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DR. RAJ BOKARIA

versus

MEDICAL COUNCIL OF INDIA AND ANR.

CORAM: JUSTICE S. MURALIDHAR

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CM No. 20412/2010 (for exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

W.P.(C) 7905/2010 & 20411/2010 (for Stay)

1. The challenge in this petition is to an order dated 3rd November 2010 passed by the Ethics Committee of the Medical Council of India ('MCI') allowing an appeal filed by Mr. Atanu Dutta, Respondent No. 2 herein, and directing that the Petitioner should be punished by removing her name from the Indian Medical Register for three months with effect from 1st November 2010 to 31st January 2011.

2. The wife of Respondent No. 2, late Dr. Roopa Dutta, a gynaecologist and obstetrician herself, was being treated at the Moolchand Kheratiram Hospital, Respondent No. 3 herein, by a team of four doctors headed by the Petitioner during her second pregnancy in 2003. An ultrasound carried out

after 20 weeks of pregnancy revealed that the foetus had a single umbilical artery. Amniocentesis done in Ganga Ram Hospital revealed that the chromosome count in the foetus was abnormal being 22. It is stated by the Petitioner that late Dr. Roopa Dutta was also a known patient of asthma and could not accept the thought of delivery of an abnormal child. It is stated that she suffered from extreme mental stress and aggravated asthma and her condition became precarious. The Petitioner states that in light of the above complication, “the issue was discussed with Respondent No. 2 and his late wife....she and her husband therefore took a conscious decision to discontinue the pregnancy in order to protect the life of late Dr. (Mrs.) Roopa Dutta.” It is claimed in the petition that this decision to discontinue pregnancy was “a normal and accepted medical practice” and a certificate dated 26th June 2004 issued by the East Delhi Gynecologist Forum is enclosed in support of such submissions. However, the records showing that a consultation was held by the Petitioner with the deceased and her husband, and that an opinion was formed by the Petitioner to terminate the pregnancy is not placed on record. It is the admitted position that there is no such record maintained in the present case.

3. It is stated that late Dr. Roopa Dutta was admitted to the RAV unit of Respondent No. 3, headed by the Petitioner, at 11 am on 6th October 2003 for discontinuation of pregnancy by inducing pre-term labour. A consent form signed by the patient and her husband has been produced. The asthma evaluation was done by one Dr. S.K. Jain. It is claimed that on 8th October 2003 the deceased got good contractions and delivered a gasping foetus spontaneously at 9.25 am at a time when the Petitioner was not present. The delivery apparently happened in the room itself. After delivery, the deceased

was shifted to the labour room for further observation and management. However, since the placenta was not expelled for more than an hour, a *bona fide* decision was taken to remove the placenta manually under anaesthesia to prevent any further complication. It is claimed that at that time the patient was conscious and was aware of the decision. It is claimed that neither she nor her husband objected to it. On the operation-table before induction, the deceased had an episode of severe bronchospasm for which I.V. steroids and broncho dilators were given but she became hypoxic and had falling oxygen saturation. Ultimately, the interventions by the attending doctors did not help and the deceased expired in the evening of 9th October 2003.

4. On 17th August 2004, Respondent No. 2 preferred a complaint to the Delhi Medical Council ('DMC') which dismissed the complaint on 21st February 2006 with the opinion that pre-term induction of labour was in the interests of maternal health of the deceased because of the single umbilical artery and the short arm of chromosomes. It is stated that Respondent No. 2 also preferred a complaint before the National Consumer Disputes Redressal Commission ('NCDRC'). By an order dated 5th December 2007, the NCDRC permitted Respondent No. 2 to prefer an appeal against the order of the DMC to the MCI. Thereafter, an appeal was preferred by Respondent No. 2 before the MCI. The Ethics Committee of the MCI, by the impugned order dated 3rd November 2010, allowed the appeal and awarded punishment to the Petitioner as already indicated.

5. Ms Maninder Acharya, learned counsel appearing for the Petitioner urged that a reading of the order of the Ethics Committee would show that although they had requisitioned the opinion of an expert doctor, Alka

Kriplani, the Ethics Committee in fact found that the opinion given by Dr. Kriplani was neutral, non-committal and therefore unhelpful. The Ethics Committee decided to refer the matter back to Dr. Kriplani for giving an unambiguous opinion. Yet, they proceeded to decide the appeal and awarded punishment to the Petitioner without receiving the expert opinion. Secondly, it is submitted that a reading of the impugned order would show that it primarily turned upon the fact that induced pre-term labour was contrary to the prohibition contained in Section 3 of the Medical Termination of Pregnancy Act, 1971 ('MTP Act') against the carrying out of such procedure at an advanced stage of pregnancy beyond 20 weeks. It is submitted that in doing so the Ethics Committee overlooked Section 5 of the MTP Act which permitted such procedure to be adopted provided an opinion was formed that it was necessary to save the life of the patient. Thirdly, it is submitted that an unusual procedure was adopted by the Ethics Committee of the MCI to investigate the complaint *de novo* and record the statements of the doctors concerned. Also, copies of these statements which were recorded in the absence of the Petitioner were not given to her. No opportunity to cross-examine the said doctors was given. It is submitted that in these circumstances the impugned order ought to be set aside and the case remanded for a further decision by the MCI.

6. The above submissions have been considered by this Court. It has been correctly submitted that the impugned order of the Ethics Committee essentially turned on the legal opinion given by its retainer on an interpretation of Section 3 of the MTP Act. It was opined, and in the view of this Court, correctly, that in terms of Section 3(2) the satisfaction of one

medical practitioner was required for terminating a pregnancy which does not exceed 12 weeks. That satisfaction had to be either that the continuation of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or that there was a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. For termination of a pregnancy between 12 and 20 weeks, such opinion must be of two medical practitioners. Therefore, there was no question of terminating a pregnancy by inducing pre-term labour beyond the 20th week of pregnancy. A reference was made to the decision in *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1.

7. What is significant as far as the present case is concerned is that it was not denied that the pre-term labour inducement of labour was resorted to beyond 20 weeks of pregnancy. Clearly, therefore, the prohibition under Section 3 of the MTP Act was attracted. The only defence, however, is that Section 5 of the MTP Act was overlooked and action of the Petitioner was justified thereunder.

8. Section 5 (1) of the MTP reads as under:

“5. Section 3 and 4 when not to apply – (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”

9. The reply of learned counsel for the Petitioner to the question whether any record to show the forming of opinion by the Petitioner in terms of Section 5(1) was produced either before the DMC or before the MCI, was in the negative. It is submitted in fact that there was no such document, although it was asserted that such opinion was in fact formed by the Petitioner. It was submitted that there was no such practice of maintaining any such record of the decision taken to go in for inducement of pre-term labour even when the pregnancy was more than 20 weeks. However, the importance of maintenance of such record was not denied by counsel for the Petitioner.

10. Appearing on advance notice, Mr. Ashish Kumar, learned counsel for the MCI pointed out that the forms necessary to be filled out before resorting to any of the procedures under Section 3, 4 or 5 of the MTP Act have been appended to the MTP Act itself. Filling out the said forms was mandatory. It was plain that in the present case no such procedure was followed.

11. On a reading of Section 5 of the MTP Act, it appears to this Court that the opinion formed by the medical practitioner to go for either MTP or pre-term inducement of labour when the pregnancy is beyond 20 weeks, has necessarily to be in writing and in the prescribed format. There was no question of there not being any record whatsoever of the forming of such opinion of the medical practitioner. The argument advanced by Ms. Acharya that in a case of emergency there may be no time for recording such opinion cannot explain the failure to record an opinion in the present case. The facts narrated by the Petitioner herself show that a very conscious decision was taken of going for a pre-term inducement of labour sometime around 6th

October 2003 when the deceased was admitted to Respondent No. 3 hospital. Even at that time the opinion of the Petitioner should have been recorded. The pre-term induced delivery took place on 8th October 2003. There was sufficient time, therefore, for the Petitioner to record her opinion, mandatorily required by Section 5(1). In terms of Rule 3(1) of the Medical Termination of Pregnancy Regulations, 2003 the medical practitioner has to record her opinion in Form I. The non-maintenance of records to show the basis on which an opinion was formed to going in for a pre-term inducement in a case where the pregnancy is beyond the 20th week is indeed a very serious lapse. There can be no excuse whatsoever for a medical practitioner seeking to defend herself with reference to Section 5 of the MTP Act not maintaining any record of the formation of the opinion in terms of Section 5(1) read with the Regulations of 2003. In the considered view of this Court, the above factor alone is enough to demonstrate the gross negligence on the part of the Petitioner.

12. It was repeatedly urged that the question whether there was negligence on the part of the Petitioner can be judged only with reference to expert opinion which is still awaited. This submission does not impress this Court in the facts and circumstances of the present case. There had to be in the first place an opinion formed by the Petitioner as required mandatorily by Section 5(1) MTP Act. It is only thereafter that one can proceed to test such opinion and examine whether any ordinarily skilled gynaecologist and obstetrician would have formed a similar opinion in the facts and circumstances. The opinion, if recorded by the Petitioner, would have reflected the application of mind of the Petitioner with reference to the medical records of the patient.

Absent such recording of opinion, the question of evaluation of the Petitioner's opinion with reference to the opinion that may have been formed by an ordinarily skilled medical practitioner does not arise. In that view of the matter, there is no need to examine the other question whether the Petitioner ought to have been given copies of the statement of the other doctors or permitted to cross-examine them.

13. This Court finds that no ground is made out for interfering with the impugned order of the Ethics Committee of the MCI. The writ petition along with pending applications is dismissed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

NOVEMBER 25, 2010

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