

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13547 of 2016

Dr. Nigam Prakash Narain, son of Late Hridai Narain, resident of
5'A', Patliputra Colony, P.S- Patliputra, Patna-800013

... .. Petitioner/s

Versus

1. Medical Council of India, represented by its Secretary, Pocket-14, Sector-8, Dwaraka, New Delhi-110 077.
2. The Registrar, Bihar Council of Medical Registration, Road no. 11D, Rajendra Nagar, Patna-800016.
3. The Principal/ Dean, Patna Medical College, Ashok Rajpath, Patna- 800013, Bihar.
4. The Principal/Dean, Shridev Suman Subharti Medical College, Dehradun-248007
5. The State of Bihar through Principal Secretary, Health.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi Sr. Advocate Mr. Prabhaker Dwivedi Advocate Ms. Soni Shrivastava Advocate
For the Respondent/s	:	Mr. Pankaj Kumar SC12 Mr. Kamlesh Kishore AC to SC-12
For the M.C.I.	:	Mr. Kumar Brijnandan Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT

Date : 20-09-2017

The order passed by the Medical Council of India, dated 21.07.2016 (Annexure - 8), by virtue of which the petitioner's name was ordered to be removed from Indian Medical Register for a period of three months, is the subject matter of challenge in the present writ application. Prayer was also made for a direction upon the Registrar of Bihar Council of Medical



Registration not to act upon the order, dated 21.07.2016 or to pass any consequential order in furtherance thereof.

2. Some facts are required to be noticed since the present predicament of the petitioner and the reason for the decision can emerge only therefrom.

3. Petitioner is a medical practitioner and is a Specialist in the field of Pediatrics. He is registered with Bihar Council of Medical Registration since the year 1976 and has held different posts in the Department of Pediatrics, especially in Patna Medical College since 1985 till his superannuation on 30.09.2014.

4. At the time of retirement, petitioner was the Professor and Head of Department of Pediatrics, Patna Medical College.

5. After his retirement from Patna Medical College, petitioner was appointed as Professor and Head of Department of Pediatrics by a Hospital known as Shridev Suman Subharti Medical College, Dehradun (hereinafter referred to as "Dehradun Hospital" for short). The appointment letter is Annexure- 2 to the writ application.

6. It is petitioner's case that he rendered service as a Faculty between 03.01.2015 to 06.04.2015 in the said Hospital. He tendered his resignation on 06.04.2015 from the Dehradun



Hospital and he was relieved from his responsibility w.e.f. 07.04.2015. Annexure- 3 series is the proof of the same, which have been brought on record.

7. After his resignation from the Dehradun Hospital he got an offer from Patna Medical College to work as a Professor on contractual basis. Petitioner chose to be nearer home and decided to accept the contract on the basis of notification, dated 06.04.2015, issued by the Department of Health, Government of Bihar.

8. A sub-committee was constituted by Medical Council of India (hereinafter referred to as “M.C.I.” for short) to scrutinise fake Faculty Declaration Forms submitted by various Faculty Members during assessment of Medical Colleges for the academic year 2015-16. This was to identify the names of such Faculty which appeared in more than one college or institution for the academic year 2015-16.

9. The sub-committee identified the present petitioner to be one of the persons, who gave a fake Faculty declaration for the academic year 2015-16 since his name appeared as a Faculty in the Dehradun Hospital for the academic year 2015-16 and his name also cropped up as a Faculty in the inspection carried out by M.C.I. at Patna on 05.05.2015. It is alleged that



the petitioner did not disclose that he had appeared in an early inspection of M.C.I. as a Faculty of the Dehradun Hospital.

10. Petitioner received a letter, dated 09.12.2015, directing him to appear before the Ethics Committee in the meeting scheduled on 22nd of September, 2015. The direction for appearance before the Ethics Committee was purported to be under the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

11. Notices were also issued to the Principal, Patna Medical College for appearance before the Ethics Committee and nominee of the Principal, namely, Shri S. N. Sharma, who was the Head of Department of Physiology, attended the meeting. None appeared on behalf of Dehradun Hospital. So far as the Patna Medical College is concerned they took a plea that no case was made out for misconduct or violation of any etiquette or ethics and the proceeding should be dropped.

12. The core issue, which was for consideration before the Ethics Committee was whether the petitioner had shown himself to be Faculty in two different institutions in the same academic year, which according to the M.C.I. is not permissible.

The petitioner did accept the fact that after superannuation from



the post of Head of Department of Pediatrics from Patna Medical College on 30th of September, 2014, he was given an offer by the Dehradun Hospital. He did accept that during the course of inspection by the M.C.I., held on 22.01.2015 at Dehradun and he also accepted that he was a Faculty in the college. He was not a Faculty in any other institution. He also offered his explanation that he served in the Dehradun Hospital for a couple of months and then chose to resign w.e.f. 06.04.2015 and he was relieved as well from the post on 07.04.2015. It is only thereafter that the petitioner chose to accept the offer of the State of Bihar to work on contract as a Professor in Pediatrics at Patna Medical College. It is his contention that he was not working as a Faculty in two different institutions simultaneously and, therefore, there was no case made out against the petitioner for violation of any ethics or etiquette by showing himself to be Faculty in two different institutions.

13. However, the Ethics Committee was of the opinion that non-furnishing of information about the petitioner working in two different Medical Colleges in the same academic year amounted to a case of serious misconduct. A recommendation was made that the name of the petitioner be removed from the



register of Indian Medical Register for a period of three months. On the said recommendation the notification of the M.C.I. was issued and therefore the writ application.

14. Petitioner in the writ application has denied the factum of his appearance before the M.C.I. Inspecting Team on 05.05.2015 at Patna Medical College. It is also his case that he had gone to attend an International Conference at Amsterdam and, therefore, he could not offer himself as a Faculty of Patna Medical College in the inspection, the conclusion which has been reached by the Ethics Committee in their so called enquiry is erroneous. The enquiry report was never furnished to the petitioner and therefore the Principles of Natural Justice was violated by the Ethics Committee. The decision of the Ethics Committee also shows non-application of mind. If the order of the M.C.I. is not interfered with, his fundamental right gets affected.

15. Yet another stand or plea has been taken by the petitioner that the decision of the Ethics Committee seems to be in violation of the mandatory provision that is Regulation 8.4 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The mandate of the Regulation according to the petitioner is that a decision on any complaint



must be taken within a period of six months and since in the present case the said decision has been taken beyond the period fixed in the Regulation, it is also barred by limitation.

16. The petitioner has categorically stated that there was no occasion for the petitioner to appear before the M.C.I. Inspecting Team as he was abroad between 05.05.2015 and 10.05.2015. It seems that during the course of inspection, somebody from Patna Medical College tendered an incomplete kind of declaration form, which was lying with them to show him as one of the Faculty at Patna Medical College and therefore a conclusion was reached in haste that the petitioner was working in two different institutions as a Faculty simultaneously. Petitioner does not rule out element of mischief by some vested interest at Patna Medical College.

17. A detailed counter affidavit has been filed on behalf of the Medical Council of India. It is their stand that there was a deliberate effort made by the petitioner to submit a false or a forged declaration from on 05.05.2015 in which material information was suppressed from the M.C.I. that he was already a Faculty in the Dehradun Hospital where he appeared in the inspection, dated 22.01.2015. He was again shown as a Faculty for Patna Medical College, Patna and, therefore, he can not and



ought not to be working as a Faculty in two different Medical Institutions in the same academic year and the Ethics Committee not being satisfied with the explanation offered by the petitioner decided to take a strict view.

18. The facts as such are not a matter of dispute, because according to the petitioner's counsel the resignation of the petitioner from the Dehradun Hospital and its acceptance by the said institution has not been disputed at all by the Ethics Committee or the M.C.I. It is only after his resignation on 06.04.2015 that he chose to accept his engagement on contract by Patna Medical College on 10.04.2015.

19. No doubt, the Regulation, which has been put in place by the M.C.I. is to prevent medical institutions from indulging in malpractice by showing a Faculty being available on record in multiple institution simultaneously. A bar has been created to prevent institutions from indulging in such acts, which is generally done to meet the requirements and standards set up by the M.C.I. with regard to the mandate of Faculties being available for either getting or continuing with recognition by the M.C.I.

20. The petitioner, who retired from a very senior position from Patna Medical College is expected to know the



does and don'ts and the requirements in place by the M.C.I. However, it is also a fact that only after the resignation from the Dehradun Hospital the petitioner chose to accept an assignment at Patna Medical College on contract, therefore, he ceased to be a Faculty at Dehradun Hospital, the day his resignation was accepted.

21. Petitioner, therefore, had no mens rea to be faculty at two medical colleges at the same time in the same year. By giving up the position as a Faculty in the Dehradun Hospital before accepting the offer given by the State of Bihar for the post of Professor in Pediatrics in Patna Medical College on contract, the intent of petitioner is clear.

22. The said fact has not been objectively examined or looked into by the M.C.I. or the Ethics Committee and they have taken very strict and technical view of the so called aberration or omission on the part of the petitioner despite he having given up his position as a Faculty at Dehradun Hospital before taking up his responsibility at Patna Medical College.

23. The Court is not against the object and purpose of the Regulation and the requirement to be adhered by the standards and ethics, laid down by the M.C.I., which is required to bring about discipline, but in totality, however, in the present case, the



Court is of the opinion that the decision, contained in Annexure- 8, striking down the name of the petitioner from the Register of the Indian Medical Practitioner for a period of three months is a erroneous decision.

In view of the same, Annexure- 8, dated 21.07.2016 is hereby quashed. Writ Application is allowed.

(Ajay Kumar Tripathi, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	06.12.2016
Uploading Date	20.09.2017
Transmission Date	

