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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11904 OF 2016

Mrs. Shreya Milind Nimonkar ... Petitioner
Vs.
Medical Council of India ... Respondents
through President and Ors.

Mr. Ganesh K. Gole for the Respondent no. 1.
Mr. Rahul Nerlekar for the Respondent no. 2.
Mr. Gopinath N. Shenoy for the Respondent no. 3.
Mr. Fauzan Shaikh i/b. Mr. M. V. Thorat for the Respondent no. 4.

CORAM : A.S. OKA & A.K. MENON, JJ.
DATE : 27th MARCH, 2017

P.C.

1. Notice for final disposal was issued by order dated 6th February, 2017. Accordingly, we have taken up the petition for final disposal.
2. The petitioner made a complaint against Rule 62 of the Maharashtra Medical Council Rules, 1967 ("MMC"). On the basis of the said complaint, the MMC issued a notice to the third respondent. The third respondent filed a reply. An order was made on 26th September, 2015 by the second respondent by which the complaint filed by the petitioner was dismissed. Being aggrieved by the said Order, the petitioner preferred an appeal before the first respondent – the Medical Council of India. By the impugned order dated 10th May, 2016 the appeal was disposed off on the ground that the appeal being time barred was not maintainable.

3. The submission of the learned Counsel appearing for the petitioner based on the assertion made in the petition is that till 9th October, 2015 the petitioner was not aware of the order dated 26th September, 2015 passed by the second respondent. Learned Counsel appearing for the petitioner pointed out that petitioner received a copy of the said order on 12th October, 2015. An appeal before the first respondent was preferred on 17th December, 2015. She pointed out that there was a delay of only four days. The submission is that the first respondent could not have disposed of the appeal without giving an opportunity of hearing the petitioner and without giving opportunity to the petitioner of satisfying the first respondent that there was sufficient cause for the condonation of delay. He also submitted that the order dated 26th September, 2015 is illegal. His submission is that even notice ought to have been issued of the complaint to the fourth respondent.

4. Learned Counsel appearing for the third as well as the fourth respondents have opposed the petition. The contention of the learned Counsel appearing for the fourth respondent is that the complaint filed by the petitioner is only against the third respondent. Learned Counsel appearing for the second respondent has also opposed the petition. Learned Counsel appearing for the first respondent is unable to point out any material to show that the parties were heard before passing the order dated 10th May, 2016.

5. We have noted the statements made by the petitioner in paragraph 3.48 to 3.50 of the petition to the effect that the order dated 26th September, 2015 passed by the second respondent was served upon her on 12th October, 2015. Therefore, there was a delay of only four days in preferring appeal before the first respondent.

6. The impugned Order dated 10th May, 2016 passed by the first respondent clearly shows that the petitioner was not heard before passing the order. The order records that as per clause 8.8 of the Indian Medical (Professional Conduct, Etiquette and Ethics) Regulations, 2002 the period of limitation for preferring an appeal before first respondent is 60 days from the date of receipt of the impugned order of the said Medical Council. The proviso to clause 8.8 clearly provides that if the appellant was prevented by a sufficient cause from presenting an appeal within stipulated period of 60 days, the same can be allowed to be presented within a further period of 60 days.

7. In the facts of the case, the first respondent ought to have granted an opportunity to the petitioner to apply for condonation of delay. If an application for condonation of delay was made, the first respondent, could have given an opportunity of being heard to the petitioner as well as respondents in the appeal before deciding the issue whether the delay deserves to be condoned.

8. Accordingly, the petition must succeed. As we propose to remand the appeal to the first respondent, it is not necessary for us to consider merits of the challenge to the order dated 26th September, 2015. If the delay in preferring appeal is condoned, the first respondent will have to go into legality and validity of the said Order.

9. Accordingly, we pass the following order :-

(a) The impugned order dated 10th May, 2016 passed by the first respondent is hereby set aside and the appeal dated 17/18th December, 2015 preferred by the petitioner is remanded to the first respondent;

(b) It will be open for the petitioner to file an application for condonation of delay setting out sufficient cause for delay in terms of the proviso to clause 8.8 of the Indian Medical (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Such application shall be filed not later than one month from the date on which this order is uploaded;.

(c) If such application is made, the first respondent shall decide the said application in accordance with law after giving an opportunity of being heard to the petitioner as well as all the concerned parties;

(d) Needless to add that under the proviso to clause 8.8 the first respondent is empowered to condone the delay upto period of 60 days if a sufficient cause is made out;

(e) If the delay is condoned, the appeal shall be decided by the first respondent in accordance with law as expeditiously as possible;

(f) The application for condonation of delay, if made by the petitioner, shall be decided by the first respondent within a period of three months from today;

(g) We make it clear that we have made no adjudication on the merits of the appeal filed by the petitioner as well as merits of the order dated 26th September, 2015 passed by the second respondent. All contentions on merits are kept open.

(h) Rule is made partly absolute in the above terms

(i) First respondent shall act upon the authenticated copy of the judgment and order.

(A.K. MENON, J)

(A.S. OKA, J)