09.04.2025
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Ct.No.7
sdas

WPA 9246 of 2021

Mega City Nursing Home (P) Ltd.
Vs.
The State of West Bengal & Ors.

Mr. Shibaji Kumar Das
...for the petitioner

Mr. Atarup Banerjee
Mr. Rajdeep Pramanik
... for the respondents no. 2 & 3

Mr. S. R. Saha
... for the respondent no. 4

Affidavit-of-service filed in Court be taken on record.

The dispute in the present writ petition has its origin in a tragic incident involving the death of a mother, who passed away on the very same day she gave birth to her child at Megacity Nursing Home, a clinical establishment within the meaning of Section 2(c) of the West Bengal Clinical Establishment (Registration, Regulation, and Transparency) Act, 2017 (hereafter referred to as the 2017 Act). The deceased woman had been under the continuous supervision of Dr. Gauranga Kumar Ghatak, M.D. (Gynaecology).

At an advanced stage of her pregnancy, following the advice of Dr. Ghatak, she was admitted to the

nursing home on 29th October 2019. A female child was delivered by caesarean section at approximately 9:00 AM in the morning. The procedure itself appeared to proceed without complications. However, at around 1:00 PM, the patient's blood pressure reportedly began to drop, and her condition deteriorated rapidly. By 5:00 PM, her condition had worsened and she was placed on a ventilator, but unfortunately, she passed away shortly thereafter.

These events prompted the husband of the deceased, the respondent no. 4 herein, to file a complaint with the Clinical Regulatory Commission, alleging medical negligence on the part of the attending doctor and the medical staff of the nursing home. Following an enquiry, the Commission issued an order on 15th February 2021, concluding that there was negligence in the patient care services provided by the nursing home. The Commission awarded a compensation of Rs. 2,00,000/- and directed the nursing home to pay this amount to respondent no. 4.

Aggrieved by this order, the nursing home, as the clinical establishment in question, has approached this Court by way of this writ petition.

Mr. Das, the learned advocate representing the petitioner, draws my attention to the complaint lodged by respondent no. 4, highlighting that the primary allegation in the complaint was medical negligence on the part of the attending doctor. Referring to Section 38

of the 2017 Act, which outlines the powers and functions of the West Bengal Clinical Establishment Regulatory Commission, he argues that the Commission lacks the authority to determine medical negligence on the part of a clinical establishment. He further contends that such power is vested with the Medical Council, not the Commission.

Additionally, Mr. Das points out that while Section 44 of the Act empowers the Commission to record evidence before arriving at a conclusion, the Commission failed to record any evidence in this case and abruptly jumped to its conclusion. He submits that the Commission's order, being both erroneous and illegal, if allowed to stand, would result in a miscarriage of justice.

Mr. Saha, the learned advocate representing respondent no. 4, draws my attention to certain portions of the Commission's order and argues that the nursing home has effectively accepted the order. He contends that, before the Commission, the nursing home had sought a reduction in the amount of compensation awarded.

Mr. Saha submits that the respondent no.4 had also lodged a complaint before the Medical Council. He presents the evidence recorded during the proceedings before the Medical Council, along with the testimony of a medical expert who had testified before the Medical Council. He highlights that the expert categorically

observed that although the operating surgeon and his assistant were repeatedly requested by the RMO to attend to the patient over a span of about six hours, they failed to do so. Additionally, Mr. Saha refers to the medical expert's remark that the nursing home is becoming a "human slaughterhouse,". The portions of the evidence produced by respondent no. 4 are duly taken on record.

Mr. Banerjee, learned advocate representing the respondents no. 2 and 3 drawing my attention to a portion of the order, submits that before the Commission the representative of the clinical establishment contended that during pandemic the concerned nursing staff left the nursing home.

He further submits that, in accordance with specific instructions issued by the competent authority and the Hon’ble Supreme Court, if a clinical establishment was operational during the COVID-19 pandemic, it was prohibited from releasing any nursing staff during that period. Mr. Banerjee, drawing my attention to the ‘Standard of Service Provider’ as outlined in Schedule II of the West Bengal Clinical Establishment (Registration, Regulation, and Transparency) Rules, 2017, argues that the regulations require every nursing home to have one qualified registered nursing staff and one qualified doctor in a maternity home. He asserts that the nursing home in question failed to comply with these norms.

Moreover, he points out that the nursing home was given an opportunity by the Commission to produce the nursing staff and the doctor who attended to the patient, but the nursing home failed to do so.

Heard the learned advocates representing the respective parties and perused the materials on record placed before me.

Undoubtedly, an administrative decision is subject to judicial review if there is illegality in the decision-making process. While a court with the power to exercise judicial review over an administrative decision will not act as an appellate body, it will intervene if the decision is shown to be perverse, irrational, unreasonable, or illegal.

From Section 44 of the 2017 Act, it is clear that the Commission is not bound by the procedure laid down in the Code of Civil Procedure. However, the Commission is required to follow the principles of natural justice. A violation of these principles constitutes a valid ground for invalidating an administrative decision. The principle of natural justice has two main aspects: the rule against bias and the right to a fair hearing.

The petitioner did not allege any bias on the part of the Commission. Before passing the impugned order in this writ petition, the Commission provided the nursing home with an opportunity to defend itself. The

Commission also gave the nursing home the chance to produce the nursing staff and the attending doctor, but the nursing home failed to avail itself of that opportunity.

After reviewing the medical and post-mortem reports, the Commission, which is manned by medical experts, concluded that there was negligence in patient care services and awarded compensation. The Commission's order indicates that it imposed interim compensation pending the decision to be made by the Medical Council, based on the complaint filed by respondent no. 4.

From the observations made by various medical experts, it prima facie appears, even to a layman, that there was a deficiency in post-operative care. The post-mortem report indicates that the bleeding occurred due to excessive hemorrhaging from the cesarean wounds. As previously noted, although the operation itself was claimed to have gone well, the patient's blood pressure suddenly dropped, and she ultimately passed away on the same day. There is sufficient evidence indicating that despite being called, the attending doctor did not attend to the patient on that day.

Therefore, I did not find any infirmity and/or perversity in the order under challenge in the writ petition that would warrant interference with the same.

Consequently, the writ petition is dismissed.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)