IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.201777 OF 2023 (GM-RES)

BETWEEN:

SRI SADASHIVA S. YELAGOD
S/O LATE Y. L. SIDDARAMAPPA,
AGE: 51 YEARS,
OCC: LEGAL PRACTITIONER,
R/O: H.NO.1-495/2 (C),
GODUTAI NAGAR, JEWARGI ROAD,
KALABURAGI-585102,
KARNATAKA STATE.

...PETITIONER

(BY SRI SADASHIVA S. YELAGOD, PARTY-IN-PERSON)

AND:

1. THE GOVERNMENT OF INDIA,
   REPRESENTED THROUGH ITS SECRETARY,
   MINISTRY OF HEALTH AND FAMILY
   WELFARE DEPARTMENT,
   NIRMAN BHAVAN, NEW DELHI-110 011.
2. THE REGISTRAR,
   KARNATAKA MEDICAL COUNCIL,
   #16/6, MILLARS TANK BUND AREA,
   VASANT NAGAR, BANGALORE-560 001.
3. THE SECRETARY,
   NATIONAL MEDICAL COMMISSION,

POCKET 14, SECTOR 8, DWARKA
PHASE-1, NEW DELHI-110 077.

4. DR. AJAYKUMAR S. DHAGE,
PSYCHIATRIST, SUMAN NURSING HOME,
#3-1023/2, OPPOSITE: TO ROYAL ENFIELD
SHOW ROOM, DARGA ROAD,
GAZIPURA, KALABURAGI-585104,
PRESENTLY SHIFTED TO
THE SUMAN NURSING HOME,
(OWN BUILDING) SEDAM ROAD, OLD R.T.O. CROSS,
NEAR GGH POST OFFICE,
KALABURAGI-585105.

5. DR. ANUSHA DHAGE,
ASSOCIATE PROFESSOR,
DEPARTMENT OF ANESTHESIOLOGY,
GULBARGA INSTITUTE OF MEDICAL SCIENCE,
SEDAM ROAD, KALABURAGI-585 105.

6. DR. DEVARAJ Y. KANNUR,
PHYSICIAN INTENSIVIST AND DIABETOLOGIST,
JEEVAN JYOTHI HOSPITAL, M.S.K .MILLS ROAD,
OPPOSITE: TO CENTRAL BUS STAND,
SHANTI NAGAR, KALABURAGI-585103.

...RESPONDENTS

**(By SRI SUDHIRSINGH R. VIJAPUR, DSGI FOR R1;
SRI BASAVARAJ S. SAPPANNAVAR, ADVOCATE FOR R2;
SRI J. AUGUSTIN, ADVOCATE FOR R4 TO R6;
V/O DT. 12.09.2023, NOTICE TO R3 IS DISPENSED WITH)**

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION TO QUASH THE ORDER PASSED IN THE COMPLAINT NO.KMC/45EXP/DOCT/2021 DATED 03.12.2022, I.E., ANNEXURE - X, WHICH HAS BEEN COMMUNICATED TO THE

PETITIONER BY THE RESPONDENT NO.2 AND SENT THROUGH REGD. POST, WHICH REACHED THE PETITIONER ON DATED 22.12.2022. TO ISSUE WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION, DIRECTING THE RESPONDENT NO.2 TO HOLD THE ENQUIRY AS REQUIRED UNDER PARA 8.2 OF THE INDIAN MEDICAL COUNCIL (PROFESSIONAL CONDUCT, ETIQUETTE AND ETHICS) REGULATIONS, 2002 FROM THE STAGE OF COMPLAINANT EVIDENCE, SINCE THE PETITIONER HAS ALREADY SUBMITTED COMMENTS ON THE REPLY GIVEN BY THE RESPONDENT NOS.4, 5 AND 6 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 13.12.2024, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

(PER: HON’BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The petitioner, appearing as a party in person, is questioning the order passed by the Karnataka Medical Council, wherein the authority has opined that no medical negligence is made out against respondent Nos.4 to 6 and has resolved to give closure to the complaint lodged by the petitioner.

2. Facts leading to the case are as under:

In the captioned petition, the petitioner is assailing the order passed in Complaint No.KMC/45Exp/Doct/2021 dated 03.12.2022, and is consequently seeking a mandamus directing Respondent No.2 to hold an enquiry as per Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics), Regulations, 2002 (hereinafter referred to as "Regulations, 2002").

3. The petitioner, who is a practicing advocate at Kalaburagi, has lodged a complaint alleging medical negligence against respondent Nos.4 to 6 concerning the death of his biological sister. The petitioner alleges that his sister had consulted respondent No.4 at Suman Nursing Home. It is further alleged that respondent No.5, who is serving at the Indian Medical Institute of Science, Kalaburagi, administered a higher dose of anesthesia during treatment. The petitioner contends that respondent No.4 did not hold a valid licence under the provisions of the Mental Health Act, 1987, and despite this, continued treating the

petitioner's sister at Suman Nursing Home without proper authorization.

4. The petitioner alleges that respondent No.4, in collaboration with respondent No.5, administered Electro Convulsive Therapy (ECT) to his sister on an Outpatient Department (OPD) basis without holding valid registration under the Mental Healthcare Act. It is specifically contended that on the night of 29.05.2019, the petitioner's sister developed severe breathing problems accompanied by a wheezing sound. Upon contacting respondent No.4 telephonically, the petitioner and his family were advised to shift the patient to Suman Nursing Home. Subsequently, she was referred to Jeevan Jyothi Hospital, Shantinagar, where respondent No.6 admitted the petitioner's sister to the Intensive Care Unit (ICU), placed her on ventilator support, and later declared her dead on 30.05.2019 at 9:20 PM.

5. Aggrieved by the above, the petitioner lodged a complaint on 29.12.2020, alleging medical negligence and misconduct. The petitioner's primary grievance is that respondent No.2 has issued a closure to the complaint without conducting a proper enquiry, as mandated under the relevant regulations. The petitioner, therefore, challenges the endorsement issued at Annexure-X and seeks a mandamus to direct the concerned authority to hold an enquiry against the doctors, alleging gross misconduct and medical negligence.

6. P*er contra*, respondent Nos.4 to 6 have contested the petition by filing their statements of objections. The respondents contend that the petitioner's sister, late Sushiladevi, had been suffering from schizophrenia since 2008 and was under treatment by multiple psychiatrists during this period. It is further submitted that the symptoms showed partial remission but relapsed due to her irregular compliance with prescribed medications. Respondent Nos.4 to 6 assert that in 2015, Sushiladevi ran away from home

under the delusion that someone was attempting to harm her. With police intervention, she was traced and subsequently taken to respondent No 4 for consultation and management.

7. The respondents categorically submit that the treatment administered, including ECT and anti-psychotic medications, was in strict compliance with established medical guidelines. It is further contended that respondent No.4, a well-renowned psychiatrist, had been treating not only the petitioner's sister but also other family members, including the petitioner's mother and two sisters, for mental health issues.

8. The respondents emphasize that Sushiladevi had stopped taking her medications, believing she was cured, which led to a relapse of her symptoms. As she was exhibiting suicidal tendencies and her life was at imminent risk, respondent No.4 administered ECT under compelling circumstances and in accordance with legal norms. The

respondents have relied on the case sheet of Late Sushiladevi, evidenced at Annexure-R1, which details the course of treatment provided.

9. Respondent Nos.4 to 6 further submit that on 29.05.2019, after undergoing treatment, Sushiladevi was stable and walked out of Suman Nursing Home on her own. However, on 30.05.2019, she developed high fever and breathing difficulties, following which she was brought back to Suman Nursing Home and subsequently referred to Jeevan Jyothi Hospital for advanced care. The respondents state that the informed consent of the petitioner's elder sister was duly obtained prior to administering the ECT procedure, as evidenced by Annexure-R2.

10. Respondent No.4 has specifically denied the petitioner's allegations that the clinic was unregistered. It is asserted that the clinic was functioning lawfully and that the procedures performed complied with the provisions of the Mental Healthcare Act.

11. The petitioner, reiterating the grounds urged in the petition, contends that the enquiry conducted by the Karnataka Medical Council is vitiated due to procedural lapses. It is argued that respondent No.2 has issued an endorsement of closure without conducting a detailed enquiry into the allegations. The petitioner further submits that the respondents have failed to justify the administration of ECT on OPD basis without proper registration and requisite approvals under the Mental Healthcare Act.

12. In support of his submissions, the petitioner has placed reliance on various rejoinders and cited judicial precedents to substantiate his claim of medical negligence and procedural irregularities. The petitioner emphasizes that the treatment administered to his sister, including the dosage of anesthesia and the ECT procedure, was improper and directly contributed to her death.

13. The petitioner also disputes the validity of the informed consent document (Annexure-R2), arguing that the

consent obtained was neither voluntary nor informed and was secured under circumstances of duress.

14. The petitioner has relied on the following judgments to support his contentions:

1. Jyoti Devi Vs. Suket Hospital & Ors. [Civil Appeal No.5256/2024]

2. K. Ningaraju Vs. Karnataka Medical Council and Another [Writ Petition No.51120/2016]

15. Respondent Nos.4 to 6 have relied on the following judgments to support his contentions:

1. Bolam Vs. Friern Hospital Management Committee [(1957) 1 WLR 582]

2. Dr. (Mrs.) Chanda Rani Akhouri & Ors. Vs. Dr. M.A. Methusethupathi & Ors. [2022 SCC OnLine SC 481]

3. Samira Kohli Vs. Dr. Prabha Manchanda and Another [(2008) 2 SCC]

16. The petitioner seeks judicial intervention to quash the closure order passed by respondent No.2 and to direct a fresh and detailed enquiry into the allegations of medical

negligence and misconduct against respondent Nos.4 to 6. The core issue revolves around whether the treatment administered to the petitioner's sister was in compliance with medical ethics and statutory provisions and whether Respondent No.2 failed in its duty to conduct a fair and impartial enquiry into the matter.

17. Learned counsel appearing for respondent Nos.4 to 6 has taken this Court through the stand taken in the statement of objections and placed reliance on several judgments to support their contentions. The following point arises for consideration:

> *"Whether the endorsement issued by Respondent No.2 vide Annexure-X can be judicially reviewed by this Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India? "*

18. The Karnataka Medical Council, while closing proceedings against respondent Nos.4 to 6, has specifically observed that it is difficult to ascertain the exact cause of death without a postmortem (PM) report. This crucial aspect

has weighed heavily in the decision to give closure to the complaint.

19. On meticulous examination of the records, this Court has noted that the patient, Sushiladevi, was not subjected to Electro Convulsive Therapy (ECT) for the first time in 2019. The records clearly indicate that she had been receiving treatment, including ECT, from respondent No.4 since 2015. It is pertinent to examine the informed consent given by the elder sister of the patient before the ECT therapy was administered. The relevant portion is extracted as under:

"SUMAN NURSING HOME, KALABURAGI.

INFORMED CONSENT FOR ELECTROCONVULSIVE THERAPY (ECT)

I hereby consent to the administration of a course of Electroconvulsive therapy To myself/my. Susheeladevi D/o. Sidramappa Yelbod. (Relation) …(Sister) Renuka…..(name of the patient) by Dr. Ajay kumar Dhage (or any other suitably trained Doctor Disputised by him).

I also consent to the use of an anesthetic and / or a relaxant or sedative for this purpose, at the discretion of the doctors.

I have been explained the nature and the purpose of the treatments, and I have opted for this treatment.

As regards possible side effects and complications, I understand that headache and confusion immediately after treatment, are common but short - lasting.

Memory deficit, lasting for a few weeks, is common but there is no scientific evidence of permanent brain damage.

I also understand that, like in other medical and surgical treatments despite all precautions, risk to life cannot be ruled out, Rarely fractures may occur.

I authorize the doctors concerned to administer emergency treatment for all such complications, shift the patient to other hospital, and / or seek help of other specialists if necessary, I also undertake to bear the financial.

I confirm that I have explained to the patient / relative the nature, Purpose, and likely effects of this treatment.

Shri./Smt. pt.:(Sister Renuka devi) was the nearest relation available."

20. The informed consent form unequivocally reveals that the elder sister of the patient was appraised of the consequences and risks involved in subjecting the patient to ECT therapy. Thus, the approval secured prior to administering the ECT treatment is clearly established. Further, the medical records demonstrate that after undergoing ECT treatment on 29.05.2019, the patient was stable and walked out of Suman Nursing Home on her own. There is no rebuttal evidence on record to suggest that the patient immediately developed complications post-treatment.

21. One significant factor that cannot be ignored is the substantial delay in lodging the complaint. While the ECT treatment was administered on 29.05.2019 and the patient passed away on 30.05.2019, the complaint was lodged by the petitioner on 29.12.2020, a delay of over 1 year and 6 months. The action of the petitioner, who is a practicing advocate, appears to be an afterthought. The explanation offered by respondent Nos.4 to 6, that the petitioner initiated the complaint because respondent No.6 refused to sign an LIC medical attendance certificate to enable an insurance claim, appears plausible. Nonetheless, the scope of judicial review in the present case is limited to verifying whether the Karnataka Medical Council's opinion warrants intervention.

22. It is pertinent to note that the Karnataka Medical Council, in the impugned endorsement, has speculated four possible causes of death. However, what is significant is that respondent No.4 had a longstanding acquaintance with the patient, having treated her since 2015. The records clearly indicate that the patient had been subjected to ECT therapy

on prior occasions with informed consent from the petitioner's family.

23. The petitioner's submissions and rejoinders do not substantiate that the petitioner himself was present with the patient during the relevant events. Furthermore, it is evident from the records that the petitioner's mother and two other sisters also have a history of depression and mental health issues. Despite availing the services of respondent No.4 for an extended period, the petitioner has now made a feeble attempt to harass the doctors. The medical records, however, speak contrary to the claims made in the petition. It is evident that informed consent was obtained before each ECT session, and the petitioner's family was clearly appraised of the risks involved. Additionally, the records indicate that the patient's health was deteriorating because she had not been compliant with the medications prescribed by the treating doctors.

24. The medical records at Jeevan Jyothi Hospital further reveal that when the patient was admitted on 30.05.2019, she was complaining of breathing difficulties and had a high fever. The records specifically attribute her death to septic shock. There is no credible evidence to link the ECT treatment administered on 29.05.2019 to the patient's death on the following day.

25. The facts of the case are squarely covered by the principles laid down by the Privy Council in ***Bolam v. Friern Hospital Management Committee(supra)***. The Bolam test provides that a medical professional is not negligent if he acts in accordance with a practice accepted as proper by a responsible body of medical practitioners skilled in that particular field. In the present case, the petitioner has not questioned the skill, expertise, or competence of respondent Nos.4 to 6. On the contrary, the records demonstrate that the respondents provided the best medical assistance available at their command.

26. The learned counsel for the respondents has further placed reliance on the judgment of the Hon'ble Supreme Court in ***Dr. (Mrs). Chanda Rani Akhouri v. Dr. M.A. Methusethupathi and Others(supra)***. The Apex Court has held that liability for medical negligence arises only if a doctor either (i) does not possess the requisite skill that he professes to have, or (ii) fails to exercise reasonable competence in a given case. It was also observed that a simple lack of care, an error of judgment, or an accident does not, in itself, constitute negligence on the part of a medical professional.

27. In the present case, the medical records reveal that the ECT treatment was administered at the request of the petitioner's family and that such treatment had been successfully administered on previous occasions since 2015. The informed consent obtained from the patient's elder sister remains valid and has not been effectively questioned by the petitioner. The consent document makes it clear that respondent No.4 had provided exhaustive information about

the risks and consequences of ECT therapy, which was acknowledged by the petitioner's family.

28. Another significant aspect of this case is the unexplained delay of over 1 year and 6 months in filing the complaint. Such an inordinate delay casts serious doubt on the credibility of the allegations. Additionally, in the absence of a postmortem report, it is impossible to ascertain the proximate cause of death. The Karnataka Medical Council, as an expert body, has rightly opined that the absence of a PM report makes it difficult to draw any definitive conclusions.

29. Upon anxious consideration of the records and submissions, this Court is of the firm view that the impugned endorsement issued by the Karnataka Medical Council does not warrant judicial review. This Court lacks the expertise to sit in judgment over the opinion expressed by the medical experts, as evidenced in Annexure-M. Accordingly, the point formulated is answered in the negative.

30. The writ petition is devoid of merit and accordingly stands **dismissed**.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

RSP
CT-SW