



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

Reserved on: 11th December, 2024
Pronounced on: 20th December, 2024

+ W.P.(C) 4828/2021 & CM APPL. 18188/2024 (for directions to Respondent No. 6/Delhi Medical Council to conduct enquiry)

SHIV KUMAR

.....Petitioner

Through: Mr. Vinay Rathi, Mr. Pratham Sharma, Ms. Ashima Jayal, Advocates

versus

NATIONAL MEDICAL COMMISSION & ORS.Respondents

Through: Mr. T. Singhdev, Ms. Anum Hussain, Mr. Abhijit Chakravarty, Mr. Tanishq Srivastava, Ms. Ramanpreet Kaur, Advocates for R-1/NMC
 Mr. Praveen Khattar, Advocate for R-6/DMC

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The instant case emerges from serious allegations of medical negligence and misconduct levelled against Respondent doctors at Max Super Speciality Hospital, Patparganj, Delhi.¹ According to the Petitioner, these alleged lapses resulted in the loss of his wife's life. Having pursued his remedies before the Delhi Medical Council as well as the National Medical Commission, and being dissatisfied with their conclusions, the Petitioner now invokes the jurisdiction of this Court under Article 226 of the Constitution of India.

¹ "Respondent Hospital"



Petitioner's case

2. The Petitioner claims that the Respondent doctors acted with negligence and disregard, ultimately resulting in his wife's demise. He presents a detailed factual narrative and supporting arguments, aiming to substantiate his charge of professional misconduct:

2.1 The Petitioner's wife, Late Smt. Kamini Gupta, began suffering from severe diarrhoea on 08th October 2016. By 11th October 2016, her condition worsened, prompting admission at Dr. Hedgewar Arogya Sansthan, Karkadoma. The following day, she was diagnosed with Systemic Lupus Erythematosus/Hematemesis, and was subsequently transferred to the Lok Nayak Jai Prakash Hospital.²

2.2 The Petitioner's wife required urgent Intensive Care Unit (ICU) support, which LNJP Hospital could not provide. As a result, she was discharged from LNJP on 13th October 2016, under 'Leave Against Medical Advice'.³ Seeking a suitable ICU, the Petitioner contacted the Respondent Hospital, which assured him of ICU availability, and arranged for her transfer there by ambulance.

2.3 To his dismay, upon arriving at the Respondent Hospital, the Petitioner learned that no ICU bed was actually available. With no alternative at hand, his wife was admitted to the Emergency Department at around 8:10 PM on 13th October, 2016.

2.4 Upon her admission, the Petitioner's wife remained in the Emergency Department, without attention of senior doctors or consultants for over two hours, and until approximately 10:30 PM, no senior consultant examined her. Only a junior emergency doctor, one Dr. Varun Chitransh, took note of

² "LNJP Hospital"

³ "LAMA"



her condition. Although Dr. Chitransh prescribed several injections, they remained unadministered throughout the night of her admission.

2.5 At around 10:30 PM, her condition deteriorated sharply; she began struggling to breathe and required ventilator support. It was only after this incident that she was hurriedly shifted to the Crash room of the Emergency Department. There, Respondent No. 3, Dr. Varun Khanna (a junior resident in Neurology under Dr. Rajesh Gupta), took charge. He ordered an urgent MRI of her brain. However, the same was not performed until the following day, after a delay of around 10 hours from the time of her admission. The EEG and blood tests prescribed for her were also not carried out in a timely manner. Even a chest X-Ray, repeatedly advised by multiple doctors, took nearly thirteen hours to perform.

2.6 According to the Petitioner, the palpable negligence and callousness on part of Respondent No. 3 and Dr. Chitransh resulted in the deterioration of the health of the Petitioner's wife. Around 11:30 PM, a junior doctor, acting under the instructions of Respondent No. 4/ Dr. Naresh Agarwal (Gastro), attended to her as she suffered a cardiac arrest between 11:30 and 11:45 PM. Although the hospital's Cardiology team intervened, directing resuscitation and salvage efforts that briefly restored her, the Petitioner's wife's condition had by that time, already deteriorated.

2.7 After suffering a cardiac arrest, the patient urgently needed an artificial ventilation tube to alleviate her breathing distress. However, the tube placement was inexplicably delayed until 5:30 AM on 14th October 2016.

2.8 Eventually, at 6:00 AM on 14th October 2016, she was placed on ventilator support. Upon enquiry by the Petitioner, Dr. Abhishek Snehy, Emergency doctor, informed him that the MRI Brain test would take



approximately 20-25 minutes. However, owing to the risk associated with keeping his wife off the ventilator for that long, the Petitioner declined to sign the consent form for the MRI test.

2.9 On 14th October, 2016, the Petitioner's wife was repeatedly prescribed injections of NORAD by the ER Team of the Hospital as well as by Dr. Rinkay Ahuja/ Respondent No. 2, to restore her blood pressure and avoid recurring episodes of cardiac arrest. However, despite such prescriptions, she was administered an insufficient dosage of the drug, establishing negligence on part of the Respondent doctors.

2.10 On the very same day, Dr. Abhishek Snehy as well as Respondent No. 3 attended to the Petitioner's wife and prescribed the administration of "injection FENTANYL" at a dosage of 50 mcg per hour. Later, Respondent No. 2 advised a significantly higher dosage of the said injection at 350 mcg per hour. Consequently, a total of 850 mcg of FENTANYL was infused to the Petitioner's wife between 06:40 AM to 11:35 AM. The Petitioner argues that the excessive dosage acted as a "diluted poison", severely deteriorating his wife's already critical state, and ultimately contributing to her death.

2.11 Observing that the patient had developed *bradycardia* (a dangerously low heart rate) and lost a palpable pulse, the doctors supervised another attempt at resuscitation. They informed the Petitioner that his wife was in a critical condition, with negligible chances of survival, and advised him to take her home. Following this, the Petitioner decided to get her discharged from the Respondent Hospital under LAMA.

2.12 The Petitioner's wife returned home with a ventilator support, effectively brain-dead, and passed away roughly three hours after discharge.

2.13 Aggrieved by the medical and professional negligence of the attending doctors at the Respondent Hospital, the Petitioner filed a



complaint dated 16th June, 2017 before Respondent No. 6/ Delhi Medical Council,⁴ alleging medical negligence and overcharging in the treatment of his wife.

2.14 The DMC, after conducting a hearing, passed an order on 05th June, 2018, holding Dr. Varun Chitransh and Dr. Abhishek Snehy responsible for professional negligence of duty. They were issued a warning and were directed to undergo at least one month of training in emergency medicine at a recognised hospital.

2.15 The DMC, while observing negligence on part of Dr. Varun Chitransh and Dr. Abhishek Snehy, took no action against the Respondent doctors, namely Dr. Varun Khanna and Dr. Naresh Agarwal. Furthermore, Dr. Rinkay Ahuja was not even summoned by the DMC, nor did she attend any meetings of the Disciplinary Committee of the DMC. Accordingly, the Petitioner filed an appeal before Respondent No. 1/ Erstwhile Medical Council of India (Now, National Medical Commission).⁵

2.16 However, the NMC, through impugned order dated 23rd December, 2019, concluded that there was no sufficient basis to establish negligence against the Respondent doctors named in the appeal.

2.17 The Petitioner also registered FIR No. 41/2020 dated 26th February, 2020 in P.S. Madhu Vihar under Section 304A of the Indian Penal Code, 1860. Additionally, he filed a suit bearing no. 517/2017 before ADJ, Karkardoma Court, for medical negligence seeking recovery damages of INR 15,00,000/- against the Respondent Hospital.

Impugned Orders

3. Pursuant to the Petitioner's complaint dated 16th June, 2017, the DMC

⁴ "DMC"

⁵ "NMC"



through its Disciplinary Committee, examined the allegations levelled against the doctors, conducted a hearing, and passed an order dated 09th April, 2018, with the following observations:

“In view of the above, the Disciplinary Committee makes the following observations :-

- 1) (a) *The patient, .M.rs Kamini Gupta was a diagnosed case of systemic lupus erythematosus for which she was being treated regularly, she developed diarrhea on 8 October 2016 followed by vomitings. including hematemesis and difficulty in breathing.*
- (b) *She was initially assessed at LNJP Hospital and referred elsewhere due to non-availability of ICU at LNJP, which obviously points to the critical nature of the disease.*
- (c) *When the patient was assessed at Max Patpatganj, where her attendants took her for admission to ICU, she was examined by the attending CMO's who apparently could not assess the severity of the disease and provided no treatment till she suffered cardiac arrest at about 10:30 pm where after she was apparently rushed into the crash centre (emergency resuscitation room) but could not be revived.*
- 2) (I) *It is distressing to note that in Max Patparganj Hospital, despite being triaged 15 times in 15 hours of stay, none of the attending doctors could assign her to a particular consultant or department for management.*
- (II) *On questioning none of the attending doctors could mention anything about the patient's diagnosis and the requirement of treatment thereafter.*
- (III) *She was admitted under a gastroenterologist, who was also Informed only after the cardiac arrest. It was not entirely clear why the patient was admitted under a gastroenterologist and nobody from the hospital could extend a valued explanation for the same.*
- (IV) *Once the patient suffered a cardiac arrest, all other management was directed towards resuscitation and salvaging.*
- (V) *Further, it was only after the cardiac arrest, that the patient was Informed about non-availability of ICU at Max (which was the reason, patient was brought there in the first place).*
- (VI) *The attitude of the attending consultants, their inability to triage a patient correctly for admission and improper and late communication about non-availability of ICU apparently does not speak well of (the institution, its management and the doctors on emergency duty.*

The Disciplinary Committee is constrained to make the following observations:-



- A) *The RMOs present in the emergency department do not seem competent to handle the triaging of seriously ill patients that lead to an illogical decision of admitting the patient under a gastroenterologist.*
- B) *Even if Dr. Varun Chitransh and Dr. Abhishek Snehy lacked the capability of handling the patient the inordinate delay in calling for help from a competent capable senior is inexplicable and is professional negligence of duty. Dr. Varun Chitransh (Delhi Medical Council Registration No. 76400) and Dr. Abhishek Snehy (Delhi Medical Registration No. 5502B) are hereby warned regarding the same and directed to undergo at least one month of training in emergency medicine in a recognized hospital, it is the responsibility of Max Super Speciality Hospital to ensure such training.*
- C) *The Medical Superintendent of Max Super Speciality Hospital is hereby directed to make available 24 hours service of a competent and responsible emergency physician, who is at least an M.D.(Internal Medicine) or M.D. (Emergency Medicine) and available within minutes to guide the RMOs, failing when the Committee will be forced to recommend a suspension of emergency services at the hospital.*
- D) *It is distressing that a Senior Resident Medicine Dr. Amrit Singh Matharu who was available in the emergency but was called to see the patient only after the cardiac arrest. This indicates that the triaging process of the hospital is meaningless and directionless.”*

3.1 The said order of the Disciplinary Committee was taken up for confirmation before the DMC, and was referred back to the Committee for considering certain issues. In this regard, the Committee passed subsequent order dated 14th May, 2018, in the following terms:

“The Order of the Disciplinary Committee dated 9th April, 2018 in complaint No. 2130 of Shri Shiv Kumar r/o 2552 Choori Walan; Bazar Sita Ram, Delhi-110006, alleging medical negligence on the part of doctors of Max Hospital Patparganj, Delhi-110092, in the treatment administered to complainant's wife Smt. Kamini Gupta, resulting her death on 14.10.2016, was taken up for re-consideration In terms of the Council minutes dated 19th April, 2018 wherein the Council observed that the matter be referred back to the Disciplinary Committee for considering on the following Issues :

(a) There appears to be discrepancy in the observations made at point (c) in the Disciplinary Committee's Order where it is mentioned that no treatment was provided till the patient suffered cardiac arrest at about 10.30 p.;, as the medical records of the Max Hospital reflect that from the time of admission at Max Hospital, the patient was given treatment.



(b) It is further noted that the patient was seen by the neurologist within two hours of her admission; which it seems has been overlooked by the Disciplinary Committee.

(c) In reference to observations made at point 2(ii) in the Disciplinary Committee's Order, it is noted from the case file that all consultants have investigations and treatment.

(d) It is further observed that the observations made at point (c) in the Disciplinary Committee's Order may be re-considered in light of the fact that the functioning of hospitals pertaining to administration do not falls within the purview of the Delhi Medical Council.

On consideration of the aforementioned issues raised by the Council, Disciplinary Committee makes the following observations:

(a) & (C) It Is observed that if a patient has been referred for ICU admission, a delay of two hours does not seem to be justified or reasonable. The triaging done failed to designate the case to a particular specialist. No plausible justifiable explanation was found in the record as to why the patient was admitted under a gastroenterologist in the first place and then subsequently seen by a neurologist.

(b) It is observed that nothing has been overlooked by the Disciplinary Committee.

(d) Triaging process is a meaningful clinical process, not an administrative process.

The Disciplinary Committee reaffirms its Order dated 9th April, 2018."

3.2 The comments of the Committee noted in the final order dated 05th June, 2018, which was provided to the Petitioner, read as follows:

"The subsequent Order dated 14th May, 2018 of Disciplinary Committee after reconsideration, was placed before the Delhi Medical Council in its meeting held on 25th May, 2018 for confirmation.

The Council confirmed the Orders dated 9th April, 2018 and 14th May, 2018 of the Disciplinary Committee.

The Council also confirmed the punishment of warning awarded to Dr. Varun Chitransh(Delhi Medical Council Registration No. 76400) and Dr. Abhishek Snehy (Delhi Medical Registration No.55028) by the Disciplinary Committee. The Council further directed that they should undergo 30 hours of Continuing Medical Education (C.M.E.) on the subject of "Emergency Medicine" within a period of six months from the date of the Order and submit a compliance report to this effect to the Delhi Medical Council.

The Council further observed that the Medical Superintendent, Max Hospital should ensure that Emergency Department in the Hospital is manned by a doctor who is a post-graduate in the field of medicine having



adequate experience especially in handling emergency cases.

The same is to be incorporated in the final Order. The Order of the Disciplinary Committee stands modified to this extent and the modified Order is confirmed.”

4. Being dissatisfied with the DMC’s failure in taking action against the Respondent doctors, the Petitioner challenged the order dated 05th June, 2017 before the Medical Council of India, the predecessor of National Medical Commission. The NMC, passed the final impugned order dated 23rd December, 2019 to the following effect:

“ORDER

I am directed to inform you that the Ethics Committee at its meeting held on 10th & 11th August, 2019 considered the matter with regard to appeal dated 03.08.2018 filed by Sh. Shiv Kumar against order dated 05.06.2018 passed by Delhi Medical Council.

The Ethics Committee of MCI decided as under:-

“... the Ethics Committee at its meeting held on 30th and 31st August, 2018, considered an appeal dated 03.08.2018 filed by Sh. Shiv Kumar against order dated 05.06.2018 passed by Delhi Medical Council.

The Ethics Committee on scrutiny of appeal and perusal of documents noted that the Delhi Medical Council through its Disciplinary Committee examined a complaint of Sh. Shiv Kumar, Bazar Sita Ram, Delhi alleging medical negligence on the part of doctors of Max Hospital, Patparganj, Delhi in the treatment administered to complainant's wife Smit. Kamini Gupta, resulting her death on 14.10.2016.

Further, the Committee noted that the appellant namely Sh. Shiv Kumar initially filed a complaint dated 16.06.2017 before the Delhi Medical Council and now he has filed an appeal before the Medical Council of India alleging gross medical negligence on the part of Dr. Varun Khanna, Dr. Rinkay and Dr. Naresh Agarwal of Max Super Speciality Hospital, Patparganj, Delhi.

The Committee further noted that the Delhi Medical Council after examination of complaint and hearing all the concerned doctors and others, passed an order on 05.06.2018, the relevant part of the order of Delhi Medical Council is as under-

“.....confirmed the punishment of warning awarded to Dr. Varun



Chitransh (Delhi Medical council Registration No. 76400) and Dr. Abhishek Snehy (Delhi Medical Registration No. 55028) by the Disciplinary Committee. The Council further directed that they should undergo 30 hours of Continuing Medical Education (CME) on the subject of "Emergency Medicine" within a period of six months from the date of the Order and submit a compliance report to this effect to the Delhi Medical Council.

The council further observed that the Medical Superintendent. Max Hospital should ensure that Emergency Department in the Hospital is manned by a doctor who is a post-graduate in the field of medicine having adequate experience especially in handling emergency cases."

The Committee further noted that Sh. Shiv Kumar is not satisfied with the decision of the Delhi Medical Council and he has filed an appeal dated 03.08.2018 in the Council Office.

The Ethics Committee further discussed the matter in detail and after detailed deliberation, the Committee decided to accept the said appeal.

The Committee further decided to call both the parties the appellant namely Sh. Shiv Kumar and the respondent doctors namely Dr. Varun Khanna, Dr. Rinkay and Dr. Naresh Agarwal of Max Super Speciality Hospital, Patparganj, Delhi for hearing alongwith all the supportive documents available with them in the next/subsequent meeting.

Whereas, the Ethics Committee of the MCI investigated the matter and recorded the statements of Sh. Shiv Kumar Dr. Varun Khanna, Dr. Rinkay and Dr. Naresh Agarwal.

The above matter was considered by the Ethics Committee at its various meetings and lastly at its meeting held on 10th & 11th August, 2019. The operative part of proceedings of the said meeting is reproduced as under:-

"...the Council vide its letter dated 31.07.2019 directed Dr. Varun Khanna & Dr. Naresh Agarwal to appear before the Ethics Committee at its meeting held on 11th August 2019 along with all the supporting documents related to the case. Dr. Rinkay had already appeared in the previous meeting.

In pursuance to Council office letter dated 31.07.2019, both the doctors namely Dr. Varun Khanna and Dr. Naresh Agarwal appeared before the Committee. Dr. Naresh Agarwal stated the following:



“

I was working in Max Super Speciality hospital, Patparganj as visiting consultant during above case (October 2016).

During the above case I was not assigned any emergency call.

Mrs Kamini Gupta was brought to emergency with altered sensorium with decreased responsiveness, increased stools frequency, respiratory distress, and history of streaks of blood in vomiting (till previous day) on 13th October 2016 around 8.00PM. She was a known case of SLE (systemic lupus erythematosus), systemic hypertension, seizure disorder, LVF (left ventricular dysfunction), and suspected stroke or intracranial bleeding. Initial treatment in form of hemodynamic resuscitation, oxygen inhalation, IV access, and ionotropes, antibiotic, proton pump inhibitors were started by emergency doctors.

During this period she sustained a cardiac arrest and was revived by CPR ACLS protocol.

She was thereafter shifted to crash room of the emergency department for need of artificial ventilation and other emergency life support measures.

I was informed at around 10.30 PM about the case. Though I was not on emergency call day, but as per emergency doctors, some doctor suggested my name for this case. I informed to same emergency doctor that since I am busy with my mother's illness, I will not be able to see her right now, so he may better call "on call" consultant for this purpose.

By the time I got call, patient has had episode of cardiac arrest.

I then called Dr Amrit (SR medicine) (MD, Internal medicine) who saw on my behalf, and I advised for a vasoactive medicine, injectable proton pump inhibitors and antibiotics meanwhile a consultant could see her.

Ryles tube lavage was also suggested which did not show blood at that time.

Decision of doing endoscopy was temporarily deferred, because she was not actively bleeding, and was already on ionotropes.

I called ER in morning whether someone has seen or not. I went to ER in morning, when the patient was still on ionotropes and



artificially ventilated. RT aspirate was still clear. I decided to defer endoscopy. Thereafter I went on leave since I had already applied for leave on 14th October 2016. I told ER colleague to change the admitting doctor's name.

Next day I came to know that patient did not get admit and went LAMA (leave against medical advise) at around 11.35 AM on 14th October 2016,

I left Max hospital in Dec 2016 after surrendering all my OPD to another unit.

I only came to know about this complaint in March 2018 when I was informed by MS/ DMS of Max hospital about the summon from honorable MCI."

All the doctors were heard at length and were also questioned by the Ethics Committee members and submitted their written statements also.

It is clear from the careful observation of treatment charts, case file that adequate care has been taken to treat this lady who unfortunately succumbed to her multiple medical problems.

She had multiple clinical issues like SLE, altered sensorium, Seizure disorder, gastroenteritis, vomiting with some bleed and was in respiratory distress and was advised ventilator support at LNJP hospital. From there the patient was brought LAMA and shifted to Max hospital, Patparganj. She suffered cardiac arrest within a short time of reporting to the hospital. She was resuscitated and put on life support system and was seen by critical care, cardiac, Internal medicine and GE team and advised treatment which was appropriately carried out.

Point wise clarification to the allegations is given below:

- 1. She was taken LAMA from LNJP hospital because of non-availability of ventilator is accepted by the complainant and thus there is no contradiction in the order of DMC. Also the very fact that patient was advised ventilator support at LNJP as mentioned in appeal, means that the patient was critical.*
- 2. Once the Doctors have seen and examined in the emergency, which is well documented, does not merit any comment.*
- 3. The very fact that patient was shifted to crash room at 10.00pm, signifies the worsening condition. Cardiac arrest occurred in presence of the doctor. Cardiac arrest occurred in front of Dr Varun Khanna who has immediately taken action and resuscitated the patient.*



There is no specific dereliction of duty or negligence pointed out which can be called as deficiency in service from the said doctor. Committee does not find any value in this complaint and absolves this doctor completely.

4. *Dr Rinkay has not seen the patient. In emergency as long as the patient has been managed properly, it does not matter who has seen her. When the Concerned specialty doctor has been called and has attended the patient, it cannot be said that so and so doctor should have seen. Thus committee does not find any merit in this complaint as well.*
5. *Dr Naresh Agarwal came in picture because somebody (???) had told the family to contact him. Because it was not this call day and nor was he present there, so he did not see immediately. As the things unfolded, she had more of neurological / cardiac problems and was thus adequately managed by the critical/cardio/neuro team. Patient had no bleed in last 24 hours and so there was no question of any immediate intervention. Committee for this reason also does not find any negligence on the part of Dr Naresh Agarwal and absolves him of all such charges.*

Thus, the committee does not find any basis of negligence against any of the three doctors mentioned in Appeal.

Administrative issues in Emergency Department of the Hospital has been adequately addressed by the State Medical Council and we have not knowingly addressed this issue as no appeal is pending before us regarding that. Thus we dispose of this case as no specific alleged charge against the concerned doctors has been found...."

5. Being aggrieved by the findings of the NMC, the Petitioner has now invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs:

- i. *Issue an appropriate writ/declaration/direction directing the Respondent No. 1 National Medical Commission to punish the Respondent Nos. 2 to 5 for medical & professional negligence to the fullest extent possible, including the removal of their names from the rolls;*
- ii. *Issue an appropriate direction directing the Respondent No. 1 National Medical Commission to pay compensation for injury caused due to mental and physical harassment to the Petitioner.*

Analysis and Findings



6. As a preliminary consideration, it bears emphasis that this Court's jurisdiction under Article 226 of the Constitution is not an avenue for re-assessing the substantive conclusions of expert bodies in matters such as allegations of medical negligence. The Court cannot assume the role of an appellate authority, scrutinizing the merits of intricate medical opinion. The Court's interference is warranted only when the decisions impugned are arbitrary, perverse or manifestly unreasonable.⁶ This Court in *Kamla Devi v. Union of Indian & Ors.*,⁷ observed that cases involving allegations of medical negligence are fundamentally matters of evidence, which can only be resolved through the material presented during the trial of a suit. Further, this Court in *Mohammad Minhaj Mustaqueem v. Ethics and Medical Registration Board & Ors.*,⁸ opined that the jurisdiction of this Court under Article 226 is not analogous to that of an appellate forum, where it may re-assess evidence or reconsider the conclusions drawn by expert bodies. Unless it is demonstrated that the decision in question is manifestly arbitrary, unreasonable, or perverse, the Court would refrain from intervening. Thus, the scope of the Court's inquiry is limited to determining whether the decision of the NMC is tainted by any significant procedural irregularity, evident arbitrariness, or irrationality, thereby justifying judicial intervention. Within this limited frame, the Court proceeds to consider the Petitioner's allegations for assailing the actions of the Respondent doctors, and the allegations of medical negligence levelled against them.

Unavailability of a bed in the ICU

7. The Petitioner contends that the Respondent Hospital had assured him telephonically that an ICU bed was available. This was a key factor that

⁶ Manvir Singh v. BOG in Supersession of MCI & Ors., 2019 SCC OnLine Del 12033.

⁷ 2015 SCC OnLine Del 7109.



prompted him to transfer his wife to the Respondent Hospital. However, on arrival, the Hospital failed to provide the promised ICU bed, which omission itself evidences negligence. In response, Mr. T. Singhdev, counsel representing the NMC, has explained that the Petitioner's wife was promptly placed in the Crash Room of the Respondent Hospital, a facility equipped with comprehensive medical support, including ventilator assistance. He has emphasized that the lack of an available ICU bed did not, in any way, undermine or affect the standard of care provided to the Petitioner's wife.

8. In the opinion of the Court, it is apparent from the record that notwithstanding the availability of the ICU bed, the Petitioner's wife was provided with necessary medical interventions, including the administration of medicines and injections, ventilator support, and was resuscitated twice following instances of cardiac arrest in the Crash Room. As for the confirmation given to the Petitioner regarding the availability of an ICU bed, it is well understood that ICU admissions are highly dynamic and subject to rapid change. It is entirely plausible that the availability of the bed could have changed by the time the Petitioner arrived at the Respondent Hospital. Therefore, the Court does not find this to be a valid ground for concluding negligence on the part of the Respondent Hospital.

Failure of DMC in examining Dr. Rinkay Ahuja

9. The Petitioner asserts that Respondent No. 2/ Dr. Rinkay Ahuja was not summoned by the DMC, and as a result she did not appear for the proceedings conducted by the Disciplinary Committee, despite the grave allegation that she had administered an excessive dosage of FENTANYL to the Petitioner's wife, which contributed to her demise. The Petitioner further argues that Dr. Ahuja, possessing only an MBBS degree, was deficient in

⁸ W.P.(C) 12880/2204.



both the requisite qualifications and experience to competently serve in the Emergency Department. Accordingly, he contends that Dr. Ahuja's non-examination is a critical procedural flaw, given the seriousness of the claims.

10. However, upon a perusal of the complaint dated 16th June, 2017 filed by the Petitioner before the DMC, it becomes apparent that the Petitioner had merely recounted the events leading up to his wife's death without assigning specific responsibility to any particular doctor, in the complaint. The complaint fails to even identify the names of the doctors involved. Nevertheless, the DMC, undertook thorough disciplinary proceedings, examining 11 doctors from the Respondent Hospital, including Respondents Nos. 3 and 4. Given that the Petitioner had failed to identify Dr. Ahuja in his complaint, the DMC cannot be faulted for not having summoned her at that initial stage.

11. Nonetheless, the procedural deficiencies raised by the Petitioner—such as the non-examination of Respondent No. 2, the failure of Respondent Nos. 3 and 4 to submit written statements before the DMC, and the lack of questioning of Respondent No. 3—were all rectified during the appellate proceedings before the NMC. During this stage, the testimonies of the Respondent doctors were duly considered, and the NMC, acting as the appellate authority, thoroughly examined all relevant factors before issuing its final decision. Consequently, the Petitioner's contention regarding the alleged procedural lapses before the DMC, stands cured by her subsequent examination at the appellate stage.

12. With regard to the Petitioner's contention concerning Dr. Ahuja's competence to serve in the Emergency Department, it is evident from the medical records that Dr. Ahuja was a junior doctor, who was managing the patient collaboratively with experienced colleagues, including Dr. Varun



Khanna and Dr. Naresh Agarwal. It is standard practice for both junior and senior doctors to provide care in tandem, and since Dr. Ahuja was not independently responsible for the treatment of the Petitioner's wife, her alleged lack of experience cannot be a ground for attributing negligence to her.

Excessive Dosage of FENTANYL

13. The Petitioner alleges that the infusion of 850 mcg of FENTANYL within a short timeframe was reckless, effectively poisoning the patient and precipitating her deterioration and death. The Petitioner, relying on certain literature, has emphasised that FENTANYL, an opioid with morphine-like properties, is primarily used for pain management and anaesthesia, and requires meticulous caution and precision in its administration. He has argued that the administration of a substantial dose of 850 mcg of FENTANYL, constitutes a grave act of medical and professional negligence, reflecting a serious deviation from the standard of care expected in such circumstances. He has further contended that as per the prevalent practice, the doctors were required to obtain the consent of the patient or the person-in-charge, prior to administering a higher dose of FENTANYL.

14. In this context, a review of the case record reveals that the Petitioner had raised the aforementioned grievance before the NMC. In response, Respondent No. 2 had provided a detailed explanation regarding the calculation of the dosage of FENTANYL administered to the Petitioner's wife, taking into account her specific health condition and weight requirements. This explanation was duly considered by the NMC during its peer review process, following which a reasoned order was passed.

15. Furthermore, the correct administration and dosage of drugs like FENTANYL is a matter that falls squarely within the expertise of qualified



medical professionals. The Court, lacking medical expertise, must trust the domain knowledge of qualified professionals, especially when the decision is the product of a recognized peer-review mechanism. In light of this, the Court, in the exercise of its judicial review, cannot substitute its own judgment for that of specialists and experts,⁹ whose primary responsibility is to uphold the highest standards of medical practice and professional conduct. Judicial interference here, would be unwarranted.

16. In addition, the Petitioner's assertion that FENTANYL alone caused his wife's death is not substantiated by reliable evidence. The Respondents have clarified in the counter-affidavits that the patient's death cannot be solely attributed to the allegedly excessive dosage FENTANYL, but rather was the culmination of multiple underlying medical conditions, which contributed to her overall deterioration.

Treatment under the care of Gastroenterologist

17. The Petitioner further contends that his wife was experiencing breathing distress, a condition that he asserts, falls within the scope of the Cardiology Department. However, he argues that his wife was attended to by Respondent No. 4, Dr. Naresh Agarwal, who holds qualifications in MBBS, MD (Medicine), and DM (Gastroenterology).

18. However, it is crucial to note that at the time of her admission, the Petitioner's wife was primarily suffering from Diarrhoea and Hematemesis. Based on the recommendations of certain doctors, Dr. Naresh Agarwal was consulted as an "on-call" specialist to address this issue. The episodes of breathing distress and subsequent cardiac arrest occurred only after her admission to the Respondent Hospital. Following these developments, she was examined by the Cardiology Department, as noted in the order of the

⁹ Bhushan Kumar Singhal v. National Medical Commission, 2023 SCC OnLine Del 7527.



NMC. In light of these facts, the Court finds no infirmity in the initial allocation of the Petitioner's wife to a Gastroenterologist, given that her primary condition upon admission was gastrointestinal, and the necessary cardiological intervention was provided once respiratory complications became apparent.

Delay in administration of drugs and conduct of tests

19. The Petitioner has also argued that his wife did not receive timely medical attention upon her admission, which he claims contributed to the deterioration of her health. He has further emphasized that the prescribed treatments, including medications and diagnostic tests, were administered with significant delays. In particular, the Petitioner has alleged that his wife was left untreated and unattended for the first four hours of her admission. He has also stressed that despite several critical interventions being prescribed, such as an MRI of the brain and an X-ray Chest, these were not performed within the appropriate time, leading to substantial delays in her care.

20. Yet, the medical records annexed with the petition indicate multiple documented assessments and interventions at regular intervals from 8:10 AM onwards. These are timestamped at 8:10 AM, 10:30 AM, 11:30 AM, 11:45 AM, and so forth, all on the 13th of October, 2016, the day of her admission. These records contradict the Petitioner's claim of a total lack of attention. While the Petitioner may have preferred quicker actions, the doctors had to assess a critically unstable patient, manage immediate crises, and prioritize interventions according to clinical necessity, not family expectations.

21. Regarding the Petitioner's claim of delays in the administration of drugs and tests, Respondent No. 4, in his counter affidavit, has rightly



pointed out that the medical professionals at the Respondent Hospital were under no obligation to act on the recommendations provided by the doctors at LNJP Hospital. They required time to carry out an initial assessment and prepare the necessary documentation before proceeding with the prescribed tests. Additionally, it must be highlighted that doctors are bound to prioritize the well-being of the patient and to administer the most appropriate treatment, in line with established medical practices. They should not be constrained by the expectations or timelines set by the patient's family, but guided by medical necessity and professional judgment.

22. Furthermore, while the Petitioner has raised concerns regarding the delay in conducting the MRI Brain test, it is significant to observe that the Petitioner has admitted in his petition that he refused to sign the consent form for the test, citing his apprehension about the doctors' alleged callousness. In response, Respondent No. 2, in her counter-affidavit, has clarified that the Petitioner's wife was a known case of seizure disorder, which necessitated MRI as a diagnostic measure to rule out any potential abnormalities or lesions. However, the Petitioner chose not to proceed with the test, prioritising the continuity of ventilator support for his wife over the test itself. In view of the aforementioned facts and circumstances, the Court is of the opinion that the Petitioner's expectation regarding the timeline for conducting tests or administering medication cannot override the professional judgment of the attending doctors. The actions of the medical professionals, as detailed in the case, have already been subject to a thorough peer review by the NMC.

Unavailability of Senior Doctor

23. The Petitioner has further contended that his wife was not attended to by a Senior Doctor/ Consultant, which, in his view, deprived her of the best



possible care from a qualified expert. In this regard, it is noted that the DMC, in fact, acknowledged the lapse on the part of Dr. Varun Chitransh and Dr. Abhishek Snehy in referring the case to a more experienced senior doctor. Furthermore, the DMC observed that Dr. Amrit Singh, a Senior Resident in Medicine, who was available in the Emergency Department, was only called to assess the Petitioner's wife after the occurrence of cardiac arrest. Based on these findings, the DMC directed both Dr. Chitransh and Dr. Snehy to undergo at least one month of training in emergency medicine at a recognized institution. Additionally, the Respondent Hospital was directed to ensure the availability of an emergency physician with qualifications such as M.D. (Internal Medicine) or M.D. (Emergency Medicine) on a 24-hour basis, capable of providing immediate guidance to the Resident Medical Officers. The DMC further warned that failure to comply with this directive could result in the suspension of the Hospital's emergency services. In light of these actions, the Petitioner's grievance regarding the unavailability of a Senior Doctor has been duly addressed and adjudicated upon by the DMC.

24. As for the present Respondent doctors, it is pertinent to note that Respondent No. 4, the only senior doctor among them, has stated that he was on leave on 13th October 2016, the day of the Petitioner's wife's admission. However, after certain emergency doctors recommended his name as an "on-call" consultant, he was contacted following the first cardiac arrest suffered by the Petitioner's wife. Dr. Amrit Singh, who had been attending to the patient, provided a telephonic briefing to Respondent No. 4. The following day, 14th October 2016, Respondent No. 4 arrived at the Hospital, fully briefed about the patient's condition, and attended to her at 9:00 AM. In light of these circumstances, Respondent No. 4 contends that he



cannot be held responsible for any alleged negligence, as he was on leave on the 13th of October and resumed his duties after being thoroughly updated on the 14th.

25. In light of the foregoing, the Court is of the view that the unavailability of Respondent No. 4 due to his leave cannot, in itself, serve as a sufficient basis for attributing medical negligence to him. Respondent No. 4 performed his duties on-call on the day in question and, after being adequately briefed, attended to the Petitioner's wife the following day. Regarding the responsibility of the Respondent Hospital in ensuring the availability of a senior doctor, the DMC has already duly considered this issue, and issued appropriate directions to the Hospital. Therefore, the Court finds no merit in the Petitioner's demand to hold the Respondent doctors personally culpable for the absence of a senior doctor at the patient's admission.

False affidavit filed by Respondent No. 4

26. The Petitioner has further accused Respondent No. 4 of providing a false statement in his reply before the DMC, asserting that his wife suffered the first cardiac arrest two and a half hours after her admission, at 10:30 PM, rather than the actual time of 11:30- 11:45 PM. The Petitioner contends that this alteration of timing was intentionally made to shield Respondent No. 3, who was attending to the Petitioner's wife at the relevant time.

27. Respondent No. 4 clarifies that given a two-year gap and reliance on hearsay (as he was not physically present at the critical juncture), his recollection might be imprecise. Such minor discrepancies in timing, absent any other evidence of *mala fides*, do not amount to deliberate falsehood or justify imputing perjury.

28. The Court finds that this alleged inconsistency, considered in light of



the entire factual matrix and the NMC's endorsement of the Respondents' explanations, does not indicate misconduct. The lapse of time and the complexity of events plausibly explain why exact timestamps may vary in recollections.

Discharge from Respondent Hospital

29. The Petitioner has further contended that the doctors at the Respondent Hospital advised him to discharge his wife, knowing her grim prognosis, to save further costs. He insinuates that this counsel was tantamount to abandonment. He claims that, acting on the advice of the Respondent doctors, he made the decision to have his wife discharged under the condition of LAMA.

30. In response, the Respondents have contended that the patient was discharged against medical advice, with full disclosure of all associated risks and consequences and that it was the Petitioner's own decision to remove her from the Hospital's care. Furthermore, the discharge slip from the Respondent Hospital clearly indicates that the Petitioner opted to take his wife home, explicitly stating that the discharge was under LAMA, a fact which the Petitioner has admitted in the writ petition. Therefore, the Petitioner cannot attribute any negligence to the Respondent doctors in this regard, as the discharge was carried out voluntarily and with full awareness of the risks involved.

Constitution of Disciplinary Committee of the DMC

31. The Petitioner further challenges the composition of the Disciplinary Committee of the DMC, specifically to the inclusion of Dr. Atul Goel, whom the Petitioner identifies as a specialist in the field of Medicine. The Petitioner contends that, since his wife was suffering from breathing distress, her condition pertains to the Cardiology Department. He argues that



the appointment of Dr. Atul Goel is in contravention of Article 21(1)(v) of the Delhi Medical Council Act, 1997,¹⁰ which mandates that the Disciplinary Committee must include an eminent medical specialist in the relevant field pertaining to the complaint, as nominated by the DMC. Consequently, the Petitioner maintains that the nomination of a doctor from the Medicine Department, rather than from the Cardiology Department, constitutes a violation of the provisions of the DMC Act.

32. However, it is imperative to note that while the Petitioner's wife experienced breathing distress and suffered cardiac arrests at the Respondent Hospital, she was not, in fact, admitted under the Cardiology Department. Moreover, the Petitioner's principal grievance before the DMC centred around the alleged mishandling of medications, particularly the dosage of FENTANYL, rather than on a purely cardiological intervention. In light of the same, the Court finds no infirmity in the appointment of an expert from the Department of Medicine to the Disciplinary Committee of the DMC. General medicine specialists are well-equipped to evaluate the standard of care in administering potent drugs. Thus, the Court finds no violation of the statutory requirement, and the Petitioner's objection on this point is unfounded.

NMC's observation with respect to Dr. Rinkay Ahuja

33. The Petitioner has contended that the NMC has committed a glaring error in observing that "*Dr. Rinkay Ahuja has not seen the patient*". He contends that the medical record of the patient at the Respondent Hospital as well as the affidavit filed by Dr. Ahuja before the NMC clearly demonstrate that Dr. Ahuja did, in fact, attend to the his wife.

¹⁰ "DMC Act"



34. With respect to the aforesaid contention, Mr. Singhdev has clarified that Dr. Ahuja, did indeed, attend to the Petitioner's wife. He has explained that the observation recorded in the impugned order of the NMC pertains specifically to the patient's treatment in the Emergency Department on 13th October 2016. It is, therefore, undisputed that Dr. Ahuja attended to the Petitioner's wife on 14th October 2016, a fact that is duly recorded in the medical records of the Petitioner's wife at the Respondent Hospital. This clarification resolves the alleged discrepancy, and the Court finds no prejudice arising from the NMC's observation, which must be understood in light of the changing timeline of the treatment and the differing roles doctors played on specific dates.

Conclusion

35. At this concluding juncture, it is apposite to recall the enduring principle enunciated in the landmark judgement of ***Bolam V. Friern Hospital Management Committee***,¹¹ whereby it was held as follows:

“Mr. Fox-Andrews put it in this way, that in the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. That is a perfectly accurate statement, as long as it is remembered that there may be one or more perfectly proper standards; and if he conforms with one of those proper standards, then he is not negligent.”

36. Bearing this principle in mind, it is paramount to remember that medical negligence is not established by mere dissatisfaction or the assertion of an “expected” standard of care. Instead, the yardstick is whether the doctor's conduct and opinion fell below that of a reasonably competent practitioner in similar circumstances. While it is acknowledged that doctors are expected to apply a reasonable level of expertise and exercise due diligence in their practices, their conduct must not be judged against



preconceived notions of a specific procedure or outcome. Consequently, the proper criterion for determining medical negligence lies in assessing whether the actions of the doctor fall below the accepted standards of a reasonably competent practitioner within the relevant field. Therefore, a doctor cannot be deemed negligent provided they discharge their duties with reasonable skill and competence.¹²

37. With this in perspective, the Court has examined the Petitioner's numerous allegations in light of the findings of DMC and NMC as well as examined the grounds and contentions urged by the Petitioner to assail the actions of the Respondents. The DMC's order dated 05th June, 2017 indicates that their Disciplinary Committee conducted a proper hearing, examined the evidence, and determined some shortcomings on part of Dr. Chitransh and Dr. Snehy, and remedied this by prescribing training and recommending enhanced emergency protocols.

38. The NMC, acting as an appellate authority, deliberated afresh over the Petitioner's grievances. NMC duly noted that the Petitioner's wife was suffering from multiple clinical conditions, for which she was advised ventilator support at LNJP Hospital. They observed that after being transferred to the Respondent Hospital, the Petitioner's wife suffered a cardiac arrest shortly after admission, was resuscitated, placed on life support, and treated by critical care, cardiac, Internal medicine and GE team and advised treatment, which was appropriately carried out. Following a review of the medical records and the course of the treatment, the NMC determined that there was no credible evidence to support the claim of medical negligence against the doctors involved. The treatment provided by

¹¹ [1957] 1 WLR 582.

¹² Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480.



the doctors was found to be appropriate. The Court is of the view that none of the grounds raised provide any basis to conclude that the orders of the DMC or NMC are tainted by perversity or arbitrariness.

39. While the Court empathizes with the Petitioner's loss and appreciates the earnestness of his pursuit, it must emphasize that the findings of medical bodies, composed of experts in the field, carry considerable weight. Their determinations, supported by peer review, merit deference unless tainted by palpable perversity or illegality. The Court finds no such grounds for interference. The consistent view of both the DMC and NMC points toward the line of treatment provided considering the patient's complex medical profile, rather than by professional misconduct.

40. In light of the foregoing, the petition is dismissed.

SANJEEV NARULA, J

DECEMBER 20, 2024/ab