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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.355 OF 2021

SANJANA KAVLEKAR

... Petitioner

Versus

THE STATE OF GOA, THR. ITS CHIEF
SECRETARY, GOVT. OF GOA AND 4 ORS.

... Respondents

Mr. Ryan Menezes with Mr Nigel Fernandes, Advocates *for the
Petitioner.*

Mr. Neehal Vernekar, Additional Government Advocate *for the
Respondent-State.*

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate
for Respondent No.5.

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 17th October, 2022

P.C.:

1. Heard Mr. Ryan Menezes for the Petitioner, Mr. Neehal Vernekar, learned Additional Government Advocate, for Respondent Nos.1 to 4 and Mr. Lotlikar, learned Senior Counsel who appears along with Ms. Kenny, for Respondent No.5.
2. The Petitioner had filed a complaint on 25.10.2018 against Respondent No.5 about prescription of an alleged overdose of Insulin-Novomix.

3. By communication dated 05.06.2020 addressed by the Chairman of the Inquiry Committee, the inquiry into this complaint came to be cancelled. The communication dated 05.06.2020 reads as follows:-

“
*Dr. Anar Khandeparkar,
Associate Professor,
Department of Medicine,
Goa Medical College,
Bambolim – Goa.*

05th June, 2020.

To,

*The Commissioner
Labour and Employment,
E.S.I. Scheme,
Shramashakti Bhavan,
Patto Plaza,
Panaji – Goa.*

*Sub: Constitution of Inquiry Committee
Ref: Your letter No.CLE/ESI/P.A./66/2020/957 dt.07/04/2020.*

Sir,

With reference to your above cited letter, inquiry was fixed on 29/05/2020 at 03.00p.m. As per the contact number provided by you, the complainant Smt. Sanjana Kavlekar, was contacted by phone twice on 26/05/2020 and again on 29/05/2020 to inform of the inquiry date, however, the complainant did not respond to the repeated phone calls. Dr. Shubhangi S. Lotlikar agreed to attend the inquiry.

So, the inquiry could not be conducted and stands cancelled.

Yours faithfully,

sd/-

*Dr. Anar Khandeparkar
Chairman
Inquiry Committee*

Copy to: The Dean, G.M.C.”

4. Mr. Menezes submits that in the month of June, 2020, Covid-19 was at its peak. Several persons were affected and there were several deaths at this time in the State of Goa. He points out that the Petitioner was already suffering from co-morbidities, and therefore, was not in a position to attend the inquiry. He submits that this was also intimated to the inquiry committee, though this position is now disputed by Mr. Vernekar.

5. In our judgment, the Petitioner had made her complaint. The inquiry committee which was constituted to inquire into the complaint should have at least examined the complaint and the contemporaneous documents about prescription of the dose and found out whether there was any negligence involved. The inquiry could not have been cancelled simply because the Petitioner could not attend the inquiry when Covid-19 pandemic was at its peak.

6. Mr. Lotlikar submits that the Petitioner is only a proxy and the complaint made by her is quite frivolous. At this stage, it would not be appropriate for us to go into these issues. However, if an inquiry is held, Respondent No.5 will have full opportunity to raise all such issues amongst others in her defence.

7. Mr. Vernekar, learned Additional Government Advocate, states that the State is not averse to constituting an inquiry committee and examining the Petitioner's complaint in accord with law and on its own merits. He states that the State will thereon hear the Petitioner and Respondent No.5 so that there is compliance with natural justice.

8. Consistent with the above statement, we direct the State to constitute an inquiry committee and to look into and dispose of Petitioner's complaint on its own merits and in accord with law. Needless to add that both the Petitioner as well as Respondent No.5 will be given full opportunity to place their respective versions. Mr. Menezes, on instructions, states that the Petitioner will render full cooperation to the inquiry committee and attend the inquiry proceedings as and when called without giving any excuses. Such inquiry should be completed within three months from today as suggested by Mr. Vernekar.
9. We clarify that we have not at all gone into the rival contentions or the merits of the complaint, because, we feel that the complaint should be looked into by the inquiry committee in the first instance.
10. The petition is disposed of in the above terms.
11. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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