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

% *Date of Judgment: 11th September, 2018*

+ LPA 799/2017

MEDICAL COUNCIL OF INDIA Appellant

Through Mr. Vikas Singh, Senior Advocate
with Mr. T.Singhdev and Ms.
Biakthan Sangi Das, Advocates

versus

DR RAJIV KUMAR AGRAWAL Respondent

Through Mr.Darpan Wadhwa, Senior Advocate
with Mr. Shalok Chandra, Ms.
Cauvery Birbal and Mr. Utpal Kant,
Advocates

+ LPA 63/2018

DR RAJIV KUMAR AGRAWAL Appellant

Through Mr.Darpan Wadhwa, Senior Advocate
with Mr. Shalok Chandra, Ms.
Cauvery Birbal and Mr. Utpal Kant,
Advocates

versus

MEDICAL COUNCIL OF INDIA Respondent

Through Mr. Vikas Singh, Senior Advocate
with Mr. T.Singhdev and Ms.
Biakthan Sangi Das, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL 6093 and 6095/2018(Exemption) in LPA 63/2018

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

LPA 799/2017

LPA 63/2018

3. Both these appeals arise out of a common order passed by the learned Single Judge of this Court dated 10.11.2017 by which the writ petition filed by Rajeev Kumar Agrawal (in short RKA) (appellant in LPA 63/2018) herein has been allowed in part.
4. The necessary facts required to be noticed for the disposal of these appeals are that RKA on completion of his MBBS in November, 1991 registered himself with the Bihar Medical Council in the year 1993; thereafter, he received his Master of Surgery (MS) in December, 1997; in the year 2008 he joined Hind Institute of Medical Sciences, Safedabad, Barabanki as an Assistant Professor. The appellant was promoted as an Associate Professor on 02.12.2013. In the year, 2015, Hind Institute of Medical Sciences decided to commence a Post-Graduate Course. RKA furnished a declaration form on 30.09.2015. Subsequently, on 29.12.2015, a compliance verification inspection was done when the declaration provided by RKA contained a false statement along with a Certificate from Meenakshi Medical College Hospital and Research Institute, which according to the Medical Council of India (MCI) was a fabricated document, however, as per RKA, it was submitted by Hind Institute of Medical Sciences and not by him for which he could not be held responsible. The MCI gave a

notice dated 13.04.2017 to RKA calling upon him to appear before the Ethics Committee of the Council. RKA appeared before the Ethics Committee of the MCI on 27.04.2017. He submitted a signed statement and responded to the questions which were asked from him. The recommendations of the Ethics Committee were placed before the Executive Committee of the Council and thereafter an order dated 21.08.2017 was passed by the Executive Committee of the Council, by which the name of RKA was removed from the Indian Medical Register for a period of three years, which resulted in filing of a Writ Petition bearing W.P.(C).8807/2017 by RKA, which was allowed by the learned Single Judge by an order dated 10.11.2017, which has led to the filing of the present appeals.

5. Mr. Vikas Singh, learned Senior Counsel appearing for the MCI submits that the MCI is primarily aggrieved by the observations made by the learned Single Judge in paragraphs 29, 30, 31 of the impugned order and the concluding portion of the order at para 32, which we deem it appropriate to reproduce below:

“29. MCI has not specified any standards or set down any guidelines for imposing such punishments and thus there is a real risk that imposition of such serious punitive measures would suffer from the vice of arbitrariness. In such circumstances, in order to maintain a certain level of objectivity, it would be necessary for MCI to draw on past precedents of imposing punishments for the misconduct of submitting false declarations/documents. To illustrate the point, if a medical practitioner, who is found to have manipulated records of a patient to meet an allegation of medical negligence, is visited with the punishment of a censure; imposing the punishment of removal of petitioner’s name from the Medical Register for three years would be arbitrary, unreasonable and would fall foul of Article 14 of the Constitution of India.

30. Imposing such harsh punishment - as has been imposed on the petitioner - without reference to any objective standard would be arbitrary and destructive of the Rule of law.

31. It is apparent from the impugned order that the Ethics Committee was of the prima facie view that there was “complete professional misconduct” on the part of the petitioner and other doctors. Plainly such harsh punishment cannot be sustained on a prima facie view. Although there is no dispute that the petitioner had misconducted himself by submitting false certificate and declaration; the question whether this constituted misconduct of the highest level (described as complete professional misconduct), warranting the punishment as imposed, is a matter which the Ethics Committee is required to consider in the context of the explanation provided and various factors as indicated above. This Court is also of the view that it would have been apposite for the Ethics Committee/MCI to have heard the petitioner on the question of the quantum of punishment proposed to be imposed.

32. In view of the above, the impugned order, to the extent that it imposes punishment of removal of the petitioner’s name from the Medical Register, is set aside and the matter is remanded to Ethics Committee of MCI to consider the question of proportionality of the punishment imposed on the petitioner and to take a final view after affording the petitioner an opportunity to be heard and having regard to the observations made hereinabove.”

6. It is also the contention of Mr. Vikas Singh, learned Senior Counsel that at the time of hearing of the writ petition, the question with regard to the guidelines for imposing punishment had not been raised or argued and hence, counsel appearing for the MCI could not have placed before the learned Single Judge the guidelines which are already in existence and which have been filed before this Court dated 22.03.2016. The learned Senior Counsel has relied upon Guideline 47, more particularly,

Guideline 47 Part B, which is a decision of the Executive Committee of the Council and finds mentioned in the Minutes of the Meeting dated 22.03.2016, which we reproduce below:

“47. Quantum of Punishment to be awarded to different persons, who have been found to provide false information to the MCI during the inspections-Ethics Committee recommendations.

.....

.....

Part B-Penalty proposed for providing Fake/Forged documents or for presenting non-medical person as medical teacher/resident only as under:

Name of Dean, HOD, concerned teacher and resident be removed from IMR for three years.

FIR to be lodged against the non-medical person posing as Faculty.”

7. Additionally, Mr. Vikas Singh, learned Senior Counsel for the MCI submits that the question of dual hearing is no longer *res integra* as the same was a subject matter of a batch of Writ Petitions bearing No. W.P.(C).11429/2012 in the case of ***Dr. Shalik Bhaurao Ade v. Medical Council of India and others*** reported at ***2015 SCC Online Bom 5060***, decided on 14.10.2015 by a Division Bench of the Bombay High Court. Reliance is placed on paragraphs 6, 7, 47, 48 and 49, which we reproduce below:

6. On or about 1 February 2010, the Petitioner took charge as Dean of the said Medical College. An inspection team of MCI carried out an inspection of the said Medical College on 29 March 2010. During this inspection, the inspection team claims to have found 32 declaration forms in respect of 32 faculty members, who were appointed by one Dr.T.Ramesh. It is further claimed by the Respondent no.1 that all the 32 faculty members were practicing Doctors and, therefore, they could not have been shown as full

time faculty members. On the inspection report of this team, a complaint was filed with Central Bureau of Investigation ('CBI') at Chennai. The Petitioner in this petition is shown as accused no.7 in the said complaint. The case of the Petitioner is that he had no role absolutely in making appointments of any of these 32 medical practitioners/doctors. Therefore, he gave a statement and recorded by the CBI, that the Petitioner was appointed as an ad-hoc Dean on 22 January 2010 and took charge on 1 February 2010. The appointment of these 32 doctors was made much prior to the Petitioner's appointment as Dean of the said Medical College.

7. It is in these circumstances that the Petitioner in WP No.562 of 2014 was surprised to be served with an order dated 21 January 2013 passed by MCI-the first Respondent in that petition, directing the MMC to remove the name of the Petitioner from the State Medical Register for five years. Annexure-A to the petition is a copy of this order.

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47. In such circumstances, it is impossible to agree with the submission that is canvassed by the learned counsel for the Petitioner Mr.Vashi that one who has not heard the Petitioners has inflicted the punishment. The Petitioners were throughout aware that they were to appear before the Ethics Committee for hearing and it would make a recommendation or report the proceedings to the MCI/the Board of Governors. We do not find in the regulations anything whereby the proceedings before the Governing Board had to conclude within a time frame. Further, the role of the Petitioner Dr.Patel is not on account of his assumption of office as a dean but as an ad-hoc dean having become a party to the fraudulent and unethical act. He counter-signed the declaration forms. In these circumstances, we are not in agreement with Mr.Vashi that a copy of the report of the Ethics Committee not being furnished and in the absence of hearing by the Board of Governors, the Petitioners have been seriously prejudiced. Once the admitted position has been taken into account and as revealed from the records of the MCI and the CBI, then we do not see how the Board of Governors was required to give a oral hearing. We are not shown any regulations much less

rules which would require the Board of Governors to act in terms of the judgment of the Hon'ble Supreme Court in the case of Institute of Chartered Accounts of India Vs. L.K.Ratna and others². For the reasons indicated and in the absence of a statutory scheme, we do not see how before taking a final decision, the Petitioners were required to be heard once again. The Petitioners were heard by the Ethics Committee and thereafter it submitted its report to the Board of Governors. The Board of Governors took the ultimate decision by accepting the report. The report has, as indicated above, not made any reference to other material save and except to the statements of the Petitioners recorded by CBI and the note of CBI to the Secretary to the MCI. In the statements made to the CBI and recorded by the Petitioners, each of the Petitioners agreed and admitted that they have stated that there is no record of their appointment, their attendance, the number of lectures that they have taken. The salary having received in the form and manner recorded by CBI. Thus, they have admitted that they obtained the appointments wrongfully and illegally. Then there was nothing for the Board of Governors but to convey its final decision. Unprofessional conduct contrary to etiquette and breach of code of ethics being serious, that for such violations, the Board of Governors decided to inflict the punishment of removal of the names of the Petitioners before us from the medical register for a specified period. We do not see how that can be faulted and made a ground to approach the writ Court. A bare assertion of breach of principles of natural justice without a proof of resultant prejudice cannot, therefore, be accepted and such a complaint cannot be upheld.

48. Each of the decisions which have been cited before us and particularly in the case of Institute of Chartered Accounts of India Vs. L.K.Ratna and others² will have no application.

49. In the backdrop of the peculiar facts and the rules and regulations requiring two opportunities, that the Supreme Court emphasized the need for a dual hearing. This dual hearing and compliance with the principles of natural justice at the stage of enquiry and at the stage of infliction of punishment by the disciplinary authority, was necessitated because of such

requirement. We have not been shown any legal requirement of such a nature but everything is being read into the rules, regulations by implication. We are unable to uphold such a contention and apart therefrom having found no prejudice caused to the Petitioners nor any miscarriage of justice, we cannot agree with the learned counsel and their reliance on these judgments of Supreme Court is, therefore, misplaced.”

8. Mr. Vikas Singh, learned Senior Counsel further submits that against the aforesaid decision of the Bombay High Court, an SLP bearing no.32464/2015 was filed which was dismissed by the Supreme Court on 30.11.2015. In effect, the order of the Division Bench of the Bombay High Court has attained finality. The learned Senior Counsel further submits that the appellant RKA was granted a hearing. The principles of natural justice were followed and also the MCI has been taking a uniform decision imposing a punishment in terms of the Minutes of the Meeting dated 22.03.2016. The learned Senior Counsel submits that RKA has already undergone the punishment of more than 320 days.
9. Mr. Darpan Wadhwa, learned Senior Counsel appearing for RKA submits that the appellant RKA is a Doctor of repute, has an unblemished record, a very well-known name in the medical field of surgeries as a renowned Doctor and an expert Doctor in his field. He submits that the entire controversy should be laid at rest and the quantum of punishment should be to the period already undergone, more particularly, keeping in view the facts of the present case and for the detailed reasons as mentioned in the writ petition as also in the present appeal filed by him.
10. In rejoinder, Mr. Vikas Singh, learned Senior Counsel appearing for the MCI submits that being a professional, extremely high standard of

ethics should be followed and every endeavor should be made to raise the standards of the medical profession to ensure that such acts are not repeated and the punishment given should be a serious deterrent in such a matter.

11. We have heard the learned Senior Counsels appearing for the respective appellants. Two issues have been raised by Mr. Vikas Singh, learned Senior Counsel for the MCI. His first grievance is that the observations made by the learned Single Judge creates an impression as if the MCI had been awarding or imposing punishment in a random or arbitrary manner and, secondly, prior to imposing a punishment a fresh hearing should be granted.
12. As far as the first issue is concerned, it seems that the minutes of the meeting dated 22.03.2016 were not brought to the notice of the learned Single Judge which led to the observation so made. Guidelines for the quantum of punishment have been put in place. The reading of the Minutes of the Meeting dated 22.03.2016 at Item no.47 would show that the Executive Committee of the Council has taken a conscious decision to prepare guidelines for the kind of punishment to be imposed with regard to providing a false information to the MCI during inspection. Item no.47, which we have extracted in the paragraph 6 foregoing would show that the penalty proposed for providing fake/forged documents or for presenting non-medical person as medical teacher/resident, the quantum of punishment is removal from the Indian Medical Register for a period of three years and, precisely this is a punishment which has been imposed on the appellant RKA.

13. Accordingly, the order passed by the learned Single Judge wherein the observations made by him are required to be modified. It seems, as rightly pointed out by the Mr. Vikas Singh, learned Senior Counsel, that the issue of guidelines may or may not have arisen before the learned Single Judge or the Minutes of the Meeting may not have been brought to the notice of the learned Single Judge.
14. As regards the second grievance raised by Mr. Vikas Singh, learned Senior Counsel that an impression has been created that prior to imposing a punishment, a fresh hearing should be granted, this issue is no longer *res integra* as the Bombay High Court has held that a second hearing is not required and, for the reasons afore-stated, we see no reason to take a different view as the judgment of the Bombay High Court has attained finality as the SLP against the said judgment has been dismissed on 30.11.2015 by the Supreme Court of India. Resultantly, the order of the learned Single Judge is modified to the extent for the reasons stated above.
15. As far as the appeal (LPA.63/2018) of RKA is concerned, Mr. Wadhwa, learned Senior Counsel has strongly urged that taking into consideration the explanation rendered and for the reasons that RKA is a Doctor of repute, has had an unblemished record, has earned a good name in the medical field, the quantum of punishment be modified to the period undergone, Having regard to the peculiar facts of this case, taking into account the totality of the circumstances of this case and for the reasons as detailed in the impugned order of the learned Single Judge, we are of the considered view that the punishment should be

modified for a period of one year. It is ordered accordingly. As agreed, this order would not be treated as a precedent in future.

16. Both the appeals stand disposed of in above terms.

CM.APPL 46311/2017(stay) in LPA.799/2017

17. The application stands disposed of in view of the orders passed in the appeal.

CM.APPL 8033/2018(delay) in LPA 63/2018

18. This is an application filed by the applicant/appellant Rajeev Kumar Agrawal (RKA) seeking condonation of 78 days delay in filing the appeal. Although the prayer made in this application is opposed, but since the application seeking condonation of delay and the appeals were heard at the same time, we condone the delay on account of the orders we have passed in the appeals.

19. The application stands disposed of accordingly.

CM.APPL 6092/2018(stay) in LPA.63/2018

20. The application stands disposed of in view of the orders passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11, 2018

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