

23.12.2025.

**Ct.No.24.
as**

WPA 558 of 2025

**Rekha Sen
Vs.
The State of West Bengal & Ors.**

Mr. Anirban Roy,
Ms. Manaswita De.

...for the Petitioner.

Mr. Jayanta Samanta, Ld. Jr. Govt. Adv.,
Ms. Indumouli Banerjee.

...for the State.

Mr. Atarup Banerjee,
Mr. Rajdeep Pramanik,
Ms. Simika Roy.

...for the Respondent No.2.

Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.,
Mr. Shiladitya Rakshit.

...for the Respondent Nos.3 & 4.

1. In a rather unfortunate factual conspectus, the petitioner has approached this Court in this writ petition.
2. The petitioner's husband was admitted with the respondent No.3 on the ground that he was suffering from dementia and connected ailments. The petitioner admitted her husband on September 5, 2023 with the respondent No.3.
3. Within a span of few months, the husband expired in January, 2024. The petitioner's allegations that several of the ailments were known to the respondent no.3, inspite whereof, the respondent No.3 admitted the husband, may

or may not be supported and/or corroborated by sufficient evidence, as disclosed with this writ petition.

4. The petitioner had made a complaint with the respondent No.2, which was disposed of by an order of July 31, 2024, which is the impugned order herein. The respondent No.2 has in great details, after taking into account the advice and opinion of several experts come to the conclusion that the death of the petitioner's husband, unfortunate as it is, cannot be foisted on the negligence or breach of any statutory duties of the respondent No.3.

5. This is the order assailed in this writ petition.

6. Mr. Banerjee, learned Advocate appearing for the respondent No.2 submits that the complaint made before the respondent No.2 ought not to have been considered at all in view of Section 1 (4)(b) of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (hereinafter referred to as the said Act), which reads as under;

“(4) It shall apply to all clinical establishments other than-

(a) xxx xxx xxx

(b) any clinical establishment or asylum established or licensed under the Mental Health Act, 1987.”

7. The respondent No.3 is a mental health care establishment, which is registered under the Mental Health Act, 1987, which is not disputed by any of the parties.

8. Mr. Bhattacharya, learned Senior Advocate appearing for the respondent Nos.3 and 4 has also submitted that the

respondent No.3 is indeed a body established and registered under the Mental Health Act, 1987 and clearly beyond the purview of the said Act. Thus, the complaint of the petitioner before respondent No.2 ought not to have been entertained.

9. After hearing the learned Counsel appearing for the parties and going through the records of the case, I find that the respondent No.3 is indeed an establishment under the Mental Health Act, 1987. The respondent no. 3 was registered under the Mental Health Act, 1987, is evident from the license which was valid till 22.02.2019. The application for renewal of the license has also been made on 31.01.2019, by the respondent no. 3. Copies of this license and the application made by the respondent no. 3 are kept with the record.

10. The respondent no. 3 being a clinical establishment, licensed under the Mental Health Act, 1987 is clearly beyond the purview of the said Act. The provisions of this Act do not have any applicability in so far as the respondent no. 3 is concerned.

11. The Respondent No. 3 not being within the domain of the aforestated Act, is not covered by the definition of Clinical Establishment under Section 2(C) of the said Act. Consequently, the Commission does not have the power as stipulated under Section 38 of the Act to examine or consider the complaints filed against this

respondent no. 3, not being a Clinical Establishment under the said Act.

12. It is evident, that this fact was not brought to the notice of the Commission at the time of receipt of the complaint. Parties have also admitted that neither of them had brought the fact to the notice of the Commission that the respondent no. 3 was not a Clinical Establishment within the afore-stated Act and kept out of the aforestated Act, specifically by Section 1(4)(b) of the said Act.

13. In view thereof, the order dated July 31, 2024 by the respondent No.2 is set aside.

14. The petitioner will be at liberty to proceed against the respondent No.3 in accordance with law, if so advised. All points are kept open for the petitioner to be urged before the appropriate authority.

15. With the aforestated direction, the writ petition is disposed of.

16. There shall be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rectobroto Kumar Mitra, J.)