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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 10.12.2019

+ W.P.(C) 12816/2019 & CM 52335/2019

MANVIR SINGH

..... Petitioner

Through: Mr.Akhil Sachar &
Ms.Sunanda, Advs.

versus

BOARD OF GOVERNORS IN SUPERSESION OF
MEDICAL COUNCIL OF INDIA & ORS Respondents

Through: Mr.T. Singhdev, Ms.Arunima
Pal, Mr.Tarun Verma &
Mr.Abhijit Chakravarty, Advs.
for R-1.

Mr.Yakesh Anand & Mr.Nimit
Mathur, Advs. for R-3 & R-5.

Mr.Praveen Khattar, Adv. for
R-2 with Sh. LDS Uppal, Astt.
Secy, DMC.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner inter alia praying for the following relief:-

“a) Issue a Writ, Order or direction in the nature of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the same quash and set aside the Order dated 23.09.2019 being Order

No.MCI-211(2)(63-Appeal)/2018-Ethics/149765 passed by the Respondent No.1;

b) Issue a Writ, Order or direction in the nature of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the same quash and set aside the Order dated 12.07.2018 passed by the Delhi Medical Council;

c) Issue a Writ, Order or direction in the nature of Mandamus and/or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondent Nos. 3 to 7 to jointly and severally pay damages of a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) to the Petitioner;”

2. It is the case of the petitioner that the petitioner went for an Arthroscopic surgery at the respondent no. 3 hospital on 30.11.2016. During the course of the surgery, there was a complication in form of breakage of a needle which was part of ‘suture passer’ used in shoulder Arthroscopy.

3. It is the case of the respondent no. 3 that the petitioner was counselled before the surgery about the complications and thereafter on the fact that it will not be possible to remove the broken needle. Though the petitioner was taken to the operation for retrieval of the broken needle, but the same was unsuccessful.

4. As the petitioner continued to suffer from this complication, the petitioner filed a petition being, WP (C) 8947/2018, *inter alia* seeking

a direction to be referred to a Super Speciality Hospital for the removal of the needle.

5. This Court by an order dated 05.10.2018 passed in the said Writ Petition, observed as under:-

“6. Concededly, there has been complication in the petitioner's case and the needle (described as a part of the suture passer) is lodged inside the petitioner's shoulder. Plainly, the petitioner is entitled to corrective procedure, if any. It is also apparent that the same is not feasible at the hospital where the petitioner was treated.

7. In the given circumstances, this Court finds no reason why the petitioner should be deprived of a consultation at Super Speciality Hospital. It is stated that the petitioner may not be eligible to be referred to as ESIC Hospital. However, it is admitted that the complication has arisen from the treatment already provided to him at ESIC hospital. Therefore, the question of ineligibility of the petitioner cannot come in his way in seeking rectification of an operation that was unsuccessful. This is not a case of fresh referral but one of a corrective measure of a procedure that was unsuccessfully managed at the ESIC hospital.

8. There may be merit in the contention that further surgery may be harmful to the petitioner. However, that is a decision, which the treating doctor(s) would have to take. In view of the above, the respondent no.2 is directed to refer the petitioner to a Super Speciality Hospital (of its choice) for further consultation and treatment, within a period of one week from today. It is further, directed that if any surgery is advised the same

would also be conducted at the said hospital (Super Speciality Hospital) at the cost to be borne by respondent no.2 to 4. This order is passed in the peculiar facts of this case.”

6. The petitioner thereafter went for an operation at All India Institute of Medical Sciences (AIIMS) and a part of the broken needle was removed from the shoulder of the petitioner.

7. In the meantime, the petitioner had also filed a complaint alleging medical negligence against the doctors of respondent no. 3 hospital before the respondent no. 2, that is, Delhi Medical Council. The said complaint was considered and by its order dated 12.07.2018, the respondent no. 2 observed as under:-

“The Executive Committee observes that the complainant suffered from a partial rotator cuff injury of his shoulder and he was planned for an arthroscopic repair, however he underwent mini open repair on 30th November, 2016 at the said Hospital under consent. There was a complication of breakage of needle during surgery as per OT notes of 30th November, 2016. This complication was also informed to the patient as per OPD notes of 10th January, 2017 for which he was referred to ESI, Basaidarapur. The Executive Committee opines that breakage of needle is a known complication of this arthroscopic surgery. The complaint was subsequently also referred appropriately for removal of the broken needle. However, it is noted that the record keeping in this case left much to be desired as pre-operative order dates have been changed from a

previous date where the surgery had been performed and the consent form does not have a proper heading to display it. Similarly the discharge summary (15-11-2016 to 02-12-2016) of ESI Hospital, Okhla does not make any mention of needle breakage during surgery done on 30th November, 2016. The authorities of the ESI Hospital are directed to take steps to ensure better record keeping for future.

In light of the observations made herein above, it is therefore the decision of the Executive Committee that the Shri Manveer Singh was treated as per accepted professional practices in such cases by the doctors of ESI Hospital Okhla and prima-facie no case of medical negligence is made out on the part of doctors of ESI Hospital Okhla.”

8. Being aggrieved of the said decision, the petitioner challenged the said order before the respondent no. 1. The respondent no. 1 passed an order dated 23.09.2019 approving the findings of the respondent no. 2 based on a report of the Ethics Committee of the respondent no. 1, observing as under:-

*“The above matter was considered by the Ethics Committee at its various meetings and lastly at its meeting held on **18th February, 2019**. The operative part of proceedings of the said meeting is reproduced as under:-*

“.....The Committee after going through the case records, the order of the Delhi Medical council and the prayer of the appellant Sh. Manvir Singh noted

that, the patient Sh. Manvir Singh suffered an injury to his shoulder at factory premises and was diagnosed as Rotator Cuff Injury. He was thereafter operated on 30.11.16 at ESI Hospital Okhla, where Arthroscopic Rotator Cuff Repair Injury was performed. During the said procedure, there was breakage of needle and complication occurred and further mini open surgery was under taken to retrieve the needle but the needle could not be retrieved. He was thereafter referred to ESI Hospital Basaidarapur, N. Delhi for 2nd Surgery which was performed on 10.04.2017 and the needle could not be retrieved again.

The Ethics Committee after going through all the case records and on the basis of the above stated observations, concluded that Standard care and treatment was provided to the patient; as needle breakage is a known complication which was duly informed to the patient by the treating doctors post operatively for which he was duly referred to higher centre for further management.

*The ethics Committee is of the unanimous opinion that there is no infirmity, in the order dated 12.07.2018 passed by the Delhi Medical Council and therefore, **the Ethics Committee decided to uphold the same.***

The above recommendations of the Ethics Committee have been accorded approval by the Board of Governors at its meeting held on 13.06.2019.”

9. The learned counsel for the petitioner submits that the respondent no. 1 has based its entire finding on the recommendations of Ethics Committee without application of its independent mind. He further submits that in the present case, it could not be denied that the Arthroscopic surgery is a Minimally Invasive Surgery and therefore, the question of a needle breaking during the course of such surgery cannot be countenanced. He further submits that such complication having occurred, the petitioner is entitled to claim compensation from the respondent no. 3.

10. I have considered the submissions of the learned counsel for the petitioner. In the present case the Delhi Medical Council and the Medical Council of India have both examined the medical records of the petitioner and have come to the conclusion that such complication in the course of the Arthroscopic surgery is not unusual and no negligence can be attributed to the doctors. This Court in exercise of its powers under Article 226 of the Constitution of India cannot act as an Appellate Body on this finding. The matters of expert opinion are to be left to the experts until and unless they are shown to be totally perverse and unacceptable in any manner. The present case does not satisfy this exception.

11. This Court by an order dated 29.04.2019 passed in WP (C) 605/2018, titled ***Prem Kishore vs. Union of India and Ors***, has observed as under:-

“It is well settled that the proceedings before the DMC and MCI are in the nature of a peer review.

Undisputedly, there may be an element of subjectivity in the decision of DMC/MCI but the professional conduct of the treating doctors, for the purposes of disciplinary proceedings, is required to be adjudged on the anvil of the subjective opinion of the representatives from the medical profession (peers).”

12. While reaching the above conclusion, the Court has placed reliance on an earlier decision of the Division Bench of this Court in ***Kamla Devi vs. Union of India & Ors***, 2015(2) RLR 19.

13. In view of the above, this Court restrains itself from entertaining the present petition.

14. As far as the claim of damages/compensation is concerned, this would also involve disputed questions of fact. However, it is left open to the petitioner to avail an alternate efficacious remedy in this regard.

15. It is made clear that the finding of the Delhi Medical Council and / or Medical Council of India and/or of this Court would not preclude the petitioner from independently leading evidence to establish its case for claim of damages/compensation in such proceedings.

16. It is further observed that limitation available to the petitioner for approaching the alternate forum may have expired and / or may be soon expiring. Incase any such proceeding is initiated by the petitioner, the appropriate forum shall keep in view the time spent by

the petitioner in pursuing its complaint before the Delhi Medical Council as also the Medical Council of India.

17. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

DECEMBER 10, 2019/rv

