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

\+ **W.P.(C) 10451/2018**

SANJEEV BANSAL ..... Petitioner

Through: Mr Sanjay K. Chadha, Advocate along with petitioner in person.

versus

INDRAPRASTHA APOLLO HOSPITAL AND ORS. ..... Respondents

Through: Mr Lalit Bhasin, Ms Ratna Dwivedi Dhingra and Ms Chandni Sadara, Advocates for R-1.
Mr K. G. Sharma, Advocate for R-2, 6 and 7.
Mr S. S. Ray and Ms Pusshp Gupta, Advocates for R-3.
Mr Siddharth Bawa and Mr Shyamal Anand, Advocates for R-4.
Mr T. Singhdev and Mr Abhijit Chakravarty, Advocates for R-9/MCI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 18.12.2018

VIBHU BAKHRU, J

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

> "a. Issue a Writ of Certiorari or any other appropriate Writ or Direction quashing the Order dated

26.05.2018 passed in Appeal No.MCI-211(2)(36-Appeal)/2017-Ethics/ 117953 by Medical Council of India, Pocket-14, Sector-8, Dwarka, New Delhi-110075 and cancel the registration of the respondents for practice in the Medical field.

b. Award for costs of this Petition;"

2. The petitioner impugns an order dated 26.06.2018 (hereafter 'the impugned order') passed by the Medical Council of India (MCI). The impugned order was passed in an appeal preferred by the petitioner against an order dated 09.05.2017 passed by the Delhi Medical Council (hereafter "DMC") rejecting the petitioner's complaint of professional misconduct against the respondents in the treatment of his father.

3. The petitioner states that on 31.01.2016, his father – Late Shri Jai Prakash Bansal – accidently fell from his chair and suffered injury on his right hip, causing a fracture. Thereafter, on 02.02.2016, the petitioner's father was brought to Indraprastha Apollo Hospital (respondent no.1) where he was examined by Orthopaedic doctors, namely Dr. Raju Vaishya (respondent no.2) and Dr. Amit Aggarwal (respondent no.7). On the recommendation of the said doctors, the petitioner's father was operated on 03.02.2016 for cemented bio-polar hip arthroplasty. Subsequently, the petitioner's father expired on 11.02.2016. It is alleged by the petitioner that his father's death was the result of negligence on the part of the respondent no. 1 hospital in treating him.

4. Aggrieved by the alleged misconduct, the petitioner filed a complaint (being DC/F.14/COMP.1856/2/2017/261722) dated 17.05.2016 before the DMC. In the said complaint, the petitioner, *inter alia*, alleged that the surgery of his late father was performed without taking medical clearance from the concerned doctors in the respondent no. 1 hospital. It was further alleged that the petitioner's father was consuming Clopidogrel Dose (Preva AS 75), which was to be stopped a week before the surgery, and the non-stop use of the said dose resulted in internal (Gastrointestinal) bleeding during the surgery.

5. The said complaint was considered by the Disciplinary Committee of the DMC. By way of an order dated 09.05.2017, the DMC rejected the petitioner's complaint holding that no medical negligence was committed by the respondents. The operative part of the order passed by the Disciplinary Committee of the DMC is set out below:

> "In view of the above, the Disciplinary Committee makes the following observations:-
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> > 1) The patient 71 years male with a diagnosis of fracture neck of femur on the right side, underwent bipolar hip replacement right side, on 03rd February, 2016 under high risk consent (given by the patient and his daughter on 03rd February, 2016). It is noted, that since the patient suffered from other co-morbid medical conditions like hypertension, chronic kidney disease, anemia, osteoporosis - and history of cereberal stroke; pre-operative clearances were obtained from Nephrologist, Physician, Neurosurgeon and Anaesthetist, as is borne out

from the progress sheet of the said Hospital dated 02nd February, 2016 and 03rd February, 2015. The patient also underwent pre-operative investigation and infact one 1 Pack cell transfusions was done preoperatively which raised the HB from 7.5 to 8.8 (post-operatively).

2) The operation (right hemiasthroplasty) for fracture neck of the femur was warranted, however, since the patient was on aspirin and clopidogrel prior to the surgery, clopidogrel should have been stopped at-least five days prior to the surgery, as per accepted professional practice in such cases, in order to mitigate the likely risk of bleeding.

However, it was noted that in this case there was around 400 ml of blood loss was there during and after surgery, which was duly 9 compensated through blood transfusion. This amount of blood loss cannot be attributed to clopidogrel and aspirin. The patient's operation was semi-emergency nature, as he had suffered injury three days prior to admission, thorough investigation alongwith INR coagulation profile should have been done prior to surgery especially as the patient was on anti-coagulation and had kidney disease.

3) The parent's condition deteriorated and the patient developed acute renal failure and was shifted to ICU. The medicines were upgraded on 6th February, 2016 including zoysm, targocid polymixin B (by nebulisation) and dialysis initiated.

In light of the observations made herein-above, it is, therefore, the decision of the Disciplinary Committee that no medical negligence can be

> attributed on the part of Dr. Raju Vaishya, Dr. S.K. Agarwal and Indraprastha Apollo Hospital, in the treatment administered to complainant's father late Shri Jai Prakash Bansal at Indraprastha Apollo Hospital. The Hospital authorities are advised to make ail efforts to provide the medical records of the patient, within seventy two hours of receipt of such request."

6. Thereafter, the petitioner filed an appeal dated 16.06.2017 before the MCI against the aforesaid order. The Ethics Committee of MCI, in its meeting considered the said appeal and rejected the same. On 26.06.2018, the MCI passed the impugned order rejecting the said appeal. The relevant extract of the decision of the Ethics Committee upholding the decision of the DMC is set out below:

> "The Committee further considered the statements of the respondent doctors - Dr. Raju Vaishya Dr Purnima Dhar Dr. S.K. Agarwal, Dr. S.K. Sogani, Dr. Sanjiv Jasuja, Dr. K.K. Kapur &Dr. Amit Aggarwal of hidraprastha Apollo Hospital, New Delhi submitted before the Committee at its meeting held on 21-22 December, 2018 and noted that late Mr Jai Prakash Bansal had Multiple underlying comorbidities including hypertension, chronic kidney disease III-IV, Anemia, osteoporosis and had a past history of cerebral stroke. He accidentally had injury on his right hip and was diagnosed as having fracture neck femur for which he underwent bipolar hip replacement surgery on 03.02.2016 after adequate PAC and due clearance. Post operatively he was properly attended to by team of experts comprising of Consultants from different specialties including Cardiologist, nephrologist and gastroenterologist. Further in the course of management, patient continued to have deteriorating

> kidney function for which he was shifted to ICU, however he succumbed to his illness on 11.02.2016.
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> In the said circumstances, the Ethics Committee feels that the decision of the Delhi Medical Council dated 09.05.2017 wherein no medical negligence has been attributed on the part of treating doctors at Indraprastha Apollo Hospital does not suffer from any infirmity and therefore deserves no interference by this Committee. Hence the present appeal is dismissed and the decision of Delhi Medical Council is upheld."

7. Aggrieved by the rejection of the appeal, the petitioner filed the present petition.

8. Mr Chadha, learned counsel appearing for the petitioner, contended that the MCI had failed to consider that the record clearly establishes medical negligence on part of the treating doctors. He assailed the impugned order on several grounds. First, he submitted that the respondents had not taken medical clearance before performing surgery on the patient. Second, he submitted that the treating doctors had not stopped the dose of Clopidogrel (Preva AS 75), which was a blood thinner, and was required to be stopped at least one week prior to the surgery. Third, he submitted that the patient was administered spinal anaesthesia, which had caused acute kidney injury. Fourth, he submitted that respondent no.1 had manipulated the records. He referred to the ECG reports dated 02.02.2016 and submitted that both the reports were inconsistent and, therefore, had been manipulated. He also stated that the patient was declared dead at 6.11 a.m. on 11.02.2016, however, the entries in the nursing chart

indicate his BP to be normal at 8.00 a.m. on 11.02.2016.

9. The contention that clearance for surgery had not been taken from various doctors is erroneous. The petitioner has premised the aforesaid contention on the basis of a statement made by one of the doctors (Dr. S.K. Sogani) that he had not examined the patient. However, the said statement also indicates that Dr. Sogani had confirmed that the patient was a follow up patient, and, he had examined him in the Neuro Science OPD room (room no. 1021) on 02.02.2016 at around 12 noon. Since the patient had suffered a fracture, he was referred to Dr. Raju Vaishya as no Neuro Surgery management was required. He also confirmed that at 10 PM, Dr. Ajay Deep Singh who was on duty had given the neurosurgery clearance, after speaking with him. The record also shows that one of the members of his unit had examined the patient and had given the clearance for the surgery.

10. The contention that the treating doctors had failed to stop the dose of Clopidogrel at least five days prior to the surgery was examined by the DMC. The Disciplinary Committee of DMC noted that as per professional practice, dosage of blood thinning medicines should have been stopped at least five days prior, in order to avoid the risk of bleeding. However, it absolved the treating doctors from any medical negligence, since the patient was operated in a semi emergency situation and, more importantly, there was no additional blood loss which could be attributed to the blood thinning medicines. This Court finds no infirmity with the aforesaid decision, which would

warrant interference, with the said decision, by this Court. It is also relevant to note that one of the doctors, Dr. Purnima Dhar, had in her statement mentioned that the patient was on blood thinning medicines as he had suffered thrombosis stroke. She had pointed out that such patients are at high risk of a repeat stroke and, therefore, it was preferable to continue blood thinning medicines unless it was indicated to the contrary. In addition to the above, it is also important to note that in fact the medicines were stopped prior to the surgery (although the surgery was not deferred for a period of five days).

11. The contention that the treating doctors were negligent in administering spinal anaesthesia is also a debatable issue. Admittedly, the patient had been administered general anaesthesia as well. The question whether spinal anaesthesia should have been administered is a matter for the experts to consider. The DMC and MCI have not found the said act to be negligent and it would not be apposite for this Court to enter upon this controversy.

12. The contention that the records have been manipulated by the treating doctors is unpersuasive. The ECG report dated 02.02.2016 recorded the following impression:-

> "This Doubtamine Stress Echocardiogram is negative for dobutamine induced new LV wall motion abnormality. Overall, there was a good increase in the global LV systolic function with increase in LVEF from 60% in the basal condition to 70% after dobutamine infusion."

Another report of the same date recorded the following impression:-

> "Mildly positive Dobutamine stress ECG for reversible Ischaemia. To be correlated with respect to the clinical profile and with the findings of Dobutamine stress echocardiography."

13. The learned counsel for the MCI points out that although the said reports may appear to be inconsistent but they are not so. He submitted that notwithstanding the same, it is also possible to have two separate reports for tests conducted on the same date. This Court is not called upon to enter the controversy whether two ECG reports in variance to one another are possible. Suffice it to state that it is not possible for this Court to accept that the inconsistency, if any, in the said reports is attributable to manipulation as there is no material on record to establish that the reports are manipulated.

14. The entries referred to with regard to the vital parameters of the patient at 8.00 a.m. on 11.02.2016 are clearly erroneous as the patient had expired at 6.11 a.m. on that date. However, the doctors cannot be held negligent on account of the said entries as the same were made by the nursing staff, and have not been confirmed by any doctor.

15. It is relevant to note that examination by DMC or MCI of any complaint made against a medical practitioner is in the nature of a peer review. The scope of judicial review in respect of such decisions is highly limited and it is not open for this Court to sit as a first Appellate Court to examine the decision of the DMC/MCI on merits and supplant its view over their decision.

16. In the case of ***Dr. Madhu Karna v. Medical Council of India &***

Anr. (W.P. (C) 5058 of 2011), a Coordinate Bench of this Court had observed as under:

> "13. As far back as in P.J. Ratnam v. D. Kanikaram (1964) 3 SCR 1 it was held that the object of a proceeding in respect of professional misconduct under the Bar Councils Act and similar statutes is to ensure that highest standards of professional misconduct are maintained; the proceedings though in a sense penal, are solely designed for the purpose of maintaining discipline to ensure that a person does not continue in practice who by his conduct has shown that he is unfit so to do. Similarly in V.C.Rangadurai v. D. Gopalan (1979) 1 SCC 308 it was reiterated that disciplinary proceedings are sui generis and are neither civil nor criminal in character and that as a rule even in exercise of appellate power (under Section 38 of the Advocates Act, 1961) the Court would not, as a general rule interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and of the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjecture and unwarranted inferences. The Supreme Court in Rajendra V. Pai v. Alex Fernandes (2002) 4 SCC 212 held that ordinarily this Court does not interfere with the quantum of punishment where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct unless the punishment is found to be totally disproportionate to the misconduct. The Division Bench of this Court also recently in Satendra Singh Vs. Union of India MANU/DE/2694/2009 though in a different context held that in exercising jurisdiction under Article 226 of the Constitution of India, this Court is not to sit as a superior medical expert expressing opinions

over the opinions rendered by the experts in the field.

14. The scope of interference by the Courts in such matters is defined by the English Courts in Meadow vs. General Medical Council [2007] Q.B. 462 and Raschid vs. General Medical Council [2007] 1 W.L.R. 1460 as under:

(A) The panel is concerned with the reputation and standing of the medical profession, rather than with the punishment of doctors;

(B) The judgment of the panel deserves respect as the body best qualified to judge what the profession expects of its members in matters of practice and the measures necessary to maintain the standards and reputation of the profession;

(C) The panel's judgment should be afforded particular respect concerning standards of professional practice and treatment;

(D) The court's function is not limited to review of the panel decision but it will not interfere with a decision unless persuaded that it was wrong. The court will, therefore, exercise a secondary judgment as to the application of the principles to the facts of the case before it.

It has further been held that since the principle purpose of the Panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the profession rather than the administration of retributive justice, particular force is given to the need to accord special respect to the judgment of the professional decision-making body in the shape of the Panel."

17. Thus, unless it is shown that there is a patent error in the decision making process or that the decision is wholly arbitrary or unreasonable, no interference by this Court would be warranted. In the facts of the present case, this Court is not persuaded to accept that any such grounds are established.

18. This petition is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 18, 2018
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