

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

Date of Decision: February 09, 2016

+ **LPA 702/2015**

BALVIR S TOMAR

..... Appellant

Through: Dr. A.M. Singhvi, Sr. Adv. with
Mr. Akhil Sibal, Mr. Saurabh S.
Sinha and Mr. Prashant Kumar, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Kavinder Gill, Adv. for
UOI.
Mr. Vikas Singh, Sr. Adv. with
Mr. T. Singhdev, Adv. for MCI.
Mr. Dayan Krishnan, Sr. Adv. with
Mr. Shalinder Saini, Adv. for
Intervener.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

Ms.G.ROHINI, CHIEF JUSTICE:

C.M. No.1446/2016

1. The main appeal is preferred against the order of the learned Single Judge dated 08.10.2015 in W.P.(C) No.9488/2015.
2. The appellant is the writ petitioner who is a medical practitioner and Chairman of a private medical college viz. National Institute of Medical

Sciences University (for short 'NIMS'), Jaipur. He has also been a member of the Medical Council of India constituted by the Central Government under Section 3 of the Indian Medical Council Act, 1956. On the allegations of submitting false documents/declaration forms pertaining to the faculty strength, nursing staff and etc. of NIMS at the time of inspection by MCI for the purpose of recognition/permission for MBBS and PG courses, CBI had registered an FIR against the appellant/writ petitioner on 19.07.2012 under Section 120-B read with Section 467 of IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 along with certain other officials of NIMS. It appears that CBI by its report dated 13.10.2014 recommended appropriate action to be taken by MCI. That apart, another FIR has been registered against the appellant/writ petitioner on 06.02.2015 in Police Station Chhutia, Sadar, Ranchi for the alleged acts of sexual exploitation of a student pursuing medical course in NIMS. In these circumstances, the Central Government by proceedings dated 30.04.2015 barred the appellant/writ petitioner from attending any meeting of MCI till the allegations against him are settled stating that he had failed to uphold the dignity and honour of the profession and such misconduct appears to be violative of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (for short 'the Regulations'). A copy of the said proceedings was also communicated to the Medical Council of India (MCI) for appropriate action.

3. Pursuant thereto, MCI issued the show cause notice dated 10.09.2015 calling upon the appellant/writ petitioner to show cause as to why proceedings should not be initiated against him under the Indian Medical

Council Act, 1956 and the Regulations made thereunder to remove him from the Indian Medical Register.

4. Aggrieved by the abovesaid two proceedings, the appellant/writ petitioner filed the writ petition contending *inter alia* that the show cause notice dated 10.09.2015 is without jurisdiction since Clause 7.5 of the Regulations provide for professional misconduct on the part of the Medical Practitioner only where there is a conviction by a court of law for offences involving moral turpitude/criminal acts. Since the criminal complaints against the appellant/writ petitioner, even according to the respondents, did not culminate in conviction, it was contended that the show cause notice itself was without jurisdiction.

5. The learned Single Judge declined to interfere firstly on the ground that no writ petition can be maintained at the stage of show cause notice. It was also observed by the learned Single Judge that since the petitioner has already submitted a reply to the show cause notice, no case for interference with the proceedings before the Ethics Committee of the Medical Council of India at the stage of show cause notice is made out in the light of the seriousness and gravity of the allegations against him. So far as the Government of India's proceedings dated 30.04.2015 are concerned, the learned Single Judge opined that allowing the appellant/writ petitioner to attend the meetings of MCI as a member thereof is likely to interfere in the decision making of MCI on the professional conduct of the appellant/writ petitioner as well as relating to the Medical College of the petitioner. Accordingly, the writ petition was dismissed by the order under appeal.

6. Against the said order, the present appeal has been preferred by the appellant/writ petitioner in October, 2015 and the same is being adjourned from time to time. While so, a fresh order came to be passed by MCI on 04.01.2016 restraining the appellant/writ petitioner from practising as a Doctor during the pendency of the complaint before MCI. The appellant, therefore, has come up with C.M. No.1446/2016 seeking stay of the said proceedings dated 04.01.2016.

7. Since the learned counsel for the appellant/writ petitioner insisted on grant of relief in C.M. No.1446/2016 pending disposal of the appeal, we have heard the learned counsel for both the parties.

8. Dr. A.M. Singhvi, the learned Senior Counsel appearing for the appellant/writ petitioner has at the outset submitted that closure report has been filed in respect of the allegations being investigated by the CBI and so far as the other complaint is concerned, the complainant herself has withdrawn the complaint. Therefore, the learned senior counsel contended that none of the allegations on the basis of which FIR dated 19.07.2012 and the FIR dated 06.02.2015 were registered against the appellant/writ petitioner can form basis for the misconduct alleged against the appellant and there is no justification to continue the proceedings initiated by the Central Government as well as MCI. Placing reliance upon Clause 7.5 of the Regulations, it is contended by the learned Senior Counsel that conviction by a court of law for offences involving moral turpitude/criminal acts alone would constitute misconduct.

9. On the other hand, it is contended by Shri Vikas Singh, the learned Senior Counsel appearing for MCI as well as Shri Dayan Krishnan, the C.M. No.1446/2016 in LPA No.702/2015

learned Senior Counsel appearing for the Intervener that Clause 8.1 of the Regulations clarified that the instances of offences and of professional misconduct enumerated in Clause 7 do not constitute a complete list of the acts which calls for disciplinary action and empowers the Medical Council of India or the State Medical Councils to initiate proceedings with any other form of professional misconduct on the part of the registered practitioner. It is also contended that having regard to the very serious allegations made against the appellant/writ petitioner, the appellant/writ petitioner cannot be allowed to continue as Medical Practitioner and therefore the MCI was justified in passing the order dated 04.01.2016.

10. We have given our thoughtful consideration to the controversy involved. Since the proceedings under the show cause notice dated 10.09.2015 have been initiated for removal of the appellant/writ petitioner's name from the Indian Medical Register and the inquiry is still in progress before the Ethics Committee, the order dated 04.01.2016 barring him from practising as a Doctor during the pendency of the complaint appears to be unwarranted and unjustified. The gravity of the allegations made against the appellant/writ petitioner, no doubt, requires inquiry and ultimately if the Ethics Committee concludes that the acts of the appellant/writ petitioner constitute a professional misconduct rendering him unfit to continue as a Medical Practitioner, it is open to pass an order barring him from practicing on completion of the inquiry. However, a perusal of the order of the MCI dated 04.01.2016 shows that more than the gravity of the allegations, the conduct of the appellant/writ petitioner in refusing to participate in the inquiry appears to be the reason for the order dated 04.01.2016. It is no

doubt true that the appellant/writ petitioner is not justified in refusing to participate in the inquiry, however in the facts and circumstances of the case, the extreme step of barring him from practising during the pendency of the inquiry is unwarranted since the same would amount to depriving him his right to practice the medical profession without conducting the inquiry as contemplated under the statute.

11. We, therefore, deem it appropriate to stay the order dated 04.01.2016 till the disposal of the writ petition, subject to the condition that the appellant/writ petitioner appears before the Ethics Committee on the next date of hearing and continues to do so until further orders.

12. C.M. is accordingly disposed of.

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Since we are of the view that the appeal requires expeditious disposal, the date fixed for hearing shall stand cancelled and the appeal be listed for hearing on 22.02.2016.

CHIEF JUSTICE

JAYANT NATH, J.

FEBRUARY 09, 2016

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