

August 8, 2024
Sl. No.47
Court No.9
s.biswas

WPA 18586 of 2024

Dr. Dipankar Chakrabarti
vs.
West Bengal Clinical Establishment Regulatory
Commission and others

Dr. Dipankar Chakrabarti
... the petitioner in-person
Mr. Atarup Banerjee
Mr. Rajdeep Pramanik
Mr. Arka Roy
... for the respondent no.1
Mr. Saptanshu Basu, Sr. Adv.
Mr. Pranit Bag
Mr. Satyaki Mitra
Mr. Anousko Das
... for the respondent no.2

1. The matter involves the unfortunate death of a 32 years old young lady, who lost her life during the COVID pandemic, at a hospital in Kolkata. After being discharged abruptly from the emergency room of Charnock hospital, the lady breathed her last at Spandan Hospital.
2. The petitioner approached the West Bengal Clinical Establishment Regulatory Commission (hereinafter referred to as the commission) on December 23, 2022, with his grievances and requested the commission to take appropriate action. On the first hearing day, the complaint was disposed of in the absence of the petitioner as he was not present before the commission. The commission took into account that initial

treatment was administered to the deceased, by the petitioner at home. The petitioner is also a doctor. When the condition deteriorated, the petitioner had taken the deceased to the emergency room of Charnock Hospital. The doctor at the emergency room had administered treatment. The doctor was a registered doctor. Thereafter, the patient was sent to Spandan Hospital. Both the hospitals appeared at the hearing. The commission found that the allegations of the petitioner bordered around the medical protocol followed by the hospitals. The commission recorded that the referral by Charnock Hospital was due to absence of a gastro-enterologist. The attending doctor was of the view that the patient required treatment by a gastro-enterologist, a specialist with expertise in the field. As soon as Spandan Hospital received the patient, she was admitted to the ICU under Dr. Soumitra Das. Whatever treatment was necessary was done. Considering the complaint, the commission was of the view that complain regarding treatment protocol was outside the domain of the commission. The petitioner was granted liberty to approach the appropriate authority, with his allegations against the treating team. The bill of Charnock Hospital amounting to Rs.1700/- was found to be correct. With regard to

the bill of Spandan Hospital, the commission found that they had charged excess and directed refund of Rs.17,438/- to the petitioner. The said amount has been refunded.

3. The matter was once again taken up by the commission at the request of the petitioner. The commission found that the allegation of the petitioner relating to the nature of treatment, insufficiency in the experience of the treating doctor who intubated the patient, etc., were matters which could be best decided by the Medical Council, which had the expertise to understand whether the treatment protocol was correct or not.
4. Whether a patient could be alive with 44% oxygen saturation and needed intubation as per the doctor of Charnock hospital, were matters to be decided by experts.
5. The other allegation that the patient was driven out from the emergency room of the Charnock Hospital without the hospital giving adequate medical support to the patient, is also a matter of evidence which can be decided by the Consumer Forum.
6. The contention of the petitioner that the medical reports, investigation reports, evaluation of expert etc. supplied by the Spandan Hospital, were not the actual reports and those reports were

subsequently forged, fabricated and concocted are also matters of evidence.

7. The commission was of the view that the petitioner was entitled to take all documents available at Spandan Hospital. As the petitioner had already approached the consumer forum, no other orders were passed. The right of the petitioner to approach the appropriate authorities has been protected by the commission.
8. It is submitted by the petitioner that the commission was bound to look into the following factors:-
 - a) Insufficient manpower in the hospitals and the emergency rooms;
 - b) Employment of inadequate and untrained doctors;
 - c) Fabrication of medical reports, inadequate infrastructure;
 - d) Lack of consent of the family prior to intubation;
 - e) False assurance by open public advertisement given by the hospitals.
9. This court finds that the commission has elaborately gone through the submission of the petitioner and of the doctors. According to the commission, the treatment protocol which the petitioner alleged to be incorrect, in so far as, intubating the patient was concerned, was not

within the domain of the commission. The commission also held that whether proper treatment was given to the patient or not was also to be decided by experts in the medical field and granted liberty to the petitioner to approach the Medical Council against the doctors. The doctors were also heard and on their submission, the commission came to the finding that the requirement for intubation and other steps taken by the hospitals, fell within the domain of the medical council. Thus, the commission rightly granted liberty to the petitioner to approach the Medical Council in this regard.

10. With regard to compensation payable to the petitioner on account of the medical negligence of the doctors and the clinical establishments, the petitioner was granted liberty to approach the appropriate authority/forum. The petitioner has already done so.

11. Now, the question arises whether the commission should have looked into other aspects which the petitioner raises before this court. In my opinion, the question whether the hospital is manned by properly trained doctors and whether the mandatory requirements to maintain certain infrastructure and other facilities before the licence or registration is granted to them, is within the domain of licensing

authority. The petitioner is granted liberty to approach the licensing authority prescribed under the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 with his grievances. The licensing authority will cause an enquiry in this regard and take appropriate steps as permissible under the law.

12. With regard to the allegation of forgery, fabrication and falsification of documents, the petitioner is granted liberty to approach the concerned police station within whose jurisdiction the clinical establishment is situated. If such complaint is filed, the investigation shall be initiated.

13. With regard to the other aspects of medical negligence, deviation from usual treatment protocol, non-observation of certain formalities required by the doctors etc, the West Bengal Medical Council shall decide the issue, upon granting opportunity of hearing to the petitioner and the doctors involved. Such decision shall be rendered within a period of two months from the date of communication of this order.

14. The consumer forum shall deal with the proceedings independently and in accordance with law. All points are left open to be decided by the appropriate authority.

15. The writ petition is accordingly disposed of.

16. All the parties shall act on the basis of the server copy of this order.

(Shampa Sarkar, J.)