

**HIGH COURT OF DELHI****Bench: Hon'ble Mr. Justice Subramonium Prasad****Date of Decision: 06 November, 2023**

W.P.(C) 10845/2022

**BALJIT SINGH****..... Petitioner****versus****DELHI MEDICAL COUNCIL & ANR****..... Respondents**

Legislation:

Article 226 of the Constitution of India

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

National Medical Council Act, 2019

Subject: Writ Petition challenging the dismissal of a complaint of alleged medical negligence against a cardiologist by the Delhi Medical Council.

Headnotes of Judgement:

Medical Negligence – Complaint against cardiologist for alleged negligence in treatment – Dismissal of the complaint by Delhi Medical Council and affirmation by High Court – Disciplinary Committee found prescription lacking but no negligence in treatment – High Court defers to the expertise of the medical panel. [Para 1, 2, 6-8]

Medical Expertise – High Court's limitation in adjudicating matters of medical expertise – Professional can only be held liable for negligence if lacking requisite skill professed – Treatment in line with acceptable medical practice not negligence, even if alternatives exist. [Para 7]

Judicial Review – High Court's scope in judicial review of expert bodies' decisions – Interference only if the decision is perverse or unconscionable – The decision of Delhi Medical Council not found to be perverse or unconscionable by the High Court. [Para 7, 8]

Delhi Medical Council's Decision – Advice for greater care in future prescriptions to cardiologist – No substantial negligence found in the treatment provided – High Court upholds Delhi Medical Council's findings and dismisses the Writ Petition. [Para 6, 8]

Referred Cases: None.

Representing Advocates:

For Petitioner: Ms. Mallika Prabhakar, Mr. Afresh Kumar, Ms. Supriya, Advocates.

For Respondent No.1 (Delhi Medical Council): Mr. Praveen Khattar, Advocate.

For Respondent No.2: Mr. T. Singh Dev, Ms. Anum Hussain, Mr. Aabhaas Sukhramani, Mr. Abhijit Chakravarty, Ms. Ramanpreet Kaur, Mr. Bhanu Gulati & Mr. Tanishq Srivastava, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. Aggrieved by the dismissal Petitioner's complaint by the Respondent No.1 herein vide Order dated 13.01.2022, the Petitioner has approached this Court by filing the present Writ Petition under Article 226 of the Constitution of India.
2. The fact, in brief, leading to the present Writ Petition, are as under:
  - a) It is stated that the Petitioner herein approached the Respondent No.1 with a complaint dated 06.11.2020 stating that his father, late Shri Inder Singh aged about 78 years, with history of Cardiac Disease was taken to Dr. B. B. Chanana, Senior Heart Specialist, MBBS, MD, for treatment of breathlessness uneasiness, headache and vomiting sensation on 26.07.2020. It is stated that on 26.07.2020, during morning walk the Petitioner's father experienced breathlessness. It is stated that when the Petitioner herein contacted Dr. B. B. Chanana on phone he asked the Petitioner to bring his father to Maharaja Agrasen Hospital, West Punjabi Bagh New Delhi, where Dr. B. B. Chanana was available as a consultant cardiologist. It is stated that as the said Hospital was a Covid dedicated hospital, the Petitioner requested Dr. B. B. Chanana to examine his father in Dr. Chanana's clinic which is in Rohini. It is stated that the Petitioner took his father to Dr. Chanana's clinic which is running under the name and style of Heart Lab. It is stated that Dr. Chanana did not conduct any tests on the father of the Petitioner and only prescribed certain medicines. It is stated that Dr. Chanana treated Petitioner's father in a very casual manner and assured Petitioner's father that he was not suffering from any heart related issue. It is stated that on the evening of 26.07.2020 when the Petitioner's father once again experienced breathlessness, the Petitioner contacted Dr. Chanana over phone and Dr. Chanana advised the Petitioner to continue the same medication. It is stated that on 31.07.2020 when the Petitioner's father once

again experienced breathlessness, they went to Dr. Chanana once again and after conducting tests, the Petitioner was told that his father's condition is very serious and he needs to be taken to a hospital with requisite facilities. It is stated that the Petitioner took his father to Saroj Hospital, Rohini, but he could not be saved.

- b) It is stated that the Petitioner approached the Delhi Medical Council contending that on 26.07.2020 when his father was taken to Dr. Chanana's Clinic, Dr. Chanana ought to have conducted the necessary tests to diagnose the exact case behind the symptoms. It was alleged by the Petitioner that Dr. Chanana has treated his father very casually despite being told that the patient has undergone bypass surgery in the past. It was contended that had requisite tests been done on 26.07.2020 itself Petitioner's father could have been saved.
- c) Notice was issued by the Delhi Medical Council to Dr. Chanana and Dr. Chanana in his defence stated that when the patient came to him on 26.07.2020 with certain symptoms he prescribed medicines as per the symptoms exhibited by the patient at the time of examination of the patient. He further stated that on the first day, i.e. 26.07.2020, when the Petitioner's father visited him his condition was stable, his BP, pulse, ejection fraction, etc. were normal for his age, however, when the Petitioner's father was brought on 31.07.2020 he was detected to have features of complete heart block which required urgent medical intervention and therefore, he was advised to visit nearest health facility equipped with emergency cardiac care. Dr. Chanana further stated that there was no negligence on his part. He stated that the Petitioner is trying to extort money from the Doctor and he has demanded Rs.50 lakhs from the Doctor as compensation.
- d) The case was examined by the Disciplinary Committee of the Delhi Medical Council wherein it found that the prescription dated 26.07.2020 did not mention the complaint/symptoms of the patient nor any diagnosis. The Committee also found that the clinical findings regarding the blood pressure and chest of the Petitioner's father were illegible and the duration for which medicines were prescribed by Dr. Chanana is also not mentioned which reflects the casual approach of Dr. B.B. Chanana. The complaint of the Petitioner herein was disposed of by the Delhi Medical Council with an advice to Dr. B. B. Chanana to be more mindful of his responsibilities in future. The Committee held that no medical negligence can be attributed on the part of Dr. B. B. Chanana in the treatment administered by him to the Petitioner's late father.

- e) The said Order was challenged by the Petitioner before the National Medical Council by filing an appeal. However, the said appeal was not entertained by the National Medical Council because under the National Medical Council Act, 2019 an appeal filed by a non-Medical Practitioner or Professional cannot be entertained.
- f) The Petitioner has, thereafter, approached this Court by filing the instant Writ Petition.
3. Learned Counsel for the Petitioner has reiterated the contentions raised by the Petitioner before the Delhi Medical Council as well as in the present Writ Petition.
4. *Per contra*, learned Counsel appearing for National Medical Council states that the complaint of the Petitioner has been dealt with in accordance with the provisions of the Indian the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 (*hereinafter referred to as „the 2002 Regulations“*).
5. Heard the Counsels for the parties and perused the material on record.
6. At this juncture, it is necessary to reproduce the observations of the Disciplinary Committee constituted by the Delhi Medical Council to look into the allegations of negligence on the part of Dr. B. B. Chanana and the same reads as under:

*“1) It is observed that the patient Shri Inder Singh, a 77 years old male, presented to Dr. B.B. Chanana in O.P.D. of Maharaja Agrasen Hospital on 26th July, 2020, with complaint of breathlessness, headache and nausea, as per the complaint. Dr. B. B. Chanana in his prescription dated 26th July, 2021 has recorded the past history of CABG; further recorded the bloodpressure, chest finding (both illigible) and E.F. (ejection fraction) 50%. He prescribed T. Ecosprin 75, Atorvas 10, Ramistrar 2.5, Concor 2.5, Vertin 16 and Ancal Forte. Thereafter apparently, the patient presented again to Dr. B.B. Chanan at his clinic on 31st July, 2020 when an ECG was conducted which showed heart block and the patient was advised admission. The patient subsequently was admitted in Saroj Hospital on 31st July, 2020 with complaints of recurrent syncope episode with nausea at home. On admission, the patient was conscious, oriented. ECG suggestive of CHB with significant bradycardia. The blood pressure was 100/go mmHg, HR-32/min, SPO2 was 92%, chest - B/L AE+. Immediately, TPI was done but during the TIP in cath lab, the patient had sudden cardiac arrest and resuscitation was started. The blood pressure of the patient was not recordable. The patient was unconscious; pupil bilateral, fixed and dilated. The patient could not be revived and declared dead on 08.25 p.m. on 21st July, 2020.*

*2) It is noted that the patient had presented to Dr. B.B. Chanana for the first time on 26th July, 2020 with complaints of breathlessness, nausea, and headache and vomiting sensation, for which, the treatment(as mentioned hereinbefore) advised as per the prescription, was appropriate and since ejection fraction was 50% in a patient with history of CABG, there was under the prevailing condition, no pressing*

*requirement for further cardiac evaluation. Having said that the prescription dated 26th July, 2020 of Dr. B.B. Chanana suffered from certain shortcomings viz :-it did not mention the complaint/symptoms of the patient nor any diagnosis; the clinical findings regarding the blood pressure and chest, were illegible. The duration for which medicines were prescribed is also not mentioned. The prescription reflects the casual approach of Dr. B.B. Chanana, which is not expected of an ordinary reasonable prudent doctor*

3) *The second time when the patient presented to Dr. B.B. Chanana 31st July, 2020 and ECG was indicative of heart block, Dr. B.B. Chanana has rightly advised admission.*

4) *It is incumbent on a medical practitioner, in his own and his patient's interest, to record a prescription mentioning the patient's history of complaints, current symptoms, his vital parameters and other clinical observations and a provisional diagnosis (and/or recommendations for further diagnostic tests). Dr. B.B. Chanana is, therefore, advised to be mindful of this responsibility, for future."*

7. The Disciplinary Committee of the Delhi Medical Council consisted of four doctors who are experts in their field. It is well settled that High Courts cannot enter into the thicket of facts while considering the allegations of medical negligence. The Committee has looked into the facts and has found that the treatment given by Dr. Chanana to the late father of the Petitioner herein was in accordance with the established medical practice. It is well settled that so long as a Doctor follows a practice acceptable under the Medical Practice on that day, he cannot be held liable for negligence merely because some other alternative course or method of treatment could have been resorted to to save the life of the patient instead of the practice that was followed by the concerned Doctor. A professional can be held liable for negligence only when he is not possessed with requisite skill which he has professed to have possess. In the present case, Dr. B B. Chanana is a Cardiologist with experience of over 30 years. There is nothing on record to show that Dr. Chanana was involved in the earlier by-pass surgery of the late father of the Petitioner. There is also no record to show that Dr. B. B. Chanana had interacted with the patient prior to 26.07.2020. When Petitioner's father visited Dr. Chanana on 26.07.2020, looking at his age and the symptoms medicine was prescribed by Dr. Chanana, which, according to the Committee, was appropriate and since ejection fraction was 50% in a patient with history of coronary artery bypass grafting, there was no pressing requirement for further cardiac evaluation. On 31.07.2020 when the patient presented himself with a more serious condition, Dr. Chanana advised him to be admitted to the nearest health facility equipped with emergency cardiac care. Since the

prescription of Dr. Chanana suffered from certain shortcomings he has been asked to be more careful in future. This Court, under Article 226 of the Constitution of India, cannot substitute its own conclusions to the one arrived at by the experts unless the decision taken by the experts is perverse and unconscionable and has the effect of shaking the consciousness of this Court.

8. In view of the above, this Court is not inclined to interfere with the decision taken by the Delhi Medical Council.

9. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

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\*Disclaimer: Always compare with the original copy of judgment from the official website.