

\$~4

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

+ **W.P.(C) 10907/2017**

DR. VIVEK KHANNA Petitioner
Through: **Mr K.G. Sharma, Advocate.**

versus

MEDICAL COUNCIL OF INDIA AND ORS. Respondents
Through: **Mr T. Singhdev, Mr Tarun Verma,
Ms Puja Sarkar and Mr Abhijit
Chakravarty, Advocates for R-1/MCI.
Mr Praveen Khattar, Advocate for R-
2/DMC.**

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
18.12.2017

%

VIBHU BAKHRU, J

CM No. 44630/2017

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

W.P.(C) 10907/2017 and CM No. 44629/2017

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 07.11.2017 passed by the Medical Council of India (hereafter 'MCI') and the order dated 16.03.2017 passed by the Delhi Medical Council (hereafter 'DMC'). By the aforesaid orders (hereafter 'the impugned orders'), the petitioner has been held to be guilty of medical negligence and has been awarded punishment of removal of his name from the State Medical

Register for a period of 90 days.

4. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

5. Respondent no.3 – who is the complainant before the DMC – alleged that he was admitted to Khanna Nursing Home on 17.11.2014 for the treatment, of his left foot. He claimed that after preliminary tests were conducted, which included X-ray of his left foot, the petitioner diagnosed that his left foot suffered from cellulitis. The line of treatment provided to respondent no.3 was on the basis of the aforesaid diagnosis. The principal allegation against the petitioner is that his diagnosis was palpably incorrect as the petitioner was suffering from Bimalleolar fracture of the left ankle, which was clearly discernable from the X-ray.

6. The aforesaid case was examined by the Disciplinary Committee of the DMC and the said Committee made the following observations:-

“1) The x-ray No.L5335 (picture of the same as provided by the complainant) reveals that the complainant suffered from a bimalleolar fracture on his left ankle which was not diagnosed by Dr. Vivek Khanna and, hence, not treated. Subsequent x-ray No.73-10745 dated 18th July, 2016 of All India Institute of Medical Sciences confirmed mal-united bimalleolar fracture on his left ankle. From the averments made in the complaint and also from the x-ray produced by the complainant, which version and document has remained un-rebutted by the doctor and hospital, it is apparent that Dr. Vivek Khanna failed to exercise reasonable degree of skill, knowledge and care in the treatment of the complainant Shri Devender Singh, which is expected of an ordinary prudent doctor.

- 2) We are further pained to note the total indifference of Dr. Vivek Khanna and the Medical Superintendent of Khanna Nursing Home, as is reflected in their failing to file their written statement or present themselves before the Disciplinary Committee or submit the medical records pertaining to this matter, inspite of repeated notices (sent on 7th October, 2015, 11th January, 2016, 26th October, 2016 and 19th January, 2017), so as to render assistance in this matter. This recalcitrance towards an authority which is exercising power of Civil Courts and whose proceedings are judicial in a nature, tantamount to misconduct.

A copy of this Order be also sent to the Directorate General of Health Services, Govt. of NCT of Delhi for stern action under the Delhi Nursing Home Registration Act against Khanna Nursing Home for failing to comply with the direction of a statutory authority, as highlighted herein-above.”

7. On the basis of the aforesaid findings, the Disciplinary Committee of DMC directed that the name of the petitioner be removed from the State Medical Register for a period of 90 days. This recommendation was accepted by the DMC and by the impugned order dated 16.03.2017, the DMC directed removal of the petitioner's name from the State Medical Register for a period of 90 days.

8. The aforesaid matter was considered by the DMC Disciplinary Committee/DMC *ex parte* as the petitioner had not appeared before the DMC. This is also one of the grievances of the petitioner. Aggrieved by the aforesaid impugned order, the petitioner preferred an appeal before the MCI.

9. The Ethics Committee of MCI examined the matter and also heard the petitioner. After examining all documents available on record, the Ethics

Committee upheld the decision of the DMC.

10. The relevant extract of the decision of the Ethics Committee, as reflected in the impugned order dated 07.11.2017 passed by the MCI, reads as under:-

“The Ethics Committee after perusal of documents and hearing the appellant in detail is of the unanimous opinion that Dr. Vivek Khanna failed to diagnose Bimalleolar fracture in the patient from the X-ray conducted on the patient. The Committee further noted that there is lack of reasonable amount of care and competence by Dr. Vivek Khanna by a operating surgeon. The X-ray number L5335 done on the patient at Khanna Hospital shows a clear cut Bimalleolar fracture of left ankle. The patient was wrongly operated for Cellulitis. The Ethics Committee found Dr. Vivek Khanna guilty of medical negligence under clause 2.4 of the I.M.C. (Professional Conduct, Etiquette and Ethics) Regulations, 2002 which reads as under:-

***2.4 The Patient must not be neglected:** A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.*

The Ethics Committee further noted that Delhi Medical Council has thoroughly investigated the case and unanimously decided to uphold the decision of DMC dt. 16.3.2017.”

11. The learned counsel appearing for the petitioner contended that there was no negligence on the part of the petitioner in treating respondent no.3

and the patient (respondent no.3) had a long history of treatment in other hospitals, which also did not disclose that any fracture in the ankle had been discovered. He emphatically states that the X-ray examined by the Disciplinary Committee of DMC as well as the MCI was of the respondent no.3's ankle - and not the infected foot - which was neither advised nor performed. He has also drawn the attention of this Court to the pleadings in this regard which reads as under:-

“J Because the MCI and the DMC have heavily relied on the x-ray claimed by the complainant to have been done on 16.11.2014 in the petitioner's hospital, as mentioned in the DMC's order. The petitioner got a glimpse of the x-ray in question during MCI's proceedings and is pertinent to mention that the said x-ray is of the ankle and not of the infected foot which was advised and got conducted by the petitioner on 17.11.2014. But the complainant has not placed any prescription of the petitioner advising x-ray of the ankle on 16.11.2017. The number of the x-ray is same on which x-ray of the foot was done in the petitioner's hospital, but the x-ray of the ankle was not advised nor performed by the petitioner in Khanna Hospital on 16.11.2017, as claimed by the complainant before the DMC/MCI. The possibility of fabricating the x-ray with the same numbers (which are easily available in the market) cannot be ruled out in toto, since the petitioner did not advise the x-ray of the ankle and the photocopy of the x-ray does not reveal the date of doing the xray, which is generally put in the Khanna Hospital.”

12. This Court is not persuaded to accept the aforesaid contention. The prescription made by the petitioner (which is reproduced on page 51 of the paper book) clearly indicates that the petitioner had advised X-ray of the foot. The said prescription also indicates that the petitioner had diagnosed

as a case of Cellulitis of “foot and leg”. It is also not disputed that an X-ray bearing the No. L 5335 was taken at the Khanna Hospital. Although, it is contended that the X-ray produced by the petitioner was not taken at the Khanna Hospital. It is difficult to accept the same. Accepting the aforesaid contention would imply that respondent no.3 had, despite suffering from ailment, fabricate an X-ray, only to file a complaint against the petitioner. This plainly is farfetched.

13. In addition, it is also apparent that the petitioner examined not only the petitioner’s foot but also his leg and thus, it is difficult to accept that the X ray taken at Khanna Hospital was not of the ankle. The petitioner has also not produced any document from the hospital, which would indicate that X-ray taken on the date in question (L 5335) did not include the ankle.

14. There is also no dispute that the petitioner had treated respondent no.3 for Cellulitis and, in fact, the petitioner had suffered by a bimalleolar fracture of left ankle. Thus, in any event, the petitioner's diagnosis was admittedly incorrect. The Disciplinary Committee of DMC as well as the Ethics Committee of MCI had examined the issues and had formed their opinion. This Court finds no infirmity with their decision or the decision making process.

15. The petition and the application are, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 18, 2017
RK