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

\+ **W.P.(C) 6541/2014 & CM 15600/2014, 31430/2016**

RABINDRA PRASAD SAH ..... Petitioner

Through None.

versus

POONAM BANKA & ORS ..... Respondents

Through Mr Kaushik Poddar, Mr Anuj Prakash, Advocates for R1.
Mr T. Singhdev, Mr Amandeep Kaur, Mr Tarun Verma, Ms Puja Sarkar, Mr Abhijit Chakravarty, Advovcates for Respondent No.3.
Mr Akshay Kumar Malhotra, in person.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 20.11.2017

1. None appears for the petitioner.

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(i) Call for the records of proceedings of the Ethics Committee of Medical Council of India in relation to Appeal No. MCI-211(2)(44)/2013-Ethics/2123685.
>
> (ii) Issue a writ of certiorari or any other appropriate writ or order to quash the order dated 08.08.2014 in appeal no. MCI-211(2)(44)/2013-Ethics/2123685 passed by the Ethics Committee of Medical Council of India.
>
> (iii) Issue a writ of mandamus or any other appropriate writ or order to permanently remove the name of the respondent no.1 from the role of registered medical practitioners maintained by

the West Bengal Medical Council and by the Medical Council of India and in case of Respondent No.2 for a period of 3 years.

(iv) issue appropriate direction to the Medical Council of India to ensure that it's Ethics Committee does not act in a totally partisan manner by including persons other than medical practitioners in the Ethics Committee or by any appropriate methods deemed fit by this Hon'ble Court.

(v) Award cost of legal proceedings to the petitioner."

3. The petitioner has filed the present petition alleging Medical Negligence on the part of respondent nos. 1 and 2 in the treatment of his wife Ms Anita Prasad (since deceased and hereafter 'the patient'). It is alleged that the patient was suffering from certain gynaecological problems and used to experience pain and bleeding during her periods. This led the patient to consult respondent no.1, who was at the material time working at Apollo Gleneagles Hospital, Kolkata. On her advice, the patient agreed to undergo total Abdominal Hysterectomy with Bilateral Salpingo Oophorictomy. The said surgical operation was conducted on 01.07.2010.

4. The petitioner alleges that the patient complained of severe abdominal pain after the patient regained consciousness, which continued to increase to excruciating levels. He alleges that the doctors ignored the same and continued to dismiss the patient's pain as post operative effect. It is stated that after three days that is at 6.00 p.m. on 03.07.2010; Dr J.B. Roy, a Senior Surgical Consultant of Apollo Gleneagles Hospital was consulted who advised CT scan of the abdomen for evaluation. The CT scan, which was conducted on the same day indicated that there was waste material and gas collected at the peritoneum of the patient due to a suspected bowel injury.

5. The petitioner alleges that bowel perforation was inflicted during the operation, however, the same was not detected till 03.07.2010. The second operation was conducted on the patient on 03.07.2010 and it is alleged that the note recorded by the attending doctor reads as under :

> "*it is recorded:(1) 1.5 x 1.5 cm perforation (Anti-mescenteric border) of ileam, about one foot proximal to 1C - (2) Faccal peritonitis, about 1 litter of Faeculent collection in peritoneum (3) small (2 cm long) longitudinal (along the axis of vessels) tear in mesentery to*."

6. Respondent no.1, who had conducted the first operation, has filed a counter affidavit, *inter alia*, affirming that there was a point perforation of size approx. 2mm in the antimesentric border of terminal ileum within 1 feet of ileocaecal junction. There was no other injury anywhere. However, 2 cms of mesentery (a very thin and broad film which is attached to one border of intestine) got torn while doing second surgery, which was repaired then and there. It is further stated that the perforation post hysterectomy cannot be termed as negligence. It is further stated that bowel perforation is a known complication of hysterectomy and occurrence of a known complication post surgery does not amount to medical negligence. Respondent no.1 further suggests that the same had occurred during the second operation and not the first.

7. A bare perusal of the impugned order indicates that none of the aforesaid issues such as whether the bowel perforation had occurred during the first surgery; whether it was a normal complication; and whether it ought to have been detected within a period of two days from such operation have been specifically considered. The Ethics Committee of the MCI has simply concluded - without any discussion as to the aforesaid issues - that *there*

were post operative complications of perforation of the small bowel and was duly attended diagnosed and treated.

8. In view of the above, the impugned order is set aside and the matter is remanded to the MCI to consider it afresh in the light of the submissions made by the petitioner in the present petition and to examine whether there was any medical negligence on the part of the attending doctors. The Ethics Committee shall specifically deal with the allegations made in the present petition and give their opinion thereon.

9. It is clarified that this order has been passed only for the reason that the impugned order has not made any specific observations regarding the allegations made in this petition.

10. This court has not expressed any opinion on the question whether the respondents have been negligent or not and nothing stated herein should be construed as such.

11. The petition and pending applications are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 20, 2017
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