

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(Crl.) 304/2005

Reserved on : 14th November, 2007

Date of Decision: 07 April, 2008

BABY SEEMA & ANR. Petitioners
Through Mr. Ravish Pathak and Mr. Sanjeev Singh, Advs.

Versus

STATE OF GOVT. OF NCT OF DELHI & ORS. ...Respondents
Through Ms. Mukta Gupta, Standing Counsel with
Mr. Rajat Katyal, Advocate for State.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MS. JUSTICE REVA KHETRAPAL

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

% **JUDGMENT**
07-04-2008

MUKUL MUDGAL,J.

1. This writ petition was filed in this Court with the following prayers:-

“a. Allow the petition and thereby issue writ order or directions in the nature of mandamus or any other appropriate writ commanding the respondents to hand over investigation of the case, FIR No. 245/2004 u/s 304A, 34 IPC P.S. Roop Nagar to CBI or any other independent investigating agency for investigation of the case and further to investigate the conduct of police officials,

b. quash the report of gynecologist body constituted by Govt. of NCT of Delhi vide letter No. F342/87/2004 H&FW,

c. constitute a new medical board by and under monitoring of this Hon'ble Court,

d. convert the case from 304A to 304 IPC on the basis of the complaint,

e. summon the case diary of investigation recorded under section 172 Cr. P.C.,

f. to deliver the copy of the report of gynecologist body and other relevant papers to the petitioners,

g. summon the papers from Apollo Hospital pertaining to admission and treatment of the petitioners' deceased mother,

h. samples of the uterus to be sent for

fresh examination,

i. appropriate legal proceedings may be initiated against ACP Rajan Bhagat and other guilty officers for intimidation and creating obstruction in administration of justice by delaying the registration of FIR and investigation thereof,

j. a copy of videography tapes, still photographs of the post mortem of the petitioners' deceased mother may also be given to the petitioner,”

2. The brief facts of the case as stated by the petitioner are as follows:-

(i) The petitioners are the minor daughter and son of the deceased Seema Sinha, who is alleged to have been died at the hands of Dr. Gauri as a result of acts done by her and her husband Dr. Chandra Prakash.

(ii) The deceased Seema Sinha, who was pregnant at the relevant time, was undergoing periodic check-ups at Dr. Gauri's Hospital. On 27th July, 2004 also, the petitioners' mother visited the said hospital along with her husband and relatives for routine check up. She was asked to be admitted in the hospital by Dr. Gauri though the expected date of delivery was 9 days away.

(iii) Subsequently, on 27th July, 2004, the patient gave birth to a girl child i.e. Petitioner No. 1 through normal delivery and she was shifted to the ward from O.T. Since the condition of the patient Seema was deteriorating even after shifting to the ward and she was bleeding profusely, the doctors asked the husband and relatives of Seema to make arrangement of blood and plasma for the patient. On demand of the doctors, the relatives of Seema arranged blood and plasma for her.

(iv) However, there was no improvement in the condition of Seema. On 27th July, 2004 itself, Dr. Gauri told that uterus of Seema had ruptured and had to be removed. The husband of the patient Seema was made to sign certain papers some of which were blank and unfilled.

(v) Consequently, uterus of Seema was removed by the doctors. It is the case of the petitioners that the doctors removed the uterus of Seema without obtaining consent of the husband and other relatives of Seema and played fraud on them after obtaining their signatures on blank papers.

(vi) Observing that the condition of Seema was not improving, she was

taken to Apollo Hospital on the same day by her husband and relatives, where they were told that Seema had expired.

(vii) Thereafter, on 28.7.2004, the husband of deceased Seema made a complaint to the SHO, Roop Nagar but no FIR was registered by the police on the basis of the same on the ground that the post-mortem of the deceased' body was yet to be conducted.

(viii) On 29.7.2004, the post mortem of deceased Seema was conducted at Subji Mandi Mortuary. Report of the said post mortem was received on 30.7.2004, on the basis of which a case vide FIR No. 254/2004 under Sections 304A/34 IPC was registered at Police Station Roop Nagar.

(ix) During the course of investigation, the Investigating Officer of the case put a questionnaire of six questions to the post-mortem committee relating to the death of deceased Seema. The committee gave its finding in clear terms that cause of death was severe hemorrhage and shock consequent to rupture of uterus and its surgical removal.

(x) Having dissatisfied with the investigation and the finding given by the post mortem committee, the husband and relatives of the

deceased Seema wrote letters dated 3rd August, 2004 to the Commissioner of Police, Delhi and DCP (North) and other high-ups of the Delhi Police for conversion of the case to Section 304 IPC instead of 304A IPC and also for sealing of the Operation Theatre of Gauri Hospital, but to no avail.

(xi) Subsequently, on the recommendations of the post-mortem committee, the Govt. of NCT of Delhi constituted a body of three Gynaecologists, which submitted its report. The said committee in its report gave a clean chit to the accused doctors, which according to the petitioner was contrary to the finding of an expert committee constituted for the postem mortem of the deceased Seema.

3. On 27th July, 2005, the learned Single Judge treated this matter in the nature of public interest and gave the following directions in this respect:-

“The Secretary (Health), Government of NCT of Delhi is further directed to issue a press release in three English daily newspapers and three Hindi daily newspapers in circulation in Delhi within three weeks from today inviting grievances from general public in regard to the problems faced by them in Government Hospitals as

well as Private Hospitals and Nursing Homes so that on the basis of the complaints, remedial measures may be undertaken and directions issued. The press release be issued within three weeks informing the general public that it is being issued under the orders of the Court and the names of the complainants would be kept confidential. These complaints would be addressed to the Registrar General of this Court. Three weeks' time be given for sending complaints to the Registrar General. The complainants would be given segregated separately in respect of Government Hospitals and Private Hospitals/Nursing Homes.

After receiving the complaints and the responses by the Secretary (Health), Central Govt. and the Secretary (Health), Government of Delhi, this Court would consider as to what remedial measures and steps can be taken to protect the citizens' life and health. It has to be kept in mind that the patients facing serious health problems cannot be left to their fate. State has to intervene.

List again on 18th October, 2005 at 2.00 p.m.”

4. The order dated 27th July, 2005 of the learned Single Judge noted that a Board of Doctors constituted on the request of the police had found that prima facie, there was no negligence, and consequently directed the Medical Superintendent to constitute another Board of the doctors of the AIIMS to submit a report.

5. On 22nd September, 2005, in LPA No. 1916/2005, on the

basis of the public interest litigation of the matter, the following directions were given by a Division Bench of this Court.

“1. The Secretary, Ministry of Health, Government of India is directed to constitute a Committee of representatives drawn from experts in Government Hospitals and All India Institute of Medical Sciences, selected Government functionaries including the Government of NCT of Delhi and representative/s of Delhi Medical Association or any other professional body. This Committee's terms of reference would be to survey the prevailing conditions in these hospitals and to indicate the reasons for the present none too-happy state of affairs and to suggest remedial measures and their mode of implementation. This Committee shall be constituted within two weeks from the receipt of this order and the Committee in turn would have three months' time to submit the report to the Secretary, Ministry of Health, Government of India, who is directed to take steps thereafter for implementation of any recommendations/suggestions made in the report. The Secretary is further directed to provide all secretarial facilities to the Committee.

2.Both Secretary, Ministry of Health, Government of India and Secretary, Health, Government of N.C.T. of Delhi are directed to constitute Redressal Committees at the State and Central Level, which will receive grievances from the patients/ public, examine these and suggest redressal of these to the concerned functionaries of the hospitals/institute. All these functionaries to whom these grievances are addressed shall take necessary steps for redressal.

3.All Government Hospitals both under State Government and Central Government control

including the Director of All India Institute of Medical Sciences are directed to constitute Grievance Cells in their respective hospital/institution for receiving complaints and grievances. These Grievance Cells would have the option to report to the Central Grievance Committee or alternatively refer the grievances to the authorities of the respective hospital, who are directed to take cognizance of these grievances and take steps for their redressal.

4.The Secretary, Ministry of Health and Director General, Health Services, Government of India are directed to publicize the constitution of Redressal Committee to be set up by the Health Secretary and its location and also the procedure/ mechanism of receiving the complaints/grievances.

5.The Secretary, Health, Government of NCT of Delhi and Director of Health Services, Government of NCT of Delhi are similarly directed to publicize the constitution of the Redressal Committee to be set up by the Government of N.C.T. of Delhi indicating its location and the timings and the authority concerned for receiving public complaints/grievances.

6. The Director of AIIMS is also directed to set up a similar committee and publicize its constitution, timings and location.

7. All Medical Superintendents of all Government Hospitals and also the Director of AIIMS are directed to stop public entry to the hospitals wards forthwith, except for one attendant per patient.

8. In view of the serious complaints about the conditions prevailing in hospitals, all Medical Superintendents of these hospitals and Director of

AIIMS shall take steps to improve the sanitary conditions and change their dirty linen in the ICUs and the wards whenever required. They are further directed to take immediate steps to stop entry of attendants of patients in the ICUs of these hospitals.

9. All concerned are directed to submit a status report showing the compliance and enforcement of directions passed by this court.”

6. Thereafter, the matter was listed before the Division Bench on 20th October, 2005, and the following order was passed :-

“This writ petition has been filed with a prayer for mandamus to the respondents to hand over the investigation in FIR No. 245/2004 under Section 304A, 34 IPC P.S. Roop Nagar to CBI or any other independent investigating agency.

It has been held by the Supreme Court in **1997 CrI. L.J. 63 CBI and Anr. Vs. Rajesh Gandhi and Anr.** that no one can have a say as to which agency will investigate the alleged criminal offence.

Moreover, if the petitioner has a grievance that the investigation is not being done properly by the police he has the alternate remedy of approaching the Magistrate under Section 156(3) of the Cr.P.C. and if the Magistrate finds that the allegations of the petitioner are correct, he can direct the Police to make a proper investigation and he can also monitor the investigation which is being made.

As regards the prayer for quashing the report of the Gynecologist, in our

opinion, no writ can be issued for this purpose. There is no force in this petition which is dismissed.”

7. The above order led to the filing of SLP in the Hon'ble Supreme Court. On 21st July, 2006, the Hon'ble Supreme Court passed the following order :-

“Leave granted.

In this case, we are not concerned with the merits of the controversy since the main objection raised by the writ petitioners before the High Court and appellants before us is that the impugned order dated 20th October, 2005 was passed on their writ petition dismissing the same without any notice to them or their counsel and on a preponed date. Writ Petition (Crl.) No.304 of 2005, filed by the appellants, was pending determination before a learned Single Judge of Delhi High Court. In that petition, an order dated 27th July, 2005 was passed by a learned Single Judge observing, inter alia, that the court would consider as to what remedial measures and steps can be taken to protect citizens' life and health after receiving complaints and responses by the Secretary (Health), Government of India and the Secretary (Health), Government of NCT of Delhi. By the self-same order, the court had directed issue of a press release inviting grievances from general public in regard to the problems faced by them in Government Hospitals as well as Private Hospitals and Nursing Homes so that on the basis of the complaints, remedial measures may be undertaken

and directions issued. The order dated 27th July, 2005 was challenged by the Delhi Medical Association before a Division Bench in L.P.A. No.1916 of 2005. The Division Bench held that there was nothing wrong in the directions given by the learned Single Judge because the said directions can help in enabling the public to redress their grievances and for the authorities to take steps. After so observing, the Division Bench felt that matter of wider public interest was involved, took cognizance thereof and treated the Letters Patent Appeal as Public Interest Litigation. Having regard to the conditions in some of the hospitals, particularly in Government Hospitals, the Division Bench issued notice to various authorities in terms of the order dated 5th September, 2005 and directed the matter to be listed on 22nd September, 2005. On 22nd September, 2005, we are told that the matter was adjourned to 18th October, 2005. On 18th October, the writ petition was also listed before the learned Single Judge when it was adjourned to 8th February, 2006. When the Letter Patents Appeal which was treated as Public Interest Litigation came up before the Division Bench on 18th October, 2005, the same was adjourned for 20th November, 2005 with a direction that Writ Petition (Crl.) No.304 of 2005 would also be heard by the Division Bench on the same date, namely, 20th November, 2005.

The grievance of the appellants herein is that instead of 20th November, 2005, without any notice, the matter was taken up on 20th October, 2005 and the impugned order was passed in the absence of their counsel and that Mr. Devendra

Singh, Advocate, who is shown to have appeared for the appellants is in fact the counsel representing the Delhi Medical Association. In the reply affidavit filed by the respondents, there is hardly any fact which has been disputed relevant for the preponing the date. In fact, para 11 of the counter affidavit admits that on 18th October, 2005, the matter was adjourned to 20th November, 2005.

Under these circumstances, we set aside the impugned order and allow the appeal and remit Writ Petition (Crl.) No.304 of 2005 for fresh decision by the High Court. The writ petition will be placed before a Division Bench of the High Court. The High Court is requested to decide the matter expeditiously.

.....CJI.
(Y.K. SABHARWAL)

.....J.
(C.K. THAKKER)

New Delhi,
July 21, 2006.”

8. The matter is now listed before this Court pursuant to the above judgment of the Hon'ble Supreme Court dated 21st July, 2006. Thereafter, the order dated 15th May, 2007, passed by the previous Bench shows that a Board of eight doctors of AIIMS including doctors from the department of Obstetrics and Gynaecology, had filed a report.

9. On 20th September, 2005, the final report of the medical board constituted for expert opinion on the issue raised in the writ petition was filed, which reads as follows:-

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES
Ansari Nagar, New Delhi-110029.

No. F.7-30/2005-Estt.(H.) Dated: 20th September, 2005

Subject: Final medical report of the medical board constituted vide memo. No. F.7-30/2005-Estt.(H) dated 25th August, 2005, for expert opinion in the case of alleged negligence by the doctors at Gauri Nursing Home, Delhi.

The meeting of the Medical Board was held on 20th September, 2005 at 3.30 p.m. in VVIP Room No. 14, M.S. Office, AIIMS. The following members were present:-

1. Dr. Sunesh Kumar, Prof. of Obst. & Gynae., AIIMS
2. Dr. R.K. Batra, Prof. of Anaesthesiology, AIIMS.
3. Dr. D.N. Bhardwaj, Addl. Prof. of Forensic Medicines, AIIMS.
4. Dr. Deepika Deka, Addl. Prof. of Obst. & Gynae, AIIMS.
5. Dr. Renu Misra, Addl. Prof. of Obst. & Gynae, AIIMS.
6. Dr. Ruma Ray, Assoc. Prof. of Pathology, AIIMS.
7. Dr. G. Dey, Resident of Hosp. Admn., AIIMS.
8. Dr. J.P. Prasad, Resident of Hosp. Admn., AIIMS.

After going through all the relevant papers sent to the Office of Director, AIIMS, vide letter F. No. 23/80/04/NH/DHS/30111 dated 16th August, 2005 by Dr. Anil Mehra, Director, Health Services, Govt. of NCT of Delhi, Delhi, in W.P.(Crl.) No. 304/2005 of the High Court of Delhi, New Delhi, the medical board came to the following unanimous opinion.

Patient Mrs. Seema Sinha, 30 years of age, who had a vaginal delivery on 27th July, 2004 at Gauri Nursing Home,

Delhi following induction of Labour, had very heavy vaginal bleeding after birth of baby (Massive Post Partum Haemorrhage). When bleeding failed to be controlled by medical means, she was subjected to emergency hysterectomy (Surgical Removal of Uterus) at the same Nursing Home. Even after this procedure, her condition continued to remain serious (Pulse Rate remaining high and blood pressure remaining low). Several units of Intravenous Fluids and Blood Transfusion were given, however, her condition continued to deteriorate. Subsequently she was shifted to Apollo Hospital, Delhi for Intensive Care where she died sometime after admission.

The management of this case for complication of vaginal delivery (Massive Post Partum Haemorrhage) was on standard established treatment guidelines and there appears to be no Negligence/omission on the part of treating team at any stage.

In a situation like this with life threatening complication of vaginal delivery, adequate and prompt replacement of blood and blood products are of immense importance towards saving life of some of these patients. Post Partum Haemorrhage (PPH) is a well documented severe complication and is responsible for about 30 percent of all women dying during child birth in India.

Sd/-	sd/-	sd/-
(DR. SUNESH KUMAR)	(DR. R.K. BATRA)	(DR. D.N. BHARDWAJ)
CHAIRMAN	CO-OPT. MEMBER	MEMBER

Sd/-	sd/-	sd/-
(DR. DEEPIKA DEKA)	(DR. RENU MISRA)	(DR. RUMA RAY)
CO-OPT MEMBER	CO-OPT MEMBER	CO-OPT MEMBER

Sd/-	sd/-
(DR. G. DEY)	(DR. J.P. PRASAD)
MEMBER	MEMBER SECRETARY"

10. The above final report shows that Professors from Obstetrics and Gynaecology departments were part of the Board which perused the

relevant papers sent along with letter dated 16th August, 2005 issued by the Director, Health Services, Govt. of NCT of Delhi.

11. The learned counsel for the petitioner has questioned the above report of AIIMS while reiterating the prayers made in the writ petition. In our view, the prayers would become relevant only when there is some indication of negligence on the part of the doctors of the concerned nursing home viz., Gauri Nursing Home. The report of the Board of eight senior Doctors including six professors in AIIMS shows that there appears to be no negligence/omission on the part of the doctors.

12. The learned counsel for the petitioner had submitted that the following answers given to the queries of the Investigating Officer of the case, clearly shows that there is a negligence:-

“In response to the queries asked by the I/O, the reply of the each question is as follows:-

1. The Uterus is removed antemortem and just before death.
2. Can be answered only after inspection of the remand uterus at Gauri Nursing Home.
3. Shall be answered by the another board of Gynaecologist as recommended in the PM report page Ante.
4. The reply can be given by another board of Gynaecologist recommended after they

inspect the Gauri Hospital in person in response to the request of Police I/O.

5. Shall be answered by the second board of Gynaecologist as recommended by this Board.”

13. He has also relied on the following portion of the post mortem report:-

“RELEVANT PORTION OF POST-MORTEM REPORT

3. ABDOMEN & PELVIS

- a) Liver & Gallbladder
- b) Spleen
- c) Kidneys
- d) Pancreas
- e) Stomach – Contents contained 50-60 ml.
semi digested food
Mucosa : Pale
Abnormal Smell : Nil
- f) Bowels Small
 Large
- G) Urinary Bladder Half filled
- H) Rectum Empty
- I) Genital Organs Cervix dilated, walls closed, closed at upper end with thread, vaginal walls are inflamed & cross, blood oozing seen.
- J) UTERUS(Females) Absent, both ovaries are intact & normal.

Incised stitched wound cut open shows clotted blood in abdominal layer in the area of cut. Abdominal cavity including pelvis cavity contained 3 litres of liquid blood & about 1 Kg. Of ante mortem blood clots. The blood gushed out after opening the abdominal cavity. Uterus is missing, appears to be surgically removed, ovaries ligaments with other structures found tied

with thread. The vessels are not separately ligated. The stump above the upper end of cervix along with vessels are tied en block. No cauterization of individual vessel seen.”

14. The learned counsel for the petitioner submitted that above post mortem report clearly shows that there was negligence. The counsel also attempted to refer to technical pleas such as lack of cauterization of individual vessels. However, no medical evidence in support of such allegations qua the negligence alleged have been placed on record or shown to this Court.

15. In light of the above, when a medical Board has been constituted by the AIIMS, which is one of the premier institutes of the country, comprising of eight of their senior doctors (including six professors and additional and associate professors of pathology, Obstetrics and Gynaecology and forensic medicine), it is not for us under Article 226 of the Constitution to question the expert opinion of the Board, particularly when no part of the expert opinion of the said Board has been shown to be perverse.

15. Accordingly, we are constrained to hold that since the

16.

medical Board constituted by the AIIMS has not found any negligence or

omission on the part of the concerned doctors, the reliefs claimed in the writ petition, cannot be granted in the face of the report from the AIIMS, which the learned counsel for the petitioner has not been able to find a flaw in. There is, therefore, no merit in the writ petition and it is dismissed.

MUKUL MUDGAL
(Judge)

April 07, 2008
sk/dr/kkb

REVA KHETRAPAL
(Judge)