
(2014) 08 MAD CK 0129

In the Madras High Court

Case No : Writ Appeal No. 2363 of 2013 and M.P. No. 1 of 2013

Tamil Nadu Medical Council

APPELLANT

Vs

Easwaran DNB FRCS

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : AIR 2015 Mad 11 : (2014) 7 MLJ 220

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

N. Paul Vasantha Kumar, J.—Heard Mr. Veerakathiravan, learned counsel the appellant and Mr. V.P. Raman, learned counsel for the 2nd respondent. This Writ Appeal is filed by the Tamil Nadu Medical Council against the order made in W.P. No. 33813 of 2012 dated 08.11.2013.

2. The Writ Petition was filed before the learned Single Judge by the 1st respondent, praying for issuing direction to the Tamil Nadu and Indian Medical Council to investigate and take appropriate action on those doctors who were responsible for the criminal negligence in treating his father.

3.1. The brief facts of the case of the 1st respondent before the learned Single Judge are that he is a Surgeon. His father was treated for cancer in Apollo Hospital, Chennai in April, 2010. The Surgeon, Anesthetist, the Medical Superintendent and the Hospital were highly negligent. The Doctor failed to take reasonable care and due to which the cancer recurred within a year and spread to other parts of the body because of the "BOTCHED UP" operation and the failure to give Radiotherapy which was essential to prevent recurrence of cancer.

3.2. The 1st respondent, who was living and working in the United Kingdom came in April 2010 for his father's treatment. He went back to UK but, returned back to India in January 2011. He found that his father had decreased hearing on the operated side. The petitioner met the doctor again and he advised MRI,

which showed a big tumour and it was in fact bigger than previous time. He got his father operated in another Hospital in April 2011 and he received Radiotherapy. But the cancer spread to other parts of the body and he finally passed away in January 2012.

3.3. The 1st respondent, who is a qualified Medical Practitioner of considerable experience was convinced that it was only on account of the sheer negligence and breach of duty of care that the cancer spread to other parts of the body, and for various violations of Professional Conduct, Etiquette and Ethics, Regulations 2002 by doctors, he preferred a complaint before the Tamil Nadu Medical Council on 06.01.2012 requesting to take disciplinary action against the concerned Doctors for their professional misconduct. The 1st respondent received a letter from them refusing to investigate the complaint against the doctors, as they are not empowered to do so. A legal notice was already sent to the Apollo Specialty Hospital on 31.12.2011. He submitted a similar complaint before the Medical Council of India. Since there was no follow up action by the statutory authorities, he preferred another complaint to the Medical Council of India on 26.07.2012. He also moved the State Consumer Disputes Redressal Commission claiming compensation. The Medical Council of India, gave a reply dated 19.09.2012, stating that since the hospital and the Doctors against whom the allegations are made are in the State of Tamil Nadu, the Tamil Nadu State Medical Council can go into the complaint and take appropriate action as per law, within a period of six months under clause 8.4 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Even then, the Tamil Nadu Medical Council failed to take any action. Aggrieved against the same, the said writ petition was filed by the 1st respondent.

4. In the writ petition, the Registrar, Tamil Nadu Medical Council filed a counter affidavit contended that the Council has no power to take action relating to medical negligence. According to the Council, only in case of professional misconduct action could be taken by the Council. It was further contended that the 1st respondent has already approached the consumer forum claiming compensation and as such the complaint before the Council is not maintainable.

5. The Medical Council of India also filed a counter affidavit in the said writ petition indicating the salient features of Ethics Regulations 2002. It was further stated that the State Council was requested to look into the complaint with notice to the concerned medical professional.

6. Before the learned Single Judge, the 1st respondent submitted that the medical practitioners owe a duty of care to his patient and the breach of such duty, would amount to professional misconduct. He further stated that even medical negligence would come under the term "Professional misconduct", in case basic facts are present in a given case. On the other hand, the learned counsel for the State Medical Council submitted that it is only a case of medical negligence and as such remedy is elsewhere. The learned Standing Counsel for Medical Council of India submitted that the State Council was obliged to look

into the complaint with notice to the 1st respondent and the Medical Professional and to decide the matter on merits. He further submitted that Medical Council of India is only an appellate forum and as such decision should be taken only by the State Council.

7. After considering the rival submissions made on the learned counsel on either side in the said writ petition and after considering the statutory provisions and the Regulation, the learned Single Judge, following the decision of the Hon'ble Supreme Court in the case of Dr. P.B. Desai Vs. State of Maharashtra and Another, has issued a direction to the Tamil Nadu Medical Council to consider the complaints dated 06.01.2012 and 26.07.2012 and dispose of the same on merits and as per law, with notice to the concerned medical practitioners and all concerned and such exercise was directed to be completed within a period of six months, as provided under clause 8.7 of Ethics Regulations 2003, without being influenced by the observations made in the order. As against the said direction issued, the writ appeal is filed.

8. The contention of the learned counsel for the appellant/Tamil Nadu Medical Council is that unless it is alleged that there is misconduct in terms of Regulation 7, the Tamil Nadu Medical Council need not enquire the complaint and thus the learned Single Judge was not right in giving direction to the appellant.

9. On the other hand, the learned counsel appearing for the 2nd respondent/Medical Council of India relied on Chapter 8, Regulation 8.1 and 8.2 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which states that the State Medical Councils as well as the Medical Council of India can take appropriate action if the medical code is violated. The learned counsel also invited the attention of this Court to Regulation 2.4, which reads as follows:--

""2.4 The Patient must not be neglected: A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care".

In the above referred regulation, the statutory duty cast on the medical practitioners are mentioned. Regulation 8.1 clearly states that instances of offences and of Professional misconduct given are not exhaustive. Regulation 8.1 reads thus:

"8.1. It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and

dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils."

Thus, the appellant is not justified in arguing that the alleged act of the doctors will not come within the categories of misconduct.

Regulation 8.2 deals with procedures to be followed by appropriate Medical Council, which reads as follows:

"8.2. It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies".

Regulation 8.3 deals punishment, which reads thus:--

"8.3. In case the punishment of removal from the register is for a limited period, the appropriate Council may also direct that the name so removed shall be restored in the register after the expiry of the period for which the name was ordered to be removed".

and as per Regulation 8.7, the Medical Council of India can issue direction to enquire by State Medical Council, which reads thus:

"8.7 Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, the Medical Council of India may-

(i) Impress upon the concerned State, Medical Council to conclude and decide the complaint within a time bound schedule;

(ii) May decide to withdraw the said complaint pending with the concerned State Medical Council straightaway or after the expiry of the period which had been

stipulated by the MCI in accordance with para (i) above, to itself and refer the same to the Ethical Committee of the Council for its expeditious disposal in a period of not more than six months from the date of the complaint in the office of the Medical Council of India".

Thus, the 2nd respondent was justified in issuing direction.

10. Since the appellant is the statutory authority, who is competent to proceed against the Doctors with reference to negligence, the learned Single Judge was right in giving direction to consider and dispose of the complaints of the 1st respondent, regarding alleged negligence of Doctors, by following the decision of the Hon"ble Supreme Court in the case of Dr. P.B. Desai v. State of Maharashtra (supra), wherein in paragraph No. 40, the Hon"ble Supreme Court has held as follows:

"40. Once, it is found that there is "duty to treat" there would be a corresponding "duty to take care" upon the doctor qua/his patient. In certain context, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of "duty to take care" is founded on a contractual relationship, it acquires a legal character. Contextually speaking, legal "duty to treat" may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. Ethical "duty to treat" on the part of doctors is clearly covered by Code of Medical Ethics, 1972. Clause 10 of this Code deals with "Obligation to the Sick" and Clause 13 cast obligation on the part of the doctors with the captioned "Patient must not be neglected". Whenever there is a breach of the aforesaid Code, the aggrieved patient or the party can file a petition before relevant Disciplinary Committee constituted by the concerned State Medical Council."

The Hon"ble Supreme Court in the decision reported in Pt. Parmanand Katara Vs. Union of India (UOI) and Others, emphasized the duty of the Doctors to treat patients with utmost care and respect. In paragraph No. 8, it is held thus:

"8.....Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way...."

Considering the above said legal principle emphasized by the Hon"ble Supreme Court, the appellant is not justified in not looking into the complaint given by the 1st respondent against the Doctors.

Hence, we are unable to find any reason to interfere with the order of the learned Single Judge.

11. Before parting with this case, we are duty bound to point out that the

Medical Council of India as well as the Tamil Nadu Medical Council, which are created under the Statute to deal with the misconduct/delinquencies alleged against the Doctors, who have registered their names with the Medical Council, are bound to enquire into the allegations/deficiencies, based on the complaint received from the patients/their relatives. It is well settled that the right to get timely treatment from a qualified Doctor is a fundamental right guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court in the decision reported in *P.T. Parmanand Katara v. Union of India* (supra) emphasized that the Doctors, either in Government hospitals or in private hospitals, are duty bound to extend timely treatment to the patients.

12. Similar instance was noticed by this Court while hearing W.P. No. 25697 of 2012, which is reported in *S. Mary Vs. The Union of India*, wherein taking into consideration the failure to extend timely medical assistance to a lady due to want of bed in operation theatre, who suffered with labour pain, and who ultimately lost her baby and also lost her uterus, the JIP-MER Hospital, Puducherry was ordered to pay compensation to the victim lady to the tune of Rs. 3.25 lakhs, following the decisions of the Honourable Supreme Court reported in *Chameli Singh and others etc. Vs. State of U.P. and another*, ; *Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another*, ; Division Bench Judgment of Orissa High Court in the case in OJC No. 8819 of 2000 dated 17.9.2012; and the Judgment of the Calcutta High Court reported in *Ranjit Kumar Das v. Medical Officer, ESI Hospital and Others* 1997 (3) CPJ 336.

13. Nowadays we come across that in some cases timely treatment is not extended to patients, who require immediate medical attention and treatment, due to want of Doctors; want of beds in the hospital; want of operation tables; for not depositing advance amount even for admission for getting instantaneous treatment in private hospitals. It is a well known fact that for certain serious diseases, immediate treatment alone will save the patients, and if there is time gap, which is called "Precious time/Golden Hours", the patient may not be in a position to survive or restore to normalcy, even after extending treatment belatedly. Similarly, it is also brought to our notice that in several hospitals, in ICU/Critical Care Units, no experts are available and only unqualified/qualified nurses are put incharge to take care of the critically ill patients. The said conduct of both private and government hospitals as well as the persons, who are in the administration of the hospitals, are bound to be enquired into by the Apex body of the State viz., The Tamil Nadu Medical Council. The Tamil Nadu Medical Council is not expected to shirk its responsibility by stating that the patient or his/her relatives, have already approached the Consumer Forum for payment of compensation. The payment of compensation is one aspect and the action to be initiated against the Registered Medical Practitioner for violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, including temporary/permanent debarment of Doctors from practising medicine is another aspect, for which the Tamil Nadu Medical Council and the Medical Council of India

alone are competent.

14. Considering all the above aspects, we are of the view that the Tamil Nadu Medical Council, who is the statutory authority is not only bound to enquire into the complaint of the 1st respondent, but also is bound to attend any complaint received from patients/their relatives with regard to dereliction of discharge of duties by Doctors so as to give confidence to the members of the public about medical profession. In fine, the writ appeal is dismissed. However, it is made clear that this order shall not be taken as a ground by the appellant that the Doctors are in negligence in any manner and the appellant shall dispose of the complaints in accordance with law. No costs. Connected miscellaneous petition is also dismissed.