

M. P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BHOPAL

PLOT NO.76, ARERA HILLS, BHOPAL

REVISION PETITION NO.18 OF 2022

(Arising out of order dated 24.01.2020 passed in C.C.No.486/2020 by the District Commission, Gwalior)

1. KESHAV KUMAR SHARMA,

S/O SHRI RAMESHWAR DAYAL.

2. AMIT SHARMA S/O SHRI KESHAV KUMAR SHARMA

3. KU. DEEKSHA SHARMA,

D/O SHRI KESHAV KUMAR SHARMA

ALL R/O VILLAGE & POST-BADAVAAS,

TEHSIL-PICHOR, DISTRICT-SHIVPURI (M.P.)

... PETITIONERS.

VERSUS

1. SUYASH HOSPITAL

THROUGH DIRECTOR DR. P. C. JAIN,

2. DR.PANKAJ JAIN,

S/O DR. P.C.JAIN

BOTH R/O OPPOSITE TELEPHONE EXCHANGE,

JIWAJI CLUB ROAD, GWALIOR (M.P.)

3. SHEETLA SAHAY INSTITUTE OF

MEDICAL SCIENCE (SSIMS) THROUGH DIRECTOR,

CANCER HILL, MANDRE KI MATA ROAD,

GWALIOR (M.P.)

... RESPONDENTS.

BEFORE:

HON'BLE SHRI A. K. TIWARI : PRESIDING MEMBER

HON'BLE DR. SRIKANT PANDEY : MEMBER

COUNSEL FOR PARTIES:

Shri A. K. Shrivastava, learned counsel for the petitioners.

Shri Sandeep Guru, learned counsel for the respondents.

ORDER

(Passed On 27.12.2022)

The following order of the Commission was delivered by A. K. Tiwari, Presiding Member:

The petitioners/complainants have filed this revision petition against the order dated 24.01.2020 passed in C.C.No.486/2020 by the District Consumer Disputes Redressal Commission, Gwalior (For short

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'District Commission') whereby the application filed by the complainants/petitioners for calling an expert opinion with regard to medical negligence was dismissed.

2. The facts of the case in brief are that the wife of the complainant no.1 and mother of complainant no. 2 & 3 Smt. Padma Sharma (hereinafter referred as patient) with complaint of stomach pain was admitted in opposite party no.1 hospital on 04.11.2018 where opposite party no.2 doctor performed surgery. Till 12.11.2018 when there was no relief and condition of the patient deteriorated, the opposite party no.1 and 2 referred to her to Sheetla Sahay Institute of Medical Science, (SSIMS), where she remained admitted from 13.11.2018 12.31am and on the same day she was further referred to Dr. Ram Manohar Lohia Hospital, New Delhi where on the very next day i.e. on 14.11.2018 at 10.15 am she collapsed. In Suyash Hospital she was diagnosed and operated for Hernia. In SSIMS she was diagnosed as obstructed hernia operated/septicemia and in Dr. Ram Manohar Lohia Hospital she was diagnosed as obstructed hernia with septicemia with kidney injury with septic shock. The complainants therefore approached the District Commission alleging deficiency in service on party of opposite party hospitals and doctors. It is alleged in the complaint that the condition of the patient deteriorated while taking treatment at Suyash Hospital Gwalior.

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3. Facts relevant for disposal of this revision are that after service of notice of complaint, the opposite parties/respondents filed reply and affidavit. The complainants/petitioners filed rejoinder. The opposite parties/respondents filed reply to rejoinder which was opposed by the petitioners and has rightly been disallowed by the District Commission. On 20.10.2020, the complainants/petitioners moved an application for calling all the medical treatment papers including case sheets from the opposite party no.1 hospital and also to call an expert opinion in this regard. That application was opposed by the opposite parties.

4. The District Commission vide impugned order dismissed the aforesaid application holding that when the complainants are not agree to case sheets filed by the opposite parties therefore it is not proper to call

medical expert report. Challenging the said order the complainants /petitioners have preferred the present revision.

5. Learned counsel for the petitioners submits that the District Commission has committed grave error in dismissing the application filed by the complainants/petitioners for calling medical expert opinion. The District Commission has ignored the principles laid down by Hon'ble Supreme Court, Hon'ble National Commission and State Commissions in cases of medical negligence. The District Commission has not considered this aspect that since the opposite parties/respondents have filed medical

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record of 100-150 pages and medical literature, only a medical expert can examine those documents. Though the opposite parties are hospital and doctors but their written statement, affidavits and documents cannot be termed as gospel truth. He therefore prayed that the impugned order deserves to be set-aside.

6. On the other hand, learned counsel for the opposite parties/respondents argued that the District Commission has rightly dismissed the application as the complainants/petitioners are trying to linger on the matter.

7. We have considered the submissions made by the parties and perused the material available on record. We find that the complainants/petitioners made a prayer to the District Commission for calling all the medical records regarding treatment of the patient and to send the same to a medical expert to get his opinion. We are of a considered opinion that the medical papers like X-Ray and Pathological Tests reports and other investigation reports as also case-sheets must have been kept by the hospital because as per Indian Medical Council Act, wherein it has been specifically mentioned that Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 03 years from the date of commencement of the treatment in a standard proforma laid

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down by the Medical Council of India. On demanding the same by the patient's attendants it ought to have been provided to them as per Indian Medical Council Act, 1956 and Indian Medical Council Regulations 2002

. Relevant provisions of Indian Medical Council Regulations 2002, Medical Council of India Notification dated 11th March, 2002 are as under:

1.3.2 If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within a period of 72 hours.

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8. The Hon'ble Supreme Court in **Savita Garg Vs National Heart Institute (2004) 08 SCC 56** has held that "The burden is greater on the institution/hospital than that on the claimant. In any case, the hospital is in better position to disclose what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence."

9. If the opposite parties/respondents have treated the patient properly and take care of her and there is no negligence on their part then there is no reason or occasion for them to oppose the prayer of the complainants/petitioners for calling medical expert opinion, if the complainants/petitioners prayed for the same.

10. In paragraph 3 of their reply which is at page 89 in the record of the District Commission, the opposite party no.1 and 2 have stated that the

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opposite party no.1 has done MBBS from Jiwaji University, Gwalior in the year 1963 and done MD in the year 1967 and he had a large experience in Medical field. The opposite party no.1 was retired from the post of Professor & Head of the Department of Medicines from J.A.Hospital Gwalior. He participated in different seminars and conferences and taught junior doctors. When such a highly qualified doctor is director of opposite party no.1 hospital then why the opposite party no.1 and 2 are opposing the prayer of the complainant for calling medical expert opinion.

11. In view of the above, by setting aside the impugned order we allow the application filed by the petitioners before the District Commission. The District Commission is directed as per relevant provisions of Medical Council Regulations 2002 as mentioned hereinabove call all the medical record of the patient from the opposite parties/respondents and thereafter send all the medical record regarding treatment of patient produced by the complainants and the opposite parties to Dean, Gajraja Medical College Gwalior and call a medical expert opinion from the College. The Dean, Medical College is directed to constitute a committee having doctors not below the rank of Assistant Professor in the field of Medicine as also in Surgery having at least 15 years' experience in their field, who after examining all the documents will submit their opinion/report with conclusion without being influenced by the opposite parties doctors to the Dean and

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thereafter the Dean will send the report along with record to the District Commission.

12. In view of the above discussion and under facts and circumstances of the case we set-aside the impugned order passed by the District Commission.

11. Accordingly, the Revision Petition is allowed. No order as to costs.

(A. K. Tiwari)

(Dr. Srikant Pandey)