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

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Date of Decision: 24th May, 2018

+ W.P.(C) 4003/2018 & CM No.15794/2018

DOCTOR VINOD SHARMA AND ANR. Petitioners
Through: Mr. Satyakam, Advocate

versus

MEDICAL COUNCIL OF INDIA AND ORS Respondents
Through: Mr. T.Singhdev, Mr.Tarun Verma,
Ms.Puja Sarkar, Ms.B. Sangi,
Mr.Abhijit Chakravarty, Advocate for
respondent No.1/MCI.
Mr.Praveen Khattar, Mr.Bapi Das,
Advocates for respondent No.2 along
with Mr.L.D.S. Uppal, Asst.
Secretary, DMC
Mr. M.S.Yadav, Mr.Ashok Tobria,
Mr.S.Y. Usmani, Advocate for
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the order dated 29th November, 2017 whereby Medical Council of India dismissed the petitioners' appeal against the order dated 22nd December, 2016 passed by the Delhi Medical Council as barred by limitation.
2. Learned counsel for the petitioners submits that after receipt of the copy of the order dated 22nd December, 2016 passed by the Delhi Medical

Council, the petitioners' vide letter dated 29th December, 2016 sought the copy of the opinion of the expert members of the disciplinary committee. Vide letter dated 14th July, 2017, the petitioners' sought copy of the Deliberation & Minutes of Meeting of Disciplinary Committee dated 24th October, 2016 and of Delhi Medical Council Meeting held on 7th December, 2016. It is submitted that the petitioners received an *email* dated 4th August, 2017 from Delhi Medical Council intimating them that they can inspect the record and seek the copies of the documents required by them under the RTI Act. It is submitted that the petitioners inspected the relevant record on 8th August, 2017 but did not find the desired documents and found some other documents and applied for the copy of the same. It is further submitted that the petitioners did not get the copies of the relevant documents. On 19th July, 2017, the petitioners made a representation to Medical Council of India against the order of the Delhi Medical Council in reply to which the Medical Council of India sent the letter dated 3rd August, 2017 intimating the petitioners that the appeal was not in the prescribed format and was not accompanied with the requisite fees. Medical Council of India sent the proforma of the appeal along with the instructions for filing the appeal to the petitioners under the cover of their letter dated 3rd August, 2017. It is submitted that the petitioners filed the appeal in the prescribed format on 9th August, 2017. It is further submitted that vide letter dated 3rd August, 2017, Medical Council of India did not raise any objection of limitation, otherwise the petitioners would have filed the application for condonation of delay to explain the delay in filing the appeal.

3. The petitioners seek condonation of delay in filing the appeal and remand of the matter back to the Medical Council of India for adjudication of the petitioners' appeal on merits.
4. Learned counsel for Delhi Medical Council submits that there is an unexplained delay in seeking the documents. It is further submitted that the inspection of the file was given to the petitioners and copies of all the documents which were asked for, were furnished to him. It is further submitted that no other document is pending for being supplied to the petitioners.
5. Learned counsel for Medical Council of India submits that there was a delay in filing of the appeal by the petitioners. It is further submitted that no application for condonation of delay was filed by the petitioners.
6. Learned counsel for respondent No.3 submits that there is undue delay on the part of the petitioners in filing the appeal before the Medical Council of India.
7. This Court is of the view that it would be appropriate to condone the delay on the part of the petitioners in filing the appeal before the Medical Council of India and to remand the matter back to Medical Council of India for adjudication on merits. This Court is satisfied that the petitioners have explained the delay in filing the appeal before Medical Council of India.
8. In the peculiar facts and circumstances of this case, the delay in filing the appeal by the petitioners before the Medical Council of India is condoned and the petitioners' appeal is remanded back to Medical Council of India for fresh adjudication on merits after hearing all the concerned parties including respondent No.3. Learned counsel for the petitioners seeks permission to file note of submissions and additional documents before the

Medical Council of India. The petitioners are given liberty to file the submissions and relevant documents within four weeks with advance copy to respondent No.3 who is given liberty to respond to the same within four weeks thereafter. Medical Council of India shall afford an opportunity of hearing to the petitioners as well as respondent No.3 and thereafter, pass a fresh order in accordance with law.

9. The writ petition and the pending application are disposed of in the above terms.

10. It is clarified that nothing recorded here in shall be considered as opinion on the merits of the case which shall be considered by the Medical Council of India.

11. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

MAY 24, 2018
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J.R.MIDHA, J.

भारतमेव जयते