

*** THE HON'BLE SRI JUSTICE S.V.BHATT**
+ WRIT PETITION NOs.7369 AND 11355 OF 2015

% 24.04.2015

1. W.P.No.7369 of 2015

#Dr. Nirmala Agarwal.

...PETITIONER

VERSUS

\$1. Medical Council of India, represented by its Secretary, Pocket-14, Sector-8,
Dwaraka, New Delhi – 110 077 and two others.

...RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri D.Prakash Reddy

for Mr. Shyam S.Agarwal

^Counsel for Respondents: Sri Dammalapati Srinivas

Sri Anil Kumar

Sri O.Manohar Reddy

? Cases referred

2. W.P.No.11355 of 2015

Mir Liyaquat Ali.

...PETITIONER

VERSUS

\$1. The State of Telangana, rep.by its Principal Secretary, Telangana Health
Medical & Family Welfare Department, T.S.Secretariat, Hyderabad, Secretariat,
Hyderabad and three others.

...RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri Ms. Naseeb Afshan

^Counsel for Respondents: Sri Dammalapati Srinivas

Sri Anil Kumar

Sri O.Manohar Reddy

? Cases referred

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION NOs.7369 AND 11355 OF 2015

COMMON ORDER:

W.P.No.7369 of 2015: The petitioner prays for mandamus declaring the order dated 01.10.2014 of the first respondent and proceedings No.MCI-211 (2)(10) (Appeal) 2014-Ethics, dated 23.01.2015 as illegal, arbitrary, contrary to the order dated 11.09.2014 in W.P.M.P.No.31034 of 2014 in W.P.No.24789 of 2014 and contrary to the Medical Council Act, 1956 and the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (for short, "Regulations, 2002").

W.P.No.11355 of 2015: The petitioner prays for mandamus declaring the proceedings in APMCDC/015/Case No.4/2013 dated 20.01.2015 and MCI-211 (2) (10)(Appeal)/2014-Ethics dated 23.01.2015, as illegal, ultra vires and contrary to Regulations, 2002.

The parties are referred as arrayed in W.P.No.7369 of 2015.

The issue arises under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

On 09.01.2013, Dr. N.Ajay Kumar/third respondent herein has given complaint against the petitioners herein for the alleged act of medical negligence, on 11.07.2012 resulting in the death of one Smt. Rama Devi, wife of third respondent.

At the outset, it is noted that in these Writ Petitions this Court is not considering the issue of medical negligence complained against the petitioners, the truth or otherwise of these allegations or the probability of explanation offered by the petitioners herein.

In these two Writ Petitions, the challenge is confined to the legality of orders of Medical Council of India/respondent No.1 and the orders dated 20.01.2015 and 23.01.2015 passed by State Council/Medical Council of India respectively.

The circumstances relevant for the consideration of legal objections urged against the conclusions arrived at by the respondents are referred to and considered by this Court. For convenience and brevity the circumstances are referred from the original records placed before the Court by respondents.

As already referred, the third respondent sent complaint dated 09.01.2013 to first respondent on the medical negligence of petitioners resulting in the death of his wife. Through letter dated 30.01.2013, the first respondent forwarded the complaint dated 09.01.2013 to respondent No.2/Andhra Pradesh Medical Council for enquiry and decision in accordance with Regulations 2002. The Medical Council neither received the action taken on the complaint forwarded to the State Medical Council nor the third respondent received from State Medical Council any information on the outcome of enquiry initiated against the petitioners in these two Writ Petitions. Hence, the third respondent on 24.04.2014 sent a representation/reminder to the first respondent on the complaint dated 09.01.2013 against petitioners herein. The third respondent *prima facie* was unaware of reminder dated 23.08.2013 sent by first respondent to second respondent in complaint dated 09.01.2013. On receipt of the representation dated 24.04.2014, the first respondent advised the fourth respondent to present appeal in Annexure-I of Regulations, 2002 on the alleged medical negligence by the writ petitioners to take further action on the complaint. On 24.04.2014, the third respondent filed appeal and together with demand draft for a sum of Rs.500/- before the first respondent. On the appeal dated 24.04.2014, the first respondent issued notice dated 06.06.2014 to the petitioners in these two Writ Petitions. This Court first has examined the correspondence between the doctors

and the first respondent in the enquiry on the appeal dated 24.04.2014 as the correspondence is not relevant for the purpose of disposal of the Writ Petitions, no reference is made to the correspondence exchanged between parties in the interregnum. It is matter of record that in the enquiry held in the appeal dated 24.04.2014, the third respondent was examined and the Petitioners/Doctors were examined. On 13.08.2014, the statements of petitioners were recorded by the Committee. Dr. Nirmala Agarwal/petitioner in W.P.No.7369 of 2015 by filing W.P.No.24789 of 2014 assailed the legality of notice dated 06.06.2014 in Case No.MCI-211 (2)(10)(Appeal) 2014-Ethics. On 11.09.2014, taking note of impropriety of enquiry pursuant to notice dated 06.06.2014 by the Medical Council of India/first respondent when the enquiry directed to be held by the State Medical Council is pending, this Court ordered as follows:

“The matter underwent few adjournments for the purpose of obtaining instructions from the Medical Council of India. Learned Standing Counsel for Medical Council of India expresses inability to obtain instructions.

An aggrieved person has filed a complaint against the petitioner before the Medical Council of India alleging professional misconduct. On receipt of such complaint, the Medical Council of India requested the A.P. Medical Council to conduct enquiry and the enquiry is in progress. However, on complaint by the complainant to the Medical Council of India that the State Medical Council is not completing the enquiry even though sufficient time has lapsed. The Medical Council of India issued notice, dated 06.06.2014, commencing the enquiry on an appeal filed by the complainant. Regulation 8.7 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, empowers the Medical Council of India to withdraw the proceedings pending before the State Medical Council, if State Medical Council has not completed the proceedings within a period of six (6) months. It also empowers the Medical Council of India to give further time, fix schedule to complete the enquiry and in case even within the time further granted, if the State Medical Council does not complete the enquiry, the Medical Council of India can withdraw the proceedings and initiate the enquiry on its own. In the instant case, as evident from the notice impugned in the Writ Petition, the proceedings before the State Medical Council are not withdrawn and the proceedings are being continued by the State Medical Council.

Prima facie, in view of the provision contained in Regulation No.8.7, the simultaneous proceedings by the State Medical Council as well as Indian Medical Council are not maintainable and since the proceedings before the

State Medical Council are not withdrawn, the impugned notice, dated 06.06.2014, is not maintainable. It is, accordingly, suspended. This order does not preclude the State Medical Council to complete the enquiry, which is already in progress”

The record placed before the Court by the respondents does not disclose receipt of order copy dated 11.09.2014 by first respondent. Dr. Nirmala Agarwal through representation dated 06.02.2015 forwarded a copy of the order dated 11.09.2014 in W.P.No.22789 of 2014 to first respondent. The explanation offered by the respondents for proceeding with enquiry and passing orders in MCI-211 (2)(10) (Appeal) 2014 is lack of knowledge of order dated 11.09.2014 of this Court and in the ultimate analysis the first respondent found petitioners guilty of negligence and imposed the punishment of suspension of practice by them.

While matter stood thus, on the complaint forwarded through letter dated 30.01.2013 by the first respondent, a belated enquiry is taken up by the second respondent, received statements and concluded the enquiry. On 30.10.2014, the Ethics Committee considered the material on record and concluded as follows:

“On perusal of records and after examining the complainant and respondents, the Ethics Committee is of the opinion that the patient was examined Anaesthetist, Dr. Mir Liyaquat Ali before induction of Anaesthesia, the appropriate pre-anaesthetic medication was given. During the procedure the findings were shown to the patient’s husband, who happens to be a Surgeon, by the treating doctor Nirmala Agarwal. Later, patient developed cardiac arrest due to vasco vasial attack which is a known complication in these procedures even under Anaesthesia which is substantiated by the articles in the literature (i.e. documentary evidence).

Hence, the Ethics Committee did not find any negligence on the part of Gynaecologist or Anaesthetist.

The Ethics Committee warns Dr. Nirmala Agarwal not to give due publicity to Infertility Centre mentioning the name of consultant or permit any foreign doctors to treat the patients in the Centre without prior permission from the State Medical Council as it amounts to violation of Code of Medical Ethics, vide Chapter-6 of IMC Regulations, 2002 as well as provisions contained in Section 15D of Andhra Pradesh Medical Practitioners Registration Act, 1968 (as amended Act No.10 of 2013) r/w Rule-7 of APMC Rules, 2013.

Taking into consideration of the material placed before it, the Ethics Committee has passed the following resolutions unanimously.

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Item – 4:

TO CONSIDER CASE NO.04/2013, i.e. COMPLAINT MADE BY DR. AJAY KUMAR AGAINST Dr.NIRMALA AGARWAL AND OTHERS OF MORPHEUJUHI HOSPITAL, HYDERABAD, (MCI REFERENCE: Lr.No.MCI/211(2) (395)/2012-Ethics/144038 dated 16.11.2012).

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It is resolved that there is no negligence on the part of Gynaecologist or Anaesthetist in this case. It is further resolved that the 1st respondent Dr. Nirmala Agarwal be warned not to give due publicity to the infertility center mentioning the name of consultant. It is also resolved that any foreign doctors be permitted to treat the patients in the center without prior permission from the State Medical Council since it amounts to violation of provisions of Chapter-6 of IMC Regulations and also in contravention to the provisions of Section-15D of Andhra Pradesh Medical Practitioners Registration Act, 1968 (as amended Act No.10 of 2013) r/w Rule-7 of APMC Rules, 2013.”

The Executive Committee in the meeting on 12.11.2014 considered the charges against the petitioners and recommended as follows.

“The Ethics Committee warns Dr. Nirmala Agarwal not to give due publicity to Infertility Centre mentioning the name of consultant or permit any foreign doctors to treat the patients in the Centre without prior permission from the State Medical Council as it amounts to violation of Code of Medical Ethics, vide Chapter-6 of IMC Regulations, 2002 as well as provisions contained in Section 15D of Andhra Pradesh Medical Practitioners Registration Act, 1968 (as amended Act No.10 of 2013) r/w Rule-7 of APMC Rules, 2013.”

“After going through the detailed observations/recommendations of the Ethics Committee, on perusal of the material available on record and after detailed discussion, the Executive Committee has decided that:

II) In Case No.04/2013, i.e. the Complaint made by Dr. Ajay Kumar against Dr. Nirmala Agarwal and others, the Executive Committee noted that the Ethics Committee did not find any negligence on the part of Gynaecologist or Anesthetist. While approving the recommendation of the Ethics Committee in respect of Dr. Nirmala Agarwal, the Executive Committee deferred with the recommendation of the Ethics Committee in respect of the second respondent, Dr. Mir Liyaquat Ali and accordingly decided as follows:

The Executive Committee warns Dr. Nirmala Agarwal not to give due publicity to Infertility Centre mentioning the name of consultant or permit any

foreign doctors to treat the patients in the Centre without prior permission from the State of Medical Council as it amounts to violation of Code of Medical Ethics, vide Chapter – 6 of IMC Regulations, 2002 as well as provisions contained in Section – 15D of Andhra Pradesh Medical Practitioners Registration Act, 1968 (as amended Act.No.10 of 2013) read with Rule-7 of APMC Rules, 2013. Though, it is a known complication, the efforts of Dr. Mir Liyaquat Ali to receive the patient looks inadequate as per the anesthesia notes and he is warned to be more careful in dealing such cases in future. He shall be CENSURED.

IV.(A) It is resolved that the detailed observations/recommendations of the Ethics Committee in the meeting held on 30.10.2014 be approved with modifications.

iii) In Case No.04/2013, i.e. the complaint made by Dr. Ajay Kumar against Dr. Nirmala Agarwal and others, it is resolved that the first respondent, Dr. Nirmala Agarwal be warned not to give due publicity to Infertility Centre mentioning the name of consultant. It is also resolved that the respondent be directed not permit any foreign doctors to treat the patients in the Centre without prior permission from the State Medical Council as it amounts to violation of code of Medical Ethics, vide Chapter-6 of IMC Regulations, 2002 as well as provisions contained in Section-15D of APMP Registration (amended Act.No.10/2013) r/w Rule-7 of APMC Rules, 2013. It is also resolved that the second respondent, Dr. Mir Liquayat Ali be warned to be more careful in dealing such cases in future since his efforts to revive the patient looks inadequate as per the anesthesia notes. It is further resolved that CENSURE be imposed on him.”

On 30.12.2014, decision of Executive Committee was placed before the General Body and the General Body resolved as follows:

“Finally, the General Body after detailed discussions has decided that there is deficiency on the part of Dr. Mir Liyaquat Ali, Anesthetist and he shall be suspended for a period of six (6) months. The General Body also decided to warn Dr. Nirmala Agarwal not to give due publicity to Infertility Centre mentioning the name of consultant or permit any foreign doctors to treat the patients in the Centre without prior permission from the State Medical Council as it amounts to violation of Code of Medical Ethics, vide Chapter-6 of IPC Regulations, 2002 as well as provisions contained in Section-15D of Andhra Pradesh Medical Practitioners Registration act, 1968 (as amended Act No.10 of 2013) r/w Rule-7 of ApMC Rules, 2013.”

The order dated 20.01.2015 passed against Dr. Mir Liyaquat Ali is impugned in W.P.No.11355 of 2015. The sum and substance of the decision of the State Medical Council is that censure was administered to Dr. Nirmala Agarwal/writ

petitioner in W.P.No.7396 of 2015 and Dr.Mir Liquayat Ali/petitioner in W.P.No.11355 of 2015 is removed from rolls for six months.

As already referred the Medical Council of India basing on the enquiry held on 13.08.2014 in MCI-211 (2)(10)(Appeal) 2014 has taken the following decision on the negligence complained against the petitioners.

“The Ethics Committee after perusing the details in the complaint submitted, statement of Respondent, other documents on records and the oral submissions made by the Respondent to the Ethics Committee, decided that there the Respondent failed to exercise a reasonable degree of skill in providing care to the patient which amounts to violations of MCI Regulations, 2,4 (the patient must not be neglected). Therefore, the Ethics Committee decided that the names of Dr. Liyaqat Ali and Dr. Nirmala Aggarwal should be remove from the IMR for a period of One Year under Clause 8.2 of the MCI Regulations the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Committee further decided to issue Warning to Dr. Srinivas Rao and Dr. Hari Krishna P. to be more careful in future in handling these type of cases, which will be recorded in IMR Register/State Medical Register.

The above recommendation of the Ethics Committee has been approved by the Executive Committee at its meeting held on 1st October, 2014.

In view of above, I am directed to request you to take further necessary action in the matter, accordingly.”

Hence, the Writ Petitions are filed assailing the orders of first and second respondents.

It is useful to excerpt Regulation No.8 on which the learned counsel appearing for the parties have made their submissions.

1. It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which cause for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come

within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

2. It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies.
3. In case the punishment of removal from the register is for a limited period, the appropriate Council may also direct that the name so removed shall be restored in the register after the expiry of the period for which the name was ordered to be removed.
4. Decision on complaint against delinquent physician shall be taken within a time limit of 6 months.
5. During the pendency of the complaint the appropriate Council may restrain the physician from performing the procedure or practice which is under scrutiny.
6. Professional incompetence shall be judged by peer group as per guidelines prescribed by Medical Council of India.
7. Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, the Medical Council of India may-
 - i. Impress upon the concerned State Medical Council to conclude and decide the complaint within a time bound schedule;
 - i. May decide to withdraw the said complaint pending with the concerned State Medical Council straightaway or after the expiry of the period which had been stipulated by the MCI in accordance

with para (i) above, to itself and refer the same to the Ethical Committee of the Council for its expeditious disposal in a period of not more than six months from the receipt of the complaint in the office of the Medical Council of India.

8. Any person aggrieved by the decision of the State Medical Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council:

Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 60 days.

Sri D.Prakash Reddy, learned Senior Counsel appearing for the petitioner in W.P.No.7369 of 2015 and Ms. Naseeb Afshan, learned counsel appearing for the petitioner in W.P.No.11355 of 2014, have strenuously contended that the orders impugned in the Writ Petitions, *prima facie*, suffer from patent illegalities, irregularities and findings have been recorded *de horse* the material available on record and without examination of physical condition of the deceased at the time of procedure and the factors which are beyond the control of the petitioners are ignored and by the expert bodies invested with the power under Regulation 2002 to maintain professional conduct, Etiquette and Ethics have recorded casual or general findings on alleged medical negligence.

The legal objection against the order of Medical Council of India is that Regulation 8.7 provides for initiation of action on a complaint either by the Medical Council of India or by the State Medical Council but not by both the authorities. In the case on hand, it is contended that the Medical Council of India has decided to forward complaint received against petitioners to State Medical Council. According to the procedure prescribed in Regulation 8.7 of Regulation, the MCI/first respondent may impress upon State Medical Council/second respondent to conclude enquiry in a time bound schedule or withdraw complaint from second respondent refer to Ethical Committee of Medical Council of India for decision on the complaint on a medical practitioner. Accordingly, the Medical Council of India/first respondent gets jurisdiction to enquire into the complaint dated 09.01.2013 by duly withdrawing the proceedings pending before the State Medical Council but not by receiving an

appeal on 24.04.2014. In the case on hand from the admitted circumstances, the learned counsel would urge that a reminder was sent for expeditious disposal of pending enquiry before the second respondent but there is no material to suggest that if the enquiry is not completed expeditiously, the Medical Council of India intends to withdraw the pending enquiry and conducts enquiry through Ethics Committee of the Medical Council of India/first respondent. Without following the procedure contained in Regulation 8.7 of Regulations, 2002, the Medical Council of India cannot conduct enquiry and pass orders on the complaint already made over to second respondent. Therefore, the orders of first respondent are *ex facie* illegal without authority and contrary to Regulation 8.4 to 8.7 of Regulation 2002.

The learned counsel relies upon the contradictory findings recorded against Dr. Nirmala Agarwal by the first and second respondents and contends that the inchoate procedure followed by first respondent is evident from the very conclusions recorded by it. The two authorities entrusted with the maintenance of professional conduct etc. cannot decide the set of negligence without either examining the issue from expert's point of view or applying the standard procedures prescribed in a situation confronted by petitioners. The other objection raised against the impugned orders is that the jurisdiction of the Medical Council of India to proceed with the enquiry is challenged and through interim order dated 11.09.2014 in W.P.No.24789 of 2014 this Court granted interim suspension of notice dated 06.06.2014. The Medical Council of India/first respondent being a party and more particularly when represented through its Standing Counsel cannot ignore the order dated 11.09.2014 and take up the issue of alleged negligence by the petitioners and impose the impugned punishment arbitrarily. Therefore, it is urged that the orders of first respondent are against the interim order dated 11.09.2014 and for violating the said order the petitioners pray for setting aside the impugned orders.

On the other hand, Sri O.Manohar Reddy, learned counsel appearing for the third respondent contends that the filing of appeal on 24.04.2014 for all purposes shall be presumed or inferred as filing a complaint again by the third respondent as third respondent was dissatisfied with the delay in conducting enquiry by second respondent/the State Medical Council, therefore, there is no need to withdraw the complaint already forwarded to second respondent. The first respondent has rightly set in motion fresh proceedings and enquiry on the appeal/representation dated 24.04.2014 was held on 13.08.2014 but not on the complaint dated 09.01.2013. The

petitioners having participated without demur in the enquiry held on 13.08.2014 cannot complain of against such enquiry if the enquiry results in adverse orders. It is further contended that if fair consideration of facts is undertaken, no exception to the decision taken by a competent body can be taken. The learned counsel for third respondent further submits that the interim order dated 11.09.2014 has to be strictly construed by this Court to appreciate whether the Medical Council of India deviated from the interim order dated 11.09.2014 while passing the impugned orders. According to the learned counsel, through the interim order dated 11.09.2014, this Court has suspended the show cause notice whereas the petitioner prayed for stay of all further proceedings in MCI-211 (2)(10)(Appeal) 2014-Ethics, dated 23.01.2015. Learned counsel further tried to persuade this Court by referring to a few decisions of the Apex Court on the distinction between stay and suspension, which are not considered having regard to the issue falls taken for decision in the admitted factual matrix.

Sri Dammalapati Srinivas, learned Standing Counsel, submits that it is the responsibility of petitioner in W.P.No.7369 of 2015 to bring to the notice of the Medical Council of India/first respondent the order dated 11.09.2014 in W.P.No.24789 of 2014. Basing on the original record, the learned counsel contends that the Medical Council of India is not aware of the order dated 11.09.2014 till the same is communicated by the petitioner through her letter dated 06.02.2015 received on 16.02.2015 and justifies the enquiry held on 13.08.2014 and the procedure followed by first respondent. The learned counsel contends that the instant enquiry is on the basis of appeal dated 24.04.2014 and not on the complaint dated 09.01.2013 and tries to sustain the order of first respondent.

Sri Anil Kumar, learned counsel representing second respondent, contends that the first respondent through reminder dated 23.08.2014, called upon the State Medical Council/second respondent to expeditiously deal with the pending enquiry on the complaint of third respondent and no time limit was prescribed for completion of enquiry. According to the learned counsel, the State Medical Council has followed the procedure and has found an act of either commission or omission by one of the petitioners and accordingly, imposed punishment of removal from rolls to Dr. Mir Liyaquat Ali and as regards Dr. Nirmala Agarwal/the second respondent administered censure. He submits the proceedings impugned in these Writ Petitions are lawful and tenable.

Now, the point for consideration is whether the orders dated 01.10.2014, 23.01.2015 and 21.02.2015 are legally and factually sustainable and conforms to the requirement of Regulation 8.7 of Regulations, 2002.

As already noted, pursuant to the docket order dated 17.04.2015, the Medical Council of India as well as the State Medical Council have made available the original record of subject matter of Writ Petitions. The record is verified and the summary of the record is as follows:

On 09.01.2013, the complaint of third respondent against the petitioners for professional negligence was received by first respondent. Through letter dated 30.01.2013, the complaint was made over to second respondent for suitable action. Therefore, on receipt of complaint, the Medical Council of India/first respondent decided to call upon the second respondent/State Medical Council to look into the allegations of negligence by petitioners, conduct enquiry and take appropriate decision. Thus, the second respondent was considered as appropriate Medical Council for action under Regulations, 2002. On the complaint forwarded through letter dated 30.01.2013, there has been inaction for nearly fourteen (14) months. The inaction compelled the third respondent to file a representation/reminder before the first respondent. From the original file, it is evident that the third respondent intended the Medical Council of India to look into the continuous inaction on the complaint against the petitioners herein and take appropriate action. The first respondent without withdrawing the forwarded complaint to the second respondent calls upon the third respondent to present the grievance in the form of appeal in

Annexure-I of Regulations 2002 to first respondent. The third respondent, treating the inaction as a circumstance falling within the scope of appeal, on 24.04.2015 has presented appeal on the very same cause of action set out in complaint dated 09.01.2013. As already noted, notice of enquiry dated 06.06.2014 is issued to the petitioners herein for proposing to conduct enquiry into the allegations of negligence. What is evident from the original file of first respondent is that the initiation of enquiry through notice dated 06.06.2014, completely ignores the enquiry directed to be conducted by the State Medical Council through letter dated 30.01.2013. On 13.08.2014, the petitioners have been examined and one of the petitioners, after obtaining order dated 11.09.2014 from this Court for whatever reason, chooses to communicate the order through letter dated 06.02.2015 to the first respondent, which was received by the first respondent on 16.02.2015. The first

respondent has passed the orders referred to above on the appeal dated 24.04.2014.

Regulation 2002 provides for code of Medical Ethics, duties, responsibilities, unethical acts, misconduct and punishment, disciplinary action against medical practitioners for alleged commission or omission by medical practitioners. Chapter-8 deals with punishment and disciplinary action. Regulation 8.2 provides for initiating action for professional misconduct before appropriate Medical Council. According to Regulation 2002, the appropriate Medical Council would be the State Medical Council where the medical practitioner is enrolled as a medical practitioner. The third respondent has sent complaint dated 09.01.2013 against petitioners to the first respondent. The first respondent forwarded the complaint to second respondent for appropriate action as per Regulation 8.2. Regulation 8.4 prescribes time schedule of six months for completion of enquiry and decision. Inaction by appropriate Medical Council in deciding the complaint and the remedy provided therefor are provided to aggrieved person is to bring to the notice of Medical Council for appropriate action vide Regulation 8.7. The Medical Council with such request can either direct appropriate Medical Council i.e., State Medical Council to complete action in a time-bound schedule or Medical Council decides to withdraw (emphasis added) the complaint straight away or after the expiry of time prescribed for disposal of the said complaint pending with State Medical Council, refers the complaint to Ethical Committee for disposal in six months.

Under the scheme provided for disciplinary action and punishment, the Medical Council is the primary authority for decision. First respondent is the Appellate Authority against the orders of State Medical Council under Regulation 8.8.

The first respondent having forwarded the complaint dated 09.01.2013 to the second respondent can assume or exercise jurisdiction on the pending complaint by prescribing timely action by State Medical Council or consider withdrawing the complaint on account of continued inaction by the State Medical Council. In a given case, if the circumstances warrant, the first respondent can straight away withdraw the complaint from State Medical Council and proceed to enquire into the complaint by referring the complaint to Ethics Committee. Under Regulations 2002, the primary

responsibility for punishment and disciplinary action against breach of code of conduct or ethics is with the State Medical Council and on the decision of State Medical Council, the Medical Council of India sits in appeal. Under circumstances covered by Regulation 8.7, the Medical Council of India can also act as primary authority in disciplinary matters by following the steps already noted in the instant order. Therefore, to act as primary authority, under Regulation 2002, the first respondent must conform to Regulation 8.7 of Regulations 2002 viz., withdrawal of pending complaint from State Medical Council and then assume jurisdiction for further enquiry. In other words a decision by Medical Council of India/first respondent under Regulation 8.7 of Regulations 2002 is a *sine quo non* for enquiry into alleged misconduct or for imposing the punishment on a medical practitioner.

In the case on hand what is evident from record is that the first respondent has acted contrary to the mandate under Regulations 2002. Unless and until the first respondent withdraws the complaint pending before the State Medical Council/second respondent, the first respondent cannot assume jurisdiction for action in respect of the very same charges, consider afresh and pass the order.

Further, Regulation 8.8 provides for appeal against an order of State Medical Council. In the case on hand, a complaint is entertained in the form of an appeal by first respondent without an order of the State Medical Council. It is not clear from record whether case on hand is considered under Regulation 8.8 or a complaint under Regulation 8.2 read with Regulation 8.7 of Regulations 2002. The decision making process is completely vitiated and is accordingly held as illegal.

The abstract prescription of guilt or exoneration by the Ethics Committee or Peer Group without diagnosing the alleged negligence with modern tools of medicine defeats the object and purpose of Regulations 2002. The negligent act by an individual or professional in a society governed by Rule of law provides means to vindicate against the negligent act or maintain an action against the perceived negligent act. The object of Regulations 2002 is to maintain the professional standards and ethics by the medical practitioners. UBI JUS IBI REMEDIUM means "there is no wrong without a remedy". The common law provides remedy to an aggrieved person against an act of negligence by a medical practitioner illustratively stated the aggrieved person moves the Consumer Redressal Forums etc for redressal. Such pursuit of remedy by an aggrieved person concerns pecuniary relief to him. The consideration of a complaint by first and second respondents has greater

scope and object. The object of Regulations 2002 is to examine and ensure professional standards etc. by a Registered Medical Practitioner. The first and second respondents are endowed with such responsibility of implementation of Regulations 2002. Therefore, further narration on the role of first and second respondents need not be highlighted. The enquiry into complaint by the Peer Group/Ethics Committee would achieve the object of ensuring professional standards and adherence to ethics by the medical practitioner, for the committee can sit in the armchair of the medical practitioner, scrutinize the case presented for treatment/procedure, what are the standards of treatment/procedure and whether the practitioner has followed these requirements in attending the patient on alleged medical negligence the Rules are well suited to decide the fact in issue. Therefore, it is also the duty of these committees to independently and objectively enquire into complaint against a medical practitioner and at the same time protect the medical practitioners from frivolous and false complaints. A decision taken by the authority under Regulation 2002 is subject to further scrutiny by a Court of law. In this background, the consideration by first and second respondents of the complaint and the conclusions must speak for themselves. In the case on hand, as already noted, the first and second respondents miserably failed to consider minimum details of complaint or explanation offered by the doctors but still recorded contradictory conclusions.

The Court would have concluded the issue with the above findings, but the close scrutiny of record compels this Court to record the following findings. The consideration of complaint on a Medical Practitioner is by a "Peer Group" or Ethics Committee as the case may be. The Peer Group or Ethics Committee consists of medical practitioners as well as subject experts. A group consisting of specialists entrusted with the responsibility of maintaining professionalism, ethics, misconduct ought to exhibit in-depth analysis of complaint against a medical practitioner the explanation of the medical practitioner whether exonerates him of negligence and thereafter, suitable findings are recorded on misconduct/negligence of a medical practitioner. Therefore, to balance the contradictory claims viz., alleged negligence and professional deligence exhibited by a medical practitioner, the decision making process of Peer Group or Ethics Committee must discern the cause, complaint and deligence exhibited by medical practitioner in a dispassionate manner to ensure fairness to both parties standing before the committee. In the instant case, the State

Medical Council finds one of the petitioners guilty of negligence and imposes punishment of removal from the rolls for six months. As against the other petitioner, as already noticed, censure is administered. This Court has considered the findings/consideration recorded by the Medical Council of India/first respondent and the State Medical Council/second respondent. The findings are contradictory and not as per the procedure stipulated under the Regulations 2002. In these two Writ Petitions, the Court is conscious of the purport of orders impugned in the Writ Petitions. The petitioners are entitled for consideration of a complaint against them strictly in accordance with the Regulations 2002. In the case on hand, the orders passed by the Medical Council of India and the State Medical Council contrary to the stipulated procedure under Regulations 2002. On the short ground, the orders impugned are set aside. The matter is remanded to the Medical Council of India/the first respondent for consideration afresh and passing appropriate orders within a period of four weeks from the date of receipt of a copy of this order. In the case on hand, the Court is compelled to observe that much is to be desired from the orders or decision making process of first and second respondents. The contradictory findings are just an instance and are recorded without proper consideration of material available on record. The contradictory findings cannot stand judicial scrutiny and should be set aside. The orders of second respondent dated 20.01.2015 are set aside. Instead of directing second respondent to look into the issue once again, the responsibility of enquiry into complaint dated 09.01.2013 is entrusted to first respondent under Regulation 8.7.

It is needless to observe that the first respondent adheres to principles of natural justice and affords a reasonable opportunity to the petitioners and third respondent before taking any decision.

Both the Writ Petitions are allowed and remanded to the first respondent as indicated above. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(S.V.BHATT, J)

24th April 2015

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