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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 14.09.2022

Judgment pronounced on: 25.11.2022

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LPA 23/2018

RASHMI DIXIT

..... Appellant

Through: Mr Jai Anant Dehadrai with
Mr Sidharth Arora and Mr Jaskaran
Singh Chawla, Advs.

versus

MEDICAL COUNCIL OF INDIA & ANR.

..... Respondent

Through: Mr T. Singhdev with Ms Ramanpreet
Kaur and Mr Abhijit Chakravarty,
Advs. for Respondent No.1.
Mohd. Anas, Adv. for Respondent
No.2.
Mr Praveen Khattar, Adv. for
Respondent No.3.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Appeal has been filed impugning order/judgment dated 20.10.2016 (hereinafter "the Impugned Judgment"), wherein the learned Single Judge has dismissed the Writ Petition, i.e., W.P.(C) 7320/2016 filed by the Appellant *inter-alia* stating that there is no infirmity with the view taken by the Respondent No.1 – Medical Council of India.

2. The record reflects that a Coordinate Bench of this Court by its orders dated 28.08.2018 and 12.03.2018 had directed the Respondent No.1 to produce its original file in relation to the case of the Appellant. We are informed by Mr T. Singhdev, Advocate who appears on behalf of the Respondent No. 1 that the original file of the Respondent No. 1 was brought to Court on 14.09.2022.
3. Since pleadings in the matter are complete, the parties made submissions on 14.09.2022 when the Judgment was reserved in the matter.
4. The brief facts that are relevant for the purposes of this Appeal are set forth below:
 - (i) On 04.05.2013, the Appellant and her husband visited Respondent No.2 at Amar Leela Hospital and Heart Centre, New Delhi (hereinafter called “A.L. Hospital”) for issues related to infertility and ancillary gynaecological issues.
 - (ii) It is the submission of the Appellant that they chose Respondent No.2 as their doctor based on representations made by her that she was a Gynaecologist and Infertility specialist.
 - (iii) It is the case of the Appellant that after some investigations, Respondent No.2 prescribed a medication course to enable the Appellant to conceive on 04.05.2013. The medical prescription *albeit* (not very legible) has been filed by the Appellant.
 - (iv) On 22.05.2013, the Appellant experienced severe abdominal pain on her right side, pursuant to which she was asked by Respondent No.2 to come to A.L. Hospital.
 - (v) Investigations made on 22.05.2013 by an ultra sound machine,

revealed that the Appellant was suffering from Torsion RT Ovarian Cyst with Hemorrhage. The Respondent No.2 and the General Surgeon in A.L. Hospital i.e. one, Dr. V.S. Solanki, advised the Appellant that a Laparoscopic surgery was needed to be carried out to completely remove the right Ovary along with the Fallopian Tube in order to treat the issue. This surgery was performed on the Appellant and thereafter the Appellant was discharged from the A.L. Hospital on 24.05.2013.

- (vi) On 25.05.2013, the Appellant had to be re-admitted to the A.L. Hospital as her condition worsened and she was experiencing symptoms which included abdominal swelling, acidity, nausea and difficulty in breathing. The Appellant was advised a series of tests and ultra sound(s) and on 25.05.2013 was diagnosed as suffering from abdominal distention, Ascites, gas, Ileus, small bowel loops and pleural effusion.
- (vii) The Appellant was once again advised to be hospitalized by Respondent No.2 and Dr. V.S. Solanki and this time the hospitalization lasted for 9 days, from 26.05.2013 to 03.06.2013. However, the condition of the Appellant only worsened and the Appellant got herself discharged from A. L. Hospital and got herself admitted to Dr. Ram Manohar Lohia Hospital (hereinafter “RML Hospital”).
- (viii) On her admission to RML Hospital on 04.06.2013, the Appellant was advised that she had severe Intestinal adhesion and required an immediate surgery to remove the 200 ml. (approx.) of “pus” in her abdomen. After a hospitalization of more than 10 days in RML

Hospital, the Appellant was discharged on 15.06.2013.

- (ix) On 16.06.2013, the husband of the Appellant filed a complaint with the Respondent No.3 (District CMO, New Delhi) wherein *inter-alia*, a brief history of the matter was given and it was submitted that the medical negligence on the part of Respondent No.2 and Dr. V.S. Solanki of A.L. Hospital be examined and that the Respondent No.3 take strict action against the said doctors.
- (x) The Respondent No.3 through its Executive Committee examined the complaint and the statements of Dr. R.P. Singh, Dr. V.S. Solanki and Respondent No.2 and the copy of medical records at A.L. Hospital and other documents.
- (xi) The five member Executive Committee of Respondent No.3 held that there was no case of medical negligence in the treatment administered to the Appellant by A. L. Hospital. By its order dated 31.10.2014, the Committee opined as follows:

“In light of the observations made herein-above, it is, therefore, the decision of the Executive Committee that the complainant’s wife Smt. Rashmi Dixit was treated as per accepted professional practices as such case and prima-facie no case of medical negligence is made out on the part of doctors of Amar Leela Hospital, in the treatment administered to the complainant’s wife Smt. Rashmi Dixit.”
- (xii) This order of its Executive Committee was confirmed by Respondent No.3 by its order dated 17.11.2014.
- (xiii) Dissatisfied with the order dated 17.11.2014 of Respondent No.3, the Appellant filed an appeal dated 26.04.2015 with Respondent No.1.
- (xiv) The Ethics Committee of Respondent No.1 considered the matter in

the meetings held on 05.01.2016 and 06.01.2016 and perused the documents available.

- (xv) By its order dated 05.05.2016, the Ethics Committee of Respondent No.1, found that Respondent No.2 was in violation of clause 1.4.1, 1.4.2 and 7.20 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter “the Regulations”). These clauses are reproduced below:

“1.4 Display of registration numbers:

1.4.1 Every physician shall display the registration number accorded to him by the State Medical Council / Medical Council of India in his clinic and in all his prescriptions, certificates, money receipts given to his patient.

1.4.2 Shall display as suffix to their names only recognized medical degrees or such certificates / diplomas and memberships / honours which confer professional knowledge or recognize any exemplary qualification / achievements.

7.20 A physician shall not claim to be specialist unless he has a special qualification in that branch.”

[Emphasis is ours]

- (xvi) The findings of the Ethics Committee were based on the fact that the Respondent No.2 had *inter-alia* displayed various acronyms in her credentials used in her prescriptions and as part of her educational/professional qualifications which did not pertain to any institution at all and were all found to be fake. The Ethics Committee decided to issue a strict warning to Respondent No.2 to be more careful in future and not to repeat such mistakes again and also directed Respondent No.2 to refrain from indulging in such practices in future.

- (xvii) The Ethics Committee also found Dr. V.S. Solanki guilty of violation of Clause 2.3 of the Regulations being related to “*Prognosis*” and decided to issue a warning to Dr. V.S. Solanki to be more careful in future while explaining the gravity of a case to a patient or attendant of the patient. The above recommendations of the Ethics Committee of Respondent No.1 were approved by the Executive Committee of Respondent No.1 in their meeting held on 22.03.2016.
- (xviii) Aggrieved by this decision of Respondent No.1, the Appellant approached this Court by way of a Petition under Article 226 *inter-alia* alleging that Respondent No.1 simply chose to issue a warning to Respondent No.2 and did not return a finding of medical negligence against Respondent No.2 or take any punitive action against Respondent No.2. No prayer or grievance was, however, made against Dr. V.S. Solanki in the Petition.
5. As set forth above, the learned Single Judge by the Impugned Judgment dismissed the said Petition holding *inter-alia* that there was due consideration of the medical treatment administered to the Appellant by Respondent No.1. The learned Single Judge *inter-alia* relying on the decision of a Coordinate Division Bench of this Court in *Kamla Devi v. Union of India*¹, held that the remedy under Article 226 would not be a proper remedy unless there is negligence on the face of it. In the present case, because the negligence involves the disputed questions of fact, this power cannot be exercised by the Court under Article 226 as it requires detailed evidence and cross

¹ 2015 SCC OnLine Del 7109

examinations which is possible only at trial.

- 5.1 The learned Single Judge, therefore, found no reason to disagree with the findings of Respondent No.1, of no medical negligence in the treatment administered to the Appellant and therefore, declined to interfere with the order of Respondent No.1 dated 05.05.2016.
- 5.2 A petition was thereafter filed by the Appellant to review the order dated 20.10.2016 which was also dismissed on 22.05.2017 by the learned Single Judge.
6. This has led to the filing of the present Appeal. The Appellant has *inter-alia* contended in the Appeal that the Appellant was under a bona fide belief based on representations made by Respondent No.2 that she was a qualified Gynaecologist with an expertise in fertility related issues, and it was only for the said reason that the Appellant consulted Respondent No. 2 and agreed to undergo treatment and the surgery advised.
- 6.1 It was contended by the Counsel for the Appellant, that as stated in its complaint dated 16.06.2013, the treatment of the Appellant with Respondent No.2 commenced from 04.05.2013 and after examination, certain medications were prescribed to the Appellant by Respondent No.2 in relation to infertility issues despite the fact that Respondent No.2 had no medical qualifications for such issues and was neither a Gynaecologist nor a fertility specialist.
- 6.2 The surgery as advised by Respondent No.2 and Dr. V.S. Solanki on 22.05.2013 and thereafter performed by Dr. V.S. Solanki led to deterioration in the health of the Appellant and consequently re-admission of the Appellant in A.L. Hospital on 25.05.2013.

- 6.3 On account of further complications, a second surgery had to be performed on the Appellant on 26.05.2013, and this line of treatment almost led to her demise. It was further submitted that the condition of the Appellant even after a second surgery, only got critical and hence, she got herself shifted after a forcible discharge from A.L. Hospital to RML Hospital. It was only after the treatment that was administered to her, after her admission to RML Hospital, that the Appellant was correctly diagnosed and was able to get back on her feet.
- 6.4 It was further submitted by the Counsel of the Appellant, that the Respondent No.2 despite not being a qualified Gynaecologist had incorrectly displayed a set of qualifications, including on all prescriptions and other diagnosis, which were false representations by her of her professional qualifications.
- 6.5 It was subsequently learnt by the Appellant that Respondent No.2 had misrepresented her medical qualifications and had advised/performed treatment and surgery on the Appellant, despite not having the requisite qualification or skill to do so.
- 6.6 Furthermore, it was submitted that though Respondent No.2 was held guilty of Clause 1.4.1, 1.4.2 and 7.20 of the Regulations, and the only punishment awarded was that of a warning whereas, in view of the seriousness of matter, a punishment of removal or at least suspension from the rolls should have been directed by Respondent No.1.
- 6.7 It was further contended that there is a *prima facie* finding of a medical negligence insofar as Respondent No.2 is concerned and that it is now well settled, that a professional may be held liable for

negligence, if he was not possessed of the requisite skills which he professed to have possessed. It was contended that this negligent treatment by Respondent No.2 at A.L. Hospital led to the Appellant losing her ability to ever conceive a child. The learned Counsel for the Appellant also relied on the judgments of the Supreme Court in the case of *Malay Kumar Ganguly v. Sukumar Mukherjee*²; *Postgraduate Institute of Medical Education and Research Chandigarh vs. Jaspal Singh & Ors.*³ and *Savita Garg v National Heart Institute*⁴ in support of his contentions.

7. The Counsel for Respondent No.1 relied upon the Impugned Judgment in support of his plea that this Court in exercise of power under Article 226 would not be required to examine the aspect of negligence as the same would involve disputed questions of fact. In this regard, he relied upon *Kamla Devi* case (supra), which has also been appreciated by the learned Single Judge.
- 7.1 It was further contended that as per the '*Peer Judge Peer*' principle, Respondent No.1 has concluded that there was no medical negligence attributable on the part of Respondent No.2 and the treatment that was administered to the Appellant was of the highest medical standards that have been recognized by Respondent No.3 and Respondent No.1, consisting of experts in the field, who specifically examined the treatment administered and have returned a finding that there was no medical negligence insofar as the treatment, that was administered to the Appellant.

² 2009 (9) SCC 22

³ 2009 (7) SCC 330

⁴ 2004 (8) SCC 56

- 7.2 The standard for judging whether any person has been negligent would be that of an ordinary competent person exercising ordinary skills in that profession and it is not necessary for every professional to possess the highest level of expertise in that branch which he practices.
- 7.3 Respondent No.2 was represented by Counsel and it was contended on her behalf that the Appellant was satisfied throughout her treatment with the hospital and the doctors and that the treatment given to the Appellant was of the highest medical practice and procedures. It was also submitted that the Appellant as well as her husband were non cooperative with the doctors and created unwarranted hindrances in the course of treatment. Now, they cannot be permitted to allege callousness and negligence against the treating doctors.
- 7.4 Respondent No.3 also filed its Counter Affidavit wherein the averments made by the Respondent No.1 were reiterated. It was *inter-alia* stated in the Counter Affidavit, that the complaint alleging medical negligence administered to the Appellant at A.L. Hospital by the Complainant, Mr Gyan Deep Dixit (husband of the Appellant) was received on 08.08.2013 and was acted upon initially by sending a notice to the Medical Superintendent of A.L. Hospital and thereafter by asking for Written Replies/Statements of Defence from Respondent No.2 and Dr. V.S. Solanki. It was only after discussions and deliberations concluded on 31.10.2014, that it was held that no *prima facie* case of medical negligence was made out on the part of the doctors of A.L. Hospital.

- 7.5 The Counsel appearing for Respondent No.2 as well as the Respondent No.1 and 3 argued that the case was examined by the Respondent No.3 initially and thereafter by Respondent No.1 as per the prescribed statutory procedure. This thorough examination led to a finding of no medical negligence and hence, the Impugned Judgment had rightly dismissed the petition filed by the Appellant.
8. During the course of arguments, we had queried the parties as to what course of treatment was prescribed by Respondent No.2 to the Appellant on 04.05.2013. The parties referred to the prescription as given by Respondent No.2 to the Appellant on 04.05.2013. Although, the prescription is not very clear/legible, we were informed that a series of medications as well as a line of treatment, essentially in relation to infertility issues, were prescribed by Respondent No.2 on that day. This has also been set forth in the complaint dated 16.06.2013 made on behalf of the Appellant to Respondent No.3, as follows:

“On 4th of May, I and my wife visited Dr. Madhu Chadha at Amar Leela Hospital for some pregnancy related consultation. After investigation, Dr. Madhu Chadha prescribed medication course to my wife to enable her to conceive.”

- 8.1 The abovementioned complaint was followed by a joint Reply as filed by Respondent No.2 and Dr. V.S. Solanki, wherein both Respondent No.2 and Dr. V.S. Solanki discussed the condition of the Appellant on and after 22.05.2013. This reply bears the signature of both Respondent No.2 and Dr. V.S. Solanki with Respondent No.2's rubber stamp, indicating her qualifications, besides her signature as

“M.B.B.S.(H); M.D.M.C., D.A.R.T., M.I.S.A.R., Gynae / Infer...[illegible] Specialist”.

- 8.2 Surprisingly, the statements of both Respondent No.2 and Dr. V.S. Solanki are almost identical. Both begin from the hospitalization of the Appellant on 22.05.2013 and refer to the 2nd hospitalization on 26.05.2013 and thereafter. There is no mention of the consultation by Appellant at the A.L. Hospital on 04.05.2013, the prescription, whereof admittedly forms part of Court record.
- 8.3 The Ethics Committee of Respondent No. 1 recorded the statements of the Complainant, Mr Gyan Deep Dixit (husband of the Appellant), Respondent No.2 and Dr. V. S. Solanki. Once again, the statements of both Respondent No.2 and Dr. V.S. Solanki only discuss the condition of the Appellant from 22.05.2013 onwards. Although, the statements were not the part of the record, these were available with the original file that was handed over by the Counsel for Respondent No.1 as set forth in para 2 hereinabove. There was no discussion about the consultation or the treatment prescribed by the Respondent No.2 to the Appellant on 04.05.2013.
- 8.4 Respondent No.3's order dated 17.11.2014 which was affirmed by Respondent No.1 on 05.05.2016, also begins from the hospitalization of the Appellant on 22.05.2013 and essentially states that the Appellant was treated with *“accepted professional practices”*. This order did not take into account that in the first instance, there was no medically qualified professional who did such treatment. Therefore, what has also not been examined by the Respondent No.3 or Respondent No.1, is whether the problems that arose on

22.05.2013, were a result of wrong diagnosis on 04.05.2013. The order also does not deal with the fact that a person, who admittedly is not a qualified Gynaecologist or a fertility expert, has prescribed fertility related treatment to a patient.

- 8.5 What is equally disturbing is the fact that when on 22.05.2013, the Appellant came back to Respondent No.2 complaining of severe pain and other issues, Respondent No.2 did not deem it fit to refer the Appellant to a person who is “*actually*” specially qualified in these matters but instead continued with the treatment of the Appellant and on 22.05.2013 prescribed a second course of treatment which included a Laparoscopic surgery on the Appellant. Even thereafter, when the Appellant was admitted to A.L. Hospital again on 25.05.2013 with serious issues and complaints, that Respondent No.2, did not refer the Appellant to a specialist, but instead continued her treatment along with Dr. V.S. Solanki.
9. The law in respect of medical negligence is well settled. The Supreme Court in a recent judgment titled as *Dr. (Mrs.) Chanda Rani Akhouri and Others vs. Dr. M.A. Methusethupathi and Others*⁵ has held that each case will have to be examined on its own merits. It was held that:

“27. It clearly emerges from the exposition of law that a medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. In the practice of medicine, there could be varying approaches of treatment. There could be genuine difference of opinion.

⁵ 2022 SCC OnLine SC 481

However, while adopting a course of treatment, the duty cast upon the medical practitioner is that he must ensure that the medical protocol being followed by him is to the best of his skill and with competence at his command. At the given time, medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

28. The term “negligence” has no defined boundaries and if any medical negligence is there, whether it is pre or post-operative medical care or in the follow-up care, at any point of time by the treating doctors or anyone else, it is always open to be considered by the Courts/Commission taking note of the exposition of law laid down by this Court of which a detailed reference has been made and each case has to be examined on its own merits in accordance with law.”

[Emphasis is ours]

- 9.1 In the matter of *Malay Kumar Ganguly* case (supra) held that, in determining deficiency in medical service, a representation made by a doctor that he is a specialist, and later it transpires that the said representation is a false representation, deficiency would be presumed. Reliance is placed on the following extract:

*“156. Even in the matter of determining the deficiency in medical service, it is now well settled that if representation is made by a doctor that he is a specialist and ultimately it turns out that he is not, deficiency in medical services would be presumed. We may notice some of the decisions in this behalf. In *Savita Garg v. National Heart Institute* [(2004) 8 SCC 56 : (2004) 8 Scale 694] this Court opined: (SCC p. 61, para 5)*

“5. It is a common experience that when a patient goes to a private clinic, he goes by the reputation of the clinic and with the hope that proper care will be taken by the hospital authorities. It is not possible for the patient to know which doctor will

treat him. When a patient is admitted to a private clinic/hospital it is the hospital/clinic which engages the doctors for treatment. ... They charge fees for the services rendered by them and they are supposed to bestow the best care....”

[Emphasis is ours]

10. In the present case, Respondent No.2 held herself out to be an expert in gynaecological and infertility related treatment despite having no formal medical education or training in the field. Respondent No.2 misled the public of her qualifications by posting signs outside her cabin claiming to be an expert in these fields and made and used official stamps showing these false “*qualifications*”. The act of Respondent No.2 required disciplinary action and censure by Respondent No.1 and Respondent No.3. Respondent No.3 carried out a superficial enquiry and reached a conclusion that there was no wrong doing. Respondent No.1 concluded that Respondent No.2 was guilty of falsifying fabricated her medical credentials yet did not take any punitive action against her.
- 10.1 Admittedly, Respondent No.2 commenced and continued treatment of the Appellant between 04.05.2013 and 04.06.2013 as an expert in the field of infertility and gynaecology. This treatment of the Appellant by an unqualified doctor and its repercussions on the health of the Appellant has also not been looked into by either Respondent No.1 or Respondent No.3. Respondent No.3 and Respondent No.1 have arrived at a finding that there was correct, ethical and professional treatment of the Appellant. However, applying the principles as set forth in the *Malay Kumar Ganguly* case

(supra), such treatment can only be presumed to be deficient professional service.

11. In these circumstances, we are constrained to set aside the Impugned Judgment and relegate the parties to Respondent No.3 for reconsideration of the issues afresh, keeping in mind the discussions and aforementioned principles. All rights and contentions of the parties are, however, left open.
- 11.1 Needless to say, that Respondent No.3 would be at liberty to examine the Appellant and Respondent No.2, the role of A.L. Hospital and any other person it deems necessary.
- 11.2 Respondent No.3 is directed to conclude its inquiry in this matter within three months from today.
12. The Appeal is accordingly allowed. The parties are left to bear their respective costs. The parties will act on a digitally signed copy of the judgment.

TARA VITASTA GANJU
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

NOVEMBER 25, 2022
r/kks