

10-02-2025
Item No.3 ML
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.2878 of 2025
Malda Apollo Nursing Home & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Saikat Chatterjee
Ms. Salma S. Shah
Mr. Sani Hossian
Mr. Bijoy Das ...for the petitioners

Mr. Nilotpall Chatterjee
Mr. Amrita Lal Chatterjee ...for the State

1. The petitioners are aggrieved by a notice dated February 4, 2025 issued by the Additional District Magistrate (General), Malda under section 152(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for conditional closure of Malda Apollo Nursing Home.
2. Apart from several other discrepancies, what has been brought to the notice of the court is that the subject nursing home is running without a valid certificate of enlistment under the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017.
3. From the documents annexed to the writ petition, it appears that the petitioners filed an earlier writ petition being WPA No.24032 of 2024 which stood disposed of by an order dated September 25, 2024 directing the Chief Medical Officer of Health, Malda (CMOH) to take a decision with regard to the prayer of the petitioners seeking renewal of

the licence, within a period of two months from the date of communication of that order, upon granting adequate opportunity of hearing to the petitioners. It has been submitted that the direction passed by the court has not been complied with till date.

4. It has been submitted on behalf of the petitioners that the District Magistrate forcefully locked the subject nursing home by removing the patients from there on Friday, February 7, 2025, and has also restrained the doctors from attending the nursing home.
5. It has also been submitted that the impugned closure notice has been issued arbitrarily without granting any opportunity of hearing to the petitioners.
6. It has been brought to the notice of the court that the Additional Chief Medical Officer of Health recommended the renewal of certificate of enlistment on November 28, 2023, but despite such recommendation, the renewal was not made. Prayer has been made to set aside the impugned closure notice.
7. Learned counsel for the State relies upon a compilation of documents in support of his submission that prayer for renewal of the certificate of enlistment of the petitioners stood rejected by an order dated February 6, 2025 and the same was communicated to the petitioners via e-mail.
8. It has further been submitted by the State that there are several discrepancies on the part of the petitioners in running their nursing home and that the functioning of the nursing home without following the provision of law, is sheer nuisance.

It has also been submitted that fire licence relied upon by the petitioners is a fake document annexed at page 96 of the writ petition.

9. On a query of the court as to whether the decision with regard to the renewal of the certificate of enlistment was taken upon affording opportunity of hearing to the petitioners as directed by the court on September 25, 2024, there is no positive response from the end of the respondent authorities.
10. It appears that the prayer of the petitioners seeking renewal of the certificate of enlistment is pending consideration for a considerable period of time. Since the nursing home is providing health services to the patients, the authority ought to have acted within the prescribed time-period. The authorities, for reasons best known to them, kept the petitioners' application pending for years together. Even after the court directed the authority to consider the prayer for renewal within a specified time-period upon affording opportunity to the petitioners, the same has not been complied with.
11. The CMOH unilaterally took a decision on the petitioner's application without affording them any opportunity of hearing and rejected the said application on February 6, 2025, immediately after the instant writ petition was filed before this court on February 5, 2025 after obtaining leave from the court citing urgency. The action of the authority raises doubt in the mind of the court with regard to the impartiality and the legality of the impugned decision.
12. In view of the above, the respondent authorities are restrained from giving any effect and/or

further effect to the closure notice dated February 4, 2025 till a decision is taken by the CMOH with regard to the renewal of the licence of the petitioners.

13. A decision shall be taken by the CMOH at the earliest but positively within a period of four weeks from the date of communication of this order.
14. An opportunity of hearing shall be given to the petitioners to produce documents in support of the prayer for renewal.
15. It is, however, made clear that the petitioners will not be allowed to run the subject nursing home till a formal decision is taken by the CMOH in this regard.
16. As the petitioners' prayer submitted pursuant to the liberty granted by the court in paragraph 7 of the order dated September 25, 2024 in WPA No.24032 of 2024 before the State Grievance Redressal Committee is pending decision till date, the respondent authority shall also take steps to consider the same in compliance of the aforesaid order.
17. The writ petition stands disposed of.
18. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
19. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

