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

+ **W.P.(C) 8099/2017**

DR. RAHUL KAKRAN

..... Petitioner

Through: Mr Mukund C., Mr Kapil Kher and
Ms Harsha, Advocates.

versus

MEDICAL COUNCIL OF INDIA AND ORS. Respondents

Through: Mr T. Singhdev and Mr Tarun
Verma, Advocates for R-1/MCI.
Mr Praveen Khattar, Advocate for R-
2/DMC with Mr L.D.S. Uppal, Asstt.
Secretary, DMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
12.09.2017

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VIBHU BAKHRU, J

CM APPL. 33343/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 8099/2017 and CM APPL. 33342/2017

3. The petitioner - at the material time was practising as a doctor attached with Fortis Hospital - has filed the present petition, *inter alia*, impugning the order dated 30.01.2017, passed by the Delhi Medical Council

(hereafter 'DMC'), imposing a punitive measure of removing the petitioner's name from the State Medical Register for a period of six months. The petitioner also impugns the order dated 23.08.2017, passed by the Medical Council of India (hereafter 'the MCI') rejecting the petitioner's appeal against the order dated 30.01.2017.

4. DMC had *suo motu* taken note of the media reports alleging medical negligence on the part of doctors of Fortis Hospital, Shalimar Bagh, New Delhi (hereafter 'the hospital') in the treatment administered to Sh. Ravi Rai (respondent no.3).

5. The Disciplinary Committee of DMC had after considering the facts of the case observed, that on 19.06.2016 respondent no.3 (hereafter 'the patient') had suffered a fall from the stairs following which he was unable to stand or walk and, thus, he was carried to Fortis Hospital, Shalimar Bagh (hereafter 'the Hospital') and was attended by the Casualty Medical Officer and, subsequently, by the Senior Resident from the Department of Orthopaedics.

6. The X-Ray of the right foot of the patient was taken and a plaster was put on the right lower limb. Thereafter, a Plan of Open Reduction and Internal Fixation (ORIF) of the comminuted fracture of right side was recorded in the case sheet on 19.06.2016.

7. The patient was under the care and supervision of Dr Ashwani Maichand. On his advice, the patient was made to undergo physiotherapy and made to stand up with the help and support and start ankle exercises. The Physiotherapist had, on enquiry, claimed that she was given verbal

instructions for ambulating the patient on the walker.

8. A CT scan of the patient's right foot, X-Ray of the left ankle and LA spine was also recorded on 20.06.2016 and, the surgery of the right foot was planned for 21.06.2016. The lower right limb was also marked for surgery. The anaesthetist had on enquiry confirmed that he was also informed that the surgery was to be done on the right leg and, had given spinal anaesthesia.

9. The patient had also given his consent for surgery on his right limb and, claims that there was no information that his left leg also required any surgery. The evidence, as noticed by the disciplinary committee, indicated that the patient was given physiotherapy where he would have to bear a higher proportion of weight on his left leg.

10. Although, the patient was wheeled in for surgery of his right leg, the petitioner had conducted surgery on his left foot. It is the case of the petitioner that it was decided in the operation theatre not to operate on the right leg since it was swollen but to perform a surgical operation on the left foot.

11. The Disciplinary Committee found that there was "Multiplanar undisplaced fracture calcaneum" on the left side, which would unite non-operatively in around eight weeks irrespective of whether surgery was done or not.

12. It is in the aforesaid context, that the Disciplinary Committee held that the petitioner have been negligent in operating on the patient's left foot. On

recovering from anaesthesia, the patient was shocked to find that his left leg had been operated instead of right. It is stated that the petitioner's relatives also became aggressive on becoming aware that the petitioner had performed an operation on the left limb of the patient instead of the right.

13. In the light of the findings of the disciplinary committee, the DMC imposed a punitive measure of removing the name of the petitioner from the State Medical Register for a period of 180 days.

14. The petitioner appealed against the said decision of the DMC before the MCI. The Ethics Committee of the MCI also confirmed the order passed by DMC.

15. The Ethics Committee of the MCI after examining the record and hearing the petitioner, Dr. Yatish Sharma and Dr. Pawan Khurana and the patient, observed that the petitioner had himself taken the decision to operate the left foot without taking consent for the operation from the patient and/or his attendant. The MCI concluded that the petitioner did not exercise the reasonable care in dealing with the patient and, accordingly, upheld the punitive measure imposed on the petitioner.

16. It is also relevant to mention that while the petitioner's appeal was pending consideration before the MCI, the petitioner approached this Court by way of a writ petition being ***W.P.(C) 1881 of 2017*** captioned "***Rahul Kalkran v. Delhi Medical Council and Ors.***", decided on 06.03.2017. The said petition was taken up for hearing on 06.03.2017, and on that date, the learned counsel for the petitioner submitted that the petitioner would challenge the order dated 30.01.2017, passed by DMC on merits, before the

MCI and restricted the relief to the interim order. After hearing the Counsel, this Court, by an order dated 06.03.2017, stayed the operation of the order dated 30.01.2017, till the disposal of the petitioner's appeal before the MCI.

17. Mr Mukund, learned counsel appearing for the petitioner advanced contentions on three fronts. First, he submitted that the petitioner was not provided the relevant documents pertaining to the patient's case. He referred to the provisions of Section 21(5)(b) of the Delhi Medical Council Act and submitted that DMC had the power to direct production of all records.

18. Next, he submitted that the petitioner and Dr. Maichand had submitted a joint statement and also filed joint submissions. However, the punishment imposed on Dr Maichand had been reduced.

19. He also referred to the decision of the Supreme Court in ***Jacob Mathew v. State of Punjab and Anr.: (2005) Supp (2) SCR 307*** and drew the attention of this Court to paragraph 49 of the said judgment, whereby the Supreme Court had explained the scope of negligence. On the strength of the aforesaid judgment, he argued that negligence becomes actionable on account of injury resulting from the act, or omission amounting to negligence attributable to the person sued. He submitted that in the present case, no injury was suffered to the patient and, therefore, the petitioner could not be held to be negligent.

20. Lastly, he submitted that the petitioner has had an unblemished career and has already suffered sufficiently. He also drew the attention of this Court to the screen shot of DMC's website which indicated that the petitioner's name was removed from the register from 03.03.2017 to

02.09.2017.

21. I have heard Mr Mukund at length.

22. The contention that the petitioner had not been provided the necessary documents and, thus, the decision making process of the disciplinary committee of DMC stood vitiated, cannot be entertained at this stage. The petitioner had filed a writ petition before this Court (*W.P.(C) 1881 of 2017*) and had indicated that the petitioner would challenge the order passed by the DMC on merits before the MCI. The contention regarding non-supply of documents or any infirmity in the decision making process was not urged at that stage. Thus, the only controversy was required to be examined by MCI in regard to the merits of the findings and the punitive measure imposed on the petitioner by DMC in its order dated 30.01.2017.

23. This Court is also of the view that if the petitioner felt that the documents were utmost necessary, the petitioner could have moved an application before the MCI, however there is no material on record to indicate that the petitioner made any such application.

24. The two professional bodies have examined the controversy and have found that the conduct of the petitioner was negligent. This Court has also briefly examined the facts and, as is apparent there is ample material available to indicate that the petitioner was guilty of medical negligence.

25. Indisputably, the patient was willing for operation of the right limb, his consent form for surgery also does not mention any proposed surgery of the left limb. Although, the petitioner has contended that the surgery on the

left leg was also necessary, the DMC has not accepted the same. In the given facts as noticed above, this Court does not find any ground to interfere with the impugned orders passed by the DMC and/or the MCI.

26. The reference to the decision of ***Jacob Mathew v. State of Punjab and Anr*** (*supra*) is misplaced. The contention that the patient suffered no injury and, therefore, there was no negligence is, plainly, unmerited. The facts clearly indicate that the patient's left leg had been operated without his consent and there is good ground to believe that such surgery was not necessary. In the aforesaid context, the contention that no injury was caused to the patient, is unsustainable.

27. The contention that the punishment imposed on other persons accused of negligence would not be relevant; the role of other persons involved was materially different and, concededly, the surgery was performed by the petitioner.

28. In so far as the contention that the petitioner has suffered enough and the quantum of punishment ought to be reduced is concerned, this Court does not find any valid ground to do so. The punishment imposed is not disproportionate to the allegations - which have been sustained - against the petitioner.

29. The contention that the petitioner's name had been removed from the register as indicated on the website of DMC is also of little relevance considering that the petitioner continued to function as a doctor by virtue of the stay order granted by this Court on 06.03.2017 (in W.P.(C) 1881/2017).

30. The petition and the application are, accordingly, dismissed. No order as to costs.

31. Order *dasti*.

VIBHU BAKHRU, J

SEPTEMBER 12, 2017
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