

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/02/2009/ 707

Case No. - 2011/2004

Name of the Complainant : Shri Atul Deshmukh
C/o, Kishore Deshmukh
58, Appu Colony, Rathi Nagar
Amravati.

Vs.

1. The Commissioner of Police
Amravati

2. Civil Surgeon
Amravati.

Date : 11 February 2009

Coram : **Justice V G Munshi, Member**

ORDER

Read the averments made in the complaint and the report received from Commissioner of Police, Amravati. Read the case papers. Read the Report given by the Investigation Wing of the Commission.

2. This is a case of medical negligence. Before proceeding with the merits of the case, points to be decided etc it is necessary to acquaint ourselves with the facts of the case with which were concerned.

The complainant Atul Deshmukh is the husband of (deceased) Deepali Deshmukh. On 12.07.2004 they both had gone to the Nursing Home of Dr. Wagh for removal of Copper Tee. Dr. Alka Wagh



checked the patient and it was found that the thread of the Copper Tee was broken. Therefore, Dr. Alka Wagh advised her to have sonographic test. Accordingly, the patient undergone the said test. Dr Alka Wagh seen the test report and fixed small operation for the removal of copper tee on 13.07.2004. Accordingly, the patient was admitted in the nursing home of Dr. Wagh on 13.07.2004. Dr. Alka Wagh, Dr Shyam Rissam, Dr. Nitin Bijave were busy in operation. At that time Dr. Wagh also came there and taken part in operation. They could not remove the copper tee. On the other hand the health condition of Deepali became serious. The patient was shifted to the hospital of Dr Bonde in unconscious condition by ambulance. She was given all the necessary treatment in the said hospital. However, during treatment Deepali expired on 19.07.2004 at about 8.00 a.m. in the morning. Accordingly, AD no. 44/2004 u/s. 174 Cr PC was registered in Police Station Gadge Nagar, Amravati.

3. It was alleged that firstly, the operation for removal of copper tee was in fact a small or minor operation. Secondly, oxygen cylinder was not available in the Nursing Home of Dr Wagh. Thirdly, all things occurred only because of negligence of doctors who have taken part in the said operation. The complainant lost his wife and held all the Doctors of Nursing home of Dr. Wagh alone responsible for the tragic death of his wife. Therefore, by moving present complaint, sought stern action against all the Doctors, who were responsible for the death of Deepali.

4. The Respondent Commissioner of Police, Amravati by filing their report made it clear how the Respondent Police did inquiry / investigation in this AD Case.

5. Therefore, it is necessary to view the case in the light of facts and circumstances brought on record and also in the light of legal position.



(i) May it be noted that the facts mentioned here in after are not disputed by the parties or may safely taken as established by the material on record.

(a) That on 12.07.2004 the complainant and his wife Deepali went in the Nursing Home of Dr. Wagh, Dr Alka Wagh examined the patient (position of copper tee) and it was noticed that the thread of the copper tee was broken.

(b) The patient as per medical advice, undergone sonography test in the hospital of Dr. Sikachi and the report was shown to Dr. Alka Wagh.

(c) Dr Alka Wagh seen the report and decided to have small operation for removal of copper tee with the help of Anesthetist on 13.07.2004 at 10.00 A.m.

(d) On 13.07.2004 in morning Dr. Alka Wagh, Dr Shyam Risram and Dr Nitin Bijare were present and tried to remove the copper tee and at that time the condition of the patient became serious and in the last became conscious.

(e) The Doctors could not remove the copper tee and as the condition of the patient became more serious, Dr. Wagh called the Ambulance along with oxygen cylinder. The patient was shifted to the hospital of Dr. Bonde in serious condition.

(f) The patient during treatment expired in the hospital on 19.07.2004.

We have to view the case on this background.

(ii) The copper tee was affixed in order to postpone pregnancy. Deepali, as she was in good state of health and as she wanted child, approached Dr. Alka Wagh, for the removal of copper tee. Even during the period of sonography test and examination, she was normal. Even on the date of operation she was normal and her blood pressure etc was normal. During



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operation her blood pressure went down and it could not be restored. In the last she was removed to another hospital in unconscious condition. Had it been the fact that oxygen cylinder was available in the Nursing Home, the patient would not have gone in coma. It is not known, why the Doctors proceeded with operation, when oxygen cylinder was not available in the Nursing Home and how they have taken such risk, without apprehending the probable danger to the life of the patient. This is the one of the important circumstance against the Doctors.

(iii) In this case autopsy was held on the dead body of the deceased by a team of five Doctors from General Hospital, Amravati. They opined that,

"Probable cause of death cannot be ascertained. So cause of death is undetermined. Viscera is preserved for chemical analysis. Blood sample is preserved for toxicological analysis."

Thus, the team of Doctors did not give any cause of death of Deepali.

(iv) The team of Doctors who held autopsy on the dead body of Deepali in their final report dated 18.06.2007 did not give any clear opinion as to whether the death of deceased occurred due to medical negligence of the Doctors, who performed operation of removal of copper tee. On the other hand they asked the Police to seek such opinion from Medical College, Yavatmal and accordingly they moved this Medical College vide letter dated 26.06.2007. The Superintendent of this Government Medical College, Yavatmal vide their letter dated 12.07.2007 informed the Respondent to take such opinion from Deputy Director (Health Services), Akola, Division Akola. Accordingly letter was



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sent to Dy Director, Akoaia on 22.08.2007, who on his turn on 05.09.2007 informed the Respondent to take opinion from Civil Surgeon General Hospital, Amravati and its copy was sent to Civil Surgeon, Amravati.

(v) The Civil Surgeon, Amravati found it difficult to give opinion because the doctors who held the autopsy either retired or transferred from that place. In the last, he formed the Committee of eight expert Doctors to give such opinion. They vide their letter dated 28.01.2008 opined that the doctors who did perform operation, were not negligent. They even suggested to seek opinion from State Committee.

(vi) In the last the matter was referred to Police Surgeon, Mumbai for their opinion. The Police Surgeon gone through all the case papers and vide their letter dated 15.04.2008 opined that, "it was a case of medical negligence." The Police Surgeon referred the Government Resolution dated 07.10.2005 issued by Government of Maharashtra in this regard and pointed out that the Superintendent - Government Medical College should constitute a three man Committee and to give report.

(vii) In such cases of death due to medical negligence, every person concerned, has to act in accordance to the directions given in Government Resolution dated 07.10.2005. In the present case it is necessary to mention that, these guidelines / directions were not at all followed. It was incumbent upon the Committee to give report within two weeks. However, the record shows that, the case was not properly handled by all these persons concerned and unnecessarily the matter was delayed. The record shows that, the Respondent Police, were required to move from one Authority to other Authority in order to get report. In fact the team of five Doctors who held the



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autopsy, should have given report within the given time. The Investigation Wing in their report observed that,

"It appears that the Doctors who held autopsy, avoided to give clear opinion, to save the persons concerned."

Attention was drawn on the clause - 2 of the Government Resolution dated 07.10.2005 issued by Government. It clearly mentions that in the case of medical negligence by medical practitioner proper inquiry should be made by the Council (Parishad). In that case the police should give such instructions to the complainant that he should file complaint before Council (Parishad) and secondly the Police should send all the information about the case to the Council (Parishad).

After considering all these aspects, I make following recommendations.

- (A) **Maharashtra Medical Council, to make proper inquiry into the allegations of medical negligence, by the Doctors who performed operation for removal of copper tee.**
- (B) **Maharashtra Medical Council, to make further inquiry, into the allegations of not giving opinion about medical negligence by the Doctors, who held autopsy on the dead body of Deepali.**
- (C) **The complainant to move the Maharashtra Medical Council accordingly with his grievances / complaint.**
- (D) **Respondent Police to furnish all the necessary information to the Maharashtra Medical Council.**



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- (E) We hope and trust that Maharashtra Medical Council would act accordingly at early date and to take action according to law.
- (F) Copy of this order be sent to Maharashtra Medical Council Mumbai through Secretary, State Human Rights, Commission, Mumbai.

Therefore, Case No. 2011/2004 is disposed of accordingly. Inform the complainant and the Respondent Commissioner of Police, Amravati.

Dated : 11 February 2009



V. G. Munshi

(Justice V G Munshi)
Member, SHRC