

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: April 20, 2009**

+ **L.P. A No. 165/2009 & CM Nos. 5402/2009 & 5403/2009**

DEAN MAULANA AZAD MEDICAL COLLEGE & ANR.

..... Appellants

Through: Ms. Avnish Ahlawat with
Mr. Saurabh Chadda, Advts.

versus

DR. BUDH PRIYA RAHUL

..... Respondent

Through: Nemo.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

ORDER

% **20.04.2009**

1. The present appeal arises out of the judgment of the learned Single Judge dated 24.2.2009. The Respondent(original petitioner in the writ petition) was issued a MBBS passing certificate on 13.3.2009 on the basis of which he applied for provisional registration with the DMC and received the provisional certificate on 14.3.2006. The Respondent started his one year compulsory rotary internship and on its completion the internship completion certificate (hereinafter ICC) was issued on 23.3.2007. The Respondent on the basis of this ICC applied to the DMC for issuance of a registration on 26.3.2007. The registration certificate was issued on 3.4.2007. The Respondent appeared in the post-graduate medical entrance test, Delhi. He was

called for counseling on 12.4.2007 and he opted for M.S. (Orthopeadics) at MAMC. By letter dated 1.5.2007 of the Registrar (Academic) the HoD (Orthopeadics) Dr. Anil Dhall, was informed that the Respondent was provisionally selected for the post. Later the Respondent was directed to submit a joining report. He reported to the HoD (Orthopeadics) for joining the course but was not allowed to do so.

2. The Respondent alleges discovering that his name was not on the list of awardees of the MBBS degree and the same was not awarded to him without assigning a reason. The letter dated 4.5.2007 was received by him on 8.5.2007 from the Registrar, DMC informing him that his registration certificate was withdrawn since his internship completion certificate had been canceled, by MAMC authorities. On the same day the Respondent received a call from Dr. J. M. Kaul and he was directed to meet her on 9.5.2007 at 10 a. m. When he reported on the said date a memorandum, dated 9.5.2007 was handed over to him whereby he was directed to appear before the inquiry committee on 10.5.2007 at 12 a. m. in connection with the charges made against him. However, no document was provided to him apprising him of the allegations and he was further directed to furnish a written explanation of the alleged misconduct within 24 hours. The Respondent sent a letter dated 10.5.2007 requesting extension of time for filing of the written explanation, but the same was not granted.

3. The Appellant(Respondent in the writ petition) countered the

allegations put-forth in the petition stating that the Respondent had approached the court with unclean hands and suppressed material facts alleging that he had forged signatures of the coordinators/In charge on the attendance records and manipulated in the process of obtaining the ICC.

4. Counter affidavit was also filed by the University of Delhi in the writ petition wherein it was stated that MAMC had informed that the ICC was issued to the Respondent inadvertently and there was shortage of attendance on his part. This, according to the University, rendered him ineligible for the ICC; the certificate was withdrawn/cancelled. It was also averred that a show cause notice was issued to the Respondent, to which he did not respond. However, the details of the said show cause notice were not provided.

5. The DMC in its counter affidavit filed in the writ petition had admitted that a certificate of registration dated 3.4.2007 was issued to the Respondent by them but the same was withdrawn as a consequence of their receiving a communication (letter dated 1.5.2007) from the MAMC that the ICC was issued to the Respondent inadvertently since on a scrutiny it was discovered that he was short of attendance. The ICC stood cancelled on this ground. On the basis of this letter, the DMC withdrew the certificate of registration by order dated 4.5.2007.

6. It was the case of the Respondent in the writ petition that MAMC denied any fair opportunity to him; it did not properly notify him of any charge, and gave him no chance to defend himself.

According to the Respondent, the MAMC's alleged notice, intimating about the holding of an inquiry on 27.4.2007 was never received by him. He submitted that by then the authority had already decided the course of action they were going to adopt. As per the Respondent the action in withdrawing the ICC certificate was, thus, illegal. The Respondent also submitted that he was not informed/intimated about the precise nature of the charges leveled against him or even appraised of the documents and materials forthcoming and sought to be relied upon by the authorities to conclude as they did, that he had forged the records so as to obtain the ICC.

7. The Respondent contended that he had attended all compulsory subjects of rotatory internship programme and was entitled to the ICC.

8. The learned Single Judge after considering the contentions and rival contention of all the parties and discussing in detail the relevant stand of the parties has rightly come to the conclusion that considering all MAMC records and files revealed that the Respondent was never invited to join the inquiry committee proceedings held on 19.4.2007 and 24.4.2007. There was no proof of his having received the memorandum dated 20.4.2007. The MAMC did not show if he was supplied any documents in connection with the allegations leveled against him. On 8.5.2007, the Respondent was for the first time instructed to appear before the inquiry committee (of the university) on 9.5.2007 to which he complied and thereafter he was issued a memorandum dated 9.5.2007 and directed to explain within

24 hours the reasons for the alleged forgery and why disciplinary action should not be taken against him for alleged misconduct. He was further directed to appear before the committee with a written explanation on 10.5.2007 at 12 a. m. The learned Single Judge has rightly held that this document too though termed as show cause notice was bereft of any details or specifics of any allegations made. The suggested disciplinary action had already been taken against the Respondent as by letter dated 1.5.2007 his internship completion certificate was withdrawn and as a result of which he was not issued as MBBS degree and his registration with the Delhi Medical Council was also cancelled, by letter dated 4.5.2007, which was received by him on 8.5.2007, issued by the Registrar of the Council.

9. The learned Single Judge also took note of the fact that as per the counter affidavit filed by the University of Delhi, it appeared that it unanimously took the decision to cancel application of the Respondent to the MS (orthopeadics) course and that was offered to another candidate for the counseling held on 29.5.2007. This decision was conveyed to the Respondent by a letter. It was not denied by the Appellants that the Registrar (Academic), who was also member of the inquiry committee issued two letters dated 26.4.2007 (for medical examination of the Respondent) and 1.5.2007 (informing the HoD (orthopeadics) about the selection of the Respondent for the said course). Before the issuance of these letters, the enquiry committee had already been constituted and meetings had already been conducted. Further, the person, who issued these letters was

also on the Board of the inquiry committee who had knowledge of the enquiry pending against the Respondent.

10. Neither the memorandum issued to the Respondent on 20.4.2007 by MAMC nor the show cause notice issued by the University on 9.5.2007 outlined the specifics of any allegations. It did not say how and for what misconduct the authorities proposed to withdraw the ICC. Learned Single Judge thus rightly held that these documents could not be termed as notices at all. Furthermore, it appears that the authorities had substantially determined the Respondent's guilt on 24.4.2007 itself even before the date fixed for inquiry proceedings. The inquiry proceedings alleged serious misbehavior and misconduct of the Respondent, including forgery. Neither did the Appellants choose to press criminal charges nor were the statements of those whose signatures appeared to have been allegedly forged or copied do not even appear to have been recorded. It is well settled principle of natural justice that no one should be condemned unheard. Notice is the first limb of this principle. It should appraise the party clearly of the case that he has to meet. It is but essential that the parties should be put on notice of the case before any adverse order is passed against him. The authorities were required to at least follow a minimum fair hearing procedure which they unfortunately failed to do.

11. The learned single Judge has rightly come to the conclusion that the procedure adopted by the Appellants in not providing the Respondent a hearing before withdrawal of the internship completion

certificate which led to the cancellation of his Delhi Medical Council registration and non-issuance of the MBBS degree, was thus an arbitrary action and liable to be struck down. The denial of proper and fair procedure has caused great damage to the Respondents name and reputation, loss of two years in his career as well as cast a shadow on his conduct. To many a man, his professional reputation is the most valuable possession. The actions of the Appellant are clearly arbitrary, unreasonable and against the basic principles and tenets as enshrined in article 14 of the Constitution of India.

12. In view of the above discussion, the appeal must fail. We see no reason to interfere with the judgment of the learned Single Judge. Withdrawal of the ICC certificate has been rightly quashed by the learned Single Judge.

13. The appeal is accordingly dismissed. CM Nos. 5402/2009 and 5403/2009 stand disposed of accordingly.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

APRIL 20, 2009
Rb/RS