

\$~17

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

%

Judgment delivered on: 04.08.2016

+ W.P.(C) 2958/2015

DR. SHALLY MAGON

..... Petitioner

versus

MEDICAL COUNCIL OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sunil Magon, Advocate.

For the Respondents : Mr. T. Singhdev, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

04.08.2016

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner has filed the present petition seeking setting aside of order of the Ethics Committee of the Medical Council of India (MCI for short) passed in its meeting held on 16.05.2014 and communicated to the petitioner by letter dated 27.02.2015 (Annexure P-1).

2. Learned counsel for the respondent submits that similar orders were passed in respect of several doctors, who, like the petitioner, were working at the Vinayak Missions Medical College, Karaikal. He submits that some of the doctors had impugned the said orders before the High Court of

Judicature at Madras. Learned counsel for the respondent has placed on record copy of order of the High Court of Judicature at Madras titled **Dr. Poovendran .T versus The Medical Council of India** dated 29.04.2015 in WP(C) 11994/2015.

3. The operative part of the order reads as under:-

“10. A reading of the impugned order would go to show that it is a non-speaking order. The doctors gave individual explanations and therefore, MCI/Ethics Committee should have considered those explanations separately and should have passed separate orders in respect of each and every doctor. The impugned order also does not disclose the application of mind on the part of MCI as to consideration of the separate explanations submitted by the doctors.

11. Hence, I am of the view that MCI fell in error in passing a common impugned order in respect of 90 doctors and as such, the same is liable to be interfered with, insofar as it relates to the petitioner.

12. Accordingly, the impugned order dated 16.03.2015 passed by the first respondent is quashed insofar as it relates to the petitioner 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 individually and shall pass a separate 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. Consequently, connected miscellaneous petitions are closed.”

4. Learned counsel for the respondent submits that the respondents have accepted the order and are implementing the same.
5. Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the said decision because the petitioner is similarly situated to the petitioners in the above referred petition inasmuch as even in the case of the petitioner the explanation rendered by the petitioner has not been considered and the impugned order also does not disclose application of mind on the part of MCI.
6. Learned counsel for the respondent confirms that the impugned order herein is identical to the orders that were impugned in the writ petition in **Dr Poovendran .T** (Supra) and other connected Writ Petitions .
7. In view of the above, the present petition is disposed of by directing that the impugned order dated 16.05.2014, communicated by letter dated

27.02.2015, is quashed insofar as it relates to the petitioner and the matter is remitted to Medical Council of India to consider the matter afresh and to pass an appropriate order in accordance with law. MCI shall furnish the relevant documents that are referred to by MCI in the impugned order to the petitioner. An opportunity of personal hearing shall be given to the petitioner in terms of Clause 8.2 of the MCI regulations. It is clarified that if the petitioner fails to appear for personal hearing, on being given an opportunity, or in case he expresses his unwillingness to take part in the personal hearing, the MCI can proceed further and pass an order based on the explanation and other materials provided by the petitioner. The explanation offered by the petitioner shall be considered by MCI. All issues of merit as well as of jurisdiction of the MCI are left open to be decided by MCI. MCI will take a decision in accordance with law and more particularly, with reference to the ethics regulations framed under the Indian Medical Council Act, 1956.

8. Learned counsel for the petitioner submits that the petitioner has changed her address and is now residing at Flat No.C-25, Silver Heights Apartments, Nakodar Road, Near Wadala Chowk, Jalandhar, Punjab and any further communication with regard to the said case be made by the respondent at the said address. The statement is taken on record.

9. The writ petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

AUGUST 04, 2016/st