

(2007) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

SARWAT ALI KHAN

APPELLANT

Vs

R.GOGI, INSTITUTE OF OPHTHALMOLOGY

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Citation : 2007 0 NCDRC 64 : 2007 3 CPJ 179 : 2007 3 UC 1731 : 2009 2 COMPLJ 454

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Final Decision : Complaint is partly allowed

Judgement

1. THIS case illustrates how the negligence of the Doctors, staff or defective functioning of the equipments used for surgery/operation can be dangerous to human life or the limb. For the deficiency in service or the negligence nothing more is required to be stated, except the Enquiry Reports submitted by the Enquiry Committees constituted by Dr.Mohan Lal Memorial Gandhi Hospital and thereafter by the District Magistrate, Aligarh, who happens to be the ex-officio President of Dr.Mohan Lal Memorial Gandhi Eye Hospital. The findings reveal that out of the 52 simple cataract operations performed between 26th and 28th September, 1995, 14 persons lost their vision of the eye. (i). Because of the hue and cry raised by the patients a Committee of 3 Doctors was constituted by Dr.Mohan Lal Memorial Gandhi Hospital, Aligarh (for short referred to "Hospital"). They were: Prof. (Dr.) R.Gogi, Dr.Anita Singhal and Dr.Ajay Kr.Saxena, who conducted the enquiry on 30.9.1995 in the presence of Chief Medical Officer, Gandhi Eye Hospital, Aligarh. Dr.R.Gogi is a Senior Academic with the Department of Ophthalmolgy, JLN Medical College and was the Dean of the faculty of Medicine. They have noted that some of the patients who were operated on 26th, 27th and 28th September 1995 have developed infection in the operated eye and the same was detected on 1st or 2nd dressing. They arrived at the conclusion that out of 52 cases operated in the New Operation Theatre from 26th to 28th September 1995, 14 patients developed infection in the operated eye. The findings of the Committee are as under: "On carefully inspecting the New Operation Theatre it was found that the two autoclaves used

in Operation Theatre were not working properly. It must be emphasized that this vital equipment is an absolute necessity to carry out sterilization of instruments, cotton, pads, linen, etc. This is the most important and basic requirement to prevent the infection. Defective functioning of the aforesaid equipment was neither noticed nor reported by the sister incharge, new operation theatre or operation theatre supervisor to the surgeon incharge or Chief Medical Officer, Gandhi Eye Hospital, Aligarh. """" (ii). Thereafter, i.e. on 4.10.1995, the second committee was constituted by the District Magistrate who happens to be the ex-officio President of the Gandhi Eye Hospital Trust, Aligarh, to investigate into the matter in depth because, in all, 14 persons have lost their eyes because of the cataract operations.

2. AFTER examining various doctors as well as the members of staff and the patients, the Committee observed as under: (A) GENERAL I. All 14 cases of ECCE and IOL operated from 26th to 29th September 1995 developed infection out of a total of 64 cases initially noted and reported in 3 cases by Director, Institute of Ophthalmology. Other Consultants later confirmed infection in their cases also. II. Most cases who developed infection have remote chances of regaining vision in the operated eye. Only 2.3 cases may be able to regain only nominal vision of hand movements only. (B). CAUSE OF INFECTION III. There was inadequate and improper sterilization of the instruments, linen etc., and improper fumigation of the Operation theatre. Posting of untrained staff in the OT who lack experience of handling sterilization and fumigation methods and are not in the technical know of the methods, had contributed to the infection. There had been no proper supervision either on both counts. IV. Autoclaves and Hot air oven are not working adequately and considering the rush of work in sterilizing drums for OT and for Wards in New OT, it is not possible to carry out the work properly in the time allotted and to prepare the OT for operations. V. Steps of operation for ECCE and IOL is different from other operations on three different ways, as follows. (a) Use of vision and cannula used for the purpose. (b) Use of two way suction cannula. (c) Ringer Lactate and 1- salt solution. There is, therefore, a possibility that infection could be due to the following additional factors than outlined above. (a) Re-use of vision and Ringer lactate has been denied by the OT staff. However, partially used bottled of vision was recovered by the CMO, GEM from the New OT for culture on 1.10.1995. Its culture revealed Pseudomonas infection. However, Ringer Lactate bottles did not show any positive culture. Visilon is very good medium and in case the remaining visilon in the used bottle is re-used there is a strong possibility of infection being introduced in the eye and transmitted to other patients through inadequate sterilization of the Cannula. It should be autoclaved and in between two operations, time available to autoclave it in defective equipment could be an additional factor as source of infection. (C). RESPONSIBILITY The Committee has done an exercise to pin point the person responsible for the lapse. It has observed that inadequate facilities, faulty equipment, over work and lack of training for each category of staff has resulted in improper sterilization. This has been mainly due to lack of co-

ordination between various functionaries in management and improper maintenance of the equipments and supervision. The aforesaid inquiry reports leave no doubt that there was deficiency in service on the part of the hospital and the staff in not maintaining the autoclaves equipment and other materials which were used before and after the operation.

Observations made by the Apex Court in A.S. Mittal Vs. State of U.P. and Ors. (1989) 3 SCC 223, dealing with similar facts: In A.S. Mittal's case (Supra) also, the Lions Club carried a cataract operation in a camp, wherein the operated eyes of the patients were irreversibly damaged owing to a post-operative infection of the Intra Ocular Cavity of the operated eyes. The Court observed that the terrible medical mishap was due to a common contaminating source.

3. FOR the unhygienic maintenance of the hospital, the Court has observed as under: "The necessity of maintenance of the highest standards of aseptic and sterile conditions of places where Ophthalmic surgery or any surgery is conducted cannot be over" emphasized. It is not merely on the formulation of the theoretical standards but really on the professional commitment with which the prescriptions are implemented that the ultimate result rests. Government, States and Union, incur enormous expenditure of public money on health care. But the standards of cleanliness and hygiene in public hospitals unfortunately, leave greatly to be desired. The maintenance sterile, aseptic conditions in hospitals to prevent cross-infections should be ordinary, routine and minimum incidents of maintenance of hospitals. Purity of the drugs and medicines intended for man-use would have to be ensured by prior tests and inspection. But, owing to a general air of cynical irreverence towards values that has, unfortunately, developed and to the mood of complacency with the continuing deterioration of standards, the very concept of standards and the imperatives of their observance tend to be impaired. This is a disturbing feature. The remedy lies in a ruthless adherence to the virtue of method and laying down practical procedures in the minutes of detail and by exacting, not merely expecting, strict adherence to these procedures."

4. THE observations made by the Apex Court are neither noticed by most of the Government Hospitals and/or charitable hospitals including the private hospitals nor any effort is made by the concerned heads of the departments in improving the standards and maintaining cleanliness and hygiene in public hospitals. Also for the drugs and medicines which are to be used for the patients, proper prior tests for finding out the required standards and purity are not carried out. Had the aforesaid observations of the Apex Court been followed, such incident would not have occurred and would not recur in future. It is to be stated that this results in irreparable damage either to the life or the limb of the patient. It is hoped that the concerned departments of the Government and also the Medical Council of India would take appropriate steps in maintaining the proper standards. In the present case, it is the case of the Complainant that in the month of September, 1995, the complainant consulted Dr. R. Gogi (Opposite

Party No.1) in O.P.D. at Dr. Mohan Lal Memorial Gandhi Hospital, Aligarh with the complainant of constantly decreasing of vision of both the eyes. During the discussion, the complainant has also narrated the treatment that he had undergone at the All India Institute of Medical Sciences (AIIMS) for the skin disease which is known as pumphigus vulgaris since 1992 till he recovered from the disease. Though the Complainant fully recovered from the skin disease, yet due to intake of high doses of steroids for a period of 3 years during the treatment at the AIIMS, some side effects resulted in cataract in both the eyes. It was more severe in the right eye, and mild in the left eye. Dr. R. Gogi, after thorough examination of the patient and also after examining the medical/ treatment record of the complainant diagnosed that the complainant has developed cataract in both the eyes and decided to perform an IOL cataract surgery, in the first instance on the right eye and fixed the date as 27.9.1995 for the operation. As per schedule fixed by the doctor, the complainant was admitted in private ward A " 26 of Dr. Mohan Lal Memorial Gandhi Hospital on 25.9.1995. An amount of Rs.1020/- towards admission fees for the advance rent of the private ward was deposited in the Trust Fund A/c of Dr.Mohan Lal Memorial Gandhi Hospital, vide receipt No. 2113 dated 25.9.1995.

5. ON 26.9.1995, the complainant was asked by the Administration of the Hospital to deposit a further sum of Rs.1,000/- towards the cost of Intra Ocular Lens, and the same was deposited on 26.9.1995.

6. AFTER performing the operation on 27.9.1995, the complainant was asked to come for check-up on 28.9.1995. It is his say that even though the complainant informed Dr. Gogi that since last night he was feeling severe pain in the operated eye apart from severe headache and that he could not sleep for the whole night, Dr. Gogi did not pay any heed and asked the complainant not to worry. Again, on the next day, the complainant visited the hospital to inform Dr. Gogi that there was no improvement in the pain. However, Dr. Gogi was not available but Dr. Amitava (Opposite Party No.3) was present and he found that the eye was infected, and, therefore, some local operation was performed by him. Thereafter, the complainant has lost complete sight in his right eye. He contents that no consent was taken for the 2nd operation. Hence, this complaint is filed claiming, in all, a sum of Rs.30 lakhs " Rs.10 lakhs for physical effects; Rs.5 lakhs for Psychological effects; Rs.5 lakhs for disability/disfigurement; Rs.5 lakhs for effects on future career; and, Rs.5 lakhs for pain, suffering and mental torture. As stated above, deficiency in service is established beyond doubt on the basis of the Inquiry Reports of both the Committees constituted by the Hospital and the District Magistrate, Aligarh.

7. THE next question which would require consideration is whether the liability of the Gandhi Eye Hospital, the Doctors and the Aligarh Muslim University is joint and several. For this purpose, we would refer to the written submissions filed by the Complainant on 30th May, 2007. In the said submissions it has been pointed out that both the Director, Aligarh Muslim University and the Chief Medical Officer

of the Gandhi Hospital would plan out for proper administration of Post Graduate man power for mutual benefit of the hospital working and clinical training. For this purpose, the University was paying every year a fixed sum, as agreed between the University and the Hospital. This is made clear by the letter written by the Chief Medical Officer, Dr. D.P. Gupta to the Director of the Institute of Ophthalmology, Aligarh Muslim University.

8. IT is to be stated that the JLN Medical College forms the faculty of medicine of Aligarh Muslim University. Dr. R. Gogi is Senior Academic with the Department of Ophthalmology, JLN Medical College and was the Dean of the Faculty of Medicine. The Institute of Ophthalmology of Opposite Party No.6, JLN Medical College, is located inside the premises of Gandhi Hospital on the basis of the arrangement between the Hospital and the University. Even the Gandhi Eye Hospital, a famous specialist hospital in India, is run by a charitable trust and semi-aided by the Government. It is stated that the Gandhi Eye Hospital is now having 650 beds, 4 private wards, 7 general wards, 4 operation theatres, 17 OPDs and its won surgeons, doctors, nurses and staff, all of whom are appointed through a selection committee headed by the District Magistrate, Aligarh. Further, Respondent No.3, Dr. Amitava of the Institute of Ophthalmology has brought on record the letter dated 23rd November, 1995, which reads as under: "The 7th respondent brought on record the letter dated 23.1.1997 whereby it was decided that the yearly grant of Rs.2 lacs given by Aligarh Muslim University, the 7th respondent to the 5th respondent Gandhi Eye Hospital, should be increased. In the said letter it has been unequivocally admitted as under: "The matter was discussed in details and it was realized that the facilities are already available in the out-patient department and they are being utilized by the doctors of the institute of Ophthalmology. That all the wards of the hospital including the diction ward will be treated equally as regards facilities are concerned. Gandhi Hospital provided facilities of much costlier equipments than asked for which are acquired recently at the cost of several lacs of rupees. It was also discussed that the Director, Aligarh Muslim University, Institute of Ophthalmology and Chief Medical Officer of Gandhi Hospital will plan out for proper administration of Post Graduate man power for mutual benefit of the hospital working and clinical training."

9. FURTHER , the Gandhi Eye Hospital, has filed an affidavit and has brought on record the letter dated 23.11.1995 along with copies of two agreements stating in detail about the inter se relationship of the hospital and the University. The relevant part is as under: "12. The services of such members of the staff of the Gandhi Eye Hospital as may be necessary will be utilized by the Institute on a part time basis. The practical training will be imparted at the hospital under the supervision of the Director of the Institute. 15. The Gandhi Hospital will be at the disposal of the aforesaid Institute for teaching and research purposes to the extent of and subject to such conditions as may be laid down by the Executive Committee of the Trust and to the extent allowed by the terms and provisions of the Gandhi Eye Hospital Trust Deed. 16. The equipment of the Institute will be purchased by the University and will be their property. 17. The surgeons of the

Gandhi Eye Hospital will be entitled to make use of the equipment and other facilities available at the Institute for the benefit of the patients. 18. The Gandhi Eye Hospital Trust will provide the accommodation to the Institute at the hospital" premises free of rent. The Vice Chancellor will kindly use his good offices to persuade the Central Government to help the Trust to put the buildings required for the Ophthalmic Institute which will be the property of the Trust."

10. THEREAFTER another Agreement dated 8.3 .1961 is also crucial and, speaks about the licence granted to the Institute of Aligarh Muslim University for the purpose of Institute of Ophthalmology against payment of licence fee as referred therein besides other conditions of user of building, operation theater, equipments etc. etc. In this view of the matter, it is not necessary to refer to the Minutes of the Joint Consultative Meeting held on 6.1.1981 which, in substance, also refers to the mutual working and co-sharing of the expenditure. In the said Minutes it has been stated that for smooth functioning of the Aligarh Muslim University and the Institute of Ophthalmology in collaboration with the Gandhi Hospital and to maintain the high traditions of this Ophthalmological complex, the Coordination Committee shall be constituted with 4 representatives of the Gandhi Hospital and 6 by the Aligarh Muslim University. The aforesaid discussion leaves no doubt that the Aligarh Muslim University and the Gandhi Hospital were running the Ophthalmological Department jointly.

11. IN this view of the matter, it is apparent that for the aforesaid deficiency in service Dr.Mohan Lal Memorial Gandhi Eye Hospital, Opposite Party No.5; Jawahar Lal Nehru Medical College, Opposite Party No.6; and, Aligarh Muslim University, Opposite Party No.7, would be jointly and severally liable to pay compensation to the Complainant.

12. THE Complainant has claimed a large amount of compensation, in all Rs.30 lakhs. It is true that because of the infection after the cataract operation the Complainant has lost one eye. The Complainant has also admitted that he was suffering from the skin disease, known as, pumphigus vulgaris, and that his eyes were affected due to intake of drugs/steroids. Considering all these aspects, in our view, a lumpsum amount of Rs.5 lakhs would be appropriate compensation in this case. In the result, the Complaint is partly allowed. Opposite Parties, i.e. Dr. Mohan Lal Memorial Gandhi Eye Hospital, Opposite Party No.5; Jawahar Lal Nehru Medical College, Opposite Party No.6; and, Aligarh Muslim University, Opposite Party No.7, are jointly and severally held liable and are directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the Complainant as compensation for the loss of his right eye due to the deficiency in service, as discussed above. The Opposite Parties Nos. 5, 6 and 7 shall also pay a sum of Rs.25,000/- as costs to the Complainant.

13. FINALLY , we hope that the Indian Medical Council as well as the Health Departments would take appropriate steps in improving the standards and maintenance of cleanliness and hygiene in public and private hospitals, so that irreparable damage may not be caused either to the life or the limb of the

patient. It is also hoped that purity of drugs and medicines intended for the use of the patients are repeatedly tested and inspected.