

\$~1

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

Judgment delivered on: 1st May, 2015

+

CONT.CAS(C) 882/2014

DR. SHARAD AGARWAL Petitioner

Represented by: Mr.Shailender Saini,
Advocate.

Versus

LOV VERMA Respondent

Represented by: Mr.Anurag Ahluwalia, CGSC
with Mr.Prashant Ghai,
Advocate with Mr.Sube Singh,
Consultant, Ministry of Health
& Family Welfare.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner seeks directions thereby to initiate contempt proceedings under Sections 11 and 12 of the Contempt of Courts Act, 1971, against the respondent for wilful disobedience of the order dated 29.09.2014 passed in WP(C) No.6713/2014.

2. Vide the aforesaid order, this Court directed the respondent No.1 to consider the petition filed by the petitioner as a complaint and take a view within a period of six weeks from the said date uninfluenced by any observation made therein.

3. Thereafter, the petitioner filed an application bearing No.4639/2015 and sought directions thereby directing the respondents to take a decision in accordance with order dated 29.09.2014 and averred

that the petitioner has recently come to know that a fresh FIR bearing No.29/15 dated 06.02.2015 under Sections 376(c)/511/354/354(A)/354(B)/506 of the Indian Penal Code, 1860, has been registered against B.S. Tomar at P.S. Chutia, Sadar, Ranchi, Jharkhand.

4. Mr.Anurag Ahluwalia, learned standing counsel appearing on behalf of respondent submits that vide WP(C) No.6713/2014, the petitioner challenged the appointment of Dr.B.S.Tomar, a Member of the Medical Council of India, being contrary to the provisions of Section 30A(2)(e) of the Indian Medical Council Act, 1956. It was alleged that an FIR has been registered in respect of the National Institute of Medical Sciences University, Shobha Nagar, Jaipur, where certain allegations had been made against concerned official of the Medical Council of India. It was further alleged that the number of beds shown in the college hospital were misstated and said Dr.Tomar has been specifically named in that case. Accordingly, vide order dated 29.09.2014, this Court directed the respondent to consider the Writ Petition No.6713/2014 as a complaint and take a view accordingly.

5. Vide communication dated 03.12.2014, it was informed to the petitioner that the observations and whim of the Ministry on his complaint would be conveyed to him as soon as final decision is taken on the matter.

6. Meanwhile, Ordinance No.11 of 2013 was lapsed on 16.01.2014. Thus, the Central Government has no power to take any action against the Member of the Medical Council of India under Section 30A of the Indian Medical Council (Amendment) Second Ordinance, 2013.

7. Moreover, said Dr.Tomar has been restrained from attending any meeting in the Medical Council of India in his capacity as a Member till the allegations made against him are settled.

8. In addition, Mr. Ahluwalia has informed this Court that the Ministry of Health and Family Welfare has communicated him vide letter dated 30.04.2015 as under:-

“ In continuation of this Ministry letters dated 03.12.2014 and 28.01.2015 (copies of letters attached) and the representation with a copy of CM No.4639 of 2015 of Shri Shailendra Saini, Advocate of petitioner on the subject cited above and to say that the case of Shri B.S.Tomar was examined in this Ministry in consultation with the Ministry of Law and Justice, Department of Legal Affairs and Medical Council of India. I am directed to submit the following facts:

(i) that the name of Dr. B.S.Tomar was notified on 05.12.2013 as member in MCI u/s3(1)(b) of IMC Act, 1956 in pursuance of directions of Hon'ble High Court of Delhi vide its order dated 02.12.2013 (copy enclosed) in WP(C) No.7557/2013 & CM Appl. No.16159/2013 filed by NIMS University & Another vs. UOI & Others.

(ii) that the provision 30 A (2) (e) was provided in the IMC (Amendment) Second Ordinance, 2013 (copy enclosed). A Bill to replace the said Ordinance could not be introduced in the Parliament and the Ordinance ceased to operate on 16th January, 2014 i.e. at the expiration of six weeks from the reassembly

of Parliament in terms of Sub-Clause (a) of clause (2) of Article 123 of the Constitution.

(iii) the CBI had registered an FIR No.RC03(A)/2012-AC-III dated 19.07.2012 under section 120 B r/w 467 IPC and section 13(1)(d) r.w 13(2) of the Prevention of Corruption Act, 1988 against Dr. B.S.Tomar, Dr. N.S. Kothari, Medical Superintendent, NIMS and unknown officials of the MCI. The CBI has filed a closure report on 01.10.2014 which is pending consideration in the court of Special Judge, CBI cases, Patiala House, New Delhi.

(iv) further, as per submission of the petitioner an FIR has been registered against Dr.Tomar on 6.02.2015 in PS Chutia, Sadar, Ranchi for his alleged acts for sexual intercourse/sexual harassment/outraging of modesty/criminal intimidation of a student pursuing medicine course in his medical college at Jaipur. As these allegations are prima facie violative of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, MCI has been directed to take suitable action under the Regulations against Dr. B. S. Tomar.”

9. In view of the above noted facts, it is established that respondent has taken all due care and passed necessary orders to comply with the order dated 29.09.2014 passed by this Court.

10. In such eventuality, proviso attached to Section 12 of the Act is relevant, which reads as under:-

“Section 12:- Punishment for Contempt of Court:-

PROVIDED that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.”

11. Moreover, the Supreme Court in the case of ***Jiwani Kumari vs. Satyabrata Chakraborty, AIR 1991 SC 326*** held that a party (or person) can be committed for contempt only owing to any willful or deliberate or reckless disobedience of the order of the Court.

12. In view of the above discussion and settled law, it is established that in the present case, the respondent has not committed any willful or deliberate disobedience of the order or direction of this Court, therefore, I am not inclined to pass any order against the respondent in this petition.

13. The petition is accordingly dismissed.

14. The petitioner will be at liberty to challenge the aforesaid communication dated 30.04.2015, if so aggrieved, before the appropriate Forum.

**SURESH KAIT
(JUDGE)**

MAY 01, 2015

sb