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

+ W.P.(C) 576/2019

ALOK KUMAR JAISWAL

..... Petitioner

Through: Mr Pranav Kumar Srivastava and Ms
Swati Jaiswal, Advocates.

versus

UOI AND ORS

..... Respondents

Through: Ms Monika Arora, CGSC with Mr
Kushal Kumar, Advocate for UOI.
Mr T. Singhdev, Mr Tarun Verma
and Mr Abhijit Chakravarty,
Advocates for MCI/R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.01.2019**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 25.08.2017 passed by the Uttar Pradesh Medical Council, rejecting the petitioner's complaint regarding medical negligence on the part of respondent no.4 (Dr Rohit Gupta) in treating the petitioner's father, Late Shri Virendra Pratap Jaiswal (hereafter 'the Patient'). The petitioner also impugns the order dated 07.08.2018 passed by the Executive committee of the Medical Council of India (MCI), and the order dated 31.08.2018 passed by the Oversight Committee of the MCI approving the decision of the Ethics Committee of the MCI and rejecting the petitioner's appeal against the order dated 25.08.2017 passed by the UP Medical Council.
2. The Patient, was suffering from a disease of the liver and was under

the treatment of Dr Gupta. The patient was also examined by the doctors of SGPGI, Lucknow, and certain medicines were prescribed to him at the material time. It is stated that the treatment continued upto March, 2015. While the treatment was continuing, on 11.04.2015, the patient's condition deteriorated and he visited to Dr Gupta in the evening of 11.04.2015 at 7:30 PM. He was, thereafter, admitted to Anand Hospital, Colonelganj, Allahabad on the same day at about 8:30 PM. The petitioner's case is that on being admitted, the patient was feeling better but, thereafter, he was administered Albumin and immediately on administration of Albumin his condition started deteriorating. He was shifted to the ICU at about 1:30 AM on 12.04.2015. Since Albumin was prescribed, it was continued in the ICU. According to the petitioner, the condition of the petitioner continued to deteriorate and he expired at about 4:30 AM, on 12.04.2015.

3. The petitioner's principal allegation is that the administration of Albumin has caused the death of patient. The learned counsel appearing for the petitioner also points out that in addition, the petitioner has also complained about the manner in which Albumin was administered and the conduct of Dr Gupta in not visiting the patient after the patient's condition started deteriorating.

4. The question as to whether there was any medical negligence in administering Albumin is concerned, was examined by the UP Medical Council and it had concluded that the cause of death was not related to Albumin. The relevant extract of the said decision dated 25.08.2017 is set out below:-

“The Ethical Committee was informed by **Dr. Rohit Gupta** that

the patient was advised urgent hospitalization and Albumin with injection RL. Subsequently patient's condition became critical and was eventually shifted to I.C.U. on 12/04/2015 where he was managed well in that given situation. As per hospital records the patient was managed through cardiac pulmonary resuscitation but patient expired on 12/04/2015, despite all efforts.

Post mortem report of the deceased was submitted by the the complainant. The PM report has "*cause of death is septicemic shock as a result of advanced liver disease and lung infection.*" Ethical Committee went through the records and the PM report and concluded that cause of death is not related to Albumin Transfusion."

5. Aggrieved by the aforesaid decision, the petitioner preferred an appeal to the MCI. A Sub-Committee of the Ethics Committee was constituted to examine the petitioner's appeal/complaint. The Sub-Committee also concurred with the decision of the UP Medical Council that, Albumin transfusion was not the cause of the patient's death. The same was considered by the Ethics Committee and the observations made by the Sub-Committee were accepted. The relevant observation of the Sub-Committee is set out below:-

"Further the Sub Committee noted that as per statement by Dr. Rohit Gupta the patient never reported to him after the change in his treatment but rather approached the doctor after 19 days. He has further relied upon the prescription of SGPGI which shows that the patient was having cirrhosis of liver with renal failure along with diabetes and CVA. Further the autopsy report indicates that the patient was suffering from cirrhosis liver, Pneumonitis and septicemia.

In view of the aforesaid the Sub Committee concluded that cause of death was not related to Albumin transfusion but was end result of multiple diseases the patient was suffering from.

The Sub Committee further noted that there is documentation of prescription of albumin with monitoring of input and output as evident from annexure 4 of Dr. Rohit Gupta's reply. The Sub Committee is of the opinion that there is no medical negligence on the part of Dr. Rohit Gupta and so he is exonerated from all the charges levelled against him in the present matter. The Sub Committee further decided to overrule the decision of Uttar Pradesh Medical Council dated 25.08.2017."

6. The said decision was, thereafter, approved by the Executive Committee of the MCI and also by the Oversight Committee. This Court finds no reason to interfere with the concurrent findings that the cause of death of the patient was not the administration of Albumin, and there was no negligence on the part of Dr Gupta in prescribing the same.

7. Insofar as the petitioner's complaint that Dr Gupta had been negligent in attending to the petitioner is concerned, it is seen from the statement made by Dr Gupta before the UP Medical Council that he had seen the patient at about 7:30 PM on 11.04.2015. Thereafter, the patient had been admitted to the hospital at about 9:15 to 9:30 PM, and Dr Gupta was present at the time of admission. The patient was shifted to the ICU and there is no material on record to indicate that the ICU did not have any attending doctor. The patient expired at about 4:30 AM and Dr Gupta has affirmed that he had immediately rushed to the hospital. It is also affirmed that Dr Gupta had been telephonically contacted twice, and had given instructions on phone. This Court is unable to accept the contention that the conduct of Dr. Gupta was grossly negligent and warranted any punishment by the MCI/UP Medical Council. Further, the question whether the conduct of the medical practitioner is negligent warranting any punitive measure, is a matter that is

required to be considered by the concerned professional bodies, namely, the State Medical Council and the MCI. This Court is of the view that no interference in their decision is warranted unless the same is found to be perverse or so unreasonable that no sensible person could take such a decision (the *Wednesbury test*).

8. Having stated above, if the petitioner is of the view that there is negligence on the part of the treating doctor, the petitioner is at liberty to institute appropriate action for agitating his case. The proceedings before State Medical Councils or the MCI are in the nature of a peer review only to ensure that certain professional standards are maintained. The said professional bodies are only concerned with maintaining the necessary professional standards.

9. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JANUARY 21, 2019
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