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

\+ W.P.(C) 12880/2024

MOHAMMAD MINHAJ MUSTAQUEEM .....Petitioner

Through: Mr. Davender Kumar, Ms. Usha, Advocates

versus

ETHICS AND MEDICAL REGISTRATION BOARD & ORS.
.....Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Tanishq Srivastava, Mr. Anum Hussain, Mr. Aabhaas Sukhramani, Ms. Bhanu Gulati, Mr. Saurabh Kumar, Advocates for R-1
Mr. Praveen Khattar, Advocate for R-2
Mr. Agir Gupta, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 13.09.2024

CM APPL. 53715/2024 *(Seeking Exemption)*

1. Exemption is granted, subject to all just exceptions.

2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the application stands disposed of.

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4. The Petitioner alleges medical negligence concerning the treatment

provided to his brother at Holy Family Hospital, New Delhi (Respondent No. 3). The factual background relevant to the present petition is summarized as follows:

4.1 The brother of the Petitioner, M. Arshad Aleem[1], was admitted in Holy Family Hospital on 5th April, 2017. Unfortunately, he passed away at the hospital itself on 23rd April, 2017, after remaining in ICU for 19 days.

4.2 The Petitioner contends that upon his brother's admission to the hospital, he was experiencing weakness and was immediately referred to the ICU. Initially, the Patient was placed under the care of Dr. Rajiv Gupta (Respondent No. 4). However, when Respondent No. 4 went on leave on 14th April, 2017, the Patient's supervision was transferred to Dr. Ravi Kamoji (Respondent No. 5).

4.3 According to the medical record, the Patient was diagnosed with Sepsis on 21st April, 2017. Notwithstanding this diagnosis, the records also indicate that the Patient was conscious and capable of communicating at that time. However, as per the records, on 22nd April, 2017, following a colonoscopy procedure conducted at around 11:00 AM, the Patient's condition rapidly deteriorated, necessitating his placement on a ventilator by approximately 1:00 PM the same day.

4.4 The Petitioner asserts that upon witnessing his brother's sudden health decline, he attempted to discuss the situation with Respondent No. 5. However, Respondent No. 5 allegedly became agitated and uncooperative, even threatening to cease treatment. Feeling aggrieved by this response, the Petitioner lodged a complaint with the floor supervisor and subsequently raised his concerns with Dr. Warsi, the Medical Superintendent of the

[1] "the Patient"

hospital.

4.5 After the death of his brother, the Petitioner requested a copy of the medical records from the hospital, which were only provided after a considerable delay. Upon reviewing these records, the Petitioner suspected both an incorrect diagnosis and potential tampering with the documents. Consequently, he lodged a complaint alleging medical negligence and citing the rude behaviour of Respondent No. 5 with the Delhi Medical Council (DMC).

4.6 The Disciplinary Committee of the DMC dismissed the Petitioner's complaint through its order dated 24th February, 2020, which was subsequently confirmed by the DMC in its meeting held on 28th February, 2020, and communicated to the Petitioner vide order dated 18th May, 2020. The Petitioner challenged this order in an appeal before the erstwhile Medical Council of India (MCI). Following the dissolution of the MCI, the appeal was taken up by the Ethics and Medical Registration Board (EMRB) of the National Medical Commission (NMC), which ultimately rejected the appeal through an order dated 22nd May, 2024.

5. Despite the medical opinions rendered in response to the complaint, which found no misconduct on the part of the doctors, the Petitioner remains aggrieved and has filed the present petition. Mr. Davender Kumar, counsel for the Petitioner, has advanced the following submissions:

5.1. The Patient was brought to the hospital with a complaint of low blood pressure and weakness, as indicated in the admission papers. Other than these issues, the Patient was well-oriented, a fact that is also documented in the medical records.

5.2 The medical records show that the Patient's condition was stable after

medication was administered to address the low blood pressure, which was the primary reason for his admission. However, despite this stability and without any further investigation, on 5th April, 2017, the Patient was admitted to the ICU without any clear justification of a serious condition. This suggests that the hospital did not properly adhere to medical guidelines and admitted the Patient to the ICU on flimsy grounds.

5.3 The Patient's condition deteriorated following the colonoscopy. According to the medical records, there is a lack of clarity regarding why the colonoscopy was necessary or why there was a delay in conducting the procedure. Moreover, the hospital failed to inform the Patient's relatives or attendants about the potential complications of the colonoscopy and did not communicate the results of the procedure to them.

5.4 The relatives of the Patient were informed about the colonoscopy only after it had been performed, and even then, the intimation was delayed. The complete set of medical records, including the death summary report and the 'Video Proctoscopy' report, was provided by the hospital after a significant delay. Furthermore, the death summary report contains references to the Patient experiencing symptoms such as altered consciousness and abdominal pain, which are not mentioned in the contemporaneous medical records. This inconsistency raises serious concerns about the accuracy and integrity of the documentation.

5.5 In light of the above, it is evident that this case involves substantial medical negligence. The Patient was not treated with the required standard of care, as demonstrated by the inaccuracies and discrepancies in the medical records, as well as the unexplained deterioration in the Patient's health following the actions taken by the hospital's medical staff. These

factors collectively indicate a failure in the duty of care, rendering the responsible doctors liable for disciplinary action.

6. The Court has carefully considered the arguments presented by both sides. It is pertinent to note that the expert medical bodies, i.e. the Disciplinary Committee of the Delhi Medical Council and the Ethics and Medical Registration Board of the National Medical Commission, have thoroughly examined the allegations raised by the Petitioner. After a detailed evaluation of the medical records and the circumstances surrounding the treatment, both bodies have concluded that there is no evidence to substantiate the claim of medical negligence against the doctors involved. The findings of these authoritative bodies, which are composed of experts in the field, carry significant weight and suggest that the treatment provided to the Patient was in accordance with accepted medical standards.

7. It must be noted that the Petitioner has invoked this Court's jurisdiction under Article 226 of the Constitution of India, owing to the absence of an appellate remedy within the framework established by the Medical Ethics Regulations, 2002, and the National Medical Commission Act, 2019. However, under Article 226, the Court's jurisdiction is not akin to an appellate forum where it can re-evaluate evidence or second-guess the conclusions arrived at by expert bodies, unless it is shown that the decision was patently arbitrary, unreasonable, or perverse. Thus, the ambit of this Court's inquiry is confined to whether the EMRB's decision suffers from any gross procedural irregularity, manifest arbitrariness, or irrationality, warranting judicial interference.

8. At this juncture, it would be apposite to refer to the impugned order passed by the EMRB, wherein they have noted as under:

*"**C. The main point raised by Sh. Mohd Minhaj Mustaqueem, the appellant in his appeal were that**:*

..xx.. *..xx..* *..xx..*

II. *The relative of the patient became doubtful about the treatment of the patient, when his condition got worsened after colonoscopy. The bare perusal of the medical papers of the patient will reflect that the condition of the patient was improving and stable on 22.04.2017 before performing of colonoscopy. Now the questions arises i.e. why colonoscopy was conducted?. Whether the colonoscopy was required in the present case and if so why the same was not done earlier?. Why the conditions of the patient deteriorated after colonoscopy and was first time put on ventilator?*

III. *The behavior of Dr. Ravi Kamoji was extremely rude, unethical and unprofessional.*

IV. *There is gross negligence on the part of the doctor in the treatment of the patient.*

V. *The medical papers of the patient were not immediately supplied to the appellant despite specific request in this regard. The report of the alleged colonoscopy/video proctoscopy and certain other papers were supplied to the appellant after two weeks of the death of the patient. Even after specific request to the Medical Superintendent of the hospital, complete set of medical papers was provided after six weeks of the death of the patient.*

D. *The copy of the appeal was sent to Dr. Rajiv Gupta, Dr. Ravi Kamoji & Dr. Sumit Ray, the current Medical Superintendent of Holy family Hospital against whom the appeal was filed, for their written submission on the appeal.*

I. ***In reply, Dr. Rajiv Gupta*** *submitted that "Mr. M. Arshad Aleem was admitted under him on 05.04.2017. The patient was found to be drowsy, pulse rate110/m. Blood pressure 90/60mmHg, SP02-94, RBS 241 mg%. Sinee. the patient had a fall at home on 31.03.2017 and was a known case of Seizure / Psychiatric disorder as per records of the Hospital; he was admitted being on call on that night. Upon admission, all routine ICU investigations were done. Considering the condition of the patient, he was advised X-ray Abdomen, Ultrasound - Whole abdomen. Surgery opinion. Psychiatry opinion. CECI abdomen*

was done, which revealed rectum and sigmoid colon loaded with focal matter and air fluid levels. Stomach was over distended and dilated, jejunum wall edema but ileum was normal. Medication was given to manage the electrolyte imbalance and provisional diagnosis of Sepsis with septic shock: hypokalemia and sub-acute shifted to intestinal obstruction were made. The patient Mr. Arshad remained in the care of management of Dr. Rajiv Clupta till 15.04.2017 and alter that transferred under Dr. Ravi Kamoji on the personal request of the patient s brother Sh. M. Minhaj Mustaqeem as he was proceeding on leave.

II. *The patient's condition deteriorated after Colonoscopy is false because he was already very sick and had abdominal distension for which both surgeon and gastroenterologist were regularly monitoring the patient. A limited colonoscopy decided upon but as per notes of GE, only proctoscopy upto the Rectum/Sigmoid colon could be conducted and the procedure was discontinued.*

III. *The patient became drowsy after Colonoscopy is again false: the patient was on seizure medicate on and prone to intermittent aggressive behavior requiring sedation. Some sedation is also likely for colonoscopy procedure.*

IV. *The condition of the patient continued deteriorating inspite of all possible investigations conducted and requisite treatment given to the patient by him and subsequently by Dr. Ravi Kamoji".*

V. *Dr. Ravi Baburao Kamoji in his written submission has stated that "Mr. M. Arshad Aleem, the patient was a Chronic case of seizure disorder, had a fall at home and suffered fracture of clavicle, increased somnolence, loss of appetite, not passing stool , decreased oral intake and behavioural disturbance.*

VI. *Based on the these symptoms and initial examination and investigations, a presumptive diagnosis of Toxic Megacolon with pseudo obstruction, LRTI with respiratory failure & Sepsis with AKI with dyselectrolytemia was arrived at & treatment started as per standard protocol.*

VII. *The sole and only contention of the appeal is that of performing of colonoscopy on the patient, further that due to the colonoscopy procedure the patient's condition deteriorated. My submissions to this allegation is that the patient was having*

multiple ailments with respect to passing of stool, loss of appetite, decreased oral intake, abdominal dissention, seizure disorder and so on. Therefore, it was totally necessary and appropriate that the colonoscopy had to be performed to determine cause of gastrointestinal conditions which - the patient was having and was not improving in spite of multi pronged, multi discipline specialists attending on him. Therefore the colonoscopy was a necessary test to augment/ modify the already ongoing treatment for better outcome to the patient.

VIII. *Due to unstable and poor condition of the patient, a very limited Colonoscopy (in effect only proctoscopy was done, as is evident from video proctoscopy report, same was done at bed side without insufflations of air. The best known medical practices were set in motion with multiple specialists' Medical care. However, even the best of treatment and procedures could not save the patient who was suffering from multiple physical, mental and organ failures. It is a mere coincidence that the patient expired a day after the procedure.*

IX. *To maintain good relations with patients/relatives the hospital, Dr. Gupta and myself have apologized to the appellant and the matter has been amicably settled long back. Once again; he condole the death 'of the patient due to multiple medical issues and apologise for the inadvertent words which may have caused hurt and anguish to the appellant".*

15(3) Ethics and Medical Registration Board has further observed:

I. *That the Complaint was filed against Dr. Ravi Kamoji, Dr. Sumbul Aarsi. (the then Medical Superintendent) & Dr. Rajiv Gupta of holy Family Hospital. New Delhi by Sh. Mohd. Minhaj Mustaqueem. The appellant.*

II. *That the doctors, Dr. Rajiv Gupta & Dr. Ravi Kamoji have managed their part in treatment of the patient, Mr. Arshad Aleem as per standard protocol.*

III. *That the doctor, Dr. Rajiv Gupta & Dr. Ravi Kamoji were not involved in Colonoscopy procedure. There is nothing in medical records to suggest any complication related to Colonoscopy procedure.*

ORDER

> ***16.*** *Ethics and Medical Registration Board finds no reason to interfere in the decision ot the Delhi Medical Council in this appeal*
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> ***17.*** *Filing of appeal against EMRB decision: As per section 30(4) of the National Medical Commission Act, 2019, a Medical practitioner or professional who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal to the National Medical Commission within 60 days of communication of such decision.*
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> *This issues with the approval of Ethics &Medical Registration Board"* *[sic]*

9. The explanations provided by Dr. Ravi Baburao Kamoji and Dr. Sumit Ray, the Medical Superintendent of Holy Family Hospital, clarify that the Patient was a chronic case of seizure disorder and had presented with multiple serious conditions, including a recent fall resulting in a clavicle fracture, increased somnolence, loss of appetite, reduced oral intake, behavioural disturbances, and severe gastrointestinal symptoms. The doctors, relying on established medical practices and protocols, engaged multiple specialists and undertook all necessary investigations to manage the Patient's complex condition. Despite their best efforts and the application of appropriate medical care, the Patient succumbed to multiple organ failure and sepsis, a recognized complication in such critical cases.

10. The Petitioner, lacking medical expertise, has not brought forward any independent expert testimony to substantiate his allegations of negligence or malpractice. It is well established in law that in cases of alleged medical negligence, the burden lies on the complainant to demonstrate, with the assistance of medical experts, that there was a deviation from the standard of care expected in the circumstances. In this case, the Petitioner has failed to discharge this burden.

11. The EMRB, as part of its decision-making process, provided ample opportunity for both parties to present their evidence and arguments. The order reflects that a detailed examination of the facts and medical records was conducted. Thus, the concerns raised by the Petitioner in the present petition have already been thoroughly considered by the expert medical bodies. Both Respondents No. 1 and 2, being expert bodies, have reviewed the medical records and concluded that the Patient was treated in accordance with the accepted standards of medical practice. Thus, it appears that multiple specialists and an independent medical board, have reached the same conclusion regarding the standard of care provided. The expert findings confirm that the treating doctors acted with due diligence and that the death resulted from complications of sepsis rather than any alleged negligence.

12. Given these conclusions by expert authorities, the Court finds no reason to interfere with their decision. Without any countervailing expert evidence, the Court finds no basis to depart from the conclusions reached by these specialized medical authorities. Moreover, the findings do not display any arbitrariness or unreasonableness, and the Petitioner's contentions do not provide any compelling evidence to suggest otherwise. This Court cannot substitute its own assessment for that of the medical experts, who have thoroughly examined the case and found no basis for the allegations of negligence.

13. In view of the above, having regard to the limited jurisdiction of this Court under Article 226 of the Constitution of India as well as the detailed and meticulous findings given by the experts, none of the grounds urged by the Petitioner call for any intervention by this Court.

14. Accordingly, the present petition is dismissed.

SANJEEV NARULA, J

SEPTEMBER 13, 2024/ab