

\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 266/2018 & CM APPL. 19124-19127/2018**

HXXX

..... Appellant

Through: Ms. Sija Nair Pal, Advocate.

versus

LOK NAYAK JAI PRAKASH NARAYAN HOSPITAL & ORS

..... Respondents

Through: Mr. Dev Prakash Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

09.05.2018

The appellant by the present appeal impugns the order of the learned Single Judge rejecting his writ petition. He had claimed certain amounts as the medical treatment expenses incurred by him in a private hospital. The appellant's complaint was that upon approaching the respondent no.2/Babu Jagjeevan Ram Memorial Hospital and subsequently the respondent no.1/Lok Nayak Jai Prakash Narayan Hospital, where he was referred to, the concerned doctors turned him away. Specific averments in the writ petition are that one doctor in the respondent no.2 hospital alleged that since the appellant did not disclose his HIV positive infected status no medical treatment could be granted as such facilities were not available.

The appellant relies upon the copies of the medical records produced before the learned Single Judge to contend that none of them recorded that he was in fact HIV positive. It is

highlighted in this context that the appellant is an HIV positive patient and undergoing treatment for that purpose for over 22 years/23 years and that he is currently employed as a counsellor by the respondent no.5/Delhi State Aids Control Society and had in fact disclosed his HIV positive status. It was also urged that the treating doctor at respondent no.2 hospital upon becoming aware of the HIV positive infected status of the appellant refused to attend to him and rather referred him to another hospital and ultimately he had to resort to private treatment.

The learned Single Judge rejected the writ petition on the short ground that disputed questions of law arise.

This Court has considered the medical records made available in a sealed cover. What is discernible after opening of the sealed cover and from the medical records is that none of the hospitals which the appellant had approached has cared to record his HIV positive status. Although there could be a dispute as to whether the appellant in fact initially disclosed that he suffers from such disease; it is inconceivable that being a patient of HIV for more than 23 years, he would have withheld such information, which in the long run would have resulted in considerable detriment to his health. The singular lack of any observation by the treating doctors, to some extent supports the petitioner/appellant's claim. However, this Court does not wish to record anything finally since the detailed investigation of the facts has to be made by the concerned authorities.

Having regard to the circumstances, the Government of NCT of
LPA 266/2018

Delhi is hereby directed to constitute an appropriate Enquiry Committee which would involve the concerned Medical Superintendants of the hospitals concerned as well as one member of the National Aids Control Organisation; the Enquiry Committee should be headed by the Director of the Health Services, Delhi Government. The said Committee shall consider the appellant's complaint and, if necessary, recommend further course of action, in accordance with law after duly examining all the necessary parties, including doctors against whom the allegations have been made. The Committee shall be set up by the Principal Health Secretary, Government of NCT of Delhi within two weeks from today; it shall conclude its proceedings and furnish its report – with a copy communicated to the petitioner/appellant directly within three months from today.

The record opened in the Court shall be sealed again.

In case the petitioner/appellant is further aggrieved, it is open to him to seek appropriate remedies in accordance with law.

The appeal is disposed of in the above terms.

A copy of the order be given *Dasti* to learned counsel for the parties.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 09, 2018

nn

LPA 266/2018

Page 3 of 3