

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.7047 of 2015

and

M.P.No.3 of 2015

Dr.N.Diviya

... Petitioner

vs.

1. The Chairman, Ethics Committee
Medical Council of India,
Sector-8, Pocket-14, Dwarka Phase -1,
New Delhi - 110 077.
2. The Board of Governors
in supersession of Medical Council of India
Rep. by Secretary/Section officer,
Medical Council of India
Sector 8, Pocket 14
Dwarka Phase I, New Delhi 110 077.
3. The Registrar,
T.N.Medical Council, D Block, I Floor
TNHB Comlex, J.N.Salai, Vadapalani
Chennai - 600 026.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified mandamus, call for the records of the 2nd respondent in connection with the impugned order passed by him in Ref. No.MCI-211(2)(621)(CBI-40)/2012-Ethics 62470 dated 27.02.2015 and quash the same.

For Petitioner : Mr.Raja Kalifulla
for

Mr.Jayendra Krishnan

For Respondents : Mr.V.P.Raman for R1 and R2
Mr.Veerakathiravan for R3

O R D E R

Mr.V.P.Raman, learned counsel takes notice for respondents 1 and 2 and Mr.Veerakathiravan, learned counsel takes notice for the third respondent.

2. The petitioner is a registered medical practitioner.

3. On 08.12.2012, the Central Bureau of Investigation, Anti Corruption Branch sent a communication to the Medical Council of India (for short 'the MCI'), to the following effect :-

" A consolidated list shows 131 doctors who are not in the actual faculty payroll of the institute, had attended one or more of the three MCI inspections, as if they were regular faculty members of the medical college. (List attached)"

4. The said communication dated 08.12.2012 also requested the MCI to take suitable action against the doctors mentioned therein. The relevant passage from the communication is extracted in this regard:-

"The Medical Council of India may initiate such action as deemed fit against the 131 doctors as per list attached along with copies of the declaration forms submitted by them during Inspection."

5. Pursuant to the aforesaid communication, a Show Cause Notice was issued by the MCI to the doctors mentioned therein to show cause as to why disciplinary action as permissible in terms of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Shortly, MCI Regulations) should not be initiated against them. The petitioner gave his reply to the said Show Cause Notice.

6. While so, the impugned order dated 27.02.2015 came to be passed by the MCI. The relevant portion of the impugned order reads as follows:-

"The Ethics Committee considered the matter of Dr.Diviya N. and perused the papers on record. The Ethics Committee subsequent to the deliberation is of the considered opinion that the conduct of the doctor doing practice in two colleges at the same time constitutes towards professional misconduct. Henceforth, pursuant to the powers granted under Clause 8.2.of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the Ethics Committee directs as under:-

1. Dr.Diviya N. is debarred from undertaking any post of medical teacher or any post of similar nature in any university or medical college for a period of Three years.

He may be asked to give an undertaking to be annexed, within a period of one month from the date of receipt of the information, failing which, the Committee reserves its right to take further stringent action against him including

removal of his name from Indian Medical Register as a registered medical practitioner." The above said decision of the Ethics Committee has been approved by the Executive Committee of the Council at its meeting held on 1st October 2014, while considering the minutes of the Ethics Committee.

In view of the above, you are hereby debarred from undertaking any post of medical teacher or any post of similar nature in any University or medical college for a period of Three years.

Please furnish an undertaking as per attached format on Rs.10/- stamp paper duly notarized within a period of one month from the date of dispatch of this letter.

This issues with the approval of the competent authority."

7. The learned counsel for the petitioner would submit that the respondents failed to consider the detailed explanation offered by the petitioner. It is further submitted that no specific charges were framed and no witnesses were examined before passing the impugned order. The impugned order is a non-speaking order and the same deserves to be set aside.

8. On the other hand, the learned Standing Counsel for MCI has sought to sustain the impugned order.

9. I have considered the submissions made by the learned counsel on either side.

10. A reading of the impugned order would go to show that it is a non-speaking order. The impugned order also does not disclose the application of mind on the part of MCI as to the consideration of the explanation submitted by the petitioner.

11. Hence, I am of the view that MCI fell in error in passing the impugned order and as such, the same is liable to be interfered with.

12. Accordingly, the impugned order dated 27.02.2015 passed by the second respondent is quashed and the matter is remanded back to MCI to consider the matter afresh and to pass an appropriate order. While doing so, the MCI shall consider the explanation offered by the petitioner and shall pass a speaking order on the same. The learned counsel for the petitioner sought personal hearing as provided under clause 8.2 of the MCI Regulations. The MCI shall also furnish the documents, which they rely on for passing the ultimate order. It is needless to state that before passing such order, MCI shall also give an opportunity of personal

hearing to the petitioner as per clause 8.2 of the MCI Regulations. It is made clear that if the petitioner fails to appear for personal hearing, in spite of being given an opportunity for the same or if he expresses his unwillingness to take part in personal hearing, the MCI can proceed further and pass orders based on the explanation and other materials provided by the petitioner. All the issues, including merit as well as jurisdiction of MCI are left open. The petitioner is at liberty to raise all issues, including jurisdiction and the MCI can decide the same on merits and in accordance with law and more particularly, with reference to the MCI Regulations.

13. The writ petition stands allowed to the extent indicated above. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chairman, Ethics Committee
Medical Council of India,
Sector-8, Pocket-14, Dwarka Phase -1,
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T.N.Medical Council, D Block, I Floor
TNHB Comlex, J.N.Salai, Vadapalani
Chennai - 600 026.

+1cc to Mr.Jayendrakrishnan, Advocate, S.R.No.28217
+1cc to Mr.Veera Kathiravan, Advocate, S.R.No.28323
+1cc to Mr.V.P.Raman, Advocate, S.R.No.28860

W.P.No.7047 of 2015

SCD(CO)
CA(07/07/2015)