

**CASE COMMENT ON DR. KUNAL SAHA V. PRINCIPAL SECRETARY,  
DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT  
OF WEST BENGAL**

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## **INTRODUCTION**

The Constitution of India is a supreme law of land which clearly differentiate legislature, administrative and judiciary from each other by adopting 'Doctrine of Separation of Powers'. This is what a issue which is arise in the present case where the petitioner has filed a petition under Article 226 of Constitution which challenges the appointment of a senior doctor as a member of West Bengal Clinical Establishment Regulatory commission on the ground that he has been held under Medical Negligence by Supreme Court of India and arise a question as whether a judiciary can interfere into state legislature or to the executive where he is given the right of choice of appointment of member of committee of West Bengal to Public office.

## **FACTS OF THE CASE**

In the spring of 1998, the couple Dr. Kunal Saha and his wife Anuradha Saha who lived in U.S. traveled to Kolkata to attend wedding near the end of April, Mrs. Saha noticed rashes on her body, and the couple asked few friends about a prominent doctor and visited Dr. Sukumar Mukherjee, which they were told. On 7 May 1998, when Mrs. Saha rash worsened Dr. Mukherjee prescribe Depo Medrol to be injected into Mrs. Saha muscle which as per Pharmacy India ltd, the maximum dosage recommended must be of 40 to 120 milligrams once a week. Whereas Dr. Mukherjee prescribe two injections at 80 milligram every day as the petitioner is also a doctor such prescription haunt him and he asked Dr. Mukherjee to explain the reason where He said, "Kunal, believe me, I have treated at least 100 patients exactly like your wife and this drug work like magic." The first dose of injection was given by Dr. Mukherjee. Four days later, Mrs. Saha's rashes

and fever worsened, and she was admitted to the AMRI Hospital in Kolkata where Dr. Mukherjee reexamined Mrs. Saha and injected with other dose of injection before leaving to U.S. On May 12, 1998, large sheets of skin of Mrs. Saha has separated from her back and limbs. The very next day, Dr. Mukherjee, Dr. Balram Prasad, Dr. Baidynath left for U.S. and continued treatment of Mrs. Saha and didn't pause to question that why her condition worsened. On May 17, 1998 Dr. Saha evacuated his wife by private plane to Mumbai's Hospital, on arrival doctor noticed green patch on her back, an unpropitious sign of an injection that claim her life on May 28. Later in 2013, Supreme Court found Dr. Mukherjee, Dr. Prasad, Dr. Halder and AMRI Hospital negligent in civil case and asked them to compensate about 60.8 million rupee due to complex socio economic condition of Dr. Saha, the pain his wife endured, the doctor's loss of income and his legal expenses but their license didn't cancel and later on, Dr. Sukumar Mukherjee became Chief advisor of the Healthy Ministry of West Bengal and other doctor practicing in city's top hospitals which made Dr. Kunal Saha to file petition under Article 226 of Constitution of India.

### **DEFINING ISSUE**

The issue raised under the case is that whether the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act 2017 have a gap of removal/ disqualification of member of committee which require instant interference of judiciary to the subject matter and also Whether a foreigner petitioner's PIL can be entertain in the court.

### **ARGUMENTS ADVANCED**

Primarily basis of the argument which petitioner contended that there is a gap in the statute in the matter of removal / disqualification of the person to be appointed as a member of commission and submitted that court should step into regulating the appointment and removal of members. Further petitioner contended that this is meanest decision from side of the state to appoint Dr. Mukherjee as a member of committee because as per *Balram prasad v. kunal Saha*<sup>1</sup> Dr. Mukherjee was found guilty of Medical Negligence. In reply to the above contention the respondent argue that the

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<sup>1</sup> Available at <https://indiankanoon.org/doc/35346928/> (last accessed on 26/07/2018)

petitioner has filed the petition which is baseless and due to the personal vendetta and such petition should be thrown out of the court as it is brought on account of personal interest and not for the public which escape the very purpose of Public Interest Litigation. Further, respondent submitted that petition is filed under Article 226 of Constitution of India which can't be entertain since the foreigner petitioner is not ordinarily the resident of this country so he can't be affected by the working of the Act and with such a behavior of foreigner petitioner his personal animosity is clear and respondent also stressed upon recent judgement of Supreme Court where PIL is dismissed due to the personal interest of the person. The cases are, *Ashok kumar Pandey v. state of west Bengal*<sup>2</sup>. And *Dr. B. Singh v. union of India*<sup>3</sup>. The Final argument presented as they argue by submitting *B.P. Singh v. union of India*<sup>4</sup>. which enumerated the parameters of 'Doctrine of Pleasure' where a particular post is held as per the pleasure of president or governor. And contented that as per Section 36 (2) (c) which is relating to the appointment of the which can be done by state government and selection can be done of those who are from field of medicine, social science, law. Furthermore, presented Section 37(1) of Act which says that the member appointed can hold office during the pleasure of state government.

## SUMMARY OF COURT JUDGEMENT

The High Court of Kolkata in the above mater had patiently heard the argument and noted out each and every important argument and held t where firstly, Court rejected the contention of state and held that overseas citizen represent the country at international level and hence, foreigner petitioner is a citizen of India as per the Citizenship Act 1955. Further held that, any person can file PIL and such petition can't be thrown away without knowing the subject matter involve in the petition only on the ground of that such petition is been file by foreigner petitioner

Furthermore, the Constitutional bench held that as per report of ' Doctrine of Pleasure' it is not a license to act with unfettered discretion of the act arbitrarily, whimsically or capriciously But such powers is given as courts are slow to entertain a challenge in a matter of choice of personnel for appointment to a public office. A court will though not easily interfere with the choice as if the

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<sup>2</sup> (2004) 3 SCC 349

<sup>3</sup> (2004) 3 SCC 363

<sup>4</sup> (2010) 6 scc 331

legislature doesn't deem it necessary to fix parameters for the selection, it would imply that an element of discretion is left over to the executive. But court clearly held that a Constitutional court would step in only when the choice appears to be bad to the meanest mind, almost defeating the purpose of appointment, if the choice are capricious and that no responsible person could have done so. Also, it was stated that 'even the Supreme Court judgment noticed that Dr. Mujherjee was a respected and reversed medical practitioner' and hence, didn't pass any other order prohibiting the respondent to associate with any public body and even didn't cancel out his license and hence, the appointment of respondent as a member of the commission doesn't go against either the spirit or the letter of relevant Supreme court judgement and doesn't fall foul of Article 144 of Constitution of India. Although, the state was aware of the judgement of Supreme Court it was held that state would made a conscious decision to still nominate Dr. Mukherjee as a member of commission and According to court the choice doesn't reflect any caprice or lack of wisdom for the court to interdict the same.

## COMMENTS

The laudable judgement by the High Court of Kolkata will be a remember able turn in India's medical negligence law and also in the matter of appointment to public office. Before coming to the above judgement I would like to draw the attention of the readers to *Balram Prasad v. Kunal Saha*<sup>5</sup> where the respondent was found guilty of medical negligence and have to compensate the complainant neither their license was canceled nor even are they demoted. Is this is the value of someone's life and Dr. Mukherjee is been appointed as a member of commission and other respondent are still working with the top hospital of city. Our honorable Supreme Court though punished them with medical negligence but in my opinion giving such irresponsible and unprofessional doctors the highest post will be the threat to the society as vulnerable patients blindfolded trust doctors and if this matter is not taken to the series of matters there will be more upcoming Mrs. Saha.

In the present case before the Honorable Court I highly appreciated the fact that the Court didn't thrown away the PIL filed by the foreigner petitioner and even broader the scope of PIL by saying

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<sup>5</sup> 24 October, 2013

that 'without knowing the matter or seriousness of PIL, court will not throw is out'. The Court also accepted that though the petitioner is a permanent resident of U.S. but he is an overseas citizen of India who represented India internationally and come under citizenship Act 1955. The Court also agreed to the point that court can interfere to state legislation or the choices which have to be made by executives but only when the discretion is arbitrary, whimsically and capriciously and of meanest of mind. In the present case appointing respondent even after knowing the judgement which is passed by Supreme court is one of the meanest decision which might be taken out of the corrupt means because a reasonable person will never appoint respondent who not only had taken away a like of a person by negligence but also tries to shift his blame to the doctor and disrespect his profession. Such person can be threat to the society. Also, by appointing or giving a highest post it might increase the cases of medical negligence in future.

## CONCLUSION

In the above case it is very important to highlight the manner in which respondent attempted to shirk from his individual responsibility in the case which is made against him on the death of claimants wife is very much unbecoming of a doctor as renowned, reversed and unprofessional he is which is in all possible way can become a threat to society that is the reason why the fact of the case is sincerely elaborated. Moreover, being such a senior doctor he has shown utmost disrespect to his profession by being so causal and also tries to shift the blame on other doctors by analyzing the case I agreed to the point that 'proving medical negligence in India is difficult and the burden rests solely on claimant'<sup>6</sup> as the doctors are believes to be the gems of the society. One of the point I highly appreciated is that Court has broaden the scope of PIL one again by not rejecting it because PIL are the greatest weapon of vulnerable people which they can use in case of any malpractices and malice intention of executives. Also, Court have agreed that judiciary can interfere in matter of appointment of member as per choice which keeps the check and balance in the society and which is necessary to avoid the arbitrariness in the society and for the development of the country.

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<sup>6</sup> By Nagarathna Annapa, an assistant professor of NLU Bangalore

Further, I hope that medical negligence must be given more seriousness as now a days the cases of medical negligence are increasing like a mushroom.



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