
ENDOPHTHALMITIS AND THE LAW

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'Eyes are the gate-way to the world' goes the saying. No doubt, if these eyes are lost, one feels that he has indeed lost the world. Undoubtedly, eyes are the most precious possessions any person can own. This fact, coupled with the over-courteous journalists, today has made the ophthalmologist the 'numero uno' on the hit list of the consumer activist and the advocates who practice in the consumer courts. There is no doubt that ophthalmologists who once occupied the top slot are now trailing behind, thanks to endophthalmitis.

Intra-ocular infection has always brought disrepute to the ophthalmologist and this problem is not only rampant at eye-camps but also in hospitals, which include the five star ones. This problem is not new and the Hon'ble Supreme Court was seized of the matter as far back as 1989, and this resulted in a landmark judgment being passed which has today laid down many guidelines on how the said infection can be controlled or minimized.

The facts of the case were, indeed, distressing. The Lions Club, Pottery Town at Khurja in Uttar Pradesh arranged and conducted, as part of its social service programme, an "Eye-camp" with intensions to extend facilities of expert ophthalmic surgical services to the residents of the town. The club invited Dr. R. M. Sahay of the Sahay Hospital, Jaipur and his team of doctors to offer the surgical services. About 122 patients were examined. 108 patients were operated upon, 88 of them for cataract. Dr Sahay left Khurja that evening for Moradabad where he was scheduled to conduct similar operations at another "Eye-Camp".

But the whole programme at Khurja, however

laudable the intentions, proved to be a disastrous medical misadventure for 84 patients. The operated eyes of the patients were irreversibly damaged, due to post-operative intra-ocular infection. The doctors present at the camp administered antibiotics, both oral and local, for the infection. Dr Sahay also personally undertook some ameliorative treatment. But the operated eyes were damaged irreversibly. A similar mishap, but on a lesser scale affected some 15 patients at Moradabad. In spite of timely treatment their condition also did not improve. It was undisputed that this terrible medical mishap was due to a common contaminating source. An enquiry was conducted and the organism was identified as E. Coli. In all probability the source of the infection was the "normal saline" used during the surgery.

Two social activists, Shri Om Prakash Tapas and Shri A. S. Mittal, acting on behalf of an organisation called 'Union for Welfare and Human Rights', directly filed a Public Interest Litigation under Article 32 of the Constitution in the Supreme Court. On the directions of the Government of Uttar Pradesh, the Deputy Director (Eye Treatment) conducted an inquiry into the happenings. Similarly the Sub-Divisional Magistrate, Khurja, conducted another enquiry.

In defence Dr Sahay admitted the unfortunate event, which he called a "Mishap". He further averred that the medical mishap at the Khurja camp was the only one he had encountered in his entire extensive experience. Despite all possible care mishaps could not always be avoided because the error in one link of the entire chain may sometimes result in a total failure. He also stated that the number of patients oper-

ated upon at the Moradabad camp for cataract was about 380 and the vision of about 10 of them could not be restored. A small percentage of failure was considered normal.

The Supreme Court felt that the doctor was not justified in describing as a mishap, the large-scale and calamitous effects the operation had on the hapless victims. It was, perhaps, a euphemism to call the incident as one, when some 84 patient's vision could not be restored. The operation was meant to remove an obstruction to vision and restore normal eyesight. But what happened was that the patients became totally blind in the operated eyes.

The Supreme Court in order to prevent such a catastrophe from occurring again passed certain guidelines namely:

1) Qualified, experienced ophthalmic surgeons registered with Medical Council of India or any State Medical Council should only perform the operations. Camps should not be used as training ground for post-graduate students, and operative work should not be entrusted to post-graduate students.

2) There should be a pathologist to examine urine, blood, sugar etc.

3) It was preferable to have a dentist to check the teeth for sepsis and a physician for general medical check-up.

4) All medicines to be used should be of standard quality duly verified by the doctor in-charge of the camp.

5) The necessity of maintenance of the highest standards of aseptic and sterile conditions at places where ophthalmic surgery - or any surgery - was conducted was emphasised. The Supreme Court said:

"The necessity of maintenance of the highest standards of aseptic and sterile conditions at places where ophthalmic surgery - or any surgery - is conducted

cannot be over-emphasised. It is not merely on the formulation of the theoretical standards but really on the professional commitment, with which the prescriptions are implemented that the ultimate result rests. Governments, States and Union, incur enormous expenditure of public money on health care. But, the standard of cleanliness and hygiene in public hospitals unfortunately, leave greatly to be desired. The maintenance of sterile, aseptic conditions in hospitals to prevent cross-infection should be ordinary, routine and minimal incidents of maintenance of hospitals. Purity of the drugs and medicines intended for man-use would have to be ensured by prior tests and inspection. But, owing to a general air of cynical irreverence towards values that has, unfortunately, developed and to the mood of complacency with the continuing deterioration of standards, the very concept of standards and the imperative of their observance tend to be impaired. This is a disturbing feature. The remedy lies in a ruthless adherence to the virtue of method and lying down practical procedures in the minutest of detail and by exacting - not merely expecting - strict adherence to these procedures."

The Supreme Court did not opine on whether the doctors were negligent or not and left that issue to the trial courts to decide after appreciating the evidence led by parties. It was argued that the wholly avoidable mishap was entirely the result of the composite negligence on the part of the surgical team and the authorities of the U.P. Government, who failed to

ensure obedience to the norms. The right of the victims for damages was argued on the footing that the persons who organised the 'eye-camp' were acting pursuant to and under the authority of Government and that on the doctrine of the State action, the activity must be reckoned as that of the State itself, which must accordingly be held vicariously liable.

As relief, the Supreme Court ordered that in addition to the sum of Rs. 5000, already paid by way of interim relief to the aggrieved, the State Government should pay a further sum of Rs. 12,500 to each

of the victims. It was further directed that if any of the victims were otherwise eligible for any benefit of pension under any of the existing schemes in force in the State, their cases should be considered for such benefit as well.

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