

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WP/15590/2009

MIHIR BANERJEE

Vs.

THE STATE OF WEST BENGAL AND ORS.

For the Petitioner	:	Mr. Srikanta Dutta, Adv. Ms. Rituparna Sarkar Dutta, Adv.
For the W.B.M.C.	:	Mr. Saibalendu Bhowmik, Adv. Mr. Biplab Guha, Adv. Mr. Subrata Bhattacharya, Adv. Mr. Rasekhar Basu, Adv.
For the State	:	Mr. Tapan Kumar Mukherjee, Adv. Ms. Munmun Tewary, Adv.
For the Respondent No.3	:	Mr. Subhankar Nag, Adv. Mr. Somnath Ray, Adv.
Reserved on	:	27.07.2023
Judgment	:	18.11.2023

Ravi Krishan Kapur, J. :-

1. The petitioner assails the orders dated 12 December 2008 and 31 July 2008 passed by the Principal Secretary, Health & Family Welfare Department and The Registrar, West Bengal Medical Council respectively rejecting the complaint and the consequential appeal filed by the petitioner against the respondent no 3 alleging negligence and the failure to provide appropriate medical treatment to the daughter of the petitioner which allegedly resulted in her death.
2. The crux of the case is that on 22 May 2001, the petitioner's daughter complained of profuse vomiting and upset stomach resulting in the patient

being taken to the respondent no.3. It is alleged that without any medical investigation, the respondent no.3 prescribed medicines alongwith an injection viz Zofer (4) IM Stat. Thereafter, the patient's condition deteriorated. The respondent no.3 was again approached by the petitioner for further assistance since the prescribed medication lead to a decline in the patient's health condition. It is alleged that at this time the respondent no 3 refused to visit the patient or provide any assistance to assist the patient. Thereafter, the patient was taken to another local medical practitioner upon whose advice the patient was transferred to a nursing home at Rishra. On arrival, the patient was declared "brought dead" by the hospital and a provisional death certificate was also issued by the hospital. However, the petitioner was advised to obtain a death certificate from the respondent no.3, being the first attending doctor. It is alleged that the respondent no.3 issued a death certificate without mentioning his registration number and recorded wrong and misleading information about the death of the patient. It is further alleged that death was caused by the negligence of the respondent no.3, prescribing an incorrect injection without any medical investigation.

3. Being dissatisfied with the treatment of the doctor, the petitioner lodged a complaint dated 8 November 2001 against the respondent no 3 before the West Bengal Medical Council (WBMC). Upon investigation, the WBMC on 18 February 2003 concluded that the charges of medical negligence against the respondent no.3 were unsubstantiated and the complaint was dismissed. Thereafter, the petitioner filed a writ petition which was disposed of granting liberty to the petitioner to file an application before the Appellate Authority.

Ultimately, the Appellate Authority remanded the matter to the WBMC setting aside the order dated 18 February 2003 with a direction to cause an independent enquiry into the complaint of the petitioner. The petitioner submitted all the evidence alongwith the reports of medical experts to substantiate the purported failure of the respondent no.3 in treating the patient as well as in issuing a death certificate without conducting any post mortem examination.

4. By an order dated 31 July 2008, the WBMC held the respondent no.3 not guilty of the charges framed against him. The said order was challenged before the Health & Family Welfare Department which was dismissed on the ground inter alia that Injection Zofer could not have attributed to deterioration in the condition of the patient nor were there any procedural lapses on the part of the respondent no.3.
5. It is alleged by the petitioner that the impugned orders were passed by both the authorities without considering the reports of the medical experts submitted by the petitioner. It is further alleged that the respondent no.3 recklessly and casually treated the patient without considering her age, medical dosage or performing any medical examination. There has also been violation of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 and The Code of Ethics of the WBMC. It is further alleged that the WBMC and the Health & Family Welfare Department failed to take into account the opinions of the medical experts relied on by the petitioner before passing the impugned orders.
6. On behalf of the respondents it is contended that, the complaint lodged by the petitioner is not in conformity with the Bengal Medical Act, 1914. In any

event, the scope of entertaining a writ petition is limited and circumscribed. The petitioner has also sought to rely on an expert opinion at this stage of the proceedings which had not been adduced before the WBMC.

7. On a reading of the impugned orders, it appears that the Appellate Authority has considered all the submissions made by the petitioner. The opinions of the medical experts before the Appellate Authority have also been taken into account along with various study reports of similar patients and the relevant medical literature. The impugned order dated 12 December, 2008 is also well reasoned and deals with all the grievances raised by the petitioner. It has been specifically recorded by the experts that there has been no negligence by the respondent no.3 and the medication prescribed by the respondent no.3 is the usual medication prescribed by most doctors in such circumstances. The failure in not mentioning the registration number of the doctor in the prescription is also not vital nor attributable to the death of the patient.
8. This is an unfortunate case which ultimately resulted in death of a minor child. Any medical intervention carries an inherent risk. There must be sufficient evidence to prove that death has been caused due to the medical negligence. A medical professional cannot be held liable simply because things go wrong due to mischance or misfortune. In order to hold a medical professional liable it must be shown that the medical professional failed to do something which in given facts and circumstances no ordinary skilled medical professional could have done or failed to do. [See: *Jacob Mathew vs. State of Punjab & Anr.* (2005) 6 SCC 1, *State of Punjab vs. Shiv Ram and Ors.* (2005) 7 SCC 1, *Nizam's Institute of Medical Sciences vs. Prasanth S.*

Dhananka (2009) 6 SCC 1 and Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors. AIR 2010 SC 1050].

9. It is found that the respondent authorities have followed the necessary procedures in passing the impugned orders and the petitioner never raised any objection in respect of the charges framed against the respondent no 3 at the appropriate stage before the Authorities.
10. Ordinarily, a Court under Article 226 of the Constitution does not act like a fact finding authority. A Writ Court does not go into a factual enquiry and then adjudicate on the correctness or otherwise of the facts and circumstances of a given case. (*Management of Madurantakam, Co-operative Sugar Mills Ltd. v. S. Viswanathan, (2005) 3 SCC 193*). There is no irregularity nor perversity nor contravention of law in passing of any of the impugned orders. In such circumstances, there are no grounds warranting any interference with the impugned orders.
11. In view of the aforesaid, WPA 15590 of 2009 stand dismissed. However, there shall be no orders as to cost.

(Ravi Krishan Kapur, J.)