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

Date of decision: 05th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 1849/2020**

RAVI RAI

..... Petitioner

Through: Mr. Abhinav Shrivastava and Mr. Shivang Rawat, Advocates.

versus

BOARD OF GOVERNORS IN SUPERSESSION OF MEDICAL COUNCIL & ORS. Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Aabhaas, Sukhramani, Mr. Tanishq Srivastava, Ms. Anum Hussain, Mr. Bhanu Gulati and Ms. Ramanpreet Kaur, Advocates for R-1.
Mr. Praveen Khattar, Advocate for R-2.
Mr. K.G. Sharma, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. Petitioner has approached this Court challenging the Order dated 05.12.2019, passed by the erstwhile Medical Council of India in an appeal bearing No.MCI-211(2) (92 Appeal/2016 & 03 Appeal/2017-Ethics/169359-66), filed by Respondent No.3 herein.
2. The facts, in brief, leading to the present Writ Petition are as under:



- a) It is stated that the Petitioner slipped from the stairs in his house on 19.06.2016 and sustained injuries. It is stated that he was taken to Fortis Hospital, Shalimar Bagh, wherein he was registered as an In-patient under the supervision of Dr. Ashwani Maichand/Respondent No.3 herein and Dr. Rahul Kakran. It is stated that X-rays were taken on the patient on the very same day and he was informed that he has suffered fracture on his right foot. It is stated that the Petitioner was also asked to get a CT Scan done of his right foot and an X-ray of his left foot and spine. Though this Court does not have the benefit of the X-ray report, but it is stated in the Writ Petition that on 21.06.2016 the Petitioner was informed that he has suffered comminuted fracture on his right foot and he was advised to undergo surgery for screw fixation on his right foot and for left foot and spine, the Petitioner was suggested to undertake physiotherapy. It is stated that the Petitioner was not informed about the hairline fracture which he has suffered on his spine. It is stated that on 20.06.2016 the Petitioner was prepared for the surgery which was to be conducted on the following day, i.e. 21.06.2016.
- b) Material on record suggests that despite the fact that the Petitioner had undergone a hairline fracture on his spine he was administered anesthesia in his spinal cord before the surgery. Material on record also suggests that in spite of operating on the right foot, Petitioner's left foot was operated.
- c) Since the Petitioner suffered injury due to anesthesia being administered on his spine despite there being a hairline fracture



and since instead of his right foot, which had comminuted fracture, his left foot was operated by the Doctors of Fortis Hospital, Shalimar Bagh, the Petitioner herein filed an FIR, being FIR No.424/2016 dated 22.06.2016, registered at Police Station Shalimar Bagh for offences under Sections 336/338/34 IPC against Dr. Ashwani Maichand and Dr. Rahul Kakran.

- d) It is stated that taking cognizance of the newspaper reports and other information a *suo moto* enquiry was initiated by the Delhi Medical Council against Dr. Ashwani Maichand and Dr. Rahul Kakran. The findings of the Disciplinary Committee of the Delhi Medical Council has been dealt with in great detail by this Court in W.P.(C) No.10506/2017 & 10625/2017 wherein this Court has noted as under:

“Findings of DMC's Disciplinary Committee:

13) The Disciplinary Committee, based on the material placed before it, which included the medical records of Fortis Hospital and other documents as also X-ray and the CT scan films, returned the following findings of fact:

(i) On 19.06.2016, Mr. Rai was admitted to Fortis Hospital. In the first instance, he was attended by a casualty medical officer and, subsequently, by a senior resident from the Department of Orthopaedics, who got his right foot and ankle X rayed.

(ii) Mr. Rai was, thereafter, given a below knee plaster-slab to support his right lower limb.

(iii) The case-sheet dated 19.06.2016, recorded the plan of Open Reduction and Internal Fixation (ORIF) of comminuted fracture of the right side.



(iv) *Mr. Rai was made to undergo physiotherapy on 20.06.2016, and made to stand up with the help of support and commence ankle exercise.*

(v) *The physiotherapist, Ms. Dipti Jha, (who was also examined by the Disciplinary Committee), had stated that she was given verbal instructions to ambulate Mr. Rai with the help of a walker.*

(v)(a) *This fact is recorded, evidently, in her case-sheet.*

(vi) *Furthermore, Ms. Dipti Jha deposed that she was aware that nonweight bearing on the right lower limb with the help of walker amounted to transmission of 80% weight on the weight bearing left lower limb.*

(vi)(a) *Ms. Dipti Jha further stated that she was not informed that Mr. Rai had fractured his left foot or the ankle or even his spine.*

(vii) *Dr. Maichand, on being queried, had indicated that he had asked for X-ray of left ankle and foot after he had noticed swelling on the left foot. There was a doubtful fracture of left calcaneus and, therefore, he had instructed that ice packs be put on the left foot and that only toe movements be permitted.*

(vii)(a) *Apparently, it is in these circumstances that Dr. Maichand did not advise application of plaster-slab.*

(vii)(b) *Pertinently, all of this, which, Dr. Maichand stated was not recorded in the case-sheet.*

(viii) *Dr. Maichand did not detect spinal fracture, though, the X-ray report showed fracture of anterior border of L-I spine.*

(viii)(a) *On being queried, Dr. Maichand admitted that he never palpated the spine for any tenderness and that diagnosis of spine fracture was based only on history of pain and X-ray*



and not on any clinical examination.

(viii)(b) Dr. Maichand also stated that he allowed the patient to stand with the help of a walker with only toe movements and that he had not instructed Ms. Dipti Jha, to allow partial weight bearing of left lower limb.

(viii)(c) It is noted, though, by the Disciplinary Committee that Dr. Maichand's statement was not supported by the case-sheet record while the notes of Ms. Dipti Jha, show that she put weight on the left lower limb, and that she was not informed of any other fracture. This evidently emerged from the notes recorded by her on 20th and 21.06.2016.

(viii)(d) Furthermore, the notes of 21.06.2016 of Ms. Dipti Jha, records that „left ankle pain-cum-laser IFT“ was given along with the cold pack.

(viii)(e) This, according to the Disciplinary Committee, was a wrong approach if the fractured calcaneus needed surgery. In other words, laser IFT is never given, if surgery is planned. Therefore, according to the Disciplinary Committee, there was no plan for surgery on 21.06.2016.

(ix) Pre-operative marking of the right lower limb was done on the second toe of right side distal to the margin of the plaster. There was no mark on the left lower limb.

(x) The anaesthetist i.e. Dr. Sharma, on being questioned, informed the Committee that he was told that the surgery had to be done on the right side. Accordingly, he gave spinal Anaesthesia. Since, he got busy with the patient, he did not notice which limb was operated.

(xi) Dr. Kakran informed the Committee that the change in plan i.e. to operate the left foot instead of the right foot was made in the Operation Theatre (OT), when, after removing the plaster on the right lower limb, he found excessive swelling.



(xi)(a) Dr. Kakran claimed that in these circumstances, he thought it fit to operate the less injured left side (which had a hairline fracture) to enable Mr. Rai to bear weight on the less painful side.

(xii) Dr. Maichand, on being queried, admitted that he and Dr. Kakran worked as a team and that it had been agreed between them, albeit, prior to the operation that in case there was excessive swelling found on the right side, the operation would be carried out on the left side. It was admitted though by Dr. Maichand that this was not conveyed to the patient and that even the change of plan to operate on the left side was not conveyed to Dr. Sharma, the Anaesthetist.

(xiii) Furthermore, the Committee found that no written consent of Mr. Rai was taken qua the change of plan or surgery being carried out on the left side.

(xiv) Upon Dr. Maichand being queried, he confirmed that whether or not surgery was conducted on the left foot with a doubtful hairline fracture, weight bearing would mend after eight weeks.

(xv) The Committee concluded that this statement, contradicted the advantage of early surgery in an un-displaced fracture, which was the basis on which, a stand was taken by the two surgeons that surgery of the left foot was in order.

(xvi) There was tampering of the record inasmuch as while there was no pre-operative mark on patient's left limb, the WHO Check-list showed the mark on the left side. The Committee concluded that if the Check-list was in order then, consent for surgery for the left foot ought to have been taken. Furthermore, the record at page No. 52 showed 'cuttings' which could be on account of an attempted tampering of records."



- e) Therefore, the Delhi Medical Council accepted the findings of the Disciplinary Committee and recommended that the names of Dr. Ashwani Maichand and Dr. Rahul Kakran be removed from the State Medical Register of the DMC for a period of 180 days.
- f) It is stated that two separate appeals were preferred by Dr. Ashwani Maichand and Dr. Rahul Kakran before the Medical Council of India. It is stated that the MCI vide order No.132428 dated 23.08.2017, exonerated Dr. Ashwani Maichand on the ground that he was absent on the day of the surgery due to personal reasons and was not present in the operation theatre when the surgery was performed on the Petitioner herein. The MCI vide order No.132428 dated 23.08.2017 sustained the punishment awarded to Dr. Rahul Kakran.
- g) W.P.(C) No.10506/2017 & 10625/2017 were filed by the Petitioner herein before this Court challenging the exoneration of Dr. Ashwani Maichand and for seeking enhancement of punishment awarded to Dr. Rahul Kakran.
- h) This Court *vide* Order dated 20.08.2018 upheld the orders of the Medical Council of India regarding Dr. Rahul Kakran. However, as far as the exoneration of Dr. Ashwani Maichand is concerned, this Court remanded the matter back to the Medical Council of India and observed as under:

“22) I have heard learned counsel for the parties and perused the record. Clearly, on perusal of the record, following has emerged: -



(i) Mr. Rai, on sustaining an injury to his lower limbs and lower back, was admitted to the Fortis Hospital on 19.06.2016, under the supervision of Dr. Maichand, Senior doctor, and Dr. Kakran.

(ii) On 19.06.2016, an X-Ray was carried out vis-a-vis Mr. Rai's right foot followed by CT-Scan of the same foot on 20.06.2016.

(iii) An X-Ray of Mr. Rai's left foot and backbone was conducted on 20.06.2016. On that very day, a CT-Scan of Mr. Rai's backbone was also carried out. The diagnostic test carried out revealed that the bone in the right foot had broken into many parts. In other words, it was a condition of comminuted fracture. Consequently, a decision was taken to perform a surgery on Mr. Rai's right foot. He was informed that the surgery would involve fixation of screws, followed by a plaster-of-paris cast.

(iv) The X-ray of the left foot and the backbone revealed that Mr. Rai had suffered a fracture in these two parts of his body as well.

(v) Mr. Rai undertook two physiotherapy sessions despite the X-ray showing that he had fractured his spinal cord. The Physiotherapist, Dr. Dipti Jha, indicated that she was not informed that Mr. Rai had suffered a fracture in the left foot and the spine.

(vi) The anaesthetist, Dr. Yatish Sharma, was also informed only about the fracture in the right foot.

(vii) Prior to the surgery, the right foot was marked, as the plan was to perform surgery only on that foot.



(viii) The WHO-Check list, though, showed a marking made on the left side, the case record at page 52 showed that certain parts had been scored out. According to the DMC, both suggested tampering of records.

(ix) No consent of Mr. Rai was obtained, prior to the surgery with regard to the possibility of the operation being performed on the left foot. The DMC found that there was “un-displaced” fracture calcaneus on the left foot, which would have united or fused after eight (8) weeks, even if surgery was not performed.

(x) Dr. Maichand had admitted before the DMC that he and Dr. Kakran worked as a team and that even before the surgery, a decision was taken by the two of them to operate the left foot, in case excessive swelling was found on the right foot. It was also found by the DMC that Dr. Maichand had not conveyed this aspect either to Mr. Rai or the Anaesthetist, Dr. Yatish Sharma.”

- i) On remand the Ethics Committee of the Medical Council of India once again examined the facts of the case and held that Dr. Ashwani Maichand had not communicated the fact that he would not be performing the surgery on the Petitioner. The Ethics Committee, therefore, held as under:

“....the Ethics Committee heard the matter and after going through the records and the judgement of the Hon'ble High Court, the Ethics Committee viewed to give warning to Dr. Maichand for not communicating properly to the patients and their relatives as well as for not keeping record properly. As per the available records and on



hearing, spinal stable fracture may be missed commonly and in spinal, stable fractures epidural anaesthesia can be given, depending upon the condition of the patient....”

j) The Petitioner has now once again approached this Court for enhancement of punishment awarded to Dr. Ashwani Maichand and Dr. Rahul Kakran.

3. It is well settled that Courts, while exercising their jurisdiction under Article 226 of the Constitution of India, should not interfere with the decision arrived at by the experts unless it is arbitrary and illegal. Therefore, this Court cannot substitute its conclusion to the one arrived at by an expert Committee on the question of quantum of punishment awarded to the Doctors unless it is so perverse that it shocks the conscience of this Court.

4. It is contended by the learned Counsel for the Petitioner that the Order dated 05.12.2019, passed by the MCI dilutes the Order dated 20.08.2020, passed by this Court in W.P.(C) No.10506/2017 & 10625/2017.

5. Needless to state that MCI cannot dilute a finding given by this Court in its writ jurisdiction. The MCI was only considering the facts limited to the award of punishment to both the Doctors under the erstwhile MCI Act and this cannot be an indicator to decide the deficiency of service, if any, which has to be evaluated by the competent forums in deciding the issue on deficiency in service. It has been stated by the learned Counsel for the Petitioner that proceedings under the Consumer Protection Act, 2019 have been initiated against the Doctors. He has also stated that in the criminal proceedings initiated in FIR No.424/2016, final report has been filed by the Police and the Court of competent jurisdiction is proceeding ahead with the



matter.

6. In light of the above, the Writ Petition is disposed off with an observation that the award of punishment by the MCI cannot be an indicator to decide on any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service which is required to be maintained under law.

7. The competent Courts are directed to proceed ahead with the case on facts without being influenced by the quantum of punishment awarded to the Doctors herein by the MCI.

8. With these observations, the Writ Petition is disposed of. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2023

Rahul