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

+ **W.P.(C) 4968/2018 and CM No. 19176/2018**

DR. N.K. GUPTA

..... Petitioner

Through: Mr Prashant Mehta, Mr Himanshu  
Kapoor and Mr K. Gupta, Advocates.

versus

MEDICAL COUNCIL OF INDIA AND ANR. .... Respondents

Through: Mr T. Singhdev, Mr Tarun Verma,  
Ms Biakthansangi and Ms Puja  
Sarkar, Advocates for R-1/THE MCI.  
Mr Praveen Khattar. Advocate for R-  
2/DMC.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**23.07.2018**

**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 27.01.2018 (hereafter 'the impugned order') passed by the Medical Council of India (hereafter 'MCI').

2. The petitioner had preferred an appeal against the decision of the Delhi Medical Council (DMC), which was communicated by a letter dated 21.06.2017, whereby the petitioner's request for renewal of registration was rejected. MCI had also commenced proceedings against the petitioner in view of the News Article published in the Newspaper. Both, the petitioner's appeal as well as the disciplinary proceedings commenced by the MCI, were

disposed of by the impugned order, whereby the MCI had permanently erased the petitioner's name from the Indian Medical Register.

3. The aforesaid punitive measure has been imposed on the petitioner in view of the order dated 06.09.2011 passed by the Superior Court of Fulton County, State of Georgia.

4. Mr Aly Mirza, learned counsel appearing for the petitioner contended that the impugned order amounts to executing the order of a Foreign Court, which is not permissible. He relied on a decision of the Full Bench of the Bombay High Court in ***Prabodh K Mehta v. Charuben Mehta : 2018 LawSuit (Bom) 375*** in support of his contention.

5. Briefly stated, the undisputed facts are as under:-

5.1 The petitioner is a doctor by profession and was registered with Delhi Medical Council (DMC). He has been practicing medicine in India and abroad for last 30 years. For a period of seven years, that is, from 2004 to 2011, the petitioner was practicing as a Medical Director & CEO at Diabetes & Hypertension Centre in Duluth, State of Georgia, USA. Thereafter, the petitioner shifted to India in 2011.

5.2 On 09.04.2012, the petitioner submitted his application form for registration with DMC. Consequently, on 08.05.2012, DMC issued a Certificate of Registration in the name of the petitioner. The petitioner has been practicing in Delhi since then. The petitioner's registration expired on 07.05.2017 and so he again applied for the renewal of the same.

5.3 On 09.05.2017, a news article in a national daily, The Indian Express, was published alleging that the petitioner had been charged and indicted in the State of Georgia, USA on various counts of sexual misconduct. It was further stated therein that a plea bargain was negotiated, wherein the petitioner pleaded guilty to three counts of sexual battery and for unwarranted medical examinations on women patients. Consequently, a Division Bench of this Court took *suo moto* cognizance of the said news article. In the meanwhile, DMC also examined the said news article and issued a *suo moto* notice dated 16.05.2017 calling upon the petitioner to file his Statement of Defence.

5.4 Thereafter, on 21.06.2017, DMC passed an order declining to renew the registration of the petitioner on the ground that the petitioner had “*concealed the fact of his having being guilty in a Court of Law*” from DMC.

5.5 Aggrieved by the aforesaid order, the petitioner preferred an appeal before the MCI under Section 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The said appeal was dismissed by MCI by way of the impugned order.

6. Undisputedly, the petitioner was charged against the acts of sexual misconduct in the State of Georgia, USA. He was indicted for misdemeanour, for which a plea bargain was negotiated.

7. Admittedly, the petitioner had agreed to special conditions negotiated by him, in terms of which the sentence awarded to him was suspended. The

“Special Conditions of Negotiated Probated Sentence Plea” before the Superior Court of Fulton County, State of Georgia are set out below:-

**“SPECIAL CONDITIONS OF NEGOTIATED  
PROBATED SENTENCE PLEA”**

1. Narendra Gupta, herein referred to as “Defendant,” shall have no direct or indirect contract with the following victims or their respective families:
  - a. Indira Sanichar
  - b. Latoya Kelly
  - c. Keivey Candelaria
2. Defendant shall comply with all conditions of probation.
3. Defendant shall surrender any and all medical licenses to practice medicine within Georgia or any other state in the United States.
4. Defendant shall not practice medicine in any form within the United States or any other country.
5. Defendant shall close any medical practice he may own and shall refrain from opening any medical practice in the future.
6. Defendant shall accept service of any subpoena or retain a representative to accept service of any subpoena relating to any pending civil matter.
7. Upon resolution of all civil matters, Defendant shall leave the United States and he must provide proof of travel arrangements to leave the United States to the Court within thirty (30) days prior to his departure.

8. Upon the resolution of all civil matters, the balance of Defendant's sentence shall be modified from "probated" to "suspended" and Defendant shall leave the United States as prescribed above in special condition "7".

8. It is seen from the above that the petitioner had voluntarily accepted that he would not practice medicine in any form within the United States or any other country. It is on this condition (which was voluntarily accepted by the petitioner) that the sentence awarded to the petitioner was suspended. As noticed above, the allegations against the petitioner were also very serious; he had been charged with the criminal offenses of Aggravated Sexual Battery and Sexual Battery.

9. After the order passed by the Superior Court in the State of Georgia, USA, the petitioner returned back to India and commenced his practice in this country. He applied for registration on 09.04.2012. In the said application, he submitted the following declaration:-

**"DECLARATION"**

I solemnly affirm & declare that the above entries made by me are true & correct. I further declare that no disciplinary proceedings have ever been initiated or are pending against me before the Delhi Medical Council or any medical regulatory authority nor have been subject to any inquiry or investigation before any authority which may disentitle me from seeking Registration from Delhi Medical Council. I undertake to abide the Code of Conduct & Ethics prescribed by Delhi Medical Council and Medical Council of India.

Note- In case you have ever been find, given a warning/ reprimanded/suspension of registration temporary/permanent, by any medical, health or any regulatory authority including Delhi Medical Council or has been held guilty or medical malpractice or negligence by any Court of Law, you must provide the full details on a separate sheet to the Delhi Medical Council.”

10. Concededly, the declaration made by the petitioner was false inasmuch as the petitioner had been subject to an inquiry in the State of Georgia.

11. Chapter VII of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 define acts of commission or omission on the part of Physician, which would constitute a professional misconduct. Regulation 7.4 and 7.5 are relevant and read as under:-

**“7.4 Adultery or improper conduct.-** Abuse of professional position by committing adultery or improper conduct with a patient or by maintaining an improper association with a patient will render a physician liable for disciplinary action as provided under the Indian Medical Council Act, 1956 or the concerned State Medical Council Act.

**7.5 Conviction by Court of Law.-** Conviction by a court of law for offences involving moral turpitude / criminal acts.”

12. In view of the above, there is no denying the fact that the petitioner was guilty of misconduct as he had been found to have indulged in an

improper conduct with his patient. Further, he has also been convicted for an offence involving moral turpitude.

13. The Ethics Committee of the MCI had considered the above and had recommended that the name of the petitioner be removed from the Medical Register. The said recommendations were accepted by the MCI. This Court finds no reason to interfere with the said decision in these proceedings, as the impugned order is neither arbitrary nor unreasonable. The petitioner had voluntarily accepted the said punitive measure in USA and so had avoided serving the sentence of twelve months awarded to him. In this view, the punitive measure imposed on the petitioner also cannot be termed as disproportionate so as to warrant any interference by this Court.

14. The petition is, accordingly, dismissed. The pending application is also disposed of.

15. However, it will be open for the petitioner to make such representation as he may require before the MCI. It is further clarified that the MCI is not precluded from taking any action as per law.

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**VIBHU BAKHRU, J**

**JULY 23, 2018**  
**RK**