

2024.PHHC.159740



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

104+206

**CWP- 9504-2018 (O&M)
Date of Decision: 28.11.2024**

AMARJEET KAUR

... Petitioner

VERSUS

THE STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vinod Kataria, Advocate
for the petitioner.

Ms. Akshita Chuahan, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

CM-17101-CWP-2024

Allowed as prayed for.

The reply to the additional affidavit dated 12.10.2023 is ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book.

MAIN CASE

Challenge in the present petition is to the order/notice dated 20.02.2018 issued by respondent No.2, whereby the petitioner has been directed to compensate respondent No.6 financially and in case of non-compliance thereof, the licence of the hospital of the petitioner was ordered to be cancelled.

Learned counsel for the petitioner contends that the petitioner was earlier the owner of Jeevanjot Hospital, Amritsar. On 15.03.2021, Mandeep

Kaur wife of respondent No.6 was admitted in the said hospital with symptomatic cholelithiasis with cholecystitis vide USG report dated 15.03.2016 from Amrit Diagnostic Centre- 45 Kashmir Avenue, Amritsar. Laproscopic Cholecystectomy was planned and on diagnostic, laproscopic extensive adhesions were noticed obscuring anatomy around the gall bladder. The adhesions were carefully dealt and a difficult Laproscopic Cholecystectomy was performed. Perfect Homeostasis was attained and it was ensured thereafter that the laproscopic wounds were closed after having wide bore dependent drain. The patient had undergone a difficult treatment in the said hospital and the treating doctors had taken every possible care during her treatment and there was no negligence of any kind whatsoever. The post operative period also went uneventful and she was eventually discharged in a stable condition on 18.03.2016 after removal of drain. A sum of Rs.20,000/- was charged by the hospital. The wife of respondent No.6 was re-admitted on 06.04.2016 with an abdominal pain, distension, fever and icterus of 8-10 days duration. CBD was documented to be normal on both ultrasounds. After careful assessment and obtaining informed consent, she was re-explored under GA on 06.04.2016. On laprotomy, moderate amount of Biliary fluid-bilioma was found in the peritoneal cavity and CBD injury identified at the junction of CBD & Common Hepatic Duct. Hepaticojejunostomy was done. Post operatively, two units of blood were transfused. When the wife of respondent No.6 got stable vitals and status, she was discharged on 15.04.2016. At the time of discharge, she refused to pay hospital bill including cost of investigation and medicines, therefore, a bill on complimentary basis was made. However, again on 09.05.2016, the wife of respondent No.6 reported back at the hospital with jaundice and anemia and was

advised treatment and investigations accordingly. However, she left the hospital without permission and information on the same day in the evening i.e. on 09.05.2016 again without paying any charges qua hospital bills, medicines and investigations.

Thereafter, respondent No.6 filed a complaint against Jeevanjot Hospital alleging that the doctors of the said hospital treated his wife negligently during the period of her treatment in the said hospital. Thereupon, the Civil Surgeon i.e. respondent No.4 appointed respondent No.5 as Inquiry Officer who sent a letter/communication dated 12.10.2016 directing the Medical Superintendent of Jeevanjot Hospital to appear alongwith all evidence and documents on 19.10.2016 at 02.00 p.m. in his office. The petitioner accordingly appeared and submitted all evidence and filed her reply dated 24.10.2016. Thereafter, a Medical Board was constituted by respondent No.4 to conduct an inquiry into the allegations levelled against the Jeevanjot Hospital.

After conducting inquiry, the Medical Board submitted a detailed report, as per which, no negligence was found either on the part of the treating doctors or the hospital. The Civil Surgeon wrote a letter/communication dated 08.12.2016 to the Deputy Commissioner alongwith a submission that he agrees with the report. It is further submitted that all due care and precautions were taken during the treatment of wife of respondent No.6 and there was no lapse or negligence of any kind. However, respondent No.2- Deputy Director (Complaints) Office of Director, Health and Family Welfare Punjab still issued the impugned letter/communication/notice dated 20.02.2018 to Jeevanjot Hospital and directed it to do the complete treatment and to compensate for the financial loss to the wife of respondent No.6 on or before 06.03.2018 failing

which, the licence of the hospital shall be cancelled. A reference was made to an order allegedly having been passed on 18.01.2018 by the Punjab State Scheduled Caste Commission, Chandigarh. No copy of any such order or complaint was, however, furnished to the petitioner. The petitioner, accordingly, approached this Court raising a challenge to the said communication.

Vide order dated 20.02.2018, operation of the aforesaid communication was stayed by this Court.

Reply by way of an affidavit of Dr. Gurinderbir Singh, Director, Health and Family Welfare, Punjab, Chandigarh was initially filed on 09.03.2021, wherein they acknowledged that no negligence of any kind whatsoever in the treatment of wife of respondent No.6 was noticed either on the part of the treating doctors or on the part of the hospital as per the inquiry report submitted by the Inquiry Officer to the Medical Board on 07.12.2016. It has also been stated in the abovesaid reply that the Punjab State Scheduled Caste Commission got conducted an independent inquiry into the complaint and the copy of the inquiry report dated 11.07.2017 submitted by non-official members of the Commission was sent to the Principal Secretary, Department of Health and Family Welfare, Punjab whereby a direction was issued to the Jeevanjot Hospital to comply with the recommendations made in the report dated 11.07.2017 submitted by the non-official members of the Commission. Accordingly, the impugned communication had been sent for issuance of directions to the Jeevanjot Hospital to do the complete treatment and to compensate for the financial loss suffered by respondent No.6. It was also stated that taking into consideration the seriousness of the patient-Mandeep Singh, a request was also made to the Principal, Medical College, Amritsar by the Civil Surgeon to do the

treatment of the patient on priority basis. The complaint was accordingly ordered to be filed by the Punjab State Scheduled Caste Commission vide order dated 24.04.2018.

The matter came up for hearing on 13.07.2023, wherein the respondent-State was directed to place on record the copy of the order passed by the Punjab State Commission for Scheduled Castes, on the basis whereof the impugned communication had been sent.

In compliance thereof, an additional affidavit dated 12.10.2023 was filed by respondent-State of Punjab placing on record the communication/order passed by the Punjab State Commission for Scheduled Castes. A perusal of the same shows that the Punjab State Commission for Scheduled Castes has nowhere directed in its order that the complete medical treatment be extended free of cost or any financial assistance be released in favour of Mandeep Kaur-wife of respondent No.5. Thus, the directions by Punjab State Commission for Scheduled Caste, purportedly referred to in the impugned communication/letter, are actually not born out from the order passed by the Punjab State Commission for Scheduled Castes.

Under the given circumstances, I find that the very foundation of the impugned communication/letter/order does not exist and as such the order travels beyond the contours of the powers vested in respondent No.4.

It is also evident from a perusal of communication dated 24.02.2018 that there is no reference to any statutory provisions or circumstances, in which the petitioner could have been directed to compensate for the financial loss to Mandeep Kaur-wife of respondent No.6, more so, when the inquiry report by the

Medical Board did not point out any negligence or lapse on the part of the attending/treating doctors or the hospital.

For the foregoing reasons and also noticing that Mandeep Kaur had been treated by the Government Medical College, Amritsar on the direction of the Civil Surgeon, Amritsar and taking into consideration that no medical negligence was ever reported by the Medical Board and no finding of any medical negligence/lapse has been noticed, I find that the impugned communication/letter/order is devoid of any statutory powers vested in respondent No.2-Authority and is hence liable to be set-aside.

The present writ petition is accordingly allowed. The impugned communication/letter/order dated 20.02.2018 is set aside.

28.11.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No