(2019) 09 CAL CK 0082

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 7191 (W) Of 2018

B.M. Birla Heart Research Centre — APPELLANT

Vs

State Of West Bengal & Ors — RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:
Indian Medical Council Act, 1956 — Section 13(4A), 23, 26, 27
Industrial Disputes Act, 1947 — Section 2(k)
West Bengal Clinical Establishment (Registration, Regulation And Transparency) Act, 2017 — Section 2(c), 2(w), 36, 38, 38(iii), 38(1)(iii), 38(1)(x)

Citation : (2019) 09 CAL CK 0082

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Shibaji Kumar Das, Biswaroop Bhattacharya, Vivekananda Bose, Deblina Chattaraj

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. The petitioner has assailed an order dated February 2, 2018 passed by the West Bengal Clinical Establishment Regulatory Commission.

2. Learned Advocate appearing for the petitioner has submitted that, the mother of the fourth respondent was admitted in the Coronary Care Unit of the petitioner under Dr. Shuvo Dutta as the Primary Consultant with complaints of Chest Pain, Shortness of Breathing and fever for three days. The patient was treated at the establishment of the petitioner. On May 7, 2017, the patient was seen by a physician. At about 7.45 p.m. on May 7, 2017, the condition of the patient progressively deteriorated. She developed hypotension and was started inotropes and vasopressors for the same. She was attended by Dr. Shuvo Dutta, Primary Consultant at about 9.15 p.m. She was asked to be transferred to a multi speciality hospital. The fourth respondent and other relatives of the patient wasted about two hours time on May 7, 2017 to take a decision with regard to

her transfer. The patient was subsequently discharged on May 8, 2017. She was admitted at C.M.R.I. for further management. The patient however succumbed to her illness on May 8, 2017 at about 6.15 p.m. The fourth respondent lodged a complaint on May 12, 2017 with the second respondent online. The complaint was against the petitioner and Dr. Shuvo Dutta. The petitioner submitted its response to such complaint on May 15, 2017. The second respondent required various documents from the petitioner which the petitioner supplied. The complaint was heard whereupon, the impugned decision was rendered.

3. Learned Advocate appearing for the petitioner has submitted that, the fourth respondent alleged deficiency in service and negligence in treatment. He has referred to the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 and submitted that, deficiency in service is not defined in the Act of 2017. Moreover, Section 38 (iii) proviso specifies that complaint of medical negligence against medical professionals will be dealt with by the respective State Medical Councils. Therefore, according to him, the second respondent did not have jurisdiction to decide on the complaint lodged by the respondent No. 2.

4. Learned Advocate appearing for the petitioner has drawn the attention of the Court to the various passages of the impugned order. He has submitted that, the impugned order proceeds on the basis that, Dr. Ashok Kumar Giri interpreted Echocardiogram data in relation to the patient and decided the course of treatment which was detrimental to the patient, unauthorised and such illegal act of the doctor of the petitioner came within the ambit of deficiency in patient care service and amounts to irrational and unethical trade practice. He has submitted that, Dr. Ashok Kumar Giri is a doctor entitled to practice medicine. He is entitled to perform an Echocardiogram as any doctor entitled to do. Dr. Ashok Kumar Giri having done the procedures as noted in the impugned order, such conduct did not amount to any deficiency in service. He has referred to the replies of the Medical Council of India and the West Bengal Medical Council given to the second respondent as also the response of the Medical Council of India given in response to an order passed by the Court. He has submitted that, in the responses to the second respondent and in the response of the Medical Council of India to the Order dated March 15, 2019, such authorities do not claim that, Dr. Ashok Kumar Giri is not entitled to perform the procedure of Echocardiogram on a patient. That being the position, the petitioner having engaged a doctor to perform an Echocardiogram on a patient cannot be said to have rendered deficient medical service to the patient warranting imposition of any damages or taking any action against the petitioner under the Act of 2017. He has highlighted the fact that, in the reports, the Medical Council of India has taken the stand that, even, a paramedical with training can undertake the procedure of Echocardiography. In the present case, Dr. Ashok Kumar Giri obtained M.D. Physician Qualification from St. Petersburg Medical Academy, Russian Federation and was granted registration to practice medicine after qualifying the Screening Test (Foreign Medical Graduate Examination) as provided in Section 13(4A) of the Indian

Medical Council Act, 1956. He has submitted that, the report of the Medical Council of India submitted to Court pursuant to the Order dated March 15, 2019, has been issued by a law officer. A law officer does not have the authority to decide whether, the qualification possessed by Dr. Ashok Kumar Giri entitles such doctor to perform Echocardiogram and interpret the data or not. The communication of the law officer of Medical Council of India should not be treated as that of the decision of the Medical Council of India.

5. Learned Advocate appearing for the petitioner has highlighted the fact that, Medical Council of India has not been able to place any Rule, Regulation or law which prohibits a medical graduate to perform Echocardiogram. M.B.B.S. courses undertaken in India includes cardiology in which Echocardiography is also taught. He has submitted that, the second respondent erred in rendering the finding that, performance of Echocardiography by Dr. Ashok Kumar Giri is unauthorised and illegal.

6. Learned Advocate appearing for the petitioner has submitted that, nothing has been brought on record to suggest that, Dr. Ashok Kumar Giri violated any statutory provision. In absence of a statute prescribing a punishment being violated, Dr. Ashok Kumar Giri cannot be punished for an alleged violation of a non-existence statutory provision. That being so, the petitioner, cannot be foisted with any responsibility of the actions of Dr. Ashok Kumar Giri. He has relied upon 2012 Volume 5 Supreme Court Cases page 242 (Vijay Singh v. State of Uttar Pradesh & Ors.), judgment and order dated August 25, 1989 passed by the High Court of Calcutta in C.O. No. 7236 (W) of 1988 (Manabendra Kumar Choudhury v. First Labour Court & Ors.) and 1989 Volume 3 Supreme Court Cases page 448 (Pyare Lal Sharma v. Managing Director, Jammu & Kashmir Industries Limited & Ors.) in support of such contentions.

7. Learned Advocate appearing for the fourth respondent has submitted that, the Commission did not enter into the arena of negligence of a doctor. He has submitted that, the petitioner did not contend that, the impugned order of the Commission and the findings rendered by the Commission are perverse or baseless. He has submitted that, since, the impugned decision of the Commission cannot be said to be illegal or irrational or suffering from any procedural impropriety, the writ petition should be dismissed. A writ court need not convert itself to a court of appeal. The decision making process of the Commission, in the facts of the present case, cannot be said to be vitiated by any illegality or irrationality. Therefore, the court need not interfere with the impugned decision.

8. Learned Advocate appearing for the fourth respondent has submitted that, the petitioner was guilty of not affording proper treatment to the patient. He has referred to the factual scenario. He has submitted that, the patient was admitted on May 3, 2017 and was planned to undergo a coronary angiography on May 4, 2017. The patient was admitted with the petitioner. The petitioner without any cogent reason delayed such procedure. The patient was suffering from fever. The

petitioner did not take any steps to treat the patient. The petitioner did not refer the patient to any other hospital for treatment till May 7, 2017. The patient expired on May 8, 2017. Although the patient was admitted on May 3, 2017 she was referred to a Dr. T.K. Bhaumik on May 5, 2017 for treatment of fever of unknown origin that the patient was suffering from. The petitioner was guilty of delaying treatment of the fever of unknown origin of the patient. Dr. Bhaumik visited the patient at 3 P.M. only on May 7, 2017. The condition of the patient deteriorated considerably between May 3, 2017 and May 7, 2017. According to him, the petitioner kept the patient admitted for five days knowing fully well that, the petitioner was not equipped to treat the ailment of the patient. The patient was admitted with heart ailments and fever. The fever prevented the treatment of the heart ailments. The petitioner knowing fully well that, it was ill-equipped to treat the fever and that, till such time the fever is treated, heart ailments of the patient cannot be attended to, the petitioner admitted the patient and did not treat the fever. Moreover, the petitioner delayed discharging the patient. According to him, Dr. Shuvo Dutta advised the patient to be shifted to a multi-speciality hospital at 9:30 P.M. on May 7, 2017. The fourth respondent and the other relatives of the patient readily agreed to do so. The petitioner took time to issue the due clearance slip. The same was issued at about 11:33 P.M. on May 7, 2017. Even thereafter, the petitioner delayed discharging the patient and ultimately discharged her at the early hours of May 8, 2017. The patient was then admitted to C.M.R.I. hospital within minutes of discharge. The patient was admitted at 2 A.M. on May 8, 2017. C.M.R.I. hospital is next door to the petitioner. Therefore, despite, the clearance slip being issued at 11:33 P.M. on May 7, 2017, and despite the fourth respondent and the relatives of the patient taking sufficient care, due to the negligence and delay on the part of the petitioner, the patient could be admitted in C.M.R.I. only at 2 A.M.

9. Learned Advocate appearing for the fourth respondent has submitted that, the bills raised by the petitioner contains charges for I.V. fluids which was never utilised or administered upon the patient. The petitioner could not explain the utilisation of the number of bottles of I.V. fluids for which the petitioner charged the fourth respondent for treatment of the patient. Moreover, the petitioner engaged Dr. Ashok Giri and Ms. Chaitali Kundu to perform echocardiography when, none of them were qualified to conduct such test and interpret the data of such test to make a report. Dr. Ashok Giri and Ms. Chaitali Kundu conducted echocardiography test upon the patient and interpreted the data thereof. Dr. Ashok Giri does not have requisite medical qualification to interpret the data of echocardiography.

10. Learned Advocate appearing for the fourth respondent has relied upon Sections 23, 26, 27 of the Indian Medical Council Act, 1956 and submitted that, Dr. Ashok Giri was not supposed to practice as a specialist. He was not supposed to undertake a procedure for Echocardiography. He did not have the additional qualification commensurate with the speciality that he claimed. Echocardiography is not taught in M.B.B.S. or equivalent courses. It is only taught in MD

(Medicine), MD (General Medicine), MD (Paediatrics) and MD (Respiratory Medicine). According to him, ECG can be performed by a cardiologist, that is, a person who has a degree in DM (Cardiology) after having requisite MD degree. He has submitted that, Dr. Giri claims to have served as in charge of Non-Invasive Department (Investigations Services) of the petitioner which includes echocardiogram. It means that, Dr. Giri consciously undertook echocardiography without there being a medical emergency to do so. According to him, Dr. Giri is not a specialist although he was employed by the petitioner as a specialist and the petitioner allowed Dr. Giri to Act as a specialist in a field which, Dr. Giri could not have acted as a specialist.

11. Learned Advocate appearing for the fourth respondent has submitted that, the petitioner issued a concocted discharge summary in respect of the patient. Although, the condition of the patient was not stable at the time of discharge, the discharge summary of the petitioner states that the petitioner was discharged in a stable condition. The explanation sought to be advanced by the petitioner before the Commission was rightly disbelieved by the Commission. In such circumstances, he has submitted that, the writ petition should be dismissed.

12. The order dated February 2, 2018 passed by the West Bengal Clinical Establishment Regulatory Commission is under challenge in the present writ petition. West Bengal Clinical Establishment Regulatory Commission was established under the provisions of the Act of 2017. In the present case, the Commission passing the impugned order was presided by a retired judge of this Hon'ble Court. Five eminent doctors of the city constituted the other members of the Commission. The fourth respondent lodged a complaint with the Commission with regard to deficiency in service of the petitioner in treating his mother. The Commission registered the complaint of the fourth respondent, called upon the petitioner to respond thereto, and after hearing the parties passed the impugned order. By the impugned order, the Commission found two major lapses on the part of the petitioner. Considering the nature of lapses on the part of the petitioner, the decree of deficiency in service and irrational and unethical trade practice coupled with the mental shock, pain, suffering and harassment suffered by the fourth respondent and other family members of the patient, the Commission awarded a sum of Rs. 20 lakhs as compensation to the fourth respondent.

13. In the impugned order, the Commission recorded that, it initially heard the parties. Upon hearing, the Commission found that, there was discrepancy between the contents of the discharge summary of the patient and the affidavit filed by the Medical Superintendent of the petitioner. The Commission also found that, large quantity of I.V. fluid was requisitioned on May 7, 2017 on which date, the patient was discharged. It noted that, the fourth respondent claimed that no echo-screening report was given to him with the medical file of the patient by the petitioner. The Commission found that, the echocardiogram on the patient was done by Dr. Giri and that, Dr. Giri noted his findings and recorded his impressions

and opinion thereupon so far as the echocardiogram report dated May 3, 2017 was concerned. In such report, Dr. Giri described himself as head of Non-Ivasive Department of the petitioner. Although the registration number of Dr. Giri was disclosed, the medical qualification of Dr. Giri was not divulged. The Commission found that another echocardiogram was done on May 7, 2017 at 8.05 P.M. with a portable machine and the findings were recorded and interpreted with impression by Ms. Chaitali Kundu. The Commission requisitioned the requisite informations from the petitioner on such aspects.

14. The impugned order records that, affidavits were filed subsequent to the Commission requisitioning the informations as noted in the preceding paragraph. The impugned order records that the Commission took cognizance of the contents of such affidavits. It found that, the discharge summary of the patient stating that the patient was discharged on a stable condition, was far from the truth. The condition of the patient deteriorated progressively from the date of her admission on May 3, 2017 with the petitioner till the date of her discharge on May 7, 2017. Therefore, the contents of the discharge summary depicted an untrue picture of the condition of the patient. It found that the Act of describing a critically ill patient to be stable and the attempt to justify the same, detailing how the patient was medicated, treated and managed and then mobilised and stabilised although the materials on record actually establish that the condition of the patient was critical, amounts to gross deficiency in patient care service by the petitioner. It therefore proceeded to find the petitioner liable for the same.

15. The Commission, thereafter, examined whether Dr. Giri, who was employed by the petitioner as Consultant in Charge of Non-Invasive Department, and Ms. Chaitali Kundu, who was employed as Echocardiogram technician, where medically competent and qualified to perform non-invasive cardiological procedures and provide their study reports. The Commission considered the educational qualification of Dr. Giri, the response of the Medical Council of India and West Bengal Medical Council as to whether Dr. Giri having his educational qualifications as declared, was entitled to conduct non-invasive cardiological procedure or not. After considering the response of the Medical Council of India and West Bengal Medical Council and the educational qualifications of Dr. Giri, Commission found that the employment of Dr. Giri in the post of Consultant in Charge, Non-Invasive Department and his engagement for conducting non-invasive procedure and echocardiogram to give a study report interpreting the data available from such procedure and, on that basis allowing him to decide the course of treatment, is not only detrimental to patient care but also completely unauthorised and illegal. It therefore found that, such practice of the petitioner comes within the ambit of deficiency in patient care service and amounts to irrational and unethical trade practice.

16. The Commission considered the educational qualifications of Ms. Chaitali Kundu and found that, she was employed by the petitioner as Echocardiography Technician with higher secondary education and commerce background. She

pursued an Electro Cardiography Technique Course from Society for School of Medical Technology. The Commission found that, neither the Institute nor the paramedical course conducted by such Institute was recognised by the West Bengal State Medical Council. It, therefore, concluded that, appointing Ms. Chaitali Kundu in the post of Echocardiography Technician and engaging her to conduct non-invasive procedures and in the facts of the case, allowing her to do eco-screening on the patient and give a report thereon was not only detrimental to patient care service but also such practice on the part of the petitioner came within the ambit of deficiency in patient care service and amounted to irrational and unethical trade practice. The Commission noted that, two reports of echocardiogram done at the petitioner did not reveal that the patient had any serious cardiac problem although, the echocardiogram done at C.M.R.I. on the patient revealed that the patient had severe cardiac problem. It noted that, the second echocardiogram report of the petitioner was at 8.05 P.M. on May 7, 2017 while the echocardiogram report of C.M.R.I. was at 2:30 A.M. on May 8, 2017. In such background, compensation was awarded by the Commission in the impugned order.

17. The impugned order is well reasoned. It considers all aspects of the matter raised by the parties before it. It gives reasons for arriving at its findings. There is nothing on record to substantiate that, Dr. Giri possesses requisite educational qualification to undertake the procedures which Dr. Giri undertook on the patient. The views of Medical Council of India and West Bengal Medical Council were considered by the Commission while arriving at its decision with regard to Dr. Giri. The Commission did not punish Dr. Giri. It noted the conduct of the petitioner in employing Dr. Giri and Ms Chaitali Kundu in treating patient and undertaking procedures which they were not permitted to do. It is the failure of the petitioner in employing appropriate personnel to treat a patient which resulted in the Commission awarding the compensation as recorded in the impugned order.

18. Learned Advocate for the petitioner has relied upon Section 38 of the Act of 2017, particularly to the proviso (iii) thereof and contended that, the Commission had no authority to look into the conduct of Dr. Giri with regard to the patient. He has contended that, since the Commission had no jurisdiction to consider whether Dr. Giri was duly qualified to treat the patient and whether Dr. Giri was guilty of any medical negligence, the Commission could not have arrived at the finding that, petitioner was guilty of rendering deficient service, and therefore, could not have awarded the compensation.

19. Section 38 of the Act of 2017 is as follows :-

"38. Powers and functions of the West Bengal Clinical Establishment Regulatory Commission. -

(1) The Commission shall-

(i) monitor the functioning of clinical establishments;

(ii) regulate and supervise functions of clinical establishments as prescribed;

(iii) examine and consider complaints, filed manually or electronically through an online system in matters related to patient care service, deviations from declared fees and charges, refusal of supply of copy of medical records and allied matters, alleged irrational and unethical trade practice alleged before the Commission by aggrieved patient parties against clinical establishments and after issue of notice and hearing both parties, adjudicate, compensate and pass such other orders, as deemed appropriate: Provided that any complaint of medica negligence against medical professionals will be dealt with by respective State Medical Councils: Provided further that the Commission for the purpose of adjudicating disputes and appeal under this Act, shall have a quorum of the Chairperson and not less than two other members;

(iv) make regulations with regard to fixing of rates or charges for indoor patient department and outdoor patient department treatment including diagnostics and also to ensure compliance with fixed rates and charges by clinical establishments;

(v) enforce transparency in dealing with patients by the clinical establishments;

(vi) tender advice and make suggestions regarding measures to be adopted under this Act, for improving patient care services and redressal of grievances;

(vii) undertake planned or surprise inspections to examine and ascertain strict compliance by clinical establishments with provisions of this Act;

(viii) hear appeals arising from orders and decisions passed by the Adjudicating Authority in the Districts;

(ix) have the powers to award such compensation as deemed appropriate not exceeding fifty lakh rupees, including interim compensation;

(x) ensure that only properly trained medical and para-medical personnel like doctors, nurses, technicians, pharmacists are employed by the clinical establishment."

20. The Commission has exercised jurisdiction under the Act of 2017 in passing the impugned order. The preamble to the Act of 2017 has stated that, one of the objectives of the Act of 2017 is to preserve minimum standards of facilities and service to be provided by clinical establishment to service recipients. It has defined a 'clinical establishment' in Section 2 (c) of the Act of 2017. The petitioner herein is a 'clinical establishment' within the meaning of the Act of 2017. Such fact is not disputed. 'Service recipient' has been defined in Section 2 (w) of the Act of 2017. In the Act of 2017, 'service recipient' is a person who seeks, accesses, or receives any health care, as outpatient or inpatient, from any clinical establishment, or service provider, including for-profit and not for profit. Section 36 of the Act of 2017 has provided for the Constitution of the Commission. Section 38 of the Act of 2017 has delineated the powers and functions of the Commission. One of the powers and functions enjoined upon the

Commission under Section 38 (1) (x) is to ensure that only properly trained medical and paramedical personnel like doctors, nurses, technicians, pharmacists are employed by the clinical establishment. Section 38 (1) (iii) of the Act of 2017 requires the Commission to examine and consider complaints, filed manually or electronically through an online system in matters relating to patient care service, deviations from declared fees and charges, refusal of supply of copy of medical records and allied matters, alleged irrational and unethical trade practice alleged before the Commission by aggrieved patient parties against clinical establishment. It requires the Commission to follow the principles of natural justice in adjudicating the rival contentions of the parties and pass an order for compensation for such other orders as deemed appropriate by the Commission. The first proviso to Section 38 (1) (iii) of the Act of 2017 stipulates that, any complaint of medical negligence against medical professionals will be dealt with by respective State Medical Council.

21. A Commission established under the Act of 2017 and exercising jurisdiction thereunder, when, in receipt of a complaint is statutorily mandated to examine, consider and adjudicate upon the same after adhering to the principles of natural justice. While examining, considering and adjudicating upon a complaint against a clinical establishment, the Commission, in the facts of a given case, is required to consider whether, the clinical establishment concerned employed properly trained medical and paramedical personnel like doctors, technicians, pharmacists or not. In the event, the Commission finds that, appropriate medical and paramedical personnel have not been employed by the clinical establishment concerned then, the Commission is empowered to take suitable measures with regard thereto. In dealing with a complaint received by the Commission under the Act of 2017, the Commission in the facts of a given case, would be called upon to pronounce whether, the clinical establishment concerned, employed appropriate medical and paramedical personnel. In doing so, it will be discharging powers and functions as granted to it under the Act of 2017. It would be within its jurisdiction to consider whether the patient dealt with by a particular doctor or a paramedical personnel, employed by the clinical establishment concerned, was properly trained or was appropriate to deal with the patient or not. While considering whether the doctor or the paramedical personnel attending the patient was properly trained, the Commission will necessarily have to consider the educational qualifications of the person concerned in relation to the duties entrusted upon such person to be discharged in his usual course of employment by the clinical establishment. The first proviso to section 38 (1) (iii) of the Act of 2017 is not a prohibition upon the Commission to consider whether, the medical professional concerned, was properly trained or had adequate qualification to treat the patient concerned.

22. In the facts of the present case, the patient was attended to by Dr. Giri. Dr.Giri was found to have expressed opinion on the data of echocardiogram performed on the patient. While considering an allegation of irrational and unethical trade practice, the Commission was necessarily called upon to decide

as to whether, Dr. Giri was a properly trained medical personnel to attend the patient for the need of the patient. In doing so, the Commission considered the duties entrusted by the clinical establishment on Dr. Giri to discharge, the conduct of Dr. Giri in relation to the patient, the medical qualification of Dr. Giri and whether, on the basis of the medical qualification of Dr. Giri, and his conduct, he was to be considered as a properly trained medical personnel attending the patient in the circumstances in which, Dr. Giri attended the patient and whether the clinical establishment could have authorised Dr. Giri to do the same. Such an enquiry is within the jurisdiction of the Commission. In the facts of the present case, it cannot be said that, the Commission acted in excess of jurisdiction in considering the medical qualifications of Dr. Giri and arriving at the findings as noted in the impugned order.

23. The Commission has found that, Dr. Ashok Kumar Giri obtained M.D. Physician from St. Petersburg Medical Academy, Russia which is equivalent to M.B.B.S. degree in India. Dr. Giri was registered with Medical Council of India after clearing foreign Medical Graduate Examination from National Board, New Delhi. It has found that, Dr. Giri claimed to have Post Graduate Diploma in Clinical Cardiology issued by Indira Gandhi National Open University. The Commission has found that, Dr. Giri was holding the charge of Consultant In Charge, Non-Invasive Department at the clinical establishment and conducting non-invasive cardiological procedures on the strength of such post graduate diploma in Clinical Cardiology. The Commission has referred to the communications of the Medical Council of India and West Bengal Medical Council issued by them to the Commission to the effect that, the Post Graduate Diploma in Clinical Cardiology awarded by Indira Gandhi National Open University is not recognised Post Graduate Medical Qualification, and therefore, a holder of such diploma is not entitled to practise in the speciality concerned and that, the diploma awarded by Indira Gandhi National Open University is not included in their schedule. In addition thereto, the Commission has noted in its impugned order that, Medical Council of India requested the Secretary of the Commission to take appropriate action in that regard. Nothing has been placed by the writ petitioner to establish that, any of the findings of the Commission on account of the Medical Qualification of Dr. Ashok Giri is perverse. Commission, in the light of such educational qualifications of Dr. Ashok Giri, has noted the conduct of the Clinical Establishment in appointing Dr. Ashok Giri to hold the post of Consultant-in-Charge, Non-Invasive Department of the Clinical Establishment and conduct Non-Invasive Cardiology procedures on patients. It has found that, Dr. Giri had performed the Echocardiogram and interpreted the data in respect of the patient. In the impugned order, Commission has held that, the Clinical Establishment in entrusting Dr. Ashok Giri with the independent charge of Non-Invasive Department inclusive of conducting vital procedures like Echocardiogram, Colour Doppler Studies etc., is guilty of deficiency in patient care service and that, the clinical establishment indulged in irrational and unethical trade practice.

24. In the impugned order, the Commission has also considered the conduct of

the clinical establishment in employing Ms. Chaitali Kundu as an Echocardiography technician. The Commission has found that, Ms. Chaitali Kundu passed Higher Secondary Examination with Commerce and that, she pursued Electro-Cardiography Technician Course from Society for School of Medical Technology situated at Indian Mirror Street, Kolkata. The Commission has found that neither the institute nor the paramedical course conducted by such institute is recognised by the State Medical faculty. The Commission has held that, mere attending of few echocardiography seminars and conference does not make any person properly qualified and trained to monitor echocardiography procedure, to study the data and examine the vital parameters of the service recipient available from such procedure and then, to give opinion interpreting those data for next course of treatment. The Commission has found that, appointing Ms. Chaitali Kundu in the post of Echocardiography Technician and engaging her to conduct non-invasive procedures, echocardiography screening and give report, is not only detrimental to patient care service but also such practice on the part of the clinical establishment comes within the ambit of deficiency in patient care service and amounts to irrational and unethical trade practice. Again, the petitioner, has failed to substantiate that, the findings on account of such technician returned by the Commission, are perverse.

25. Vijay Singh (supra) has considered a disciplinary proceeding. It has found that, the disciplinary authority imposed a punishment outside the purview of the statutory rules governing the disciplinary proceeding. In the present case, the Commission has noted the provisions of the Act of 2017 and a communication of the Medical Council of India dated January 4, 2018 where, the Medical Council of India informed the Commission as per Clause 7(2) of the Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulation, 2002, a doctor cannot claim to be specialist unless he/she has special qualification in that branch. The Commission in the impugned order has not awarded any punishment upon any of the doctors or the technician involved. It has proceeded to assess the involvement of the doctors and the technician in dealing with the patient, in a clinical establishment which comes within the purview of the Act of 2017, and found, the actions of the clinical establishment to comprise of deficient service, amongst others, and proceeded to award compensation for the same. The Act of 2017, empowers the Commission to consider and decide issues relating to patient care at a clinical establishment. None of the parties have submitted that, the clinical establishment involved, is not within the purview of the Act of 2017 or is not amenable to the jurisdiction of the Commission. Therefore, the Commission exercised jurisdiction in assessing the clinical establishment in appointing and authorising the personnel involved in attending to the patient concerned, at the clinical establishment. In the facts of the present case, it cannot be said that, the Commission awarded any punishment which is not provided for in the statute.

26. Manabendra Kumar Choudhury (supra) has considered an industrial dispute relating to termination of the services of an employee. At the hearing, a letter

was produced at the behalf of the employer stating that, the employee concerned, tendered the resignation. In the facts of that case, it was held that, resignation implies a cessation of the relationship of an employer and employee and is inextricably connected with non-employment of a person. It held that, the dispute relating to the factum of resignation becomes an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947.

27. Pyare Lal Sharma (supra) has considered whether, back wages can be awarded when, the termination of employment is held to be illegal. It has held that, when the termination order is set aside by the Courts, normally the employee becomes entitled to backwages and all other consequential benefits.

28. The Commission has not only noted the conduct of Dr. Ashok Giri and Ms. Chaitali Kundu, in relation to the patient concerned, but also, the conduct of another doctor namely Dr. Tanmoy Chakraborty. The Commission has held that, the Clinical Establishment issued a discharge certificate which was contrary to the condition of the patient prevailing at that point of time. It has noted the conduct of Dr. Tanmoy Chakraborty in doing so. It has found that, the Clinical Establishment was guilty of issuing a discharge summary of the patient which did not reflect true state of the condition of the patient at the time of discharge. The petitioner has failed to substantiate that such findings are perverse or beyond jurisdiction.

29. In the facts of the present case, the Commission having received a complaint against a clinical establishment, enquired into the same, after affording the parties affected in such proceedings, an opportunity of hearing, passed the impugned order, granting compensation to the patient party. In the facts of the present case, therefore, it cannot be said that, the Commission acted in excess of its jurisdiction in awarding the compensation. While considering the complaint against a clinical establishment, a Commission is necessarily called upon to arrive at a finding as to whether, the dealings of the Clinical Establishment in relation to the patient was in accordance with law or not or whether, the Clinical Establishment was guilty of any deficiency in service. The proviso to Section 38(1)(iii) specifies that, a complaint of medical negligence against a medical professional will be dealt with by the State Medical Council. In the facts of the present case, the Commission did not deal with the complaint of medical negligence against a medical professional. The Commission did not award any punishment on any medical professional by the impugned order. Therefore, the impugned order cannot be said to be in excess of jurisdiction so far as the medical professionals are concerned.

30. In view of the discussions above, I find no merit in the writ petition. W.P. No. 7191 (W) of 2018 is dismissed.

31. Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.

Later:-

It is pointed out on behalf of the respondent No. 4 that, a sum of Rs. 15,00,000/- is lying with the Registrar General of this Court.

In view of this judgment, the respondent No. 4 is at liberty to withdraw such sum from the Registrar General.

Learned Advocate appearing for the petitioner prays for stay of such direction.

Such prayer is opposed on behalf of the respondent No. 4.

There will be a stay of the order permitting withdrawal of the sum of Rs. 15,00,000/- from the Registrar General till November 8, 2019.

