the judgment of the learned Single Judge.

10. It is well-settled that mere pendency of an appeal does not automatically operate as a stay of the order and, as such, in the absence of any stay order being passed by the Division Bench which is in seisin of the appeal against the learned Single Judge's order, it cannot but be said that the order of the learned Single Judge is still binding and, thereby rendering Advisory no. 14, along with other Advisories under consideration there to the extent of fixation of rates and charges, to be inoperative and void.

11. In such view of the matter, the impugned order suffers from patent illegality, being contrary to the law laid down by this Court and, as such, ought to be struck down.

12. Hence, W.P.A. No. 11194 of 2024 is allowed on contest, thereby setting aside the order dated February 27, 2024, passed by the West Bengal Clinical Establishment Regulatory Commission in Case Reference-INT/EMID/2024/030 only to the extent insofar as the same directs the petitioners to pay an amount of Rs.2,600/- as well as to the

extent that Commission observed that paragraph nos. 40 and 41 of the judgment of the learned Single Judge did not touch upon Advisory no. 14 issued by the Commission.

13. There will be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)