IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.02.2019

+ **W.P.(C) 7097/2013**

KRISHAN LAL KUMAR ..... Petitioner

versus

MEDICAL COUNCIL OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Kapil Sankhla, Mr Rishab Dua and Ms
: Amanjot Kaur, Advocates alongwith
: Petitioner in person.

For the Respondents : Mr T. Singhdev with Mr Tarun Verma and
: Ms Puja Sarkar, Advocates for MCI/R-1.
: Mr Bapi Das, Advocate for Mr Praveen
: Khattar, Advocate for DMC/R-2.
: Mr Y.P. Ahuja, Advocate for R-3.
: Ms Meenakshi Singh, Advocate for R-4.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the order dated 22.04.2013 (communicated by the letter dated 26.04.2013) passed by the Medical Council of India (MCI). By the said impugned order, the petitioner's appeal against an order dated 30.08.2012 passed by the Delhi Medical Council (DMC) was disposed of with the MCI approving the finding of the Ethics Committee of MCI that there was no medical

negligence on part of respondent no.3 (Dr. S.K. Sogani). The Ethics Committee of MCI had also advised respondent no. 3 to improve his communication with regard to the doctor-patient Relationship.

2. The petitioner alleges that respondent no. 3 was negligent in treating his wife (since deceased). The petitioner states that his wife was suffering from Meningioma/Brain Tumor and respondent no.3 had operated upon her thrice during the period 03.11.2003 to 07.05.2011. The petitioner alleges that conducting the operation on 07.05.2011, without conducting a prior MRI scan, was an act of negligence.

3. The petitioner further assails the order dated 30.08.2012 passed by the DMC on the ground that it was passed without taking an expert opinion on the issue of medical negligence. He submits that DMC had indicated that an expert opinion is necessary, however, no such opinion was obtained.

Factual Background

4. The petitioner states that his wife was under the treatment of respondent no.3 for a brain tumor. He claims that on the advice of respondent no.3, an MRI scan was conducted on 27.10.2003. In view of the MRI report, respondent no.3 advised the petitioner's wife to get admitted urgently for Microsurfical Excision of Tumor.

5. On 03.11.2003, respondent no. 3 operated on the wife of the petitioner at respondent no.4 hospital (Apollo Hospital). The tumor recurred in 2008 and the wife of the petitioner was again operated upon by

respondent no.3 on 10.11.2008. The petitioner states that even after two operations, his wife was suffering from multiple problems relating to the brain tumor. Accordingly, on 07.05.2011, the third operation for tumor was conducted by respondent no.3. This was done without conducting a MRI scan. The petitioner states that his wife suffered a paralysis attack just after the operation. He claims that conducting the surgical operation, without an MRI scan, amounts to medical negligence.

6. The petitioner's wife expired on 31.05.2011, while still in the hospital.

7. The petitioner filed a complaint dated 07.06.2011 to respondent no.4 hospital, *inter alia*, complaining about the negligence on the part of respondent no.3. He alleged that a request was made to respondent no.3 to conduct an MRI Test before the third operation, but respondent no.3 failed to do the same. In response, respondent no.4 hospital sent a letter dated 29.06.2011 to the petitioner, *inter alia*, stating that *"all necessary investigations needed to assess the patient were done"* and his wife was posted for surgery, after obtaining required clearances and obtaining the necessary consent.

8. Thereafter, the petitioner sent another complaint dated 21.07.2011 to the DMC for taking an appropriate action against respondent no.3 for medical negligence in the treatment of his wife. During the course of next two months, the petitioner sent several reminders to the DMC regarding his complaint, but he did not receive any response to the aforesaid letters. Consequently, on 23.11.2011, the petitioner filed an application under the

Right to Information Act, 2005, *inter alia*, seeking the information regarding the action taken against respondent no.3 for medical negligence.

9. DMC responded to the said application by a letter dated 29.11.2011. The petitioner was informed that his complaint (complaint no. 896) was taken up for screening before the Executive Committee of DMC and it was directed that a specialist in the field of surgery be co-opted as an expert member and the matter be taken up for deliberations.

10. Thereafter, the DMC sent a letter dated 26.12.2011 to respondent no.3, *inter alia*, calling upon him to submit his statement of defense in the case of alleged medical negligence against him, within fifteen days from the date of notice.

11. In response to the aforesaid letter, respondent no.3 submitted his defense by a letter dated 09.01.2012, *inter alia*, stating that the MRI Test was not done considering the nature of the tumor: Meningioma being a gentle tumor which grows slowly over the years. He further stated that wife of the petitioner was seriously ill, and a written and informed consent regarding the benefits and risks involved in the surgery was taken from the petitioner, and further consultation was done with the physician, anesthetist and ophthalmologist for necessary clearance before surgery.

12. The petitioner filed his replies (dated 25.01.2012, 01.04.2012 and 04.07.2012) to the statement of defense filed by respondent no.3, and contested the averments made therein by respondent no.3.

13. Thereafter, the DMC passed an order dated 30.08.2012 holding that

no case of medical negligence had been made out against respondent no.3 in the treatment of the wife of the petitioner, as she died due to *"the known complications associated with surgery of such nature"*.

14. The petitioner filed another application under the Right to Information Act, seeking the details of the material on the basis of which the order dated 30.08.2012, was passed. The DMC responded to the said application by a letter dated 19.09.2012, *inter alia*, stating that no expert opinion in the matter was available on record.

15. Aggrieved by the order dated 30.08.2012 passed by the DMC, the petitioner preferred an appeal against the said order before the MCI. The said appeal was disposed of by way of the impugned order, whereby the Ethics Committee of the MCI concurred with the DMC's view that there was no medical negligence on the part of respondent no.3 in treatment of the petitioner's wife.

Submissions

16. Mr Sankhla, learned counsel appearing for the petitioner assailed the impugned orders on two fronts. First, he submitted that the action of respondent no.3 in conducting an operation on the petitioner's wife without a prior MRI scan was negligent. He drew the attention of this Court to the information provided by G.P. Pant Hospital and DDU Hospital in response to the queries submitted by the petitioner under the Right to Information Act, 2005, wherein the said hospitals had responded that an MRI scan prior to an operation of the skull was essential. He also pointed out that the petitioner had raised a query whether an MRI scan of

a skull done six months prior to the operation was sufficient, and the said hospitals had unequivocally responded in the negative. He submitted that in view of the aforesaid responses, there could be little doubt that respondent no.3 was guilty of medical negligence.

17. Second, he submitted that the DMC had sought an expert opinion; however, it had passed the order dated 30.08.2012 without receiving any such opinion. He referred to a letter dated 29.11.2011 sent by the DMC in response to information sought under the Right to Information Act, 2005. The said letter indicated that the Executive Committee had decided to seek opinion of an expert in neurosurgery. He also referred to a letter dated 01.02.2012 sent by DMC to Dr Daljit Singh, Professor of Neurosurgery, Department of Neurosurgery, G.B. Pant Hospital informing him that he had been nominated as an expert member. He submitted that after the DMC had passed the order dated 30.08.2012 rejecting the petitioner's complaint, the petitioner had filed an application dated 13.09.2012, under the RTI Act seeking a copy of the expert opinion tendered by Dr Daljit Singh. DMC had responded to the aforesaid letter informing the petitioner that there is no separate opinion of Dr Daljit Singh on record. The learned counsel submitted that in the aforesaid view, it was clear that the decision making process of the Executive Committee of DMC was flawed.

18. Mr T. Singhdev, learned counsel appearing for MCI and DMC countered the submissions made on behalf of the petitioner.

Reasons and Conclusion

19. As is apparent from the above, the principal allegation against respondent no.3 is that he had conducted an operation without a prior MRI Scan.

20. The aforesaid question was considered by the Executive Committee of DMC. Respondent no.3 had explained that he had seen petitioner's wife on 26.10.2003 and she had a "large Left Sphenoid Wing and Meningioma". She was operated on 03.11.2003 and, thereafter, she continued to follow up with him and consulted him on several occasions over the next five years. She was subsequently diagnosed of a reoccurrence of the tumor on the same side in 2008 and was operated by respondent no.3 on 10.11.2008. It was explained that she continued her follow up with respondent no.3 and during one of her visits in 2010, respondent no.3 suspected reoccurrence of her tumor, as she had symptoms of weakness on the right side of her body; slurring of speech; blurring of vision; and bilateral hearing loss. In view of the above, respondent no.3 had advised a repeat MRI of the brain, which was conducted on 29.10.2010 at Orbit Imaging and Path Lab Pvt. Ltd. – MRI Imaging Centre at Pusa Road, New Delhi.

21. Respondent no.3 affirmed that the MRI report suggested "a possibility of recurrence of mitotic etiology (Meningioma) at the same site". In view of the above, respondent no.3 had advised immediate surgery. However, the petitioner's wife did not undergo the said surgery and again approached respondent no.3 after a period of six months. Respondent no.3 explained that, in the aforesaid circumstances, he was aware of the condition of petitioner's wife and

had been treating her for over seven-and-a-half years. He pointed out that Meningioma was a slow growing tumor, and therefore he knew the location, type and nature of the tumor. He explained that in the given circumstances, he did not feel the need for a repeat CT Scan/MRI Scan before surgery.

22. The aforesaid explanation was accepted by the Executive Committee of DMC. The Committee agreed with the report filed by respondent no.3. The relevant extract of the said decision is set out below:-

> "The Executive Committee of Delhi Medical Council examined a complaint of Shri K.L Kumar r/o. 2551, Hudson Lane, Kingsway Camp, Delhi - 110009 (referred hereinafter as the complainant),
>
> alleging medical negligence on the part of Dr. S.K Sogani, in the treatment administered to complainant's wife late Savita Kumar (referred hereinafter as the patient) at Indraprastha Apollo Hospital, Sarita Vihar, Delhi-Mathura Road, New Delhi, resulting in her death on 31.5.2011.
>
> & the Executive Committee perused the complaint, written statement of Dr. S.K. Sogani and Medical Superintendent, Indraprastha Apollo Hospital, copy of medical records of Indraprastha Apollo Hospital and other documents on records.
>
> The Executive Committee noted that the patient late Savita Kumar was a case of recurrent meningioma operated twice before the final operation (third surgery), done on 7th May, 2011 at Indraprastha Apollo Hospital by Dr. S.K. Sogani. The patient was diagnosed as a case of recurrent left sphenoid wing meningioma and was taken up for surgery (Left Temporo-parietal osteoplastic

craniotomy and decompression of recurrent space occupying lesion) as per accepted professional practices in such cases, under informed consent which had detailed the complications associated with the surgical procedure.

After surgery, the patient developed pulmonar), embolism which was treated accordingly, unfortunately the patient succumbed to her ailments on 31' May, 2011.

It is further observed that as the M.RI had been done almost six months before the surgery, the explanation given by Dr. S.K. Sogani for not considering repeat M.R.I is found to be satisfactory in terms of management of the case.

In view of the observations made hereinabove, it is the decision of the Executive Committee that prima-facie no case of medical negligence is made out in the treatment administered to late Savita Kanwar at Indraprastha Apollo Hospital. The patient died due to the known complications associated with surgery of such nature, which in spite of being treated as per standard protocol, have grave prognosis/outcome."

23. It is relevant to bear in mind that proceedings before DMC/MCI regarding medical negligence are in nature of peer review. The question whether there is any negligence on the part of the medical practitioner is required to be assessed by medical practitioners. Unless the petitioner is able to show that there is any flaw in the decision making process or that the decision is vitiated by any bias or *malafides*, no interference by this Court would be warranted. A judicial review on the merits of the decision is not available, except on limited grounds, where such decision is found to be such that no reasonable person could possibly have arrived at such a decision.

24. In the present case, respondent no.3 had given an explanation which was found to be acceptable by the Executive Committee of DMC. There is no flaw in the decision making process nor is it established that the decision of Executive Committee of DMC is so irrational and absurd that no sensible person could have take that view.

25. The only material relied upon by the petitioner for assailing the explanation provided by respondent no.3 are the responses furnished by G.B. Pant Hospital and DDU Hospital to the information sought by the petitioner under the RTI Act. Clearly, the said responses are general in nature and do not take into account the particular facts of the case. In particular, the said responses do not take into account that the patient was under treatment of the concerned doctor for seven-and-a-half years and one who had operated on the patient twice before. It also does not take into account that an MRI scan, done six months prior to the operation, had indicated Meningioma at the same site which had been operated earlier.

26. The DMC's decision was examined by Ethics Committee of the MCI. The said Committee also concurred with a view that there was no medical negligence on the part of respondent no.3. This Court finds no reason to interfere with the aforesaid decision.

27. The learned counsel for the petitioner had contended that the approach of the Ethics Committee was flawed inasmuch they had observed that pre-operative MRI would not have made any difference in the outcome of the treatment. He had submitted that it was not open for Ethics Committee to speculate in this regard and MCI should

have limited its examination to determine whether there was any medical negligence in not conducting a pre-operative MRI. This Court is of the view that the observations made by the Ethics Committee of MCI must be read in its context. It is apparent that the Ethics Committee had accepted the explanation that a pre-operative MRI was not necessary, as the type of tumor and location was known to respondent no.3. It is in this context that the Ethics Committee had observed that "pre-operative MRI would not have made any difference in the outcome of the treatment". This is not an expression of any speculation on the part of the Ethics Committee of MCI.

28. The next question to be examined is whether the decision of DMC is flawed inasmuch the Executive Committee had acted without awaiting an opinion of an expert in neurosurgery. The contentions advanced on behalf of the petitioner in this regard are also unpersuasive. The petitioner was informed (pursuant to his application under the RTI Act) that the Executive Committee had decided that "a specialist in the field of neurosurgery be co-opted as an expert member". It is, thus, clear that the Executive Committee was not seeking any separate opinion of an expert, but had decided to include an Expert as a part of the Committee for considering the complaint filed by the petitioner. Pursuant to the aforesaid decision, Dr Daljit Singh, Professor of Neurosurgery, G.B.P. Hospital was co-opted as a part of the Committee that had deliberated on the petitioner's complaint. The order passed by the Executive Committee of DMC is also signed by Dr Daljit Singh. By an application dated 13.09.2012

filed under the RTI Act, the petitioner had sought a copy of the expert opinion tendered by Dr Daljit Singh. The DMC had responded to the same by a letter dated 19.09.2012, *inter alia*, stating as under:-

> "The decision of the Executive Committee dated 27th July, 2012 was arrived in its collective wisdom, and the same was confirmed by the Delhi Medical Council in its meeting held on 22nd August, 2012. A copy of the Order of the Executive Committee dated 27th July, 2012 is attached herewith as Annexure 'A'.
>
> It is further informed that there is no separate opinion of Dr. Daljit Singh in this matter, available, on record."

29. It is clear from the above that neither any separate legal opinion was sought by the Executive Committee nor was any such legal opinion tendered. However, an expert was included as a part of the Executive Committee, which had deliberated on the complaint filed by the petitioner. As observed above, the examination of the complaint by DMC is in the nature of peer review, and in conformity with this nature, an expert in neurosurgery was included as a part of the concerned committee.

30. In view of the above, this Court finds no merit in the present petition and the same is dismissed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 06, 2019
pkv