
(2004) 08 DEL CK 0071
In the Delhi High Court
Case No : Writ Petition (C) 5004 of 2003

Dr. M.M. Bagati

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
— Regulation 8.4, 8.5, 8.6

Citation : (2004) 08 DEL CK 0071

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Arvind K. Gupta, for the Appellant; Maninder Singh and Kirtiman Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner is a qualified doctor and is aggrieved by the decision of the respondent Medical Council of India (for short, "the Council"), suspending the license of the petitioner to practice as a doctor for a period of one year.

2. The incident relating to the disciplinary proceedings against the petitioner arose in September, 1998 when one Shri Nihal Singh brought a child Master Risham at Shivaji Medical Center. The petitioner prescribed certain medicines and it is stated by the petitioner that Shri Nihal Singh never brought back the child thereafter. However, Shri Nihal Singh gave a complaint received by the respondent Council on 04.08.2000. The petitioner denied the allegation of negligent treatment. The petitioner was asked to appear before the Ethical Committee on a rescheduled date of 28.06.2002, but the petitioner requested for postponement of the said date. The petitioner also did not appear on the subsequent date on 25.07.2002 since it is stated that the petitioner was in Mumbai. The petitioner filed a writ petition before this Court being CWP No.

4047/2003 on account of lack of opportunity of hearing to the petitioner. The petitioner was aggrieved by the communication dated 12.05.2003 of the respondent stating that the petitioner had been found prima facie guilty of infamous conduct in respect of medical profession and it had been decided by the Council to remove his name temporarily from the Indian Medical Register for a period of one year.

3. The aforesaid writ petition was disposed of on 06.06.2003. The learned Single Judge of this Court took note of the fact that the Ethical Committee of the Council was likely to meet on 17 and 18.06.2003 and to cut short the litigation and to redress the petitioner's grievance, it was deemed appropriate to dispose of the petition at the request of learned counsel for the parties in the following terms:

""Petitioner shall be summoned to appear before the Ethical Committee of the Medical Council on the dates it is scheduled to meet. The Committee shall afford him a reasonable opportunity of hearing finally and submit its recommendations/report to the Competent Authority. If this report goes against him, impugned order dated 12.5.2003 shall revive and come in force but it shall be open to the petitioner in that eventuality to seek appropriate remedy against that order, if so advised.""

4. That the petitioner thereafter appeared before the Ethical Committee and received the impugned communication dated 30.07.2003 in the following terms :

"" I am directed to state that the General Body of the Council at its meeting held on 16th October, 2002 after taking note that upon information and evidence given by Shri. Nihal Singh, R/o 19/18, Kalyan Puri, Delhi - 110 091 vide letter dated nil have noted that you have committed negligence in the treatment/management of the patient namely Rashim. Hence, you have been found prima facie guilty of infamous conduct in respect of medical profession.

In the light of the above facts, it has been decided by the Council to remove your name temporarily from the Indian Medical Register for a period of one year.

You are, Therefore, requested to appear before the Secretary on 11th August, 2003 at 11.00 A.M. along with your original permanent registration certificate and degrees etc.""

5. The grievance of the petitioner is that the Ethical Committee merely dittoed the findings arrived at by the General Body earlier and that recommendations of the Ethical Committee had to be considered afresh by the General Body before a decision could be taken against the petitioner. The subsequent plea is based on the fact that even the earlier decision dated 12.05.2003, which was impugned in the earlier writ petition, was taken by the General Body.

6. Learned counsel for the petitioner also referred to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter to be referred to as, "the said Regulations"), which are as under:

"" 8.4 Decision on complaint against delinquent physician shall be taken within a time limit of 6 months 8.5 During the pendency of the complaint the appropriate Council may restrain the physician from performing the procedure or practice which is under scrutiny. 8.6 Professional incompetence shall be judged by peer group as per guidelines prescribed by Medical Council of India.""

7. Learned counsel relied upon regulation 8.4 of the said Regulations to contend that the action was not taken within a period of six months and could not be taken thereafter.

8. Learned counsel for the respondent on the other hand, submits that grievance of the petitioner earlier made stood redressed in terms of the order dated 06.06.2003 in CWP No. 4047/2003 and that a consent order was passed therein requiring the petitioner to appear before the Ethical Committee. The Ethical Committee considered the case of the petitioner and even certain queries were put to the petitioner. The opinion of an expert in the field was also asked for from Dr. Arvind Bagga, Additional Professor of Pediatrics at All India Institute of Medical Sciences (for short, "AIIMS"). The opinion is dated 19.01.2002, which had been considered at the time of even the earlier decision against the petitioner. Learned counsel submits that the consent order is clear in its terms that a hearing was to be given by the Ethical Committee and in case the Committee was to agree with the findings arrived at by the competent authority, the earlier order dated 12.05.2003 would stand revived and it is that order which had to be challenged by the petitioner. It is submitted that the issue of the competent authority once again examining the matter would arise only if the Ethical Committee had come to a different conclusion since then the General Body had to consider the report of the Ethical Committee to decide whether to re-affirm its earlier decision or modify the same in terms of the report of the Ethical Committee.

9. Learned counsel referred to the view expressed by Dr. Arvind Bagga, who came to the following conclusion:

"" Perusal of the case records show that the treatment provided at Shivji Medical Center was not satisfactory

1.A 3 - month child with bilateral bronchopneumonia, which was severe enough to necessitate treatment with a third generation cephalosporin and an amino glycoside needs admission and extremely close observation. This was not done and neither was an expert opinion sought.

2. The dosage of medications that were administered was incorrect. In particular, a very high dose (3-4 times" normal) of gentamicin (garamycin) was given. Gentamicin, even in normal doses, can be toxic to the kidneys and close observation is recommended. In this case, a much higher dose was given for five days with no monitoring for renal dysfunction.

3. Further the child was also administered a very high dose of nimesulide and

later, paracetamol and ibuprofen. All cyclooxygenase inhibitors in the doses mentioned, are capable of increasing renal injury during infections and among patients receiving gentamicin (and related drugs).

4. The child was also administered oral corticosteroids, which may have further worsened the systemic infection and increased the risk of renal damage.

5. The dosage of cefaclor that was administered on the third visit (12 September 1998) was 3-4 times the normal dose. Similarly, the combination of oral cefadroxil and cefaclor was irrational and unnecessary.

6. A number of drugs that were administered (loperamide, nimeulide, ibuprofen) are not approved for use in young infants.

The histological evidence of acute tubular necrosis and interstitial nephritis, in the present patient, might be attributed to the combined effects of systemic sepsis and drug toxicity. However, it is difficult to establish whether drug toxicity was the sole cause of acute renal failure. A number of potentially nephrotoxic medications were administered in inappropriate doses and without adequate monitoring. Such treatment has been reported to result in impaired renal function even in completely normal children. In this patient, these could have significantly contributed to the occurrence and severity of renal dysfunction.""

10. Learned counsel, thus, submits that the opinion of a Pediatrician, who is a specialist in the field in respect of which complaint was made clearly showed that the treatment given was not satisfactory and that the medication was administered in inappropriate doses and without adequate monitoring.

11. Learned counsel further referred to the proceedings before the Ethical Committee where the petitioner was posed certain questions and referred to the answer given by the petitioner to certain questions, which are as under:

""Q. It was a 3 months child. was a 3 months child. Being a Surgeon should you have accepted that patient?

A. I agree, I am not a Pediatrician but as a MBBS doctor I treated him.

Q. Without doing any investigation you treated the child for Bilateral Pneumonia. Is it correct?

A. I told him verbally to do some investigations and get the child admitted in the hospital.

Q. Have you got a Nursing Home?

A. No. It is a small clinic in slum area.

Q. Did you think about referring the child to a Pediatrician?

A. I told the father of the child verbally to get the child examined by a Pediatrician.

Q. Did you give the same medication on all the 3 occasions i.e. 7th, 10th and 12th Sept., 1998?

A. Yes, but on 12.9.1998 inject able medicines changed to oral medicines because the child was improving.

Q. Have you mentioned in the prescription the clinical findings?

A. No. I did not do.

Q. Why there was no clinical findings written in the prescription?

A. Nowadays I am doing it as a routine matter and nothing the clinical findings in the prescription.

Q. Have you got any documentary evidence that you had advised the patient for investigations as well as hospitalization of the child?

A. I told him verbally.

Q. You must be aware that medicines which you gave in inject able form need monitoring. Why the child was treated in OPD manner?

A. I advised verbally the father of the child to get the child admitted in the hospital, but he told that he is a poor man and have many children so he could not get the child admitted in the hospital.

Q. Why the child was given Nephrotoxic drugs?

A. The child was not having any renal symptoms and was suffering from Bilateral Pneumonia. Moreover, at Narendra Mohan Hospital they administered Nephrotoxic drugs.

Q. Would you like to add anything more?

A. I have got nothing more to add.""

12. Learned counsel for the respondent submits by reference to the aforesaid that the petitioner, who is a Surgeon, had treated the patient which was really the function of a Pediatrician and did not even take a second opinion. It is emphasized that the investigations to be done are stated to have been verbally informed and the petitioner works from a small clinic in a slum area having no nursing home. Even the clinical findings were not mentioned in the prescription and the answer to the query was that the petitioner was now following the same.

13. Learned counsel for the respondent submits that peers of the petitioner have considered and examined his case and had come to the conclusion against the petitioner.

14. I have considered the submissions advanced by learned counsel for the parties.

15. The scope and ambit of Securitisation of such matters in exercise of

jurisdiction under Article 226 of the Constitution of India is limited to procedural irregularities, which may have been committed or where the finding arrived at is not borne out at all from the material on record. It is to be appreciated that in determining whether the petitioner conducted himself properly in accordance with the norms, it is the peers of the petitioner who have to judge the petitioner. That is the purpose of having the Ethical Committee and the General Body of doctors to come to a conclusion in this behalf.

16. The grievance of the petitioner that he had not got an opportunity earlier before the Ethical Committee was not admitted by the respondents, but in order to put an end to the controversy and to give an opportunity to the petitioner, consent order was assed on 06.06.2003 in CWP No. 4047/2003.

17. In my considered view, the said consent order dated 06.06.2003 leaves no manner of doubt that what had been agreed upon is that the petitioner should get a chance to appear before the Ethical Committee and explain his point of view. If the Ethical Committee agreed with the finding arrived at earlier, then the earlier order impugned in the writ petition dated 25.05.2003 was to revive. The occasion for the General Body to again examine the matter would only arise if the Ethical Committee was to differ with the findings arrived at earlier.

18. I am unable to accept the contention of learned counsel for the petitioner that there was any mandate for the General Body to once again consider the matter even though the Ethical Committee agreed with the decision taken earlier by the Ethical Committed and the General Body. This is apparent from the fact that there would have been no question of revival of the earlier order dated 12.05.2003 in case the General Body had to once again consider the matter even if the Ethical Committee had agreed with the finding arrived at on the earlier occasion. The petitioner should, in fact, have challenged the earlier order dated 12.05.2003, which stood revived as a consequence of the subsequent decision communicated vide letter dated 30.07.2003. The petitioner has impugned only the subsequent communication dated 30.07.2003. Be that as it may, it was deemed appropriate to consider the matter on merits and not on this technicality.

19. The petitioner has had a full chance before the Ethical Committee. The questions and answers posed to the petitioner leave no manner of doubt that the petitioner himself admits not to have followed established procedure. For example, the petitioner greed that being a Surgeon, it may not have been appropriate to accept the patient since the medical problem required a Pediatrician, but justified the same on the ground that he was an M.B.B.S. Doctor. The petitioner has tried to explain the infirmity in his action by stating that he had given certain verbal instructions for investigations. This would be difficult to believe as a professional doctor is required to prescribe what is required to be done including the investigations. The petitioner admitted that in the prescription even the clinical findings were not mentioned and on a query being raised, only replied that now he is doing the same in a routine manner. There is no written instruction for hospitalization of the child.

20. The report submitted by the Additional Professor of Pediatrics of AIIMS, Dr. Arvind Bagga, clearly shows that the conclusion arrived at was that the treatment provided was not satisfactory. The opinion expressed was that the medication was administered in inappropriate doses and without adequate monitoring. A collective reading of all the aforesaid facts gave rise to the conclusion that the petitioner's conduct fell in the category of infamous conduct in respect of medical profession. This finding hardly calls for any interference in exercise of jurisdiction under Article 226 of the Constitution of India, especially given the aforesaid facts and circumstances.

21. The last aspect to be considered is that the plea of the petitioner based on regulation 8.4 of the said Regulations. In my considered view, the object of the said regulation is not that the authorities are without jurisdiction to deal with the complaint on expiry of six months. The regulation has been made to consider the matter expeditiously. There is also force in the contention of learned counsel for the respondent that this regulation has to be read along with regulation 8.5, which provides for the power to the respondent Council to restrain from practice even when the complaint is under scrutiny. It was, thus, submitted that the object was that a person should not be in suspended animation for a long period of time.

22. The present case is one where regulation 8.6 of the said Regulations had been followed as the professional incompetence has been judged by the peer group.

23. I find no merit in the writ petition. Dismissed.