

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

Date of decision: 16th September, 2011

+ **W.P.(C) 5058/2011**

% **DR. MADHU KARNA** **..... Petitioner**

Through: Mr. Sandeep Kapoor, Adv.

Versus

MEDICAL COUNCIL OF INDIA & ANR. **..... Respondents**

Through: Mr. Ashish Kumar, Adv. for MCI.

Mr. Saurabh Sharma, Adv. for R-2.

AND

+ **W.P.(C) 6084/2011**

% **DR. AVNINDRA GUPTA** **..... Petitioner**

Through: Mr. Mahabir Singh, Sr. Adv. with Mr.
Rakesh Dahiya & Mr. Nikhil Jain,
Advocates.

Versus

MEDICAL COUNCIL OF INDIA & ANR. **..... Respondents**

Through: Mr. Ashish Kumar, Adv. for MCI.

Mr. Saurabh Sharma, Adv. for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. These petitions have been filed impugning the order dated 19th April, 2010 of the Delhi Medical Council and the order dated 19th May, 2011 in appeal, of the Medical Council of India (MCI).

2. A complaint was filed by one Mr. Anil Kumar Mahato with the Delhi Medical Council, of professional negligence by the petitioners in the matter of treatment at Centre For Sight of the baby daughter of the said Mr. Anil Kumar Mahato. It was *inter alia* the case of Mr. Mahato that he took his daughter to the Centre For Sight where she was examined by skilled professionals and Retina Specialists i.e. the petitioners, but due to their gross negligence the disease was not diagnosed by them and the Retinoblastoma became incurable and eye of the child had to be subsequently removed and which could have been saved if detected in early stages when the child was examined by the petitioners. The Delhi Medical Council, after hearing the petitioners, vide order dated 19th April, 2010, though finding the petitioners to be guilty of professional negligence in, contrary to norms, in the face of symptoms, not suspecting the Retinoblastoma and not getting the mandatory

tests done and advising Squint Surgery which is not advisable till tumour is ruled out, let them off, only with a warning.

3. The petitioners did not avail of the remedy of appeal against the aforesaid order of the Delhi Medical Council.

4. However Mr. Mahato aforesaid, preferred an appeal to the MCI for enhancement of punishment to the petitioners and which appeal was disposed of vide order dated 19th May, 2011 by the MCI.

5. The MCI has held that there was error of judgment on the part of both the petitioners on the issue of B-Scan and Squint Surgery but delay in diagnosis of Retinoblastoma has not affected patient's prognosis. The MCI thus, while upholding the decision of Delhi Medical Council and dismissing the appeal of Mr. Mahato, noted that both the petitioners are specially trained Retinal Surgeons from reputed Institutes in the country specialized in eye surgery namely Arvind Eye Hospital and Shankar Netralaya and that in view of their very specialized training were expected to have not committed such an error of judgment. The MCI accordingly recommended that the petitioners should attend their above named Institutes i.e. Arvind Eye

Hospital and Shankar Netralaya for Continuous Medical Education (CME) and update for 15 days every year for next 3 years.

6. The senior counsel for the petitioner in W.P.(C) No. 6084/2011 has contended that the said petitioner had in the prescription, advised B Scan and in the orders impugned it has been wrongly recorded that he had failed to advise B Scan.

7. The counsel for the petitioner in W.P.(C) No. 5058/2011 has contended that MCI has wrongly presumed that the said petitioner is specially trained retinal surgeon when she is a Squint Specialist. It is thus contended that there is perversity in the orders and the same should be set aside.

8. The counsel for the respondent MCI has contended that the petitioners were satisfied with the order of the Delhi Medical Council and did not challenge the same and cannot now challenge the factual findings in the said order which have been upheld in appeal by MCI and the challenge if any can at best be only to the further directions issued by the MCI in appeal for the petitioners to undergo education and update.

9. The counsel for the petitioner in W.P.(C) No.5058/2011 though claims that the said petitioner had preferred an appeal, is unable to show so from the records. Thus, the said plea cannot be accepted.

10. I have also enquired from the counsels for the petitioner as to what is the scope of judicial interference in the orders of bodies such as MCI. MCI is a democratic, statutory, representative body of the professionals in the field of medicine and governs the numerous facets of the said profession. Section 20A of the Indian Medical Council Act, 1956 enables the MCI to prescribe standards of professional conduct and etiquette and a Code of Ethics for Medical practitioners and to punish violations thereof including by removal of name from the Register thereby preventing the delinquent from practicing medicine. The Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 provide the procedure for enquiring into such complaints. A perusal of the orders of Delhi Medical Council & MCI shows the matter to have been considered by Medical Professionals. There is no argument that the Medical Professionals who have returned the findings aforesaid were not competent to and/or did not

have the requisite expertise in the matter. It is not the argument that such professionals were biased against the petitioners. I have wondered whether this Court can in the circumstances, interfere with the concurrent findings of two sets of Medical Professionals. Judicial review is of the decision making process and not of the decision. No error in the decision making process of either of the two professional bodies is argued. Nothing is shown that the conclusions reached are preposterous. The arguments aforesaid noted, are not unequivocally borne out from the record. This court in exercise of powers of judicial review is not to sit in appeal over the decision of the Professional Bodies who are otherwise competent and experts to deduce whether there has been any error of judgment as has been found by the MCI in the present case.

11. I also agree with the contention of the counsel for the respondent MCI that the petitioners having not challenged the order of the Delhi Medical Council are deemed to have accepted the same as correct and cannot now seek to challenge the factual findings, of error of judgment, having been committed by them in treatment of the baby daughter of Mr. Mahato. If the

petitioners were aggrieved from the findings of Delhi Medical Council, they had the remedy of appeal, prescribed under the Act and Regulations supra. The challenge now by the petitioners can at best be to the direction to them for undergoing education and update.

12. The counsel for Mr. Mahato has also invited attention to the Report of the Team of Ophthalmologists constituted by the Safdarjang Hospital pursuant to the directions in a consumer complaint also preferred by Mr. Mahato against the Centre For Sight. The said team also reported that the basic tests which ought to have been carried out in the first instance to establish the diagnosis, were not carried out.

13. As far back as in *P.J. Ratnam v. D. Kanikaram* (1964) 3 SCR 1 it was held that the object of a proceeding in respect of professional misconduct under the Bar Councils Act and similar statutes is to ensure that highest standards of professional misconduct are maintained; the proceedings though in a sense penal, are solely designed for the purpose of maintaining discipline to ensure that a person does not continue in practice who by his conduct has shown that he is unfit so to do. Similarly in *V.C.*

Rangadurai v. D. Gopalan (1979) 1 SCC 308 it was reiterated that disciplinary proceedings are *sui generis* and are neither civil nor criminal in character and that as a rule even in exercise of appellate power (under Section 38 of the Advocates Act, 1961) the Court would not, as a general rule interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and of the State Bar Council unless the finding is based on no evidence or it proceeds on mere conjecture and unwarranted inferences. The Supreme Court in ***Rajendra V. Pai v. Alex Fernandes*** (2002) 4 SCC 212 held that ordinarily this Court does not interfere with the quantum of punishment where an elected statutory body of professionals has found one of their own kinsmen guilty of professional misconduct unless the punishment is found to be totally disproportionate to the misconduct. The Division Bench of this Court also recently in ***Satendra Singh Vs. Union of India*** MANU/DE/2694/2009 though in a different context held that in exercising jurisdiction under Article 226 of the Constitution of India, this Court is not to sit as a superior medical expert expressing opinions over the opinions rendered by the experts in the field.

14. The scope of interference by the Courts in such matters is defined by the English Courts in *Meadow vs. General Medical Council* [2007] Q.B. 462 and *Raschid vs. General Medical Council* [2007] 1 W.L.R. 1460 as under:

(A) The panel is concerned with the reputation and standing of the medical profession, rather than with the punishment of doctors;

(B) The judgment of the panel deserves respect as the body best qualified to judge what the profession expects of its members in matters of practice and the measures necessary to maintain the standards and reputation of the profession;

(C) The panel's judgment should be afforded particular respect concerning standards of professional practice and treatment;

(D) The court's function is not limited to review of the panel decision but it will not interfere with a decision unless persuaded that it was wrong. The court will, therefore, exercise a secondary judgment as to the application of the principles to the facts of the case before it.

It has further been held that since the principle purpose of the Panel's

jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the profession rather than the administration of retributive justice, particular force is given to the need to accord special respect to the judgment of the professional decision-making body in the shape of the Panel.

15. I have in the circumstances wondered whether any interference in the direction for undergoing education and update is necessary.

16. The senior counsel for the petitioner in W.P.(C) No.6084/2011 has contended that Dr. Avnindra Gupta is a very senior Retinal Surgeon and one out of only eight in the city with such high qualification and he has been visiting the Shankar Netralaya as a guest Lecturer and if he is now directed to undergo any training there as a student from persons much junior to him, neither will it serve any purpose and it would demean him before his juniors.

17. The counsel for Dr. Madhu Karna has contended that the order of the MCI is vague; it mentions two Institutes but does not specify as to which of the petitioners is to undergo further education in which Institute. The counsels are unable to state whether any petitioner has been a student of

Arvind Eye Hospital though it is stated that both were students of Shankar Netralaya.

18. The direction of the MCI pursuant to the findings reached, to the petitioners to undergo further training and update in their alma mater cannot be said to be disproportionate in any manner so as to call for interference by this Court. Learning is a life long process of keeping abreast of change. Even otherwise, not only for the petitioners but for every professional, such updation of professional skills is mandatory. Traditionally, it is the responsibility of the individual medical practitioner to remain competent. However, with the exponential growth of knowledge and technology and consequent demands for changing practice, no practitioner can hope to remain competent for more than a few years after graduation without updating knowledge and skills through a programme of active learning. There have been advancements by leaps and bounds in the medical field specially with the introduction of modern technology in diagnosis and treatment. The tradition of graduating in medicine from a university and then obtaining a licence for life from the medical council is no longer acceptable,

when the quality of care provided depends so much on the efforts of practitioners to keep themselves up-to-date. Therefore, periodic recertification of doctors has become inevitable. Senior doctors in the city often admit that they have studied till X-ray only inasmuch as at the time when they were in medical college the subsequent inventions of ultrasound, MRI, CT Scan etc. did not exist. It is only through continuous learning and education that they are today able to read diagnostic reports of subsequent inventions. The need for such updation has been felt in the legal profession also and lecture series and knowledge sharing programmes are being introduced. Due to the pace at which knowledge is growing, even people who are considered experts sometimes find it hard to keep up with recent developments in some fields. The knowledge base of those who earn advanced degrees becomes obsolete quite soon if they do not keep current in their areas of specialization. I therefore do not see any stigma in the petitioners going as students to the Institutes where they also lecture. In the field of Information Technology specially, it is often the youngsters who have more innovative ideas than their seniors.

19. However, I find merit in the contention of the senior counsel for the petitioner that the directions of MCI are vague and the possibility of the same not serving any purpose cannot be ruled out. It is therefore felt that MCI should be more specific in drawing up the curriculum which the petitioners are to undergo so that the objective of the direction is achieved and the direction does not remain on paper only. MCI ought to be more specific in designing good quality CME and professional development courses appropriate to the petitioners. The same need not be limited to one or two institutes and need not be at one stretch of time and can be spread out at different times/venues. The same can also be in the form of conferences and participation in professional meetings. It may also take the form of teaching other professionals just a notch below in as much as a teacher also has to first study and be prepared to answer the queries from the taught.

20. Merit is also found in the contention that the petitioners while undergoing such updation should not feel demeaned or belittled as the same would not produce a conducive environment for the petitioners to acquire further knowledge and expertise as the purpose of the directive of the MCI

is. I may notice that though Medical Councils in some countries have introduced a provision of periodic re-certification of their practitioners but the same has not been successful mostly because of lack of motivation and failure to develop appropriate CME programmes. It is necessary to motivate the petitioners to realize the importance of CME programme to practice high quality medical care. In fact it is found that CMEs concentrate on academic, technical or subject based knowledge and other issues for overall development are left out. Attention needs to be paid to professional development also.

21. The MCI is accordingly directed to fine tune the directions in the light of the observations herein, if need be in the consultation with the petitioners so that the period of training serves the purpose intended. The needful be done within three months. It is informed that the next meeting of the Ethics Committee of the MCI is to be held on 27th September, 2011; if possible the said matter be considered and appropriate directions be issued on the same day. The petitioners, if so desire may also remain present on 27th September, 2011 for meaningful directions being issued.

The petitions are disposed of in terms of above. No order as to costs.

Copy of this order be given *Dasti* under signature of the Court Master.

RAJIV SAHAI ENDLAW
(JUDGE)

SEPTEMBER 16, 2011

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