

19.05.2026
Court No. 12
Item No.02
Cp/Sandip

MAT 853 of 2026
With
CAN 1 of 2026

Jaiprakash Gupta
Vs.
The State of West Bengal & Ors.

Mr. Naba Kumar Das
Mr. Arindam Banerjee
Mr. Debayan Roy Chowdhury
Mr. Sumangal Sil

...for the Appellant.

Mr. Jishnu Choudhury, Sr. Advocate
Mr. Sarvapriya Mukherjee
Mr. Deepan Kr. Sarkar
Mr. B. Kumar
Mr. A. Lakhotia

....for the respondent nos. 8 & 9.
Mr. Dhiraj Trivedi, Sr. Adv.,
.....for the State.

Mr. Dhiraj Trivedi, learned senior advocate has been requested by the Court to enter appearance in the matter on behalf of the State of West Bengal and assist the Court in the peculiar circumstances of the case.

This appeal is at the instance of a husband who refuses to take back his wife who was admitted in

Apollo Multispeciality Hospitals Limited in the Emergency Department on September 15, 2021. The wife is still in hospital and the hospital authorities have been taking care of her till now. The husband is unwilling to abide by the directions of the writ court. An order was passed directing the appellant to get his wife discharged and take her to the residence, within a week from the date of the order of His Lordship. His Lordship directed that, if required she may be taken for further treatment at any government hospital. The government hospitals have been directed to treat the wife as and when required. His Lordship observed that, the respondent no. 8 was not in a position to pay the bills and as such, the money should be claimed through the insurance company if the law permitted.

After hearing Mr. Das, learned advocate for the appellant, we find that the grievance of the husband is that the wife is in a vegetative state and cannot be looked after at home. Apollo should make arrangements to transport her to any other government hospital. However, the report of the medical board constituted by the Writ Court, indicates that the patient can be discharged and looked after at home.

In our view, this appeal has been filed only to circumvent the responsibility and avoid any kind of moral duty towards maintenance and care of the

legally married wife, who unfortunately has become physically incapacitated due to an accident.

His Lordship has relied upon a report of a medical committee constituted by the Medical Superintendent, Kolkata Medical College. The following conclusions were arrived at by the committee.

"The present condition of the patient are as follows,

1. Patient is conscious and responding by gesture
2. Her Glasgow coma scale score is E4VTM6
3. Patient is hemodynamically stable.
4. She has spastic hemiparesis involving left half of the body, with secondary contracture.
5. Patient is on tracheostomy tube for tracheal stenosis.
6. Her last visit to ICU was around two years back.
7. There is no bed sore present.
8. She is off anti-convulsant for last two years without any recurrence of convulsion.
9. She can feed herself.
10. She is presently wheelchair bound.
11. Patient is not on external oxygen supplementation, Ryles tube feeding or any IV medication.

Conclusion & Recommendation:

- Thus, we had come to the opinion that patient can be discharged for homestay.
- She needs physical rehabilitation which can be done at home.
- Her tracheostomy tube care consisting of periodic cleaning and suction (SOS) can be done at home by a trained paramedical staff.

- Change of tracheostomy tube which might be required at a gap of around 6 months interval; this can be done by critical care specialist or ENT Surgeon as and when required at any hospital or nursing home having that facility."

Mr. Das submits that the learned court made out a third case by directing the appellant to take back his wife to the house and ensure her treatment from a government-run hospital. Such direction was beyond the scope of the writ petition. It is further submitted that the writ petition was filed by the hospital for a mandamus upon the State respondents to frame guidelines in order to address the issue of patients overstaying in private hospitals. No relief was sought for against the appellant. Mandamus could not be issued against him. It is further submitted that, the State has responsibilities towards the sick, incapacitated and handicapped citizens and should come up with schemes and policies to rehabilitate them in shelter home. The husband wants the State to keep his wife in a shelter home.

The lady has a 17 year old child, who will also be deprived of the company of his mother. What we fail to understand, upon hearing Mr. Das, is how the husband can shirk the responsibilities of the wife, by refusing to take her back to the house. His Lordship was alive to the situation that, the wife may need medical attention and had directed government

hospitals to provide free treatment in future, as an when the lady needs hospitalization.

The appeal is nothing but a ploy of the husband to avoid any responsibility towards his disabled wife. He wants to abandon her. He refuses to take her home, on the ground that, it would be difficult to nurse her. The report of the expert committee constituted by His Lordship clearly states that no further treatment at Apollo Hospital would be necessary and she could be looked after at home. The Apollo Hospital has been treating her for the past four years. Admittedly, the payments have not been made. The Apollo Hospital has also fairly submitted that their anxiety is far deeper than recovery of money from the husband.

It is submitted by Mr. Chowdhury, learned senior advocate appearing for the Apollo Hospitals, that often private hospitals are faced with situations when the party does not want to take back the patient to the house, either on the ground that the patient will become a burden or on the ground that payments cannot be made. Such a situation led Apollo Hospital to file the writ petition, for a direction upon the State Government to device a mechanism which would address such a situation. According to him, protection of the citizens is the duty of the State.

Admittedly, the State has enacted various welfare legislations, with regard to special provisions

and allowances for the old, infirm, disabled and the mentally unwell. Homes for juveniles who are in need of care and protection and in conflict with law have also been established.

However, asking the State to take the patient who is conscious and stable, to a shelter home in a situation like this, on the request of the appellant, would be imposing a huge burden on the State. There will be a risk of parents, siblings, spouses etc., abandoning their own, who are suffering from irreversible ailments. That is why, His Lordship balanced the situation and directed the respondent no. 8 to discharge his moral, humanitarian and legal obligations towards his wife and take her home. His Lordship, being sympathetic to the financial condition of the appellant directed that, in case of any future treatment, the government hospitals will treat his wife as an indoor patient, free of cost. The bills of Apollo were not to be recovered from the appellant.

Under such circumstances, we do not find any reason to interfere with the order impugned.

We direct as follows, by modifying the order of His Lordship:-

The Officer-in-Charge Fulbagan Police Station, accompanied by a lady officer shall transfer Smt. Poonam Gupta from the hospital to her matrimonial home, which is the residence of the respondent no. 8,

situated at 39A, Amherst Row, Raja Rammohan Sarani, Kolkata. Such transfer will be by an equipped ambulance to be provided by Apollo Hospital. A doctor and nurse will accompany the patient, to ensure smooth transfer. She will be settled in her house by the team.

Before reaching the house of the appellant, information shall be given to the Amherst Street Police Station, so that the entry of Poonam into her own home, is without any resistance. The exercise shall be completed by the police authorities on May 21, 2026.

The Superintendent, Calcutta Medical College and Hospital will depute a paramedic /nurse twice a week, to check her vitals and general condition. The report of the medical team does not indicate that Poonam is on any external support. Moreover, she can feed herself and is wheel chair bound.

The said medical staff shall also ensure the cleaning of the tracheostomy tube.

The respondent no. 8 will take Poonam to a government hospital, to be treated by an ENT Surgeon, in periodic intervals for change of such tube.

Needless to mention, if the physical condition of Poonam deteriorates, and she requires emergent hospitalization, she will be removed to Calcutta Medical College and Hospital, for her treatment as an indoor patient.

We cannot lose sight of the moral obligation of the respondent no. 8 and we expect that Poonam is treated well. The police authorities will also keep a vigil. The wife has a right to live in the house.

The appeal and the application are disposed of with the above modification of the order impugned.

We find that His Lordship has already directed that the unpaid bill will be recovered from the insurance company.

This order shall be served in the office of the Secretary District Legal Services Authority, Kolkata for all necessary protection, support and assistance, including legal assistance to the wife if required.

The Secretary DLSA, will make periodic visits to the house, to ensure the patient is secure.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)