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2022 PLRonline 0492 (Del.)

HIGH COURT OF DELHI

JUSTICE PRATHIBA M. SINGH

**LT. COL. SP SINGH RETD v. UNION OF INDIA, THROUGH
SECRETARY & ORS.**

W.P.(C) 6474/2022

6th December, 2022

Constitution of India, Art. 226 - Writ - Medical Negligence - In a writ petition, the question as to whether there was negligence, or not, cannot be gone into, inasmuch as the same would require ascertainment of various facts relating to the treatment which was administered to the Petitioner's daughter, as also, her medical condition - Thus, the Petitioner is at liberty to approach the appropriate forum in order to avail of his remedies, in accordance with law.

Mr. D.N. Tripathi, Advocate along with Petitioner in person. Mr. Nitinjya Chaudhry, Sr. Panel Counsel for UOI/R-1 to R-4.

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - Lt. Col. S.P. Singh (Retd.) has been constrained to file the present writ petition in an unfortunate case, due to the death of his daughter - Ms. Purnima, who is stated to have passed away on 2nd March, 2017 at the Respondent No.4 - Army Hospital Research & Referral, New Delhi (hereinafter, "AH R&R") under allegedly mysterious circumstances.
3. In the present petition, the Petitioner alleges that his daughter who was admitted to the AH R&R, was not properly taken care of. He further alleges that the doctors/officers at the AH R&R have been negligent in following the protocol required for patient on the 'Dangerously Ill List', and also failed to perform the required protocol for 'CODE BLUE' procedures adequately. Further allegations have been made against the decisions taken by the doctors/officers at the AH R&R. It is also alleged by the Petitioner that even the

post-mortem examination was also denied due to paucity of time and the death certificate dated 2nd March, 2017 issued by the AH R&R did not reflect the actual cause of death of the patient.

4. In view of the above, the Petitioner filed the present petition seeking constitution of an independent board of doctors to conduct an investigation into the death of his daughter. He also seeks medical records relating to his daughter, as also, appropriate compensation for medical negligence. The prayers sought in the present petition are extracted below:

“(a) Issue directions to Respondent No. 1 (UOI) to constitute a Board of independent Doctors/Committee of Doctors of AIIMS, Delhi/any other institute of repute to conduct an in-depth investigation into the death of Ms. Purnima;

(b) Issue directions to Respondent No. 4 (AH R&R) to share the documents of all necessary proceedings/medical records/Court of Inquiry/Medical Case-Sheet and drugs administered etc with the independent Board of Doctors/Committee of Doctors;

(c) Issue directions to Respondent No. 2 (COAS) to initiate disciplinary action against the negligent Army Doctors/Officers based on the report submitted by the Board of Doctors/Committee of Doctors; and

(d) Issue directions to Respondent No. 1 & 2 to award an appropriate compensation to the Petitioner for the said medical negligence by the AH R&R; and

(e) Pass such further orders as may be deemed fit and proper in the facts and circumstances of the present case. ”

5. Vide order dated 25th April, 2022, the Respondent No.4 was directed to obtain instructions and file a status report on record. The said status report has now been filed.

6. This Court has perused the status report which has been filed. A perusal of the said status report shows that the Respondent-Army, on its own, conducted a Court of Inquiry to investigate the allegations of medical negligence at the AH R&R in respect of the Petitioner’s daughter. The said Court of Inquiry recorded the evidence of 37 witnesses, and examined 50 documents running into 387 pages. The Petitioner was one of the witnesses whose statement was recorded. The findings of the said Court of Inquiry have been summarized in the status report, and the same reads as under:

“11. That in the said Court of Inquiry, the Petitioner in the present petition himself appeared as Witness No. 01 and his detailed statement was recorded. In addition to petitioner’s statement, other witnesses who were doctors and specialist posted in R&R were also examined and their statements were also duly recorded in the Court of Inquiry. Pursuant to the directions of convening authority, the Army Rule 180 was invoked upon MR-4731L Major General N S Lamba, MR 0029X Lt Col Manu Chopra and MR-08836M Major Vishal Mangal of AH (R&R). Accordingly, Court of Inquiry had arrived on its findings and gave a detailed finding and gave a detailed

finding of nine pages consisting 72 paragraphs. The Court also endorsed its opinion on various aspects with respect to the admission of petitioner's daughter, her medical status at the time of admission, medical treatment given to her in due course of time, any negligence or omission of personnel attributed to the death of petitioner's daughter and also gave various remedial measures to be adopted in the functioning of the R & R Army Hospital."

7. It is further stated in the said status report that the Army Headquarters, Delhi Area sought further clarifications, vide letter dated 12th December, 2017. Pursuant to the said letter, the Court of Inquiry was reassembled again on 12th January, 2018 to rectify the observations raised in the said letter. All the 37 witnesses, who were examined earlier, were examined once again, and the statements of said witnesses were again recorded, including that of one additional witness. Further, a total of 47 additional exhibits were taken on record. Pursuant to the said Court of Inquiry, various directions were also issued by Respondent No.3 - The General Officer Commanding, Delhi Area.

8. Thus, the said status report reveals that two detailed Court of Inquiry proceedings have been held by the Army in respect of the Petitioner's case. In the opinion of this Court, under such circumstances, the prayer for constitution of an independent medical board, under AIIMS, or any other hospital, would not be required in the present petition.

9. This Court is of the opinion that, in a writ petition, the question as to whether there was negligence, or not, cannot be gone into, inasmuch as the same would require ascertainment of various facts relating to the treatment which was administered to the Petitioner's daughter, as also, her medical condition. Thus, the Petitioner is at liberty to approach the appropriate forum in order to avail of his remedies, in accordance with law.

10. However, the relief sought by the Petitioner seeking the entire record, as also, the statements and evidence recorded during the Court of Inquiry proceedings can be provided to the Petitioner, in order to enable the Petitioner to avail his remedies for seeking compensation before the appropriate forum, in accordance with law.

11. Accordingly, it is directed that the Respondent Nos.1 to 4 shall supply the entire set of medical records relating to Ms. Purnima, to the Petitioner, by 31st January 2023.

12. In addition, the entire record of the proceedings of the Court of Inquiry, including the statements, evidence, and exhibits placed on record, shall also be provided to the Petitioner, by 31st January, 2023. 13. For the said purposes, the Petitioner is permitted to visit the Office of The General Officer Commanding, Delhi Area, on 30th January, 2023 at 11:30 a.m.

14. None of the other reliefs are gone into and are left open to be considered by the appropriate forum.

15. The present petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 6, 2022