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

+ **W.P.(C) 277/2017**

SHISHIR CHAND Petitioner

Through: Petitioner in person.

versus

MEDICAL COUNCIL OF INDIA (MCI) & ORS Respondents

Through: Mr T. Singh Dev, Mr Tarun Verma,
Ms Puja Sarkar and Ms Biaktuansangi
Das, Advocates for R-1.

Mr Parag Tripathi, Senior Advocate
with Mr Punit Dutt Tyagi, Mr
Ashwini Mishra and Mr Shikhar
Khare, Advocates for R-2.

Mr Subhodh Kumar Jha and Mr
Ramekbal Roy, Advocates for R-3.

Mr Gopal Prasad, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

(i) Set aside the two decisions of the Medical Council of India dated 12.12.2014 and 21.07.2016 in so far as it only awards a "warning" to Respondent No. 2 on the facts and circumstances as mentioned above, and

(ii) Direct Respondent No.1 to reconsider and enhance the

quantum of punishment awarded to Respondent No. 2 in view of the recommendation of the Ethics Committee which had awarded a six month suspension of license of Respondent No. 2 from the Indian Medical Register and,

(iii) Direct Respondent No.1 and Respondent No. 3 to complete the degree verification process of Respondent No. 2 as initiated by Respondent No. 1 and bring on record complete set of documents as sought by crime branch of Jharkhand Police."

2. Insofar as the prayer with regard to verification of respondent no.2's qualification is concerned, the same had been addressed by this Court in the order passed on 30.08.2017.

3. The controversy to be addressed in this petition is whether there is any medical negligence on the part of respondent no.2 in treating the petitioner's brother (since deceased). The petitioner states that the petitioner's brother, Mr Vishal Chand, felt extreme uneasiness and experienced severe chest pains in the evening of 20.05.2011 and, therefore, was rushed to Tata Main Hospital at Jamshedpur. He was attended by respondent no.2. It is alleged that the patient's blood pressure was elevated and the ECG reading were also abnormal. According to the petitioner, the symptoms were indicative of a major heart attack, but respondent no.2 neither admitted the patient nor referred him to a cardiologist. It is alleged that respondent no.2 misdiagnosed the symptoms as gastritis; the patient was administered an anti-spasmodic medication and was advised to return home and undertake a three days course of medication to treat 'hyperacidity'.

4. On the next day (that is, on 21.05.2011), the petitioner's brother (the patient) was rushed to another hospital at 10:00 am from his office, where he

suffered cardiac arrest and expired.

5. The petitioner lodged a complaint with the Bihar Council for Medical Registration, which was subsequently dismissed.

6. The petitioner appealed against the decision of the Bihar Council of Medical Registration to respondent no.1 (hereafter the 'MCI'). The Ethics Committee of the MCI considered the petitioner's appeal and decided to warn respondent no.2 to be more careful in future. The recommendation of the Ethics Committee was approved by the Executive Committee of the MCI at its meeting held on 01.10.2014, and the decision was communicated to the concerned parties on 12.12.2014.

7. The petitioner felt that issuance of mere warning to respondent no.2 was not commensurate with the respondent no.2's alleged negligence and, therefore, made representations (by letters dated 19.12.2014 and 30.12.2014) to the MCI. The MCI took note of the said representations and called upon the petitioner to appear before the Ethics Committee on 16.01.2015. The petitioner's representation was considered by the Ethics Committee at the meeting held on 15.01.2015 and 16.01.2015.

8. At the said meeting held on 15.01.2015 and 16.01.2015, the Ethics Committee decided to obtain a legal opinion on the question whether the earlier decision could be reviewed. The Ethics Committee considered the matter once again at the meetings held on 16.06.2015 and 17.06.2015, in the light of the legal opinion of the law officer that the Ethics Committee could reconsider the question of quantum of punishment.

9. After considering the material on record, the Ethics Committee concluded that the name of respondent no.2 ought to be removed from the Indian Medical Register for a period of six months. However, it appears that respondent no.2 was not heard before such decision was taken. Thereafter, the Ethics Committee in their meeting held on 15.10.2015 and 16.10.2015 decided to once again refer the matter for a legal opinion, whether it would be necessary to hear respondent no.2 before enhancing the punishment. The matter was thereafter referred for legal opinion of an advocate.

10. The legal opinion received thereafter, clearly indicated that a fresh notice was required to be issued to respondent no.2 before enhancing the quantum of punishment. The Ethics Committee after reviewing the legal opinion was of the view that re-hearing of the appeal would amount to a review of the earlier decision, which was not permissible and, therefore, concluded that the earlier decision to issue a warning to respondent no.2 (which was approved by the Executive Committee of the MCI) should be maintained.

11. It appears from the above narrative that the Ethics Committee has taken different views at different points of time. Mr Parag Tripathi, learned Senior Advocate appearing for respondent no.2 also submitted that the petitioner had been consistently changing its case from time to time. He also submitted that there was no negligence on the part of respondent no.2 and no punitive measure was required to be taken against respondent no.2. The petitioner, on the other hand, is also dissatisfied with the quantum of punishment imposed on respondent no.2 and seeks enhancement of the punishment meted out to respondent no.2.

12. Keeping the above facts in mind, this Court is of the view that it is apposite that MCI examine the matter afresh and take an informed view after hearing the petitioner as well as respondent no.2. MCI may also seek an expert opinion, if necessary.

13. The impugned order passed by MCI is, accordingly, set aside and the concerned Committee of MCI is directed to rehear the concerned parties and take a decision afresh uninfluenced by the decisions rendered earlier.

14. The petition is, accordingly, disposed of.

SEPTEMBER 05, 2017
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VIBHU BAKHRU, J

