



2026:DHC:2055



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 2726/2026**Date of Decision: **26.02.2026****IN THE MATTER OF:**

ASHOK KUMAR

.....Petitioner

Through: Mr. Krishna Chandra Dubey,
Advocate.

versus

GOVT OF NCT OF DELHI & ANR.

.....Respondents

Through: Ms Avni Singh (Panel Counsel-
GNCTD) with Mr Vaibhav Sharma,
Advocates.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)****CM APPL. 13248/2026 (EXEMPTION)**

1. Exemptions allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present petition is for the following reliefs:

"a) direct the Delhi Medical Council to take appropriate action against the Respondent No. 2 for clear medical negligence; and/or
b) grant appropriate amount of compensation to the Petitioner and his family for the loss incurred to them due to the medical negligence and non-chalant attitude of a Govt. medical facility towards the life and health of the Petitioner's wife; and/or

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- c) grant appropriate amount of compensation for the mental and physical harassment suffered by the Petitioner in the process of treatment of his wife and thereafter; and/or
- d) pass such any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. The facts of the case evince a painful narrative concerning the death of the petitioner's wife. It is alleged by the petitioner that medical negligence on the part of the doctors of respondent no. 2—G.B. Pant Hospital resulted in the death of the petitioner's wife late Mrs. Parvati on 22.04.2017.

5. It appears that the petitioner made a complaint to the Delhi Medical Council (hereinafter "**DMC**") concerning the aforementioned act of medical negligence. The Executive Committee of the DMC *vide* order dated 24.04.2018, arrived at the finding that *prima facie* no case of medical negligence was made out. The said order was, thereafter, confirmed by the DMC in its meeting held on 25.05.2018, and an order to that effect was passed by the DMC on 05.06.2018.

6. The petitioner, subsequently, moved the National Human Rights Commission (hereinafter "**NHRC**") on 02.07.2018, however, his case bearing no. 3661/30/0/2018, was closed *vide* order dated 27.02.2021, upon returning a finding of medical negligence not being made out. On 12.07.2021, the petitioner filed an application before the NHRC for reopening his case, and another application dated 02.02.2022 was preferred to seek an opportunity of personal hearing. Both the said applications came to be rejected by the NHRC *vide* orders dated 19.05.2022 and 18.08.2022 respectively.

7. It appears that after the conclusion of the aforementioned proceedings, the petitioner has not taken recourse to the provisions of the Consumer



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Protection Act, 1986 nor has he instituted any civil suit.

8. A bare perusal of the prayer clause would reveal that the petitioner has called upon this Court to arrive at a favourable finding of medical negligence. It is but obvious that a substantive adjudication of the case would require this Court to delve into seriously disputed questions of facts, which the Court under Article 226 of the Constitution, cannot delve into.

9. In ***Radha Krishnan Industries v. State of Himachal Pradesh***¹ the Supreme Court re-iterated the discretion available with the writ court to decline exercise of its powers when disputed questions of facts are involved.

The material portion of the judgement reads as under

“27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

10. This Court in ***IDBI Bank Ltd. v. Power Finance Corporation Ltd.***² while analysing the impermissibility of entertaining writs which have their origin in private and not public law has held as under:

“26. Each of the issues so mentioned above, fall exclusively in the domain of private law and are fundamentally contractual in nature. There is no element of public law that this court finds involved in the present petition. The mere fact that the parties engaging in the contract are State or its instrumentalities, does not in itself make the issue relevant to public law. There is no determination of the rights relating to public law, nor is there a consideration relating to the public at large that needs to be factored in while deciding the dispute so argued by the parties. Issuance of the BGs by the petitioner at the instance of respondent no. 2 in the favour of respondent no. 3 and its encashment is purely governed by the terms of the BGs. The same is the commercial wisdom of the parties. It concerns the legal relationship between the parties involved, namely, the bank and the beneficiary of the guarantee. The enforcement is not the result of any

¹ (2021) 6 SCC 771.

² 2023 SCC OnLine Del 2909.



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administrative order or State act involving the exercise of State power.

...

35. This court cannot countenance the argument that, whereas, otherwise, a dispute owing to its private law origins ought to have been agitated before a civil court, merely because the entity so breaching the contract is a State or its functionary, the case is to be considered under Article 226 of the Constitution of India. Arbitrariness, under Article 14 of the Constitution of India needs to be pleaded in exclusion to claims of pure breach of contract. In the present petition, the petitioner has not been able to persuade this court that the breach so alleged on the part of respondents is of such a nature that it may be considered arbitrary and deserves to be entertained under the writ jurisdiction of this court alone."

11. In the facts and circumstances of the case, and the law discussed above the Court does not deem it fit to entertain the present petition. The petitioner, however, shall be at liberty to take appropriate recourse in accordance with law.

12. With the aforesaid observation and liberty, the instant petition stands disposed of, along with pending applications, if any.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

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