

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

+ **W.P.(CRL) 717/2021 & CRL.M.As. 5218/2021, 10899/2021
10902/2021, 10905/2021, 10908/2021 & CRL.M.A. 11006/2021**

Date of Decision: 13.10.2022

IN THE MATTER OF:

A MAITRI

S/O LATE SH. L.C. SHARMA

(FATHER OF DR. SHRUTI MAITRI)

R/O 5A/2, BHAMA SHAH MARG,

NEAR GURUDWARA NANAK PIAO, DELHI

..... Petitioner

Through: Mr. N. Hariharan, Senior Advocate
alongwith Mr. Sushil Kumar Gupta, Ms. Punya
Rekha Angara, Mr. Prateek Bhalla, Mr. Sharian
Mukherji & Mr. Rahul Mukherji, Advocates

Versus

STATE OF NCT OF DELHI

..... Respondent No. 1

THE STATION HOUSE OFFICER

POLICE STATION MODEL TOWN

DELHI- 110009

..... Respondent No. 2

Through: Ms. Nandita Rao, ASC (Crl.) for State with
Mr. Amit Peswani, Advocate with SI Virender
Kumar, P.S. Model Town

Mr. Dayan Krishnan & Mr. Mohit Mathur, Senior
Advocates alongwith Mr. Narinder Mann & Mr.
Sanjeevi, Advocates for Intervener.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition has been filed by the petitioner seeking quashing/setting aside of the impugned Medical Board Opinion/Report bearing No. 11(205)/VIG./DDUH/2020/1537 dated 25.01.2021 of *Deen Dayal Upadhyay Hospital* on the ground of non-compliance of the order of this court passed on 01.12.2020 in Writ Petition CrI. No. 1440/2020, 1446/2020 & 1447/2020.

2. The detailed facts are not being reiterated for the reason that this court in its order dated 01.12.2020 passed in W.P.(CrI.) 1440/2020 considered them and passed certain directions. While disposing of the petition in paragraph Nos. 24 & 25, the following directions were issued. The same are reproduced as under:-

“24. Having stated the above, this Court is also of the view that the decision to set aside the FIR should not in any manner impede the investigating agency to make the necessary inquiries. Since there is, a consensus between the learned counsel for the parties that the matter can be referred to DDU Hospital for an expert opinion, this Court also considers it apposite to direct the investigating officer to draw up a specific case for opinion and refer it to DDU Hospital. Ms Rao, the learned ASC appearing in this case is requested to vet the case for opinion so as to ensure that it comprehensively sets out the allegations of the complainant along with the necessary documents.

25. The Superintendent DDU Hospital is directed to constitute a Board, which would include experts in anaesthesia and orthopaedics. It is directed that the Medical Board shall give its opinion as expeditiously possible and in any event within a period of eight weeks from the date when the case for opinion is forwarded to the Superintendent DDU Hospital. Depending on the opinion rendered by the Medical Board, the IO may take further steps as necessary. It is also expressly clarified that the fact that the FIR has been quashed would not preclude

the 10 from registering the same if an opinion adverse to the concerned doctors is issued by the Medical Board.

3. The learned Senior Counsel appearing on behalf of the petitioner submits that although he has filed detailed written submissions of about 221 pages to demonstrate that entire exercise after passing of the directions by this Court is erroneous and vitiated on account of various reasons but all those submissions may not be necessary to be dealt with in view of the order which this court intends to pass at this stage.

4. Learned Senior Counsel appearing on behalf of the original writ petitioners in W.P.(Crl.) 1440/2020 and other connected matters have appeared as an Intervener by way of filing an application for intervention. The application for intervention has been opposed by learned Senior Counsel for the petitioner. This court vide order dated 13.12.2021 in paragraph No. 8 while recording the submissions of the parties has noted that the intervention application be kept pending and in case at any stage this court finds that complete documents relevant to the petition are not placed before the Medical Board or some assistance is required, the same will be taken from the applicants.

5. Since this court proposes to dispose of this writ petition in terms of the directions which were already issued, therefore, neither any additional documents are required to be taken into consideration nor any elaborate submissions are required to be heard. This court finds that once certain directions were issued earlier on the basis of the consensus arrived at between the parties, the same be complied with in letter and spirit.

6. This court on 01.12.2020 directed the Investigating Officer to draw a specific case for opinion and refer it to DDU hospital and also directed learned ASC for the State to vet the case for opinion, so as to ensure that it comprehensively sets out the allegations of the complainant alongwith the necessary documents. The fact remains that the exercise so directed to be undertaken in paragraph No. 24 has not been, admittedly conducted. Paragraph No. 3 of the Status Report filed by the learned ASC for the State is reproduced as under:-

“In view of the direction in para 25, DDU Hospital set up a medical board and the S.H.O P.S. Model Town received a letter dated 21.12.2020 from the Medical Director DDU hospital informing them that a medical board has been constituted and calling for certain documents from the investigating agency. The SHO forwarded the said documents, without consulting the Ld. ASC under the bonafide impression that it was in compliance with para 25 of the judgment of the Hon'ble High Court. The medical board has formed an opinion after considering the queries raised by the complainant reproduced here in below;

i.Role of multiple risk factors for VTE which were alleged to be present in this patient being on oral contraceptive and antidepressant medications, a travel by long flight prior to her admission and high blood platelets count prior to her surgery which might have predisposed her to venous thromboembolism (VTE) and Pulmonary Embolism (PE).

ii. Whether oral contraceptives needed to be discontinued before her elective surgery.

iii. Whether chemical prophylaxis was required during her preoperative and post-operative period in view of aforementioned risk factors for deep vein thrombosis (DVT).

iv. Whether there was negligence in the treatment of the patient by the doctors at Escorts Fortis Heart Institute in her surgery and in that post-operative care.

7. Learned ASC for the State tries to explain that there were various circumstances which resulted in the non-compliance of the directions given by this court. The same were bona-fide and any breach of the directions issued by this court is not with any *malafide* intent. The fact remains that there is a non-compliance of the directions given in paragraph No. 24.

8. Learned Senior Counsel appearing on behalf of the Interveners vehemently submit that at this stage it would not be necessary in the interest of justice to erase the entire exercise and to redo the things which have already attained their logical end. The position, however, is strongly disputed by learned Senior Counsel appearing on behalf of the petitioner.

9. Since this court is not adjudicating upon anything which has been done subsequent to the passing of the directions and is constrained only to the issues relating to the compliance of the order, as the same is in contravention of directions made in paragraph No. 24, this court, therefore, does not find it necessary to deal with all those submissions on merit. Since admittedly the directions issued in paragraph No. 24 have not been complied with, therefore, the entire exercise conducted by the respondent is vitiated and the same is *non est* in the eyes of law. The same is, therefore, set aside.

10. Having considered the facts of the case, this court reiterates the same directions, which have already been passed in W.P.(Crl.) 1440/2020 dated 01.12.2020, meaning thereby the entire further exercise would commence from the stage of the passing of the directions on 01.12.2020. Let the same be complied with in letter and spirit.

11. With aforesaid directions, the petition is disposed of alongwith pending applications.

12. Needless to state that this court has not expressed any opinion on the merits or demerits of the reports. All contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J.

OCTOBER 13, 2022

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