

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

Reserved on: 3rd December, 2013
Pronounced on: 10th January, 2014

+ **W.P.(C) 1334/2013**

MAX HOSPITAL, PITAMPURA Petitioner
Through Mr. Sanjeev Puri, Senior Advocate with
Mr. Sajad Sultan, Advocate

versus

MEDICAL COUNCIL OF INDIA Respondent
Through Mr. Ashish Kumar, Advocate with Mr.
Avijit Mani Tripathi, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. By virtue of this writ petition under Article 226 and 227 of the Constitution of India, the Petitioner hospital seeks quashing of the minutes of the meeting of the Ethics Committee dated 27.10.2012 whereby it was held that there was medical negligence on the part of Dr. Alka Gupta, Dr. Navita Kumari and Dr. Pooja Bhatia in treating the patient Nitika Manchanda (the deceased) post her Lower Segment Caesarian Section Procedure (LSCS) on 03.05.2009. The observations of the Ethics Committee against the doctors and the Petitioner hospital are extracted hereunder wherein the observations against the Petitioner hospital are highlighted:

“18. Appeal against order dated 07.06.2010 passed by Delhi Medical Council made by Mr. S.P. Manchanda (597/2010)”

02:30 PM.

The Ethics Committee considered the matter and noted that Dr. Pooja Bhatia, Dr. Vikas and Dr. Rajeev Kapoor & Mr. S.P. Manchanda were asked to appear before the Ethics Committee and all the said persons appeared before the Committee except Dr. Rajeev Kapoor. The hospital authorities submitted letter stating that Dr. Rajeev Kapoor was currently not working in their hospital.

After detailed discussion, the Ethics Committee noted that hospital records as well as oral statement submitted by the treating doctors/consultants showed that there was lack of guidance and care as provided by the treating consultant Incharge. Moreover, it is found that the hospital did not provide the patient with standard post operative care. The hospital lacked in adequate blood component facilities, timely ultrasound examination, timely usage of appropriate drugs, which might be responsible for the death of the patient Ms. Nitika Manchanda.

After going through the case, the Ethics Committee unanimously felt that there was definite professional misconduct on the part of the consultant/treating doctors in management of patient i.e. Nitika Manchanda, in so far as the post operative monitoring and management of the adverse events occurring on the 2nd post operative day, which ultimately led to the death of the patient. It appears that the patient had developed severe pain in the abdomen at around 10.00 p.m. on 4th May, 2009 which was managed by the Resident Doctor on duty by a very aggressive multi modal analgesia and sedation and did not advise any investigations like a routine Haemogram and Ultrasound investigations, which was strongly indicated in such a situation.

On going through the records, it was found that there were numerous over writings and alterations in crucial patient data as well as the timing of the notings. At some points additional data seems to have been inserted at later date. On page No.183, the note does not specify the blood pressure the column of B.P. has been left blank which is unusual for a patient developing severe post operative abdominal pain.

The Ethics Committee strongly recommended to the regulatory body concerned with quality of hospital care, to take necessary action on the hospital administration for the poor care and infrastructure authorities. The Committee found that the attending consultant was negligent in providing post-operative care and the Committee decided the following punishment:

- (i) *The name of Dr. Alka Gupta be struck off from the Indian Medical Register as well as from the Register of State Medical Council for a period of 3(three) years.*
- (ii) *Dr. Navita Kumari – a warning letter may be issued to her.*
- (iii) *Dr. Pooja – RMO (Jr. Resident) – a warning letter may be issued to her.*
- (iv) *The concerned State Govt. Authorities (Principal Secretary, Health and Family Welfare, Govt. of Delhi) who have given permission to this Max Hospital, Pitampura Delhi to function may be requested to take necessary action on the said hospital management for not having adequate infrastructure facilities necessary for appropriate care during the post-operative period which contributed substantially to the death of Mrs. Nikita Manchanda.”.....*

2. It is not in dispute that Dr. Nikita Manchanda, 30 years old female was admitted in the Petitioner hospital under consulting Obstetrics and Gynaecologist Dr. Alka Gupta on 03.05.2009 at 5:07 a.m. She was prepared for LSCS and was immediately shifted to operation theatre at 5:15 a.m. LSCS under SA was done and a full term baby boy was delivered at 5:41 a.m. On the first day of the operation, there was complaint of occasional mild pain in the abdomen. On the second day, the deceased was observed to be stable. However, around 11:00 p.m., the deceased complained of severe pain in lower abdomen and back. She was

attended to by the Resident Doctor on duty *i.e.* Dr. Pooja Bhatia (Obste & Gynae). Dr. Pooja Bhatia is alleged to have found tenderness in lower back L-3, L-4 and L-5 region. There was no obvious swelling. The deceased was advised to be administered injection voveran, injection fortwin and injection phenergan IM slowly. The case is stated to have been discussed by Dr. Pooja Bhatia with Consultant Anaesthetist Dr. Vikas Mangla, who advised tablet mobizox.

3. Thereafter, the patient again complained of severe pain and a call was made to Dr. Alka Gupta around 6:55 a.m. the next day. Before Dr. Alka Gupta could reach the hospital, the condition of the deceased severely deteriorated and the BP and pulse became non recordable. Urgent resuscitating measures are stated to have been taken. The deceased was shifted to POP/SICU for further resuscitation. Ultimately, the deceased died and was declared clinically dead at 12:30 p.m.
4. A criminal complaint with allegations of medical negligence was made by Mr. Aman Sarna, the deceased's husband to the Police. The DCP (Headquarter) sought an opinion from the Delhi Medical Council (the DMC) if there was any medical negligence on the part of the doctors.
5. The DMC issued notices to the concerned doctors and after hearing them opined that there was no medical negligence on the part of the doctors (of Max Hospital, Pitampura, New Delhi) in the treatment administered by them to the deceased Nitika Manchanda. Being dissatisfied with the opinion given by the DMC, Shri S.P. Manchanda, the deceased's father made a representation in the form of an Appeal to the Medical Council of India (MCI) which after notice to the concerned doctors and the Petitioner hospital passed the impugned order which has been extracted

above.

6. The Petitioner's grievance is twofold. Firstly, that since the Medical Council of India (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the Regulations) have been framed in exercise of the power conferred under Section 20-A read with Section 33 (m) of the Indian Medical Council Act, 1956, these regulations do not govern or have any concern with the facilities, infrastructure or running of the Hospitals and secondly, that the Ethics Committee of the MCI acting under the Regulations had no jurisdiction to pass any direction or judgment on the infrastructure of any hospital which power rests solely with the concerned State Govt. The case of the Petitioner is that the Petitioner hospital is governed by the Delhi Nursing Homes Registration Act, 1953. It is urged that in fact, an inspection was also carried out on 22.07.2011 by Dr. R.N. Dass, Medical Superintendent (Nursing Home) under the Directorate of Health Services, Govt. of NCT of Delhi and the necessary equipments and facilities were found to be in order which negates the observations dated 27.10.2012 of the Ethics Committee of the MCI. It is also the plea of the Petitioner hospital that the Petitioner was not provided an opportunity of being heard and thus the principles of natural justice were violated.
7. In the counter affidavit filed by the Respondents, it is not disputed that the MCI under the 2002 Regulations has jurisdiction limited to taking action only against the registered medical practitioners. It's plea however, is that it has not passed any order against the Petitioner hospital therefore; the Petitioner cannot have any grievance against the impugned order. At the same time, it is stated that only simple observations were

made by the Ethics Committee of the MCI about the state of affairs in the Petitioner hospital and the same did not harm any legal right or interest of the Petitioner. It will be apposite to extract the relevant paragraphs of the counter affidavit filed by the MCI as under:-

“4. Preliminary Objections:

- (i) *That the instant writ petition is not maintainable under Article 226 of the Constitution of India as there is no cause of action for filing of this instant petition. The MCI has not passed any order against the petitioner in the impugned minutes of meeting dated 27.10.2012, therefore, there is no cause of action for filing the instant writ petition.*
- (ii) *That the MCI has not passed any order against the petitioner and nor does the impugned minutes of meeting dated 27.10.2012 affect any legal right or interest of the petitioner which the petitioner seeks to enforce by filing this writ petition and thus the same is not maintainable.*
- (iii) *That the jurisdiction of MCI is limited only to take action against the registered medical professionals under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter the ‘Ethics Regulations’) and has no jurisdiction to pass any order affecting rights/interests of any Hospital, therefore the MCI could not have passed and has not passed, any order against the petitioner which can be assailed before this Hon’ble Court in writ jurisdiction.*
- (iv) *That a simple observation made by the Ethics Committee of MCI about the state of affairs in the petitioner Hospital has harmed no legal right/interest of the petitioner for which a writ can be issued by this Hon’ble Court against the answering respondent.*
- (v) *That the petitioner contends that an adverse order has been passed by the MCI and that too without hearing the petitioner. Both these contentions of the petitioner are*

incorrect and frivolous as firstly, there is no adverse order made by the MCI against the petitioner as MCI does not have any such jurisdiction; secondly, the petitioner was throughout represented before the Ethics Committee of MCI during the proceedings initiated on complaint of one Mr. Sunil Manchanda against some of the doctors working in the petitioner hospital. The petitioner was heard through its advocates on several occasions and had submitted several documents also in support of their stand.”

8. It is clearly admitted by the Respondent that it has no jurisdiction to pass any order against the Petitioner hospital under the 2002 Regulations. In fact, it is stated that it has not passed any order against the Petitioner hospital. Thus, I need not go into the question whether the adequate infrastructure facilities for appropriate post-operative care were infact in existence or not in the Petitioner hospital and whether the principles of natural justice had been followed or not while passing the impugned order. Suffice it to say that the observations dated 27.10.2012 made by the Ethics Committee do reflect upon the infrastructure facilities available in the Petitioner hospital and since it had no jurisdiction to go into the same, the observations were uncalled for and cannot be sustained.
9. Since the MCI had no jurisdiction to go into the infrastructure facilities, I need not also go into the aspect that in the year 2011, the facilities available in the hospital were inspected and were found to be in order.
10. The petition therefore has to succeed. I hereby issue a writ of *certiorari* quashing the adverse observations passed by the MCI against the Petitioner hospital highlighted in Para 1 above.
11. The writ petition is allowed in above terms.

12. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 10, 2014

vk