

12th May, 2023
(D/L No.31)
(SKB)

W.P.A. 11326 of 2023

Arogya Niketan Private Limited and another
Versus
West Bengal Clinical Establishment
Regulatory Commission and another

Mr. Soumabho Ghose,
Mr. Subhas Bhattacharyya,
Ms. Tiana Bhattacharyya
... for the petitioners.

Mr. Avik Ghatak
... for the respondent no.1.

1. The petitioner no.1 before the court is a clinical establishment as defined under The West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (hereinafter referred to as 'the Act'). The petitioner no.2 is the director of the petitioner no.1.
2. The petitioners are aggrieved by an order passed by the West Bengal Clinical Establishment Regulatory Commission on 13th April, 2023 imposing penalty of Rs.9 lacs on the petitioner no.1. The petitioner no.1 was directed to compensate the complainant/ respondent no.2 within a month from the date of receipt of the copy of the order. The impugned order indicates that the petitioner is to pay the penalty amount by 13th May, 2023 which is tomorrow.

3. After hearing learned counsel appearing for the petitioners, the Commission as well as the private respondent/complainant, there are several facts appearing from the records, which persuade this court to draw conclusions upon the same, at least at this stage before the matter is heard out finally.
4. The impugned order records, inter alia, that one Dr. Dipsikha Chakraborty who was the pathologist, looking after the daughter of the complainant admitted to certain interpolations and tried to explain her conduct by adverting to certain medical/technical counts and records.
5. The conclusion of the Commission points to an expert opinion given by the members of the Commission to the effect that the patient was not properly treated. The Commission accepts that the charge of medical negligence is outside the domain of the Commission and the complainant is free to approach the appropriate authority against the concerned doctor, one Dr. Munsu. The Commission, however, proceeds to hold that the negligence is apparent from the records and refers to the interpolations done by the concerned pathologist.
6. The concluding remark is that the interpolations would be sufficient to “blame” the clinical establishment which is the petitioner no.1 in this

case. The point of the petitioner no.1 not being able to arrange blood transfusion to the patient is further recorded.

7. None of these recordings however bear a rational nexus with the amount of penalty imposed. The amount of Rs.9 lacs is without any basis or even a calculation supported by facts and documents. The lapse on the part of the Commission to provide a basis for the amount of penalty would be reinforced by Section 44 of the Act which outlines the procedure to be followed by the Commission. Section 44(2) of the Act vests the Commission with the powers of a Civil court in respect of requiring discovery and production of documents and receiving evidence of facts. The impugned order does not invoke any of the powers which the Commission could have done under Section 44 of the Act. Although, random remarks have been made, there is no basis to hold that the petitioner no.1 was responsible for medical negligence. Prima facie, it appears that the alleged interpolations on the part of the concerned pathologist have been passed on to the petitioner no.1.

8. Section 45 of the Act provides for enforcement of orders upon non-compliance of an order passed by

the Commission. Hence, sufficient urgency is made out for passing appropriate orders.

9. The above reasons persuade this court to stay the impugned order passed by the Commission on 13th April, 2023 until the matter is heard out further.
10. List this matter on 12th June, 2023, as prayed for on behalf of the complainant.

(Moushumi Bhattacharya, J.)