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

+ **W.P.(C) 7263/2018 & CM 27685/2018**

CHELAKARA RAMASWAMY

..... Petitioner

Through: Mr R.K. Kapoor, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms Rajdipa Behura, SPP for CBI with
Mr Phlomon Kani, Mr Kriti Handa,
Mr Damini K., Mr Ashray Behura,
Advocates.

Mr T. Singhdev, Mr Tarun Verma,
Ms Puja Sarkar, Mr Abhijit
Chakrawarty, Advocate for
Respondent No.5.

Mr R.K. Kapoor, Ms Khujali, Ms
Rekha Giri, Advocates.

Mr Vikas Mahajan, CGSC for UOI.

Mr Brajesh Kumar, Advocate for
UOI.

Mr Vikas Mahajan, CGSC with Mr
Aakash Verma, Mr Deepak Goyal,
Advocates UOI.

Counsel for State of Maharashtra.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.07.2018

1. The petitioner has filed the present petition praying for several reliefs including for directions to respondent no.2 (Ministry of External Affairs) to instruct the Indian Embassy at Maldives to initiate criminal action against one Dr Dorjee Khandu, who had treated the petitioner's son when he was on

vacation at a resort in Maldives. The petitioner further prays that directions be given to respondent no.3 (Home Secretary, Government of Maharashtra) to send the preserved viscera of the petitioner's deceased son to the All India Institute of Medical Sciences (AIIMS), New Delhi for complete re-examination and report the cause of death, reasons for death and the mode of death after examination of the reports.

2. The petitioner's son and his newly wed wife had proceeded to Maldives for a vacation on 19.07.2016, which is within a few days of their marriage. They were staying at *Vilu Reef Resort* at Vilu Reef Island, which is about 120 kms from MALE, Maldives. It is stated that the said island could only be reached by Sea Planes which fly during the day time.

3. It is stated that the petitioner's son was fine till 23.07.2016. On 24.07.2016, the petitioner's son complained of an upset stomach and consulted Dr Dorjee Khandu, who manages a small and impoverished clinic at the Island. It is stated that although the petitioner's son's blood pressure was very high, the treating doctor neither took any emergency steps nor consulted nor referred the petitioner's son to any specialist.

4. At about 01:20 a.m. on 25.07.2016, the petitioner's son complained of breathlessness, which the petitioner claims was on account of Cerebro-Pulmonary Oedema caused by the medicines (Nifedipine and Propranolol). The petitioner's son did not survive the night and his body was shifted to MALE, Maldives on 25.07.2016. The petitioner states that there was no facility for post-mortem or embalming of the body in Maldives and, therefore, the body of the petitioner's son was brought to India.

5. The Coffin carrying the body of the petitioner's deceased son arrived in Mumbai at 01:00 a.m. on 27.07.2016 and was taken to JJ Hospital in Mumbai. The petitioner states that the post-mortem was completed at about 01:00 p.m. on 27.07.2016; that is, after the delay of approximately 12 hours.

6. JJ Hospital issued a "Final Cause of Death" on 19.11.2016 but the cause of death was declared as "*Cerebro-Pulmonary Oedema and Pulmonary Hemorrhages in case of Coronary Artery Disease (CAD), associated finding fatty liver*".

7. It is stated that the petitioner approached the Chief Secretary, Government of Maharashtra (hereafter 'Chief Secretary') on 02.01.2017 requesting that his son's viscera be sent for re-examination at K.E.M. Hospital, Mumbai. It is stated that at the instance of the Chief Secretary, JJ Hospital formed a team which confirmed the report submitted by the hospital. The petitioner is dissatisfied with the said report and claims that the same was made only to safeguard the reputation of JJ Hospital.

8. The petitioner states that being dissatisfied with the said report, he has approached the Chief Minister of Maharashtra to initiate a CBI Inquiry. The petitioner also made representation to various authorities including the Prime Minister and the President of India. Thereafter, the petitioner has filed the present petition, *inter alia*, praying as under:-

- "a. issue a writ of Mandamus or any other appropriate writ/order directing the Respondent No. 2 to instruct the Indian Embassy at Maldives to file an immediate complaint and FIR with Maldives Police to initiate Criminal Action against the Resort Doctor and the Resort

Management, for sudden, unfortunate, untimely death of the son of the petitioner which virtually is a case of homicide;

- b. Issue an appropriate writ against Respondent No.2 to further direct the Indian Embassy at Maldives to persuade initiation of Criminal Action against the Resort Doctor and the Resort Management including a request to impound the Passport of the Doctor, who is a Bhutanese Citizen, from escaping from Maldives;
- c. Pass an order directing Home Secretary Maharashtra (Respondent No. 3) to send the preserved viscera of deceased at JJ Hospital Mumbai and Forensic Science Laboratory at Kalina, Mumbai to AIIMS, New Delhi for a complete re-examination and report the cause of death, reasons for death and mode of death after examination reports;
- d. Pass an order directing the Medical Council of India (MCI), Respondent No.5 for conducting a thorough, complete and expeditious medical investigation on all available medical documents and reports from 24.07.2016 (Maldives) till today.
- e. To pass an order directing the MCI (Respondent No 5) to constitute an appropriate medical ethical committee which in coordination with the Police Authorities would examine the issue of inappropriate and negligent conducting of post mortem examinations, including delays and fix the responsibilities of the Doctors responsible for that and then initiate appropriate disciplinary and penal action against those found guilty and also for initiating action for negligence in not issuing the appropriate Medical Certification of Cause of Death (MCCD) in the prescribed format and expeditiously submit the report before this Hon'ble Court;
- f. To issue an appropriate writ/order directing the CBI (Respondent No.4): to have a thorough investigation in the

whole episode particularly where the Maharashtra Government has also recommended CBI enquiry for further action.

- g. Directing the Government of India to approach the Maldives Government through Indian Embassy immediately to prompt the Maldives Police to initiate appropriate investigation and actions against those who would be found guilty before expiry of Maldives court time limitation.
- h. Directing the CBI to enquire into the Indian Embassy, Maldives Coffin Scam running for about a decade at the cost, prejudice and harassment of innocent tourist/families visiting the resorts at Maldives, suffering the unfortunate deaths on account of gross Medical negligence.
- i. Further pass an appropriate direction to the Indian Govt. through the Ministry Of Foreign affairs/Tourism to persuade the Maldives Govt. to provide for availability of sufficient medical facilities at all Resorts at Maldives.
- j. Order the respondent Nos. 1 to 3 to pay heavy compensation to the petitioner on the irreversible mental agony, torture, pain and dishonor to the deceased by delaying Post Mortem for 12 hours and by not following a appropriate Post Mortem protocols and for issuing sham medical reports by Dr. Manish and Dr. Dixit.”

9. The reliefs as prayed for are unmerited. Assuming that the allegations of medical negligence made by the petitioner are correct, the same would relate to a treatment provided to the petitioner's son in Maldives and, therefore, action, if any, is required to be taken by the authorities in Maldives. The petitioner is not precluded in any manner from pursuing any action against the concerned doctor.

10. In so far as re-examination of the documents for determining the

cause of death is concerned, JJ Hospital at Mumbai had already submitted its report indicating the cause of death and this Court is not persuaded to accept that any further directions in this regard are necessary. No directions are required to be issued to the Medical Council of India (MCI), as the doctor in question, does not practice in India and there is no averment that his name is entered into Indian Medical Register; consequently, MCI would not exercise any jurisdiction over Doctor Khandu. There is also no reason to direct MCI to constitute any committee to examine any allegations of negligence in conduct of post-mortem.

11. The petitioner states that the Final Cause of Death Certificate, issued by JJ Hospital is not in terms of the proper form as prescribed under the Maharashtra Registration of Births and Deaths Rules, 2000 and as per the forms prescribed. Final Cause of Death Certificate has been issued at JJ Hospital in Mumbai and there is no material on record to indicate that the petitioner had sought the said certificate in any format. It is, thus, always open for the petitioner to approach JJ Hospital in this regard.

12. The prayer made by the petitioner to direct respondent nos. 1 to 3 to pay heavy compensation to the petitioner is also unmerited.

13. In view of the above, the reliefs as sought for by the petitioner in this petition cannot be granted. However, the learned counsel for the petitioner has drawn the attention of this Court to the Compendium issued by the Ministry of Overseas Indian Affairs, which expressly provides for the procedure for claiming compensation in case of a death of an Indian National abroad.

14. In this view, the petitioner would be at liberty to approach the (Joint Secretary), Ministry of External Affairs for assistance in this regard. The petitioner's case would be examined by the Joint Secretary. And, if any assistance can be provided to the petitioner in conformity with the current framework of policy/ rules, for pursuing the claim for compensation, the Joint Secretary MEA shall ensure that the same is provided. The pending application stands disposed of.

15. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

JULY 24, 2018
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