

25.09.2024
Sl. No.26(DL)
srm

W.P.A. No. 24032 of 2024
Malda Apollo Nursing Home & Anr.
Versus
The State of West Bengal & Ors.

Mr. Saikat Chatterjee,
Ms. Salma Sultana Shah,
Mr. Sani Hossain,
Ms. Sneha Sarkar

...for the Petitioners.

Mr. Sirsanya Bandyopadhyay, Id. Jr. Standing Counsel
Mr. Depopriyo Karan

...for the Respondent No.1.

Mr. Sudip Ghosh Chowdhury

...for the Respondent No.4.

1. The writ petition has been filed challenging two separate actions taken by two separate authorities. The first issue is the purported delay in renewal of the clinical establishments licence granted earlier to the petitioners by the Chief Medical Officer of Health, Malda and the second issue is the decision of the Additional District Magistrate (General), Malda & District Key Manager, Swasthya Sathi, Malda, suspending the petitioner from the Swasthya Sathi Scheme. A penal amount of Rs.14,81,760/-, was claimed from the petitioners.

2. Page 39 of the writ petition is a decision taken by the Additional District Magistrate (General), Malda & the District Key Manager, Swasthya Sathi, Malda, upon an inspection of Malda Apollo Nursing Home and the following anomalies were found:

- “1. No GNM staff was found during the visit.
2. RMO was not present at 09 wards.
3. Many expired injection was found in ICU.
4. OT was assisted by people having no medical qualification.
5. ICU technician not found present.
6. One patient found in the labour room whose baby died. She was referred to Gynecologist but was not attended by any Gynecologist.
7. The dead body of the baby was kept on a tray outside the OT.
8. Display of baby warmer was not functioning properly.
9. Baby warmer was not having guard wall on one side.
10. 03 blank discharge summary of Swasthya Sathi patients were signed by the surgeon.
11. Two children who were admitted at ICU post drowning complications, but was not reported in the Local Police Station.
12. Laryngoscope and adrenalin not found inside one OT.
13. No ramp found on the 4th floor where Swasthya Sathi patients were admitted.
14. Fire extinguishers were not found in many wards and floors.
15. No episiotomy tray found.
16. No signature of surgeon, anaesthetist or Paediatrician was found on patients' medical documents.
17. Nursing home had license of 70 bed but 95 beds were found.
18. Emergency OT tray found not ready.
19. BMW management is improper.
20. OT register was not signed by the surgeon and anaesthetist against many OT.

21. Used vials and syringe found present in the medicine tray inside the ward in patients' cupboard.
22. Admission register was not maintained properly.
23. Discharge Register is incomplete.
24. High risk patient's consent was signed by patient party without any valid reason and patient counseling was not done.
25. PAC was not there in the medical file of many patients."

3. The Chief Medical Officer of Health, Malda, on the other hand, renewed the licence under the West Bengal Clinical Establishments (R, R&T) Act, 2017, on October 21, 2022 for a period of up to November 2, 2023. However, on November 21, 2022, a show cause notice was issued to the petitioners alleging violation of the Clinical Establishments Act and the petitioners were asked to answer to the show cause notice.
4. It is contended by the petitioners that without a final decision in this regard, the Chief Medical Officer of Health, Malda asked the petitioners to furnish the challan showing deposit of the fine imposed by the District Key Manager, Swasthya Sathi, Malda. According to the petitioners, the imposition of penalty is already *sub judice* before this Court and Chief Medical Officer of Health, Malda does not have any authority to direct payment of such penalty. The licence must be renewed on the parameters provided under the statute. The petitioners also rely on an alleged

recommendation by the Additional Chief Medical Officer of Health, Malda.

5. It appears to this Court that the decision with regard to the application for renewal of the licence is pending before the competent authority. It also appears that another competent authority under the Swasthya Sathi Scheme has found serious deficiencies in the service rendered by the hospital and recommended closure of the hospital along with suspending the hospital from being a part of the Scheme until the penal amount is paid.
6. For a hospital to be empanelled under the Swasthya Sathi Scheme several criteria have to be fulfilled. It also appears that there is a process for de-empanelment of hospitals. The Swasthya Sathi Scheme provides that the hospital can approach the State Grievance Redressal Committee under the Swasthya Sathi Scheme, if any de-empanelment is done.
7. Under such circumstances, the petitioners are at liberty to approach the State Grievance Redressal Committee for redressal of their grievance with regard to the decision of the Additional District Magistrate (General), Malda & District Key Manager, Swasthya Sathi, Malda.
8. With regard to the decision for renewal, it appears that same is kept pending. A point has been made as to whether

the Chief Medical Officer of Health can act as a recovery officer for the Additional District Magistrate (General), Malda & District Key Manager, Swasthya Sathi, Malda with regard to deposit of the penal amount.

9. It appears from the notice issued to the petitioners that the challan was required to be deposited by the petitioners showing deposit of the penal amount. It further appears to this Court that the application for renewal of licence is pending.
10. Under such circumstances, the question raised by the petitioners before this Court shall be raised before the authority concerned and the authority concerned shall decide the matter in accordance with law on the basis of the records and the pleadings strictly confining himself to the provisions of the statute and any other provision which may empower the Chief Medical Officer of Health, Malda to also require deposit of the penal amount as claimed.
11. As the period of validity of the licence has expired and prior to such expiry, the petitioners were asked to stop admitting patients, no interim order can be passed directing the authority to allow the nursing home to continue its business. The issue of renewal of the licence shall be decided within a period of two months from the date of

communication of this order, upon granting adequate opportunity of hearing to the petitioners.

12. The argument of Mr. Chatterjee, learned Advocate for the petitioners that a prior recommendation had been made, does not persuade this Court to pass any order allowing temporary treatment in the nursing home pending the decision for renewal of licence, as such inter-departmental note does not vest any right upon the petitioners.
13. The writ petition is disposed of.
14. There shall be no order as to costs.
15. All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)