
(2018) 10 DEL CK 0450

In the Delhi High Court

Case No : Letter Petent Appeal No.863 Of 2015 & Civil Miscellaneous Appl.
28932 Of 2015

M K Gupta

APPELLANT

Vs

Dr Ram Avtar Garg & Ors

RESPONDENT

Date of Decision : 23-10-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 10 DEL CK 0450

Hon'ble Judges : Rajendra Menon, Cj;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Nishant Datta, Arun K. Sharma, T. Singhdev, Tarun Verma, Praveen Khattar

Final Decision : Allowed

Judgement

Rajendra Menon, CJ

1. Seeking exception to an order passed by the learned writ court on 10.07.2015 in W.P.(C) 4220/2011 titled Dr. Ram Avtar Garg v. Medical Council

of India & Ors., this appeal has been filed under Clause 10 of the Letters Patent.

2. The appellant herein Shri M.K. Gupta had made a complaint before the Delhi Medical Council against the writ petitioner " Dr. Ram Avtar Garg

to the effect that a child patient was brought to the casualty of Holy Family Hospital, Okhla, New Delhi around 8:00 p.m. on 04.12.2009. The child

was sick for more than three months with various complaints. The child was admitted, examined by a resident paediatrician who was on call duty,

treatment was prescribed in the casualty and ultimately the child was admitted to Room No.324 at 08:30 p.m. The child was examined and finally it is

stated that child died and he was declared dead at 01:08 a.m. on 06.12.2009.

Shri M.K. Gupta filed a complaint with regard to negligence and improper treatment before the Delhi Medical Council which heard four doctors including the appellant Dr. Ram Avtar Garg and finally disposed of the matter by issuing a warning to Dr. Ram Avtar Garg and one Dr. Sachin Jain.

3. Being aggrieved by the warning issued on 07.12.2010, respondent No.2 filed an appeal against the order of the Delhi Medical Council before the

Medical Council of India. The Ethics Committee considered the matter and passed the impugned order dated 18.05.2011 enhancing the punishment of

warning to three months removal of name from the Indian Medical Register as well as the State Medical Register. Challenging this enhancement of

punishment passed on 18.05.2011 by the Medical Council of India, the writ petition in question was filed by Dr. Ram Avtar Garg and the writ court

allowed the writ petition, went into the merit of the matter, the treatment granted and exonerated the doctor of the culpability and quashed not only the

punishment but also held that the doctor has not committed any negligence or misconduct in the treatment. Aggrieved by this order passed by the

learned writ court, this writ petition has been filed.

4. On behalf of the petitioner and the Medical Council of India, primarily two contentions have been raised. The first one was that on 07.12.2010 the

Delhi Medical Council has issued warning to the doctor â?"appellant herein finding him culpable, responsible for negligence and improper treatment

resulting in death of the child. This order passed on 07.12.2010 was never challenged. It had attained finality and Dr. Ram Avtar Garg â?" the

appellant herein did not impugn this order. It was only when on 18.05.2011 that Medical Council of India enhanced the punishment that the second

order dated 18.05.2011 was challenged meaning thereby that the appellant herein i.e. Dr. Ram Avtar Garg only challenged the enhancement of

punishment. It is argued that while considering the question of enhancement of punishment, the learned writ court committed grave error and illegality

in entering into the question of culpability on merit and exonerating the doctor by examining various technical and factual aspects when the original

order of punishment dated 07.12.2010 was never challenged. That apart, it was argued that if Dr. Ram Avtar Garg had any grievance with regard to

the original order passed on 07.12.2010 holding him guilty, he should have challenged it by filing an appeal under Clause 8.8 of the Indian Medical

Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereafter referred to as "the Regulations") before the appropriate

Council and this having not been done, the writ petition directly challenging the enhancement of punishment dated 18.05.2011 was not maintainable.

5. Learned counsel appearing for the respondent " Dr. Ram Avtar Garg tried to indicate that it was the hospital where the child was admitted and

the treatment granted. The doctor could not be singled out for imposing punishment and on merit of the matter he tried to justify the order of the

learned writ court.

6. Having considered the submissions made, we are of the considered view that in this case once the order holding Dr. Ram Avtar Garg culpable and

issuing him a warning was passed by the Delhi Medical Council on 07.12.2010 and when this order was not challenged by Dr. Ram Avtar Garg and it

had attained finality then when challenge was made to the appellate order passed by Medical Council of India on 18.05.2011, only enhancing the

penalty, the learned writ court could have only considered the question of enhancement of penalty and could not go into the merits of the matter and

examine the culpability of the doctor with regard to the merit of the allegation. In entering into the culpability of the matter, while considering the

enhancement order by the appellate authority, namely, Medical Council of India on 18.05.2011 the learned writ court has committed a grave error and

acted in excess of jurisdiction available. That apart, once concurrent findings with regard to culpability were recorded both by the Delhi Medical

Council and the Medical Council of India in their orders passed on 07.12.2010 and 18.05.2011, the learned writ court in exercise of its limited

jurisdiction under Article 226 of the Constitution of India could not act as a further appellate authority and go into the question of culpability on merit,

particularly, when remedy was available to the petitioner Dr. Ram Avtar Garg under Clause 8.8 of the Regulations.

7. In our considered view, the learned writ court has misdirected itself, acted in excess of jurisdiction and interfered into the matter which was not

permissible for the reasons recorded hereinabove. Accordingly, we allow this appeal quashing order dated 10.07.2015 passed by the writ court.

However, we grant liberty to Dr. Ram Avtar Garg, the original writ petitioner and the respondent herein to challenge the orders passed on 07.12.2010

or 18.05.2011 if permissible in accordance with the statutory provision before the statutory authority.