

(2023) 08 CAL CK 0101
In the Calcutta High Court
Case No : WPA No. 16381 Of 2021

Park Hospitals And Another	Vs	APPELLANT
West Bengal Clinical Establishment Regulatory Commission And Another		RESPONDENT

Date of Decision : 30-08-2023

Acts Referred:

West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act,
2017 — Section 38, 38(1)(iii)

Citation : (2023) 08 CAL CK 0101

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Abhratosh Majumder, Soumabho Ghosh, Deepan Sarkar, Saaquib Siddiqui, Aviroop Mitra, Avijit Ghoshal

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner no.1 is a Clinical Establishment (CE) under the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 (hereinafter referred to as, "the 2017 Act") and the petitioner no.2 is its Managing Director. The present challenge has been preferred against an award passed against the petitioner no.1 by the respondent no.1-Authority that is The West Bengal Clinical Establishment Regulatory Commission (WBCERC), directing payment of compensation of Rs.20 lakh for negligence in treatment of Dr. Shraddha Bhutra, herself a doctor.

2. Dr. Bhutra had conceived and was under medical observation of Dr. (Mrs.) Supriya Khetan. The delivery was scheduled on June 12, 2021. On April 24, 2021, the patient had a mild chest-pain in the evening and had a check-up by Dr. Khetan at her Bangur chamber, who advised the patient that everything was normal and there was no need to worry, upon which the patient returned home. The same evening at around 10:00 p.m. the patient felt severe pain in her lower

abdomen. The complainant/respondent no.2, her husband, called up Dr. Khetan but the latter allegedly refused to prescribe medicine and did not agree to come to the house of the patient to examine her. Dr. Khetan advised hospital admission. Accordingly, the patient was taken to the Apollo Hospital which declined to admit the patient on the ground that the Hospital was full of Covid patients and it would be risky to admit a pregnant patient there.

3. The complainant rushed the patient, his wife, to the Bhagirathi Neotia Woman & Child Care Centre (for short, "BNWCCC"), at Rawdon Street, run by the petitioner no.1. The patient, along with the complainant, reached the hospital at about 11p.m. when her blood-pressure (diastolic) was 117. The said Hospital informed the patient's family that they had talked to Dr. Khetan over phone but she had instructed not to admit the patient at Neotia. The patient's family requested the Hospital to admit her but in vain.

4. After waiting there for about 45 minutes, the patient and her family went to the Belle Vue Hospital at around 11:55 p.m. when the patient was already in a state of collapse. Belle Vue was reluctant to admit the patient till 12:30 a.m. Such admission was done under pressure of medial publicity and call from the police at the instance of the family of the patient. Despite all efforts by the attending RMO at Belle Vue, the patient was declared dead at around 11:12 a.m.

5. Learned senior counsel for the petitioner argues that no complaint was lodged against the Apollo Hospital although the Apollo Hospital shirked its duty as clinical establishment as well. Even Belle Vue has been given a clean-chit, although a considerable delay was occasioned by the Belle Vue and the patient met her unfortunate demise in Belle Vue after having had to wait for a considerable period of time.

6. It is argued that the petitioners had filed an affidavit, to which a rejoinder was filed by the complainant. However, such affidavit was not considered at all by the respondent no.1-Commission.

7. It is argued that BNWCCC provided preliminary treatment to the patient, measured her blood pressure and also provided an ambulance, in which she was taken to the Belle Vue Hospital. As such, there was no negligence on the part of the petitioner no.1.

8. It is further contended that independent proceedings have been taken out before the Medical Council against Dr. Supriya Khetan, the attending doctor. However, BNWCCC cannot be blamed, since the staff of the BNWCCC had immediately contacted Dr. Khetan, upon the patient being brought, which has not been denied, upon which it was Dr. Khetan who said that the appropriate facilities were not available in BNWCCC, for which the patient could not be admitted to the said CE.

9. Since it was the attending doctor who had so advised, the staff of BNWCCC was in no manner responsible for any sort of medical negligence whatsoever.

10. Learned counsel places reliance on the transcripts of the telephone conversation between Dr. Khetan and the hospital staff during the relevant juncture, which is a part of the materials on record, in support of such submission.

11. Learned senior counsel for the petitioners argues that even the respondent no.1-Commission observed that Dr. Banerjee, a member of the Commission, on whose report the petitioners were indicted, was critical against Belle Vue as would appear from his opinion set out in the order of the Commission. However, the Commission observed that the patient was attended at Belle Vue, as was seen in a video, although what treatment was actually given or not would be the exclusive domain of the West Bengal Medical Council.

12. It is argued that the same logic ought to have been applied to the BNWCCC as well, as it was beyond the purview of the Commission to enter into the treatment protocol meted out by the CEs. The only ambit of the Commission's enquiry was negligence, which was not found in case of the BNWCCC at all.

13. It is reiterated that even the ambulance where the patient was kept sitting for a considerable period of more than half an hour at the Belle Vue, was provided by the BNWCCC.

14. The petitioners thus assail the impugned order of the Commission.

15. Learned counsel for the respondent no.2/complainant places reliance on a judgment reported at AIR 1989 SC 2039 [Pt. Paramanand Katara Vs. Union of India and others]. In the said judgment, it is argued, it was observed that preservation of human life is of paramount importance and every doctor has the professional obligation to extend his services with due expertise for protecting life. It was held that there is no legal impediment for a medical professional, when he is called upon or requested to attend to an injured person needing his medical assistance, to extend such service, since there is no doubt that the effort to save the person should be the top priority not only of the medical profession but even of the police or any other citizen connected with the matter or who happens to notice such an incident or situation.

16. Learned counsel next cites an unreported judgment dated December 2, 2019 passed in Narayana Hrudyalaya Limited and another Vs. The West Bengal Clinical Establishment Regulatory Commission and others in W.P. 21787 (W) of 2019. It was held there in that apart from adjudicating on merits, the Commission is empowered to compensate and pass such other orders as deemed appropriate as well, which, read in conjunction with powers to award such compensation as deemed appropriate, indicates that such separate mentioning of the power lends a stand-alone existence of Clause (ix), even independent of Clause (iii) of Section 38(1) of the 2017 Act.

17. Learned counsel places reliance on Section 38 of the Act as well. It is argued that on the fateful day, the BNWCCC did not provide immediate and basic

treatment to the patient, thereby failing to meet the obligations of the medical professionals.

18. It is argued that the judgment cited by the respondent no.2 casts an obligation on the State as well as all persons, whether Government Doctors or otherwise as well as hospitals, to provide immediate medical aid to a patient in need, which was denied to the patient in the present case.

19. It is argued that due to the callous attitude of the BNWCCC in not admitting the petitioner's wife at the crucial juncture and keeping her waiting for 45 minutes, which turned out to be fatal, the BNWCCC committed a flagrant violation of the duties of CEs. As such, the compensation awarded against the BNWCCC was justified.

20. Upon hearing learned counsel for the parties, it transpires that the patient, even as per the report of an expert on which the Commission relied, was suffering from Eclampsia, which is a pregnancy-induced hyper-tensive disorder with superimposed seizures/convulsions, which is largely preventable. As per the report, there is a WHO (World Health Organisation)-designed effective "Anti-Convulsion Tranquilizer Therapy" in Eclampsia and other anti-convulsant regimes. It was further observed in the report that each transfer and transport had added to the seriousness and severity of Eclampsia.

21. The Commission in the present case relied on such report and disbelieved the defence of the BNWCCC.

22. Let us now examine the role of the BNWCCC in the unfortunate plight of the deceased wife of respondent no.2, who was herself a doctor. The Commission held that the second CE that is the BNWCCC, in its view, was fully responsible for the unfortunate death, in the same breath holding that it is not sure whether the patient could be saved or not, however, she was refused treatment by Neotia which would be apparent from the affidavit itself. BNWCCC, it was observed, had categorically stated in its affidavit that they did inform the condition of the patient to Dr. Khetan who did not advise them to admit and as such they could not admit the patient contrary to her instruction.

23. It was also observed that the patient had neurological complications, for which she was referred to Apollo Hospital by the concerned medical practitioner, Dr. Khetan.

24. The BNWCCC submits that the RMO of BNWCCC called Dr. Khetan at around 11:30 p.m. complaining that the patient was not allowing her to clinically examine her and that the complainant behaved rudely over phone.

25. However, there is no proof in support of such allegation. Be that as it may, as it transpires from the discussions by the Commission, the negligence of Dr. Khetan is prima facie established. Although Dr. Khetan may have her reasons, she did not care to visit the patient in the fateful night when the patient suffered from severe pain in her lower abdomen at about 10 p.m.

26. As per the allegations, Dr. Khetan not only refused to prescribe medicine, but also did not make any effort to see the patient but only advised her hospital admission.

27. As per the advice of Dr. Khetan, the patient was taken to Apollo which did not admit the patient on the ground that the Hospital was full of Covid patients and it would be risky to admit a pregnant patient there.

28. Surprisingly, no complaint has been lodged against Apollo, although it was the first CE which refused admission to the patient. There is nothing on record to indicate that, despite there being several Covid patients, there was no infrastructure at Apollo at the relevant juncture to admit a pregnant lady, having convulsions and serious neurological complications. The said aspect ought to have been looked into by the Commission. The cryptic version of Apollo was that as per their records, the patient never visited the CE on the fateful or any other day, and, hence, they were unable to apprise the Commission that what had actually happened on that day. The said issue was not explored any further. Surprisingly, the complainant/husband of the patient did not make any formal complaint against Apollo. Even at the time of hearing, he did not make any request to add Apollo as a respondent. Even the visit of the patient to Apollo was denied. The Commission held that in the absence of proper proof it would be difficult for it to blame Apollo. Since no complaint was lodged against it, there is no scope of ascertaining the role of Apollo in the sordid episode. Thus, the finding of Commission on such score cannot be faulted. The insinuation of the petitioners that Apollo was never indicted cannot be of much help to the petitioners, since no complaint has been lodged in the first place against Apollo.

29. As such, the remaining chief players in the drama on the fateful night were BNWCCC and Belle Vue.

30. Belle Vue, it has been rightly argued, was given a clean-chit by the Commission despite several factors casting serious doubt on the role of Belle Vue as well. First, Belle Vue was the last CE which the patient was taken to and where she met her demise.

31. Even as per the Commission's findings, the patient reached Belle Vue at about 11:55 p.m. but was not admitted to Belle Vue till 12:30. Only when one of the members of the patient's family streamed a video on social media and warnings were issued by the police to Belle Vue, was the patient admitted by Belle Vue. Thereafter, the patient was treated by Belle Vue, which is apparent from the video which was examined by the Commission. The Commission did not go into the medical protocol or the treatment protocol adopted by Belle Vue and was satisfied merely on the perusal of the concerned video footage, which showed that there was activity surrounding the patient. However, the exemption of Belle Vue from the entire episode by the Commission cannot be sustained. Such exemption, in fact, is patently contrary to the report on which the Commission relied on for indicting the BNWCCC.

32. As per the said report, the last stop in the fatal journey was at the Belle Vue Clinic where it was mid-night around 12 a.m. of 25th April. The medical note written there shows diagnosis of pre-Eclampsia with convulsion/seizure at 10:15 p.m. Still the patient was kept waiting without any medication and treatment for over half an hour, as alleged. The patient was eventually admitted in Belle Vue on the threat of exposure in the social media and a telephone call from the local police station at Shakespeare Sarani. An attempt for resuscitation was done then, but was little too late. Eclampsia, it was observed in the report, was largely preventable.

33. From the above circumstances, it is clear that Belle Vue kept the patient waiting for at least 35 minutes at a crucial juncture, immediately after which the patient met her demise. Such apathy on the part of the Belle Vue, keeping in mind that the admission there took place only upon social media inducement, ought not to have been pardoned by the Commission while assessing compensation.

34. Insofar as the BNWCCC is concerned, it was required to be ascertained as to whether the BNWCCC actually has the infrastructure to treat Eclampsia. Although, *prima facie*, the BNWCCC is supposed to be a Multi-Specialty Hospital taking care of women and children and ought to have sufficient expertise and infrastructure regarding pregnancy complications, it cannot be ascertained without an examination on facts as to whether it had the infrastructure at the relevant point of time to give proper treatment to the patient. Apparently, the telephonic conversation between the BNWCCC staff and Dr. Khetan, annexed to the writ petition, indicates that Dr. Khetan was of the opinion that at

Neotia "there isn't a proper ICU" and that the BNWCCC does not have proper facility. The said fact was not ascertained properly on the basis of materials by the Commission while passing the impugned award.

35. One other aspect, apart from the facility at BNWCCC, is whether the BNWCCC provided proper medical care to the patient during her wait for 45 minutes. The BNWCCC claims that basic medical attention was given to the patient and her biological parameters were checked as far as possible. It is also alleged that an ambulance was provided by the BNWCCC, which has not been denied from any quarter. Hence, *prima facie*, it is arguable as to whether the BNWCCC was really the sole CE which was to take the entire blame for the sad demise of the patient.

36. In fact, the petitioners are justified in arguing that whereas the Commission observed that it could not go into the question of treatment protocol with regard to Belle Vue, double standards were applied in as much as BNWCCC is concerned, due to the observation of the Commission that the latter did not extend proper medical care to the patient.

37. Hence, the Commission ought to have adverted to the aforesaid factors and yardsticks while deciding the issue of compensation.

38. Accordingly, WPA No.16381 of 2021 is allowed, thereby setting aside the impugned award passed by the respondent no.1-Commission dated September 6, 2021 on the sad demise of Dr. Shraddha Bhutra. The matter is remanded to the respondent no.1-Commission for a re-adjudication, upon giving opportunity to the parties to produce further evidence to substantiate their cases and for a fresh decision on the issue as to the compensation to be awarded against the BNWCCC and/or Belle Vue Clinic in the facts and circumstances of the case, in the light of the observations as made hereinabove. It is expected that the Commission shall complete such re-adjudication at the earliest, preferably within three months from the date of communication of this order to the Commission.

39. There will be no order as to costs.

40. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.