

Case Report

Retrospective Invocation of MCI Ethical Regulations, 2002: A Case Report

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ABSTRACT

Rajasthan High Court observed that a death is always traumatic. More so, when it is attributable to the medical negligence or otherwise, this could have been eschewed with a degree of requisite care. But, aside of the merits of the findings of MCI on medical negligence of the petitioner, the issue which has been agitated in the writ petition is with regard to the manner in which proceedings were taken against the petitioner for his alleged medical negligence. In the present case, issues of lack of informed consent and medical negligence on the part of petitioner and two other doctors were raised by complainant. He filed a complaint against them with Rajasthan Medical Council (RMC) which was dropped after inquiry. He again made complaint with RMC which was kept pending for almost 6 years. In the meantime, he requested MCI to transfer complaint from RMC to MCI. After that, RMC dismissed the complaint after inquiry. No appeal was filed by complainant against this order to MCI under clause 8.8 of Regulations, 2002. In spite of that, MCI instructed Principal, Sawai Man Singh Medical College, Jaipur, to order an inquiry and submit report. Later, report was forwarded to ethics committee mentioning no negligence on the part of doctors. On later date, MCI found petitioner guilty of medical negligence. MCI passed order directing striking off the petitioner's name from Indian Medical Register for a period of 18 months. Same order was also passed by RMC. It was challenged by petitioner in Rajasthan High Court (RHC) on various grounds. Later, High Court quashed and set aside the order passed by MCI and RMC.

Keywords: Ethics, Medical negligence, Jurisdiction, Ethics committee, Consent, Hydatid cyst, Operation, State medical council, Medical council of India

INTRODUCTION

State medical councils (SMCs) have disciplinary control over the medical practitioners. They *have the power to remove the names of medical practitioners' permanently or for a specific period from their registers when after due inquiry they are found to have been guilty of serious professional misconduct*^[1]. If the person is not satisfied with decision of SMCs, he/she may request

or appeal to Medical Council of India (MCI) under clause 8.7 and 8.8 of Regulations, 2002. ^[2] After due inquiry, MCI gives decision which is also binding on SMCs. MCI decisions can be challenged in concerned high court.

Medical negligence may be defined as want of reasonable degree of care and skill, or wilful negligence, on the part of a medical practitioner in the treatment of a patient which causes bodily injury or death of the patient ^[1].

Doctrine of informed consent implies an understanding by the patient of his/her nature of condition, nature of proposed treatment or procedures, risk and benefit involved in procedures etc. If a doctor fails to give the required information to the patient before taking consent to a particular operation/treatment, he may be charged for negligence.

Facts of the Case

- The facts of the case are that Ajeet Singh Singhvi (complainant) made a complaint to Rajasthan Medical Council (RMC) on 17 May 2000, alleging misconduct on the part of the petitioner and two other doctors of Sawai Man Singh Medical College (SMSMC) and Hospital, Jaipur, resulting in the death of his mother Jatan Kanwar Singhvi on 28 April 2000.^[3]

It was stated that the complainant's mother was admitted to the unit of Dr. S. K. Pareek, Professor and Head, Department of Nephrology, SMS Hospital, in the night intervening 25 and 26 February 2000.

In the course of treatment, the patient was transferred to the unit of Dr. D. S. Mathur, Professor of Medicine.

She was referred to Dr. D. K. Jindal, and thereafter to the petitioner, Dr. T. C. Sadasukhi, who performed a surgical aspiration of the Hydatid Cyst.

The complaint was considered by a three-member committee of RMC on 20 May 2000 and found no negligence on the part of the petitioner and two other doctors who treated the complainant's mother.

- The complainant again made another complaint before RMC for the same incidence on 11 October 2000.
- As the complaint was pending before the RMC for over six years, the complainant on 12 July 2007 sought transfer of the enquiry into the alleged medical negligence from the RMC to Medical Council of India (MCI), referable to clause 8.7 of the Regulations of 2002. A follow-up letter was also sent by the complainant to the MCI.
- In the meantime, RMC gave decision on 26 October

2007 holding that no *prima facie* case was made out against the petitioner and two other doctors for their alleged medical negligence. The complaint was dropped.

- No appeal against the RMC's order dated 26 October 2007 under clause 8.8 of the Regulations of 2002 was filed by complainant.
- MCI, however, appears to have seized the transfer application referable to clause 8.7 of the Regulations of 2002 as an appeal against the RMC's order dated 26 October 2007 under clause 8.8 of the Regulations of 2002.
- MCI directed the Principal, SMSMC, Jaipur, to arrange for an enquiry into the matter and send the report to its Ethics Committee.
- The Principal, SMSMC, Jaipur, constituted a Committee of five doctors of the SMSMC, Jaipur. Vide its report dated 30 August 2011, the Committee exonerated all doctors including the petitioner of the alleged medical negligence and held that the allegation of lack of consent by the petitioner for undertaking the surgical procedure of the late Jatan Kanwar Singhvi on 3 April 2000 appeared to be an outcome of miscommunication.
- The report of the enquiry dated 30 August 2011 was forwarded to the Ethics Committee of the MCI on 01 September 2011.
- Ethics Committee of the MCI in its meeting sometime between 23 August 2011 and 01 December 2011 took a decision that no further action was required against the petitioner and two other doctors for their alleged negligence in treatment of complainant's mother as none was made out.
- However, the Ethics Committee of MCI appears to have again met on 01 December 2011 and taken up the matter afresh.
- On 17 July 2012, the Ethics Committee noted that one of its members would look at the issue of medical negligence in the treatment of the complainant's mother and thereafter proceed further.

- No report of the in-depth study by a doctor pursuant to Ethics Committee's decision on 17 July 2012 has been averred to in the reply/affidavit of the MCI or placed on record.
- Ethics Committee on 27 October 2012 concluded that the petitioner was guilty of medical negligence for two lapses while treating Jatan Kanwar Singhvi, the mother of the complainant, i.e., (i) no proper informed consent was taken, and (ii) did not carry out adequate investigation and assessment of the patient as were required, to arrive at appropriate diagnosis.
- After that MCI concluded that the petitioner was guilty of contravention of clause 7.16 of the Regulations of 2002 and deserved to be visited with a penalty of removal of his name from the register of MCI as well as that of RMC for a period of eighteen months.

The Board of Governors of MCI approved the aforesaid decision on 10 December 2012.

The impugned order was passed by the MCI on 10 January 2013 and by RMC on 16 January 2013 directing striking off the petitioner's name from Indian Medical Register and Rajasthan Medical Register for a period of eighteen months. These orders were challenged by petitioner in high court.

Stand of Doctors/Hospital ^[3]

- Mr. Ashok Gaur, Senior counsel appearing with Mr. Ajay Chaudhary for the petitioner submitted that the orders dated 10 January 2013 and 16 January 2013 are unsustainable primarily for the reason of them being non-speaking peremptorily and perverse for being without consideration of relevant material and therefore vitiated for non-application of mind.
- Counsel also submitted that no appeal against the order dated 26 October 2007 passed by the RMC exonerating the petitioner for alleged medical negligence was filed by the complainant as provided for under clause 8.8 of the Regulations of 2002. Therefore, MCI wrongly treated complainant's

transfer application filed on 12 July 2007 as an appeal. Consequently, the order dated 26 October 2007 passed by the RMC exonerating the petitioner had attained finality.

- Counsel submitted that order dated 10 January 2013 and the consequent order dated 16 January 2013 both punishing the petitioner are unsustainable and illegal because they seek to invoke clause 7.16 of the Regulations of 2002 which came into force on 06 April 2002, even while the alleged medical negligence attributed to the petitioner was in respect of a medical procedure performed by him on the complainant's mother on 03 April 2000. It was submitted that the Regulations of 2002 were thus made retrospective when they would not be so.
- Counsel submitted that non-consideration of the report prepared by five doctors Committee appointed by the Principal, SMSMC, Jaipur, dated 30 August 2011 prejudiced the petitioner and material beneficial to him was perfunctorily overlooked.
- He finally submitted that a meeting of the Ethics Committee of MCI was held on 01 November 2011 whereupon it had found that no *prima facie* case of medical negligence was made out against the petitioner consequent to which the enquiry against the petitioner was liable to be dropped. This decision of the MCI appears to have been thereafter reversed without just cause and lack of jurisdiction to review as the MCI is a quasi-judicial authority. Therefore, the impugned orders dated 10 January 2013 and 16 January 2013 are liable to be quashed and set aside.

Stand of the Patient/Attendants ^[3]

- The complainant Ajeet Singh Singhvi submitted that no consent was given by his mother or her family members to perform operation. The reliance on the purported consent of 26 February 2000 limited to peritoneal dialysis was completely misplaced as consent for aspiration of the Hydated Cyst on 03 April 2000 (45 days later)-a completely different and distinct procedure/operation.

- Complainant further submitted that medical negligence of the petitioner has also been found by the MCI in his failure to carry out requisite investigation for assessment of the illness of the complainant's mother and is not using an ultrasound-guided procedure for the aspiration of perinephric cyst for better precision.
- He also submitted that this court in the exercise of its jurisdiction under Article 226 of the Constitution of India should not interfere with the conclusions of such an expert body. Hence, the petition should be dismissed.

Stand of MCI ^[3]

- Mr. Angad Mirdha appearing for the MCI submitted that the MCI was seized with the complaint prior to passing of the order dated 26 October 2007 by the RMC exonerating the petitioner and two other doctors of medical negligence. Further consideration of the matter by the MCI on the pending transfer application under clause 8.7 of the regulations of 2002 was therefore in the nature of appeal relatable to clause 8.8 thereof.

He also submitted that the Ethics Committee of the MCI is constituted of leading doctors and legal experts with domain knowledge of medical science and practice, and hence the decision taken by it should not be interfered with by this court while exercising its jurisdiction under Article 226 of the Constitution of India.

- It was submitted that in the circumstances both for reason of absence of consent of the patient or her attendant and lack of requisite due care being taken, but rampant recklessness by the petitioner, nothing perverse can be attributed to finding the petitioner guilty of medical negligence by the MCI. Medical negligence potentially caused the death of the patient, punishment of striking off the petitioner's name from the register of the MCI and consequently RMC for eighteen months are justified.
- It was submitted that nothing illegal or arbitrary can be found in the orders passed by the Ethics

Committee of the MCI and the order by RMC which flowed from it.

Observations of RHC ^[3]

1. **On the Issue of Jurisdiction:** Jurisdiction of this court under Article 226 of the Constitution of India can be exercised to address the decision-making processes resorted to by statutory body and ascertain as to whether the procedure statutorily prescribed had been adhered to religiously and whether the conclusions/findings of fact arrived at by the expert body are not vitiated for perversity and/or non-application of mind in overlooking relevant material on record.

2. **Interpretation of Clauses of MCI Regulations, 2002:** High Court observed that manner in which an enquiry into a complaint for medical negligence is required to be considered by the SMC and MCI.

(a) MCI Regulations on Consent:

Clause 7.16: Before performing an operation, the physician should obtain in writing the consent from the husband or wife, parent or guardian in the case of minor, or the patient himself as the case may be. In an operation which may result in sterility, the consent of both husband and wife is needed.

(b) Manner and Procedure for Appeal before MCI:

Clause 8.7: Where either on a request or otherwise the MCI 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 MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, it may:

- (i) Impress upon the concerned SMC to conclude and decide the complaint within a time-bound schedule;
- (ii) May decide to withdraw the said complaint pending with the concerned SMC straightaway or after the expiry of the period which had been stipulated by the MCI in accordance with 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 receipt of complaint in the office of the MCI.

Clause 8.8: Any person aggrieved by the decision of the SMC on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the SMC.

“Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 60 days.”

It is not in dispute that the complaint was first laid against the petitioner on 17 May 2000. That was considered by a three-member committee of the RMC on 20 May 2000 which found no negligence on the part of petitioner and other two doctors who treated the complainant’s mother.

A complaint was again made on or about 11 October 2000. It is no doubt true that the said complaint was kept pending by the RMC for several years, consequent to which the complainant was left with no option except to approach the MCI by filing a transfer application on 12 July 2007 for transfer to MCI from RMC of the complaint filed by him against the petitioner and other two doctors. This was followed-up by letter/reminder dated 13 September 2007.

- Nothing substantial appears to have been done by the MCI on aforesaid request for transfer of the complaint to itself. Then, on 26 October 2007, the RMC considering the complaint found no *prima facie* case of professional misconduct/negligence against the petitioner and two other doctors leading to death of Smt. Jatan Kanwar Singhvi.
- 3. Issue of Manner of Appeal:** According to clause 8.8 of the regulations of 2002, appeal has to be filed within a period of 60 days from the order of the SMC. No appeal appears to have been filed

against RMC’s order dated 26 October 2007 by the complainant.

- 4. Case Law cited on Rule of Law:** The Apex Court said ^[4, 5] “It is procedure that spell much of the difference between rule of law and rule of whim or caprice. Steadfast adherence to strict procedural safeguards is the main assurances that there will be equal justice under law.”

The above judgment is wholly relevant in this present case where despite no appeal having been filed against the order dated 26 October 2007 passed by the RMC, the MCI wrongly treated the complainant’s application for transfer of the matter from RMC to MCI as appeal.

- 5. Non-application of mind by the MCI:** The report submitted by the Principal of the SMSMC, Jaipur, dated 30 August 2011 unanimously found that neither the petitioner nor the other two doctors were guilty of the alleged misconduct of medical negligence. The order passed by the MCI holding the petitioner guilty of medical negligence does not reflect any consideration of above said report.

Besides the above, the MCI appears to have exonerated the petitioner of the allegation in a meeting held between 23 August 2011 and 01 December 2011 as has been stated by the counsel for the petitioner.

- 6. Issue of Fabrication of Documents:** Nothing has been stated by the MCI that the document filed by the petitioner with his additional affidavit is fabricated, and/or a result of interpolation. All that has been stated is that in the minutes of 1 November 2011 a bonafide typographic mistake occurred in the minutes recorded.

Quashing of Order of MCI

High Court allowed the application and, consequently, the order dated 10 January 2013 passed by the MCI as also the consequent order dated 16 January 2013 passed by the RMC striking off name of the petitioner from the Registers of medical practitioners for a period of eighteen months was quashed and set aside.

CONCLUSION

In this case report, issues of lack of informed consent and medical negligence on the part of doctors were raised by patient's attendant in Jaipur, Rajasthan. RMC found no negligence on the part of doctors. In the mean time, patient's attendant requested MCI to take case from RMC. No appeal was preferred before MCI by complainant against RMC decision. Later, MCI found doctors guilty of medical negligence and order was passed by MCI and RMC for award of punishment. Doctors challenged these orders in RHC and finally High Court quashed orders of MCI and RMC for punishment.

RECOMMENDATIONS

1. The doctor should take separate informed consent for each procedure/operation; otherwise it may lead to medical negligence.
2. The doctor should use all reliable and relevant information such as history, physical examination, laboratory tests etc. to make appropriate diagnosis.

3. Complete, accurate, relevant records should be maintained by doctor to reduce medical negligence allegations.

REFERENCES

- [1] Modi JP. A Textbook of Medical Jurisprudence and Toxicology, 25th edn, 2016: 57,105.
- [2] Clause 7.16, 8.7, 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
- [3] Sharma A, J. Dr. T.C. Sadasukhi vs. Medical Council of India and Ors., S.B. CWP No.822/2013, Date of Judgment: 22.12.2016. Rajasthan High Court, Jaipur Bench.
- [4] Rekha vs. State of Tamil Nadu [(2011)5 SCC 244]
- [5] Mr. Justice Douglas of the United States Supreme Court in Joint Anti-Fascist Refugee Committee vs. McGrath [95 L Ed 817].

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