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

\+ W.P.(C) 733/2023

KANNU SINGH HARIT .....Petitioner

Through: Mr. Ashok Kumar, Advocate.

versus

GNCT. OF DELHI & ORS. .....Respondents

Through: Mr. Rajesh Kumar Agnihotri, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 10.07.2024

1. This writ petition seeks Court's intervention under Article 226 of the Constitution of India for against the Government of the National Capital Territory Delhi (GNCTD) concerning serious allegations of medical negligence and systemic failures within its hospital facilities. The Petitioner, aggrieved by the tragic death of his wife, which he contends was a direct result of the negligent and indifferent actions of hospital staff, urges the Court to mandate critical improvements in hospital emergency services and to award compensation for the wrongful death that occurred under the care of the hospital. The present writ petition seeks the following reliefs:

> *"To direct the GNCT of Delhi to ensure availability of necessary facilities especially in emergency and casualty of the hospitals for meeting urgent and emergency needs of the visiting patients to avoid any case of fatality/death as has happened in the case of the wife of the petitioner due to callous, indifference and negligence of the hospital.*
> *To direct the respondent GNCT of Delhi for payment of adequate*

compensation for loss of valuable life due to nonavailability of timely help/negligence/non-cooperation of the hospital staff which loss of life could have been averted had the timely relief would have been made available."

2. On the night of 27th February 2020, at approximately 11:00 p.m., the Petitioner urgently sought emergency medical treatment for his wife at Dr. Hedgewar Arogya Sanshthan (DHAS Hospital), a facility operated by GNCTD. Upon arrival, the patient was examined in the casualty ward, where an injection and certain medications were administered, as recorded on her emergency card. Despite being diagnosed with critically high blood pressure and visibly unable to move independently, the patient was instructed to proceed toward No. 5. In these critical moments, the condition of the patient deteriorated. The Petitioner's requests for assistance—specifically for orderlies or a stretcher—were regrettably ignored. Left without the necessary support, the patient tragically collapsed enroute to the emergency ward. Subsequent efforts by the Petitioner to secure aid from the ward in-charge were futile, and it was only with the help of other patients' attendants that she could be moved to ward No. 5. Arriving there at approximately 11:40 p.m., emergency CPR was administered upon observing her dire condition, but to no avail. The patient remained unresponsive and was declared deceased at 11:57 p.m. The Petitioner contends that this heartbreaking loss was a direct result of the hospital's negligence, arguing that the tragedy could have been prevented had adequate facilities and prompt medical assistance been available. Moreover, when the petitioner, distressed by the actions of the medical staff at the hospital, made some inquiries to the doctor in charge of ward no. 5, a staff member named Mr. Vivek Goswami, who was intoxicated, behaved insolently towards the

Petitioner. In the aforenoted background, this petition seeks redress and accountability for the systemic failures that led to this avoidable fatality

3. Given the serious nature of the allegations, this Court on 20th January 2023 issued a direction to the Secretary of Health, GNCTD, to constitute an inspection team comprising of one Medical Superintendent or Additional Medical Superintendent from any government hospital, along with two senior doctors employed at any government hospital. The mandate of the team was to conduct a thorough inspection of Dr. Hedgewar Arogya Sansthan, Karkardooma, to engage with the doctors and staff, and to evaluate the status and condition of the facilities available at the hospital. Furthermore, the team was instructed to provide recommendations for necessary improvements to enhance the quality of health services within the hospital. Pursuant to these instructions, an inspection report has been submitted to this Court. While the report finds that the allegations made by the Petitioner were not found to be true, nonetheless it outlines certain suggestions for enhancements which are reproduced herein below:

1. The current bed occupancy can be improved
2. Department of Dental, Skin and Venereal diseases do not have any beds for IPD. Same should be ensured.
3. The attendance in Cancer Clinic requires improvement by means of advertising and improving patient awareness.
4. The hospital has shortage of ECG technicians in the Casualty.

4. In response to the Petitioner's claim for compensation, the Respondents have filed a detailed reply denying any medical negligence by the hospital or the attending doctors. They have outlined the sequence of events on the day in question and the medical treatment administered to the patient upon her arrival at the hospital. The Respondents assert that there

was no negligence involved in their handling of the situation. Furthermore, they highlight that the Petitioner arrived at the casualty ward exhibiting restlessness and had a known history of uncontrolled hypertension, for which she was receiving treatment externally. It is also noted that Dr. Rajeev Sharma, the Junior Resident on duty, provided emergency medical care and subsequently instructed that the patient be moved to the emergency ward. However, due to her unstable and critical condition, the patient collapsed enroute and was declared deceased, as indicated on the emergency slip.

5. In light of the above factual backdrop, this Court faces a crucial issue regarding the second prayer sought by the Petitioner, which hinges on establishing that the death of the Petitioner's wife was due to negligence the of hospital. Although the Petitioner has not commented on the treatment administered by the doctor at Respondent No.3 hospital, they have in their pleadings stated that the hospital's failure to provide orderlies/wheelchair and not allowing the Petitioner to rest resulted in the demise of the Petitioner's wife as evident from paragraphs extracted herein below:

> 9. That in view of the deteriorating condition of the patient, request was made that either sometime be allowed to the patient to rest in emergency or to provide assistance of orderlies/stretcher bearer. But neither of the requests was acceded to and in spite of discomfort pressure was mounted for immediate shifting of the patient to the ward no. 5 without making available the assistance sought.
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> To direct the respondent GNCT of Delhi for payment of adequate compensation for loss of valuable life due to non-availability of timely help/negligence/non-cooperation of the hospital staff which loss of life could have been averted had the timely relief would have been made available.

Additionally, the Petitioner in their rejoinder has accused the hospital and its staff of contributing to the death of the Petitioner's wife in the following manner:

B. No comments as regards treatment given in the casualty for stabilising the patient but the order regarding transfer of the patient to emergency ward was not complied with by any nursing orderly / stretcher bearer. Nor was there any stretcher / wheelchair which could be made use of by the attendants of the patient.

C. That as per the version on behalf of the hospital that the patient was not stabilised and was in critical condition so it was the duty of the doctor to have directed some nursing orderly for shifting the patient to emergency.

D. Dr Ravi Shekhar, CMO might be on duty but he was not within the access of the attendants of the patient to whom the grievance could be aired for due redressal.

E. The patient did not die in emergency but due to the utter carelessness of the staff and the emergency doctor. The patient could not be controlled by the attendants and therefore, the patient fell down and even at that time the emergency doctor insisted on bringing the patient in emergency without affording any staff / class IV for shifting the patient.

(5) There is no complaint regarding the treatment administered in the casualty but the complaint concerns when the patient was insisted upon to be shifted to Emergency Ward without providing any orderly, wheelchair or stretcher. Therefore, the husband and daughter of the patient with much difficulty had to take the patient to the emergency but meanwhile she could not be handled and as such she fell down and despite that the emergency doctors did not come to the patient and which resulted into her death. Therefore, an element of negligence had been there and no one liked to assist or call the orderlies. Nor was the wheelchair/ stretcher provided contrary to the averment in the WS on behalf of

the hospital that the hospital was equipped wheelchair, stretcher and nursing orderlies.

Conclusively it is inferred that the patient died due to the apathy of the staff and due to non-availability of wheelchair / stretcher. So, it is a case of total negligence where even the CMO had not been within the access of the attendants of the deceased patient.

However, the Respondents deny any negligence on their part and state that the hospital was equipped with wheelchairs, stretcher, and nursing orderlies.

6. The instant matter clearly involves disputed questions of fact, which are not amenable to resolution through instant writ proceedings under Article 226 of the Constitution. It is settled law that when a petition raises disputed questions of facts, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India,[1] particularly so, in cases where tortious liability and negligence is involved.[2] The determination of medical negligence involves intricate questions of fact which are unsuitable for adjudication under writ jurisdiction. This view was reaffirmed by a Division Bench of this Court in ***Kamla Devi v. Union of India & Ors.***[3] In light of the above, this Court is mindful of the delicate balance required when handling allegations of medical negligence. Therefore, the second prayer sought in the present petition, cannot be granted. The Petitioner shall be free to take recourse to appropriate civil remedy available in cases of Negligence or any other remedy as available under law, in case the Petitioner were to seek compensation from the State for the loss of life of the Petitioner's wife.

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[1] ***Harpati v. State (NCT of Delhi)***,2023 SCC OnLine Del 4607
[2] ***Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das*** 7 SCC 298
[3] *LPA 55/201*

7. As regards the first prayer, the Court relies on the inspection report and the recommendations provided therein. This Court notes that the inspection report is based on the inspection conducted 4th September, 2023, which is more than 2 years post the death of the patient. Nonetheless, the inspection report is found to be relevant as it outlines certain suggestions for enhancements in the hospital as on such date. Accordingly, it is directed that the GNCTD carefully review the findings and suggestions outlined in the report. The GNCTD is further instructed to implement necessary measures to augment and improve the healthcare services provided in its hospitals. They must address the specific deficiencies identified in the report but also continuously monitor in healthcare delivery across the region. The GNCTD should ensure that these improvements are implemented effectively and expeditiously and take regular updates on progress to ensure accountability and transparency in the enhancement of medical facilities.

8. Before parting, this court also takes note of the enquiry report (Annexure R-1) indicating that Shri. Vivek Goswami, Nursing Orderly, was in fact, drunk while on duty in the hospital. Accordingly, the Respondents are directed to take the necessary disciplinary action under the applicable norms/rules against the said staff member.

9. The present petition is disposed of in the above terms.

SANJEEV NARULA, J

JULY 10, 2024
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