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

+ **LPA 254/2025**

SWYAMBHU SWAMI

.....Appellant

Through: Mr. Kamran Malik and Mr. Javed
Hasan, Advs.

versus

DELHI MEDICAL COUNCIL & ORS.

.....Respondents

Through: Ms. Monika Arora, CGSC with Mr.
Subhrodeep Saha, Mr. Prabhat Kumar
and Ms. Anamika Thakur, Advs.
Ms. Harshita Nathrani, Adv. for
Mr. Sameer Vashisht, SC, GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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28.04.2025

CM APPL. 22278/2025

1. Having heard learned counsel for the parties and perused the averments made in the application seeking condonation of delay, we find that the delay has sufficiently been explained and, accordingly, the application is allowed and the reported delay of 73 days in filing the appeal is hereby condoned.

LPA 254/2025, CM APPL. 22279/2025 & CM APPL. 22280/2025

2. This Letters Patent Appeal assails an impugned order dated 10.12.2024 passed by the learned Single Judge whereby after quoting the order passed on 07.11.2024, it has been observed by the learned Single

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Judge that, on instructions from the Head of Department, Orthopaedics Department at the Ram Manohar Lohia Hospital (hereinafter referred to as '*the RML Hospital*'), it was stated that after examining the appellant, the doctors concluded that surgery is not the most suitable treatment for the appellant, instead, physiotherapy was recommended as the preferred course of treatment. It was also informed to the learned Single Judge by the counsel representing the respondents that if the petitioner insists on undergoing surgery at RML Hospital, RML is willing to proceed, subject to the outcome of a Nerve Conduction Velocity (NCV) test to assess the feasibility of and safety involved in the surgical procedure.

3. The learned Single Judge after noticing the aforesaid view expressed by the doctors at RML Hospital directed the appellant to meet the Head of the Department, Orthopaedics at RML Hospital at 11.12.2024. It was further provided in the order that during this meeting detailed consultation regarding the proposed course of treatment, considering the appellant's current medical condition shall be provided. The learned Single Judge also directed that the appellant after receiving the professional advice, shall communicate his final decision regarding the treatment, to the doctors at RML Hospital.

4. The learned Single Judge has also clarified, considering the circumstances, that if the appellant opts for surgery despite the doctors at RML Hospital advising physiotherapy as the more appropriate treatment, the decision shall be entirely at the appellant's own risk and that he shall not be entitled to raise any allegations of medical negligence against the doctors performing the surgery in the future.

5. The learned Single Judge appears to have given the said clarification

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to ensure that the doctors at the RML Hospital, acting in good faith and in the best interests of the appellant, are not unduly burdened with potential litigation which may arise from a procedure they perform but do not recommend as the optimal treatment.

6. Submission on behalf of learned counsel for the appellant is that the directions contained in paragraph 5 of the impugned order are unwarranted and, therefore, the said directions be set aside.

7. The learned Single Judge by the aforesaid impugned order has required the appellant to meet the Head of the Department, Orthopaedics at RML Hospital and the Head of the Department has been directed to provide detailed consultation regarding course of treatment. The appellant thereafter has been directed to communicate his final decision regarding the treatment, to the doctors at RML Hospital.

8. It appears that the appellant was earlier treated at Safdarjung Hospital, however, he expressed his dissatisfaction and consequently he filed a representation before the Delhi Medical Council alleging medical negligence on the part of the doctors at Safdarjung Hospital.

9. Considering the said aspect, the learned Single Judge has expressed his view in the impugned order that these antecedents necessitated additional clarification and safeguard to avoid future disputes.

10. Learned counsel for the appellant states that the appellant does not want to get himself treated at Safdarjung Hospital, rather he will prefer treatment at RML Hospital. Learned counsel representing the appellant categorically states that the appellant does not insist for a particular mode of treatment such as surgery or physiotherapy.

11. In the aforesaid view of the matter, since the learned Single Judge has

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already directed the petitioner to meet the Head of the Department, Orthopaedics at RML Hospital and further that the Head of the Department after examining the appellant shall apprise him of the treatment which is more suitable to him, we do not find any reason to interfere with the order passed by the learned Single Judge. The observation made in paragraph 5 of the impugned order is not a blanket direction or observation, rather the said observation appears to have been made on account of the background of the matter and is also to provide adequate safeguards. The observation is to apply only in case against the advice of the doctors, the appellant insists for surgery.

12. The observations being conditional, in our opinion, do not require any interference by us in this Letters Patent Appeal. The Letters Patent Appeal is thus, hereby dismissed.

13. We also note that pursuant to the order passed by the learned Single Judge, the appellant did not contact the Head of the Department, Orthopaedics at RML Hospital. Accordingly, we provide that in case the appellant contacts the Head of the Department, Orthopaedics at RML Hospital within ten days, he shall be appropriately attended to and the directions given by the learned Single Judge in his order dated 10.12.2024 shall also be given effect to.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

APRIL 28, 2025

N.Khanna

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