

26.06.2024
Sl. No.2(DL)
srm

W.P.A. No. 16283 of 2024
Accuhealth Solutions Private Limited
Versus
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharyya,
Mr. Aniruddha Chatterjee,
Mr. Sumitava Chakraborty,
Mr. Aditya Mondal,
Ms. Bratati Pramanick
...for the Petitioner.

Mr. Samrat Sen, Id. Sr. Advoate,
Mr. Avik Ghatak
...for the Regulatory Commission.

Mr. Sirsanya Bandyopadhyay
...for the State-respondents.

Mr. Shibaji Kumar Das
...for the Respondent No.5.

1. Affidavit-of-service is taken on record.
2. The writ petition arises out of an order dated June 13, 2024 passed by the West Bengal Clinical Establishment Regulatory Commission. By the said order, the Commission held that the majority of the members were of the view that the diagnostic centre should be closed down at once. The Chief Medical Officer of Health, South 24-Parganas was directed to suspend the licence and initiate appropriate proceedings therefor.

3. Mr. Bhattacharya, learned Advocate appearing for the petitioner submits that a discrepancy in the report of the mother of the complainant should not result in the suspension of licence and initiation of proceeding by the Chief Medical Officer of Health. According to Mr. Bhattacharya, expert opinion was not obtained by the Commission to come to a finding that the test result was incorrect.
4. Secondly, the petitioner did not get any opportunity to cross-examine either the complainant or the doctor whose digital signature had been found on the report. The specific contention of the petitioner is that certain tests were outsourced. Such arrangement is available from the terms and conditions attached to the report. Similarly, this test was also outsourced and upon obtaining the report from the agency which conducted the test, the report was copied on the letterhead of the petitioner with the digital signature of the doctor, by mistake. The doctor disowned the responsibility. Thus, the petitioner should have been allowed an opportunity to cross-examine the doctor.

5. It is next contended that law does not permit the Commission to issue direction of closure and suspension of licence.
6. Relying on a decision of the Hon'ble Division Bench of this Court in the matter of B.M. Birla Heart Research Centre vs. State of West Bengal & Ors. (In Re: MAT 1595 of 2019), Mr. Bhattacharya submits that the High Court had held that the Commission could not impose any punishment, not permissible under the law. The powers conferred on the Commission had been held to be restricted to the statutory interpretation of Section 38 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (hereinafter referred to as the said Act) and not beyond that. An expression of an opinion for the closure of the business was beyond the scope of the statute and the Commission wrongly placed reliance on the statements of Dr. Atrayee Roy Chowdhury, without granting an opportunity to the petitioner to rebut such claim of Dr. Roy Chgowdhury.
7. Relying on the complaint of the patient's son, the petitioner submits that the only allegation was that the test result did not tally with the test result of the Tata Medical Center and the patient party was of the opinion

that the test conducted by the petitioner was wrong. It is contended that before coming to a conclusion that the report was either incorrectly prepared or carelessly prepared, the Commission ought to have conducted an enquiry in terms of the Act, especially Sections 30 to 32 of the said Act.

8. Mr. Bhattacharya finally relies on the provision of Section 23 which deals with improvement notices and submits that if the Commission was of the view that improvements should be made, then sufficient notices should have been given. Mr. Bhattacharya submits that all that the Commission could have done was to direct payment of compensation to the aggrieved party, instead of opining for closure of the diagnostic centre with a further direction to the Chief Medical Officer of Health to initiate steps for suspension of licence.
9. Mr. Sen, learned Senior Advocate appears for the Commission. Mr. Sen refers to the reply/written objection filed by the petitioner to the complaint. According to Mr. Sen, the third paragraph of the said reply is relevant. The diagnostic centre admitted that the test for serum Thyroglobulin was not available in the centre. Therefore, the collected sample was sent from the Baruipur lab to

the AI Diagnostics Private Limited for the test. Further admission is that the report provided by AI Diagnostics was flawlessly copied on Accuhealth's letterhead and was handed over to the patient party from Baruipur lab. While the report was getting copied at Accuhealth, by oversight a wrong report format was selected which resulted in the incorporation of the signature of Dr. Roy Chowdhury. Dr. Roy Chowdhury was not associated with the Baruipur lab of Accuhealth, but her name was selected by mistake when the report was typed as her credentials were available in the system. She was attached to the Kasba lab of Accuhealth Solutions. The test was repeated by the complainant from another laboratory where the test value was different.

10. This, according to Mr. Sen, clinches the issue. On the admission of the diagnostic centre and the statements of the Dr. Roy Chowdhury, who had disowned any connection with the test result, the Commission held that the test result could have endangered the life of the patient. The *modus operandi* of the laboratory was incorrect. It had misused the digital signature of Dr. Roy Chowdhury. The test was outsourced without any intimation to the patient party. The commission had

rightly directed that steps should be taken in terms of Section 38(1)(iii) of the said Act. The Commission was empowered to pass such orders as deemed appropriate.

11. According to Mr. Sen, the diagnostic centre practised fraud on the patient and as such the order impugned should not be interfered with.

12. Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel appearing for the State-respondents submits that the law permitted the Commission to regulate and monitor the affairs of a health care facility or a diagnostic centre. In exercise of such supervisory and regulatory function, the Commission could pass any direction for the safety of the patients and as such opined that the laboratory should close down and the licence should be suspended. The direction upon the Chief Medical Officer of Health, South 24-Parganas was in accordance with the provisions of Section 38(1)(iii) of the said Act.

13. Heard learned Advocates for the respective parties. Admittedly, the diagnostic centre did not have the expertise to conduct the test. The patient is a cancer survivor. She was suffering from Thyroid cancer. She underwent total thyroidectomy at Tata Medical Centre. The test is a cancer marker and would indicate whether

she was cancer free or whether the cancer had aggravated.

14. The diagnostic centre first drew blood and performed the incorrect test. It is alleged by the complainant that the diagnostic centre drew sample for serum TSH, Free T4 and Thyroglobulin. At first, the laboratory had an undesired report of Anti Thyroglobulin Antibody which had not been prescribed. Thereafter, when an objection was raised, again they collected the blood and submitted the report which was contested before the Commission. The doctor who was treating the patient disbelieved the report and advised the repeat test at the Tata Medical Center and there was serious discrepancy in the two reports. The values obtained were drastically different. While the sample drawn by the petitioner recorded serum Thyroglobulin as 51.23 ng/mL. The result at Tata Medical Center indicated <0.040 ng/mL. The petitioner has admitted that it did not have the facility to conduct the test and had sent the sample to AI Diagnostics. Thereafter the test result as communicated by AI Diagnostics, was copied on the letterhead of the petitioner and due to oversight, the digital signature of Dr. Roy Chowdhury was incorporated.

15. This entire procedure, *prima facie*, indicates carelessness, lack of expertise, negligence and an element of deceit. The patient party complained that the lab had drawn the blood sample twice from the patient. The fact that the test was done by another laboratory and a report was prepared on the letter head of the petitioner indicates that there was lack of truthfulness and transparency. There is no evidence that the test report had been signed at all by a practising doctor, which is the mandate of law. If the digital signature of Dr. Atreyee Roy Chowdhury was incorporated by mistake, it was for the diagnostic centre to prove that another doctor had actually prepared and signed the report. Such evidence was not before the Commission. Neither is such evidence before this Court.
16. The Commission had rightly made a recommendation to the Chief Medical Officer of Health, South 24-Parganas to proceed with the matter. The statute permits recommendations and passing of appropriate orders by the Commission. Thus, a deeper probe by the Chief Medical Officer of Health, 24 Parganas is essential to determine the fate of the continuity of the diagnostic centre. The Commission rightly referred the matter to the

Chief Medical Officer of Health, South 24-Parganas for further proceedings.

17. It is made clear that no further bookings shall be taken with respect to any tests/investigations i.e., blood test, X-rays, Ultrasonographies, etc. beyond 2.00 pm today. The bookings which have already been taken till 2 p.m. today and the blood samples which have been received till 2 p.m. today shall be honoured by conducting the relevant tests/examinations. The pendency bookings/cases, shall be intimated to the Chief Medical Officer of the Health, South 24-Parganas by 4.00 pm today, so that a check and balance can be maintained to ensure compliance of this order.

18. It is also made clear that along with the reports that are going to be supplied to those patients from the time when this order is passed, a communication that an issue is pending before the Chief Medical Officer of Health, South 24-Parganas with regard to the said diagnostic centre, shall be made.

19. This Court has only considered the propriety of the order passed by the Commission and the prayer for setting aside the same. The opinion of this Court is restricted to the adjudication of the writ petition and the Chief

Medical Officer of Health, South 24-Parganas, shall hear the matter independently upon allowing all the parties to make their submissions and adduce evidence. Expert opinion shall be allowed.

20. It is made clear that apart from what has been indicated above, the diagnostic centre shall not function till the Chief Medical Officer of Health, South 24-Parganas decides the issue as to whether the licence should be suspended or cancelled or whether any other order as per the statute, should be passed.

21. The opinion of the closure of the diagnostic centre by the Commission is set aside. All issues shall be decided by the Chief Medical Officer of Health, South 24-Parganas.

22. It is made clear that the direction that the licence should be suspended is modified to the extent that the Chief Medical Officer of Health, South 24-Parganas will decide the entire issue with regard to suspension/cancellation etc., within one month.

23. The writ petition is, thus, disposed of.

24. There shall be no order as to costs.

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

(Shampa Sarkar, J.)