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

+ **W.P.(C) 15529/2024, CM APPL. 72355/2024**

SWYAMBHU SWAMI

.....Petitioner

Through: Mr. A. Kumar Srivastava, Mr. Shashank Rai, Ms. Arushi Agrawal, Mr. Yash Prakash Yadav and Mr. Om Prakash Sapra, Advocates.

versus

DELHI MEDICAL COUNCIL THROUGH ITS SECRETARY & ORS.

.....Respondents

Through: Ms. Monika Arora, CGSC with Mr. Kamaldeep. G.P., Ms. Radhika Kurdukar and Mr. Subhrodeep Saha, Advocates for R-2, 4 to 8. Mr. Kunal Sabharwal and Mr. Deepak Mahajan, Advocates for R-9. Mr. Prashant Manchanda, ASC with Ms. Nancy Shah and Mr. Rohan Pratap Singh, Advocates for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

10.12.2024

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1. On 7th November, 2024, this Court passed the following order:

“4. This Court on 9th August, 2024, in WP (C) 10830/2024, directed Ram Manohar Lohia Hospital (“RML”) to take appropriate steps for the examination and treatment of the Petitioner herein. Petitioner states that although RML Hospital commenced the treatment and directed certain tests and physiotherapy, however, despite the orders of this Court, on 20th September, 2024, they referred him back to Safdarjung Hospital, New Delhi.

5. *Issue notice. Counsel mentioned in appearance above accept*



notice on behalf of Respondents.

6. *Counter affidavit, if any, be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.*

7. *Issue notice to the remaining Respondents, upon filing of process fee, returnable on the next date of hearing. On service, such Respondents shall file counter affidavit within a period of four weeks from the date of service.*

8. *Ms. Monika Arora, CGSC representing RML, is directed to confirm to the Court, the reason for referring Petitioner back to Safdarjung Hospital as specified in Annexure P-5 annexed to the petition.*

9. *Re-notify on 25th November, 2024. ”*

2. In compliance with the afore-noted order, Ms. Radhika Kurdukar, counsel for Respondents No. 2, 4 to 8, on instructions from the Head of Department, Orthopaedics Department at the Ram Manohar Lohia Hospital¹ states that after examining the Petitioner, the doctors have concluded that surgery is not the most suitable treatment for the Petitioner's condition. Instead, physiotherapy has been recommended as the preferred course of treatment. She further submits that, should the Petitioner insist on undergoing surgery, RML is willing to proceed, subject to the outcome of a Nerve Conduction Velocity (NCV) test to assess the feasibility and safety of the surgical procedure.

3. In light of the foregoing, the Petitioner is directed to meet the Head of Department, Orthopaedics at RML tomorrow i.e. on 11th December, 2024. During this meeting, the Head of Department shall provide a detailed explanation regarding the proposed course of treatment, considering the

¹ “RML”



Petitioner's current medical condition. The Petitioner, after receiving this professional advice, shall communicate his final decision regarding the treatment to the doctors at RML.

4. At this juncture, it is pertinent to note that the Petitioner was previously treated at Safdarjung Hospital but expressed dissatisfaction with the treatment provided. Consequently, the Petitioner filed a representation before the Delhi Medical Council, alleging negligence on the part of the doctors at Safdarjung Hospital. This history necessitates additional clarity and safeguards to avoid further disputes.

5. Considering the circumstances, the Court deems it necessary to clarify that if the Petitioner opts for surgery, despite the doctors at RML advising physiotherapy as the more appropriate treatment, the decision shall be entirely at the Petitioner's own risk. The Petitioner shall not be entitled to raise any allegations of medical negligence against the doctors performing the surgery in the future. This clarification is to ensure that the doctors at RML, acting in good faith and in the best interests of the Petitioner, are not unduly burdened with potential litigation arising from a procedure they do not recommend as the optimal treatment.

6. With the above directions, the present petition, along with pending application, is disposed of.

7. *Dasti* under the signature of the Court Master.

8. The next date of hearing i.e. 10th January, 2025 stands cancelled.

SANJEEV NARULA, J

DECEMBER 10, 2024/as