

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.07.2018

+ **W.P.(C) 5430/2017 & CM No. 22861/2017**

DR HEMANT TEWARI

...Petitioner

Versus

MEDICAL COUNCIL OF INDIA AND ORS

...Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Abhijat with Mr Maurya Vijay Chandra.

For the Respondents :Mr Vikas Singh, Sr Advocate with Mr T. Singhdev, Mr Tarun Verma, Ms Puja Sarkar, Mr Abhijit and Ms Manpreet Kaur for R-1/MCI.

Mr Praveen Khattar with Mr Bapi Das for R-4/DMC.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 25.05.2017 (hereafter 'the impugned order') passed by the Medical Council of India (hereafter 'MCI'), whereby MCI has enhanced the punishment imposed on the petitioner by the Delhi Medical Council (hereafter 'DMC') and directed removal of the petitioner's name from the Medical Register for a period of one year from 06.06.2017.

2. The impugned order was passed in an appeal preferred by

respondent no.2 (hereafter 'the complainant') against an order dated 08.07.2015 passed by the Delhi Medical Council (hereafter 'DMC').

3. The petitioner is a qualified doctor. He had completed MBBS course from Bundelkhand University, Jhansi, UP in 1992 and completed his MD in Anesthesia in 1997. It is stated that he further specialized in Critical Care in Australia. On 20.09.2007, the petitioner was registered with the DMC.

4. The allegations against the petitioner relates to medical negligence in treatment of one Kshitij Mathur (the son of the complainant). At the material time, the petitioner was working as Senior Consultant Pulmonology and Medical Intensive Care at Fortis Hospital, Vasant Kunj.

4.1 The complainant came across an advertisement issued in a newspaper by Fortis Hospital, wherein it was advertised that a special camp was being organized for persons suffering from regular cough. This prompted the complainant to take his son – who was suffering from chronic cough – to Fortis Hospital. He was then referred to the petitioner. The petitioner advised a PFT Test, which was done and thereafter, the petitioner diagnosed that the patient was suffering from Asthma. He prescribed certain medicines alongwith Seroflo 250 mg. The patient continued to be under the treatment of the petitioner from the year 2009 till 2012. However, the patient's condition did not show any perceptible improvement and he continued to suffer. In December 2012, the patient suffered yet another bout of acute cough and once

again visited the petitioner. It is stated that the patient got a temporary relief but that was not perceptible. The condition of the patient got aggravated in January 2013 and he once again consulted the petitioner and took the medicines as prescribed. However, his condition did not improve. On 13.02.2013, the patient once again visited the petitioner and was prescribed a fresh set of medicines alongwith bed rest. On the next date, the petitioner sent a message to the complainant to get the patient tested for swine flu test and also prescribed Fluvir 75 mg to be administered twice a day.

4.2 Since, there was no relief from the medicines prescribed by the petitioner, the complainant took his son to another doctor, Dr. Nevin Kishore, for a second opinion. The patient was under the treatment of Dr. Nevin Kishore till 03.03.2013. During this time, his condition became worse. On 04.03.2013, the petitioner took his son to Dr. Deepak Talwar, who after examining the report and X-ray done at Max Hospital, Saket advised that an Echo Cardiograph, X-ray of the Chest & PFT be done immediately. Dr Deepak Talwar then informed the complainant that he did not have any respiratory problem but his heart was enlarged.

4.3 The complainant was advised to get in touch with a cardiologist immediately as his son's condition was quite critical and serious. The complainant then took his son to Metro Heart Institute, where the attending doctor – Dr. Upansani – informed the complainant that there was retention of fluid in the patient's body due to which there was a pressure on the heart and he was not able to breathe. The patient was

kept in ICCU for seven days, that is, from the evening of 04.03.2013 to 11.03.2013 morning, during which, about 22 litres of fluid was flushed out of the patient's body and his weight came down by about 20 kgs.

4.4 It is in the aforesaid factual context that the complainant made a complaint of medical negligence against the petitioner and Dr Nevin Kishore to the DMC.

4.5 The Disciplinary Committee of the DMC examined the complaint and concluded that the petitioner had failed to observe the standard protocol and should have advised Chest X-ray of the patient. The Disciplinary Committee found the petitioner guilty of medical negligence and recommended that warning be issued to the petitioner with further direction for him to undergo ten hours of Continuing Medical Education (CME) on the subject of chest disease and submit a compliance report to the DMC. The recommendations of the Disciplinary Committee of the DMC were accepted by the DMC in its meeting held on 03.07.2015. Accordingly, on 08.07.2015, DMC issued an order imposing the penalty as recommended by the Disciplinary Committee.

4.6 The complainant was dissatisfied with the quantum of the punitive measure imposed by the DMC and, therefore, filed an appeal before the MCI. The Ethics Committee of the MCI considered the said appeal and recommended that the name of the petitioner be removed from the Indian Medical Register for a period of one year.

This was approved by the Executive Committee of the MCI in its meeting held on 11.04.2017 and, by the impugned order, the MCI directed the said punishment to be imposed on the petitioner.

4.7 This Court is informed that the decision of the Executive Committee of the MCI was subsequently placed before the MCI.

4.8 It is relevant to note that the petitioner did not file any appeal against the order of the DMC, and accepted the finding that he was guilty of medical negligence.

5. The present petition was taken up for hearing on 03.07.2017 and the learned counsel appearing for the petitioner challenged the impugned order, essentially, on three grounds. First, he submitted that the punishment was harsh and disproportionate. Second, he submitted that the petitioner was not afforded an appropriate opportunity of being heard, as one of the members of the Ethics Committee was dismissive of the petitioner and interrupted him incessantly while making his submission. And third, that the Ethics Committee had no jurisdiction to examine the case of medical negligence against the petitioner.

6. The first two contentions – that is, whether the punishment imposed was harsh and disproportionate and whether the petitioner was afforded a proper opportunity – was considered by this Court and rejected by an order passed on that date, that is, on 03.07.2017.

7. The petitioner has not appealed against the said decision and the

same has become final. The only question that remains to be addressed was whether the Ethics Committee of the MCI has jurisdiction to entertain an appeal against an order passed by the DMC.

8. Mr Abhijat, the learned counsel appearing for the petitioner referred to Regulation 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereafter “2002 Regulations”) and pointed out that the said regulations provides for an appeal against the order passed by any State Medical Council to the MCI. He earnestly contended that since the appeal could be only made to the MCI, no other body or committee could consider or hear the same. He submitted that only the MCI as constituted under the Indian Medical Council Act, 1956 could hear and consider an appeal against any order passed by the State Medical Council.

9. Mr Vikas Singh, learned Senior Counsel appearing for MCI countered the aforesaid submission. He referred to the Medical Council of India Regulations, 2000 (hereafter “2000 Regulations”) and drew the attention of this Court to Regulation 45 of the 2000 Regulations. He submitted that in terms of Regulation 45 of the 2000 Regulations, the Executive Committee was empowered to constitute such sub-committees as may be necessary in furtherance of discharge of its duties. He contended that the Ethics Committee had been constituted, *inter alia*, to consider the matters regarding professional misconduct and, therefore, any appeal preferred under Regulation 8.8 of the 2002 Regulations would, in the first instance, be required to be examined by the Ethics Committee. He submitted that the

recommendations of the Ethics Committee are placed before the Executive Committee of the MCI, which then deliberates whether to accept the same or not. He states that the decision of the Executive Committee is also placed before the MCI as and when the Council meets. He also referred to the minutes of the meeting of the Executive Committee of the MCI held on 08.08.2017 and submitted that the Executive Committee had examined the role of the Ethics Committee and had reiterated that the Ethics Committee of MCI was always empowered/authorized to deal with the complaints of medical negligence and professional misconduct relating to medical practitioners.

Discussions and Conclusion

10. The Indian Medical Council Act, 1956 (hereafter 'the IMC Act') contains provisions for the constitution of the Medical Council of India. Section 3(1) of the IMC Act provides that the Central Government shall cause to be constituted a Council consisting of one member from each state; one member from each university; one member from each state in which a State Medical Register is maintained to be elected from the persons enrolled on such register; seven members to be elected amongst themselves by persons enrolled on the State Medical Registers who possess the medical qualifications as included in Part I of the third Schedule of the IMC Act; and eight members to be nominated by the Central Government.

11. Section 9(1) of the IMC Act mandates that the Council shall

constitute from amongst its members an Executive Committee and such other committees for general and special purposes as the Council deems necessary to carry out the purposes of this Act. Section 9(1) of the IMC Act is set out for ready reference:-

“9. Officers, Committees and Servants of the Council.— The Council shall – (1) constitute from amongst its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act.”

12. Section 10(3) of the IMC Act further provides that in addition to the powers and duties conferred upon the Executive Committee under the IMC Act, the Executive Committee shall also exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made by it.

13. Section 20A(1) of the IMC Act empowers the Medical Council to prescribe standards of professional conduct and a code of ethics for medical practitioners. Section 20A(2) provides that the regulations made by the MCI in that regard would have an effect notwithstanding anything contained in any law for the time being in force.

14. Section 33 of the IMC Act empowers the Council to make regulations to carry out the purposes of the IMC Act. In exercise of powers conferred under Section 33 of the IMC Act, the MCI has framed the 2000 Regulations.

15. Part VI of the 2000 Regulations contained provisions with

regard to the constitution and the conduct of business of the Executive Committee. Regulation 45 of the 2000 Regulations expressly provides for constitution of sub-committees. The said Regulation is set out below for ready reference:-

“45. Sub-Committees.— The Executive Committee may constitute such sub-committees as it may deem necessary in furtherance of discharge of its duties including examining of any matter referred by the Council.”

16. As is apparent from the plain reading of Section 10(1) of the IMC Act, the Executive Committee is constituted by the President, Vice-President of the MCI, which are elected on the post by the members of the Council from amongst themselves in terms of Section 3(2) of the IMC Act and other members (not less than seven and not more than ten) elected by the Council from amongst themselves. Thus, essentially, the Executive Committee is a body elected by the members of the Council. In terms of the IMC Act, the Executive Committee is also charged with performing not only the functions as prescribed under the IMC Act but also functions that are entrusted to the Executive Committee by the Council.

17. By virtue of Regulation 45 of the 2000 Regulations, the Executive Committee is in turn empowered to constitute sub-committees to carry out various functions. Thus, any function to be performed by the Executive Committee, can be entrusted to a sub-committee. In exercise of powers under Section 20A read with Section 33(m) of the IMC Act, the MCI has framed the 2002 Regulations. The said Regulations expressly provides for constitution

of an Ethical Committee to be constituted for consideration of the complaints relating to professional misconduct. Regulation 8.7 and 8.8 of the 2002 Regulations are relevant and are set out below:-

“8.7 Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, the Medical Council of India may-

- i) Impress upon the concerned State Medical Council to conclude and decide the complaint within a time bound schedule;
- (ii) May decide to withdraw the said complaint pending with the concerned State Medical Council straightaway or after the expiry of the period which had been stipulated by the MCI in accordance with para (i) above, to itself and refer the same to the Ethical Committee of the Council for its expeditious disposal in a period of not more than six months from the receipt of the complaint in the office of the Medical Council of India.”

“8.8 Any person aggrieved by the decision of the State Medical Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council:

Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 60 days.”

18. Regulation 8.7(ii) of the 2002 Regulations expressly empowers

the Medical Council of India to withdraw any complaint pending with the concerned State Medical Council, which has not been decided by the State Medical Council within the prescribed period for any justified reason and refer the same to the Ethical Committee of the Council (also referred to as the “Ethics Committee”).

19. In view of the above, there can be little doubt that the Ethics Committee has been constituted for looking into the matters relating to the complaints of professional misconduct and medical negligence.

20. Regulation 8.8 of the 2002 Regulations, which provides for an appeal against the decision of the State Medical Council, does not specifically refer to the Ethics Committee. However, since it is apparent that an Ethics Committee has been constituted to perform the functions of the Council with regard to complaints of professional misconduct and medical negligence, the Ethics Committee would be the relevant Committee to perform the functions of the MCI in this regard. As noticed above, the Executive Committee is also empowered to constitute sub-committees to carry out the functions.

21. MCI has filed an additional affidavit to place on record the minutes of the meeting of the Executive Committee held on 08.08.2017. The relevant extract of the said minutes is set out below:-

“Part-VI of the Medical Council of India Regulations, 2000 deals with the Executive Committee and Regulation 45 provides that the Executive Committee may constitute such Sub-Committees as it may deem necessary in furtherance of the discharge of its duties. Thus, the

Executive Committee from time to time constitutes various Sub-Committees to discharge the duties / functions as provided under the IMC Act, 1956 and the Regulations made there under including the Academic Sub-Committee, Administration & Grievance Sub-Committee, Finance Sub-Committee, Migration Sub-Committee, PG Monitoring Sub-Committee, Registration Sub-Committee, TEQ-Equivalence Sub-Committee, UG Monitoring Sub-Committee and also the Ethics Sub-Committee.

The Ethics Sub-Committee comprises of medical professionals who are experts in their field of modern scientific medicine, have vast knowledge & experience in the field.

The Ethics Sub-Committee, being the peer group as provided under Regulation 8.6 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, deals with complaints of medical negligence & professional misconduct against the registered medical practitioners including suo motu proceedings, appeals under Regulation 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 against orders passed by various State Medical Councils in the Country and also considers various matters pertaining to misconduct / unethical acts committed by physicians / medical teachers as referred to it by the Executive Committee & the Postgraduate Medical Education Committee as per the procedure prescribed under Chapter-8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

The Ethics Sub-Committee, in its proceedings, strictly observes the principles of natural justice and affords an opportunity of hearing to all the parties, either in person or through a pleader, including submission of written statements / documents while adjudicating upon a matter. The Ethics Sub-Committee, also examines the

appropriate record pertaining to the matter and only after examining considering the entire record, depositions and the written submissions of the parties, proceeds to make its recommendations on the action, if any to be taken.

The said recommendations of the Ethics Sub-Committee, are thereafter placed before the Executive Committee for its approval, only after which the said decisions are communicated to the concerned parties. The Executive Committee considers the recommendations of the Ethics Sub-Committee, in view of the facts and circumstances of the matter. This procedure has been in place since the inception and has been followed consistently. All recommendations of the Ethics Sub-Committee are elaborately considered and finally ratified / approved following the said procedure.

It is in this background, that the Ethics Sub-Committee has always been empowered / authorized to deal with complaints of medical negligence & professional misconduct against the registered medical practitioners including suo moto proceedings, appeals under Regulation 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 against orders passed by various State Medical Councils in the Country and also considers various matters pertaining to misconduct / unethical acts committed by physicians / medical teachers as referred to it, from time to time, by the Executive Committee & the Postgraduate Medical Education Committee as per the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Ethics Sub-Committee has always afforded an opportunity of hearing to all the concerned parties, either in person or through a pleader, including submission of written statements / documents while adjudicating upon a matter and only after considering the entire record, all the statements / depositions including the written submissions of the parties, proceeded to make its recommendations.”

22. It is also relevant to note that Regulation 8.6 of the 2002 Regulations expressly provides that “*professional incompetence shall be judged by peer group as per guidelines prescribed by Medical Council of India.*” Thus, an appeal from a decision of the State Medical Council with regard to any complaint of medical negligence is also required to be adjudged by a “peer group”. As noticed above, MCI has constituted the Ethics Committee for examining matters of professional misconduct and, therefore, there is no infirmity of the said Committee also considering the appeals preferred to the MCI.

23. In view of the above, this Court is unable to accept that the Ethics Committee does not have the jurisdiction to examine an appeal preferred against any decision of the State Medical Councils relating to professional incompetence of medical practitioners enrolled on the Medical Register, particularly so, as the recommendations of the Ethics Committee is then placed before the Executive Committee of the MCI, which takes the final decision. It is also apparent that the principles of natural justice are duly followed as the Ethics Committee records all material and evidence produced before it and also affords the affected parties full opportunity of presenting their case.

24. In view of the above, the petition is dismissed. The pending application also stands disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JULY 17, 2018/RK