

JPD-30
Ct No.01
30.07.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

MAT 185 of 2023
CAN 1 of 2023
CAN 2 of 2023

Sri Sarat Chandra Sarkar
VS
A.H.IVF & Infertility Research Centre (P) Ltd. and others

Mr. Narendra Nath Das,
Mr. Madhab Kumar Roy,
Mr. Jagesh Chandra Roy

.... for the appellant

Mr. Somraj Paul,
Mr. Deborshi Dhar

....for the respondent no.1

Mr. Subir Kumar Saha, Ld. AGP,
Mr. Momenur Rahman

.... for the State

In Re: CAN 2 of 2023

1. In view of sufficiency of the reasons for the delay having been explained before the court, CAN 2 of 2023 is allowed, thereby condoning the delay in preferring MAT 185 of 2023.
2. Let the appeal stand registered.
3. There shall be no order as to costs.

In Re: MAT 185 of 2023

4. The scope of the present challenge is with regard to the order of the learned Single Judge whereby the

learned Single Judge set aside an order of prohibition of functioning of the writ petitioner, which is a clinical establishment, by lifting such prohibition.

5. The present appellant was the complainant at whose behest an enquiry was supposedly done before such prohibition was imposed. Learned counsel for the appellant argues that there was an enquiry preceding the prohibition and, as such, the impugned order of the learned Single Judge is bad in law. Learned counsel places reliance on Annexure P6 at page-97 of the establishment's affidavit-in-opposition filed in connection with the present appeal which, according to learned counsel for the appellant, was the said enquiry report.
6. Secondly, it is argued that Section 26 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 (hereinafter referred to as "the 2017 Act") provides for an appeal against an order of prohibition. Hence, the writ petition itself was not maintainable before the learned Single Judge.
7. While answering the issues, learned counsel appearing for the clinical establishment submits that the prohibition was done without any prior enquiry and, as such, the order of the learned Single Judge was justified. It is further contended that the

livelihood of several employees of the hospital are dependent on the outcome of the present appeal and, as such, the Appellate Court may not interfere with the impugned order.

- 8.** Learned counsel for the State places reliance on the report filed in the form of an affidavit before this court to indicate that there was an enquiry and the report thereof has been placed before this court.
- 9.** It is, thus, contended that in the absence of any application under Section 21(5) of the 2017 Act, there could not have been any occasion to lift the prohibition.
- 10.** Upon hearing learned counsel, we find from the materials on record that although a report was actually filed, the same was authored after the order of prohibition.
- 11.** Annexure-P6 at page-97 of the affidavit-in-opposition of the establishment filed in connection with the appeal cannot be said to have been a report. It is evident therefrom that the same was merely a query from the clinical establishment by the CMOH, Darjeeling as to whether certain steps had been complied with by the clinical establishment.
- 12.** Thus, there is substance in the impugned order inasmuch as the prohibition was not preceded by any proper enquiry.

- 13.** Insofar as the bar under Section 26 is concerned, we are of the opinion that the hands of the writ court are not tied by an alternative remedy in the event it is found that there was some palpable illegality and/or gross miscarriage of justice.
- 14.** We are also aware of the well-settled position of law that the Appellate Court, in an intra-court appeal, is extremely cautious so that its own views are not substituted for that of the learned Single Judge and unless there is a palpable or patent error of law and/or fact, there is generally no interference in intra-court appeals.
- 15.** We do not find from the materials on record that there was any palpable illegality in the impugned order of the learned Single Judge, whereby the prohibition was directed to be lifted.
- 16.** However, at the same time, we are also of the view that since the present appellant had taken out a specific complaint on the demise of his wife, all aspects of such complaint ought to have been enquired into by the respondent-authorities.
- 17.** There are two components of such complaint. First, whether there was any negligence on the part of the clinical establishment concerned in the sad demise of the wife of the appellant. Secondly, whether the clinical establishment concerned has duly complied

with all legal and procedural norms in its functioning.

- 18.** Since the authorities were initially of the view that there were certain infirmities in the functioning of the hospital for which initially a set of queries was made, we are also of the opinion that a fresh enquiry should be held by the respondent-authorities on both the counts as indicated above.
- 19.** Accordingly, MAT 185 of 2023 along with CAN 1 of 2023 and CAN 2 of 2023 are disposed of without interfering with the impugned order but with the observations given hereinbelow:
 - (i) The CMOH, Darjeeling shall initiate and conduct a fresh enquiry into the allegation as to the concerned clinical establishment (respondent no.1 herein) not functioning in accordance with legal and procedural norms;
 - (ii) The CMOH shall also enquire as to whether, irrespective of compliance or non-compliance of the above norms, there was any negligence on the part of the respondent no. 1 clinical establishment in the demise of the wife of the present appellant;
 - (iii) In connection with both the above enquiries, the CMOH shall give adequate opportunity of hearing both to the clinical establishment as well as to the appellant/complainant and/or

any other party who might be interested in the outcome of the said enquires;

- (iv) It is expected that both such enquires shall be completed within an outer limit of three months from this date;
- (v) After conclusion of such enquires, the CMOH shall take appropriate steps in accordance with law in pursuance of the outcome of such enquires. The written outcome of the enquiries shall also be communicated by the CMOH both to the complainant as well as the clinical establishment concerned immediately after coming to its conclusion.

20. For the above purpose, the CMOH will be at liberty to form a fresh Enquiry Committee and take all due steps in accordance with law afresh without being influenced by the outcomes of the previous enquiry and/or the previous procedure undertaken by him.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)