

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Harish Tandon
and
The Hon'ble Justice Hiranmay Bhattacharyya**

**FMA 1262 of 2024
With
IA No. CAN 1 of 2024**

**Dr. Dipankar Chakrabarti
Vs.
West Bengal Clinical Establishment Regulatory Commission & Ors.**

For the Appellant (in person) : Dr. Dipankar Chakrabarti

For the respondents : Mr. Atarup Banerjee
Mr. Rajdeep Pramanik
...advocates

Reserved on : 11.12.2024

Judgment on : 13.02.2025

Hiranmay Bhattacharyya, J.:-

1. This appeal is at the instance of an unsuccessful writ petitioner and is directed against an order dated August 8, 2024 passed by a learned Single Judge in WPA 18586 of 2024.
2. The daughter of the appellant lost her life at the age of 32 years during the COVID-19 pandemic at a hospital in Kolkata. The said lady after being discharged from the emergency room of Charnock Hospital breathed her last at Spandan Hospital.
3. Appellant filed an application before the West Bengal Clinical Establishment Regulatory Commission (for short "the Commission") under the provisions of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (for short "the 2017 Act").

4. The said complaint was disposed of by the Commission by an order dated December 23, 2022 holding that principally the complaint relates to questioning the treatment protocol that would be clearly outside the domain of the Commission leaving the complainant/ appellant herein to approach the appropriate authority against the treating team questioning the treatment protocol. However, the Commission after examining the bill of Spandan Hospital found some amount was charged in excess. By the said order, Spandan was directed to refund the amount of Rs. 17,438/- charged in excess by an account payee cheque to the appellant.
5. The matter was again taken up by the Commission at the request of the appellant. After hearing the complainant/appellant herein, the complaint was disposed of by an order dated 30.01.2023 by permitting the appellant to apply afresh before the Commission after disposal of the Medical Council proceedings.
6. Appellant approached the Writ Court with a prayer for adjudication of the complaint by including the names of several doctors of Charnock Hospital and Spandan Hospital; to cancel the license of two hospitals as well as upon the doctors and personnel of management of the two hospitals and to pay compensation to the petitioner and for other ancillary reliefs.
7. By the order impugned, the writ petition was disposed of by giving liberty to the appellant to approach the authorities competent to decide the various issues raised in the complaint.
8. The appellant appeared in person before this Court and placed the complaints in details. In course of argument, the appellant laid special emphasis on several issues which falls within the jurisdiction of the Commission. He submitted that the Commission failed to exercise its jurisdiction vested upon it by the 2017 Act.
9. Mr. Banerjee, learned advocate appearing for the respondents submitted that principally the complaint relates to medical negligence which fall outside the jurisdiction of the Commission.
10. Heard the appellant in person and the learned advocate for the respondents and perused the materials placed.
11. After going through the complaint as well as other materials that were produced before the Commission, this Court finds that the complainant has questioned the treatment protocol and has alleged medical negligence against medical professionals.

12. Section 38 of the 2017 Act deals with the powers and functions of the Commission. Proviso to Clause (iii) of sub-section 1 of Section 38 states that any complaint of medical negligence against medical professionals will be dealt with by retrospective State Medical Councils.
13. This Court, therefore, holds that the learned Single Judge was right in directing the West Bengal Medical Council to decide the issue of medical negligence, deviation from usual treatment protocol, non-observance of certain formalities required by the doctors etc. within a stipulated time limit after granting opportunity of hearing to the writ petitioner and the doctors.
14. This Court further finds that the appellant has alleged that the conditions of registration and license have been violated by the Clinical Establishments Conditions for registration and licence have been enumerated in Section 7 of the 2017 Act. Section 20 of the said Act lays down the conditions for cancellation of registration and license. Cancellation of registration and license falls within the exclusive domain of the licensing authority as defined under Section 2(h) of the 2017 Act.
15. The learned Single Judge granted liberty to the appellant to approach the licensing authority with his grievances falling within the scope and ambit of Section 7 of the 2017 Act and the licensing authority was directed to cause an enquiry and to take appropriate steps in accordance with law. This Court is of the considered view that the appellant cannot feel aggrieved by such liberty being granted to him.
16. This Court, however, finds that the complaint filed before the Commission contains certain allegations which falls within the scope and ambit of Section 38 of the 2017 Act. The appellant has specifically alleged that properly trained medical and para medical personnel like doctors etc. have not been employed by the clinical establishment. Such issue squarely falls within Section 38 of the 2017 Act.
17. The Commission, in its order dated 30.01.2023 also noted that some of the allegations which falls within the domain of the Commission and granted liberty to the appellant to apply afresh after disposal of the Medical Council proceedings.
18. Various issues have been raised by the appellant in the complaint lodged with the Commission. Some of such issues falls within the domain of the Commission while others do not. The statutes under which the Commission and the Medical Council have been constituted have conferred jurisdiction upon them to decide certain issues. In view thereof, this Court is of the considered view that the Commission is empowered to decide some of the

issues raised in the complaint which falls within its jurisdiction irrespective of the fact that certain other issues falls within the domain of the West Bengal Medical Council. To the mind of this Court, there was no impediment upon the Commission to decide the issues which fell within its domain.

19. Since the complaint raises several issues and some of which do not fall within the domain of the Commission, this Court feel that the appellant should be given liberty to file a fresh complaint before the Commission raising only the issues which falls within the jurisdiction of the Commission.
20. This Court is not inclined to interfere with the impugned order insofar as liberty granted to the appellant to approach the appropriate fora but feels that the impugned order is to be slightly modified.
21. For all the reasons as aforesaid, the appellant is permitted to file a complaint before the Commission raising only the issues which fall within the jurisdiction of the Commission along with a server copy of this order. If the complaint in the manner as directed hereinbefore is filed, the Commission shall dispose of the same by passing a reasoned order after making necessary enquiries and upon giving opportunity of hearing to the appellant, the clinical establishments or their authorised representatives and any other person whose presence may be necessary for an effective adjudication of such issues that may be raised by the appellant. The reasoned order shall be communicated to the parties immediately thereafter. The entire exercise shall be completed within a period of 10 weeks from the receipt of such complaint. The impugned order stands modified only to the extent as indicated hereinbefore. The appeal and the application stand disposed of accordingly. There shall be no order as to costs.
22. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)