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

+ **W.P.(C) 5204/2014**

FLT. LT. RAJAN DHALL CHARITABLE TRUST..... Petitioner

Through Mr Rohit Puri, Advocate with Mr Mizan Siddiqui, Advocate.

versus

MEDICAL COUNCIL OF INDIA & ANR Respondents

Through Mr T. SWinghdev, Ms Micheue, Advocate with Biaktnansangi, Mr Tarun Verma, Ms Puja Sarkar, Advocates for MCI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

16.10.2017

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VIBHU BAKHRU, J

1. The petitioner - a registered society operating a hospital under name Fortis Flt. Lieutenant General Rajan Dhall Hospital - has filed the present petition impugning a communication dated 23.05.2014. By the said communication the petitioner was informed that the Executive Committee of the Medical Council of India (hereafter 'MCI') has in its meeting held on 16.04.2014 approved the recommendations of the Ethics Committee, reproduced in the aforesaid communication. The petitioner is particularly aggrieved by the decision of the Ethics Committee (as accepted by the MCI), whereby it has directed as under:-

"A separate letter should be sent to the Directorate of Health Service, Gov. of Delhi stating that the Fortis Hospital, Vasant Kunj does not have basic infrastructure to manage critically ill patients and to take stringent action against the hospital and ensure the MRI facilities is made available in the hospital."

2. Learned counsel for the petitioner states that MCI has no jurisdiction to pass any order against a hospital and its jurisdiction only extends to medical practitioners. He, thus, submits that the aforesaid observations made by the Ethics Committee as approved by MCI be set aside.

3. MCI does not dispute that it has no jurisdiction to take any action against a hospital and its jurisdiction is limited only to take action against registered medical practitioners under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Paragraph 4 of the counter affidavit filed by MCI is relevant and is quoted below:-

"It is submitted that as per the statutory scheme envisaged by the Indian Medical Council Act 1956, the scope of the respondent Council is limited only to take action against the registered medical professionals under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter the 'Ethics Regulations') and has no jurisdiction to pass any order affecting rights/interests of any Hospital whatsoever. It is respectfully submitted that the respondent Council has not passed any order against the petitioner hospital by passing its ambit which can be assailed before this Hon'ble Court in writ jurisdiction."

4. The learned counsel for the petitioner has also referred to the decision of a coordinate Bench of this Court in **Max Hospital, Pitampura v Medical Council of India: ILR (2014)1 DELHI 620**, whereby this Court had considered the issue regarding observations made against facilities provided by the petitioner therein - Max Hospital, Pitampura. In the said decision, this Court had held as under:-

"8. It is clearly admitted by the Respondent that it has no jurisdiction to pass any order against the Petitioner hospital under the 2002 Regulation. In fact, it is stated that it has not

passed any order the Petitioner hospital. Thus, I need not go into the question whether the adequate infrastructure facilities for appropriate post-operative care were infact in existence or not in the Petitioner hospital and whether the principles of natural justice had been followed or not while passing the impugned order. Suffice it to say that the observations dated 27.10.2012 made by the Ethics Committee do reflect upon the infrastructure facilities available in the Petitioner hospital and since it had no jurisdiction to go into the same, the observations were uncalled for and cannot be sustained.

9. Since the MCI had no jurisdiction to go into the infrastructure facilities, I need not also go into the aspect that in the year 2011, the facilities available in the hospital were inspected and were found to be in order.

10. The petition therefore has to succeed. I hereby issue a writ of certiorari quashing the adverse observations passed by the MCI against the petitioner hospital highlighted in Para 1 above."

5. In view of the above, the observations made by the MCI with regard to the facilities available at the petitioner hospital and further directions that stringent action be taken against the petitioner are without jurisdiction.

6. In the circumstances if the Director of Health Services Govt. NCT Delhi takes note of the said observations, it shall ensure that appropriate opportunity is granted to the petitioner to meet the said allegations and DGHS would take an independent decision uninfluenced by the observations made by the MCI.

7. The petition is disposed of with the above observations.

VIBHU BAKHRU, J

OCTOBER 16, 2017/pkv