

11.06.2025
Item No.14
Court No.11
Avijit Mitra

MAT 1833 of 2023
with
IA No.CAN 1 of 2023

Midland Nursing Home Pvt. Ltd. & anr.
- Versus -
State of West Bengal & ors.

Mr. Subir Sanyal, Sr. Adv.,
Mr. Kaushik Chatterjee,
Mr. Aman Agarwal,
Mr. Soham Sen,
Mr. Ritaban Sarkar,
Mr. Trijit Mitra

...for the appellants

Mr. Vimal Kumar Shahi, A.G.P.,
Mr. Sasthi Charan Dhara

....for the State respondents

Mr. Jayanta Narayan Chatterjee, Sr. Adv.,
Mr. Sirshendu Sinha Roy,
Mr. Supreem Naskar,
Ms. Jayashree Patra,
Ms. Pritha Sinha

...for the respondent no.3

Mr. Atarup Banerjee,
(through virtual mode)

Mr. Rajdeep Pramanik

....for the respondent no.2

The present appeal has been preferred by Midland Nursing Home Pvt. Ltd. being the appellant no.1, a Clinical Establishment (hereinafter referred to as CE) and its functionary being the appellant no.2 challenging an order dated 29th August, 2023 passed by the learned single Judge in a writ petition being WPA 16953 of 2023 which was preferred by the appellants challenging, *inter alia*, an order dated 22nd May, 2023 passed in a Case Reference :ID-INT/NPG/2020/50 by the West Bengal Clinical Establishment Regulatory Commission

(hereinafter referred to as the Commission). By the said order dated 22nd May, 2023, the Commission confirmed its earlier order dated 10th September, 2020 and directed the appellants to pay an amount of Rs. 5 lakhs by transferring the said amount to the bank account of the complainant being the respondent no.3 herein.

Records reveal that the complainant's son, namely, Subhrojit Chatterjee (in short, Subhrojit) aged about 18 years was suffering from an acute respiratory problem. On 9th July, 2020 at about 5.30 a.m. he was taken to the Kamarhati ESI Hospital (hereinafter referred to as the ESI hospital). His sugar level was tested and he was referred to the CE. He was thereafter taken to the CE at about 10.00 a.m. Allegedly he and his parents were kept waiting on the road for 30 minutes and none attended him. Aggrieved thereby, Subhrojit's father called the police authorities and requested for help. Thereafter, Subhrojit was attended by a staff of the CE and the complainant was handed over a report stating that her son was COVID-Positive and, accordingly, the CE refused to admit Subhrojit and referred him back to ESI hospital. Thereafter, his parents took him to Sagore Dutta Hospital but admission was refused and he was referred back to the said ESI Hospital wherefrom he was referred to Calcutta Medical College & Hospital. The said hospital initially refused to admit him as there was no bed. However, he was ultimately admitted at 4.00 p.m. but

unfortunately, he expired at about 9.40 a.m. on 10th July, 2020. Upon receipt of a copy of the complaint lodged before the Belghoria Police Station, the Commission treated the same as a formal complaint. A copy of the said complaint was also forwarded to the appellant no.1 and upon hearing the parties, the Commission directed the CE to deposit a sum of Rs. 5 lakhs with the Commission's office within a week from date. In spite of communication of the said order, nothing was deposited. Challenging the said order dated 10th September, 2020, the appellants preferred a revisional application being CO 661 of 2021 in which initially an *interim* order was passed staying the proceedings and thereafter, on 28th April, 2023, the same was disposed of directing the Commission to dispose of the complaint. It was also directed that the deposit of compensation of Rs. 5 lakhs shall be kept in abeyance till the final disposal of the complaint. Pursuant thereto, the Commission passed an order on 15th May, 2023. Aggrieved by the same, the appellants preferred the writ petition and the order passed in the same has been impugned in the present appeal.

Mr. Sanyal, learned senior advocate appearing for the appellants submits that prior to issuance of the order dated 10th September, 2020 appropriate opportunity of hearing was not granted to the appellants inasmuch as prior thereto neither the complaint nor its supportive documents were physically served upon the appellants.

Such act is blatantly violative of the principles of natural justice.

Drawing our attention to the order dated 22nd May, 2023, Mr. Sanyal argues that the tone and tenor of the said order would reflect that as the Commission was not having jurisdiction over the Government hospitals, the entire burden of compensation was fixed upon the appellants.

He submits that the patient was brought to the CE at about 10.30 a.m. i.e., almost five hours after he was referred by ESI Hospital. Having thus failed to bring the patient to the CE within a short period of time, the burden of deterioration of the health condition of the patient could not have been imposed upon the appellants. The delay which occurred was not attributable to the CE.

He further argues that the CE was not a COVID-Hospital and was not equipped with COVID treatment but still the authorities made a sincere endeavour to treat Subhrojit, however, he could not be admitted as he was COVID-Positive and as there was no vacant bed in the CE. The order impugned would itself reveal that without even arriving at a specific finding of negligence against the appellants, the Commission had penalized them directing payment of an amount of Rs. 5 lakhs moreso when the concerned CMOH, North 24 Parganas failed to make any local enquiry and to submit a report in terms of the initial order dated 10th September, 2020.

According to Mr. Sanyal, the Commission ought to have appreciated that the unfortunate incident occurred during COVID pandemic period. The doctors and staff of the said CE were working in a very emergent situation. For admission of a COVID patient, the life of the other patients admitted in the CE would have been at stake.

Drawing our attention to the documents annexed at pages 91, 98, 99, 101, 105 and 106 Mr. Sanyal submits that the CE extended all cooperation and answered all the queries as put forth by the appropriate authorities, contemporaneously and without any delay. The reply of the CE to the show cause notice dated 28th July, 2020 issued by the CMOH, North 24 Parganas was found to be satisfactory. The patient was referred by the ESI Hospital with an advice of ICU ventilation. The patient was immediately attended to and was found to be COVID positive. However, due to non-availability of a bed, he could not be admitted. The allegation that the patient was denied adequate preliminary medical aid is absolutely unfounded. In the said conspectus, the Commission ought not to have directed payment of an amount of Rs. 5 lakhs to the complainant and such direction severely affects the reputation of the CE.

Mr. Chatterjee, learned senior advocate appearing for the respondent no.3 submits that the acts of the appellants expressed their rudeness and utter negligence to treat Subhrojit. The patient was kept waiting for about

an hour outside the CE and was not even provided preliminary medical aid. There was even no attempt on the part of the appellants to stabilize the patient. It is only after the police authorities were intimated about such conduct, a staff attended Subhrojit and in hot haste it was intimated that he was COVID-Positive and consequently admission was denied and he was referred back to ESI hospital. The test conducted was thoroughly discrepant and dependent upon '*visual interpretation*'. Had he been provided primary medical aid, his condition might not have deteriorated. Such negligent act on the part of the appellants is thus inextricably bound with the unfortunate death of the patient on the same day.

Mr. Chatterjee has drawn our attention to the reply given by the appellants to the show cause notice wherein it was stated that '*for this particular case as a special case, checked a COVID KIT in discussion with ESI, Hospital, Kamarhati authority and the visual understanding of COVID-KIT only been shared with ESI, Hospital Kamarhati Authority. And the same done for the benefit of patient*'. No explanation is forthcoming as to why the patient was denied preliminary medical aid. A new document, annexed at page 29 of the writ petition, has been brought on record by the appellants to justify their conduct. Having not placed all the said documents before the Commission, the appellants cannot allege that no finding was returned on the same by the Commission.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that both the orders dated 10th September, 2020 and 15th May, 2023 were passed by the Commission upon granting opportunity of hearing to the appellants and that as such the allegation of violation of principles of natural justice is not acceptable to this Court.

The argument of the appellants that they took all necessary steps towards treatment of the patient but he could not be admitted since all beds were full, was rightly discounted by the learned single Judge as no document indicating the bed profile on the said date was produced before the Commission.

No explanation was furnished as to why a rapid antigen test was conducted as a special case and as to how COVID was detected on '*visual understanding of Covid-KIT*'. In the said conspectus, the learned single Judge rightly observed that '*it defies logic as to what prompted the petitioners to undertake the said test in the present case*'. The appellants miserably failed to dislodge the categoric imputation that they refused the preliminary medical assistance to the patient.

It is well-settled that a writ court cannot transpose itself as an appellate authority and interfere with the decision taken by the statutory body. The learned single Judge had refused to exercise its discretion in favour of

the appellants giving reasons and observing that it was the duty of the appellants '*at least to examine the patient in its outdoor/emergency, thereby rendering at least preliminary medical assistance to the patient, instead of refusing the patient from the outside of the precincts of the Establishment*'. The patient was only 18 years of age and proper extension of a medical assistance by the appellants could have saved his life. The parents suffered distraught pain due to the stone-walled response from an apathetic administration.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

For the reasons discussed above, no interference is called in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)