

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.07.2018

+ **W.P.(C) 6145/2017**

DR NEVIN KISHORE

...Petitioner

Versus

MEDICAL COUNCIL OF INDIA AND ORS ...Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Kapil Kher and Mr Sukhija Akbar Warsi.

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.

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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 State Medical Register for a period of one year.

2. The impugned order was passed in an appeal preferred by respondent no.3 (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 AIIMS and received his post graduate and specialist training in General Medicine and Respiratory Medicine in United Kingdom. The petitioner was registered with DMC in 2002. At the material time, the petitioner was working at the Max Super Speciality Hospital, Saket.

3.1 The allegation against the petitioner relates to the medical negligence of the treatment of one Mr Kshitij Mathur (the Patient). The Patient was under the treatment of one Dr Hemant Tiwari of Fortis Hospital since September 2009. Dr Tiwari had prescribed PFT Test, which was done and thereafter, Dr Tiwari diagnosed that the Patient was suffering from Bronchial Asthma. The Patient was a minor at the material time and his father had consulted Dr Tiwari, as the Patient was suffering from chronic cough. The medicines prescribed by Dr Tiwari did not alleviate the condition of the Patient and he continued to suffer.

3.2 The Patient's problem got aggravated in January 2013. Since the medicines prescribed by Dr Tiwari had not resulted in any effective relief, the Patient's father (the complainant) took him to consult the petitioner. The petitioner examined the Patient in his clinic on 18.02.2013 and his diagnosis was that the Patient was suffering

from seasonal allergy, wheezing, no fever and cough. The petitioner then prescribed medicines which were to be administered for seven days and advised the patient to revisit him on 25.02.2013.

3.3 It is stated that on 25.02.2013, the condition of Kshitij Mathur got worsened and, therefore, the complainant (Kshitij Mathur's father) once again got in touch with the petitioner who advised him to meet him at the Max Hospital, Saket, New Delhi. The petitioner once again examined the Patient on 25.02.2013 and advised that Chest X-Ray to be done. The X-Ray of the chest was done immediately. Although, the petitioner states that only the wet film was shown to him; there is no dispute that the said X-Ray was shown to the petitioner. The complainant had also stated that the X-Ray done at Max Hospital was examined by the petitioner.

3.4 After examining the X-Ray, the petitioner had informed the complainant that the chest was absolutely clear and the problem was on account of acute allergy. The petitioner diagnosed the problem as cold cough, no fever, no asthma, no wheeze. On the basis of the aforesaid diagnosis, the petitioner prescribed the following medicines: (i) Foracort 200-2 puffs, twice a day; (ii) Omnacortli 10 mg-1 tab, three times a day; and (iii) Zedex syrup - two table spoon, twice a day. The complainant stated that after taking the said medicines, there was a slight improvement in his condition for a couple of days but the same was not appreciable.

3.5 On 02.03.2013, the Patient had problem in breathing and could

not sleep during the night. There was swelling on his face and legs and his condition had worsened.

3.6 On 03.03.2013 – which was a Sunday – the Patient's mother rang up the petitioner at about 09:00 a.m. and informed him of the Patient's condition. However, the complainant states that the petitioner refused to tender any advice and stated that he did not take any calls on a Sunday.

3.7 On 04.03.2013, the complainant took his son to Dr Deepak Talwar, who after examining the report and the X-ray done at Max Hospital, Saket advised that an Echo Cardiograph, X-ray of the Chest and PFT be done immediately. Dr Deepak Talwar then informed the complainant that the Patient did not have any respiratory problem but his heart was enlarged.

3.8 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 till 11.03.2013 morning. During which, about 22 litres of fluid was flushed out and the patient's weight was came down by about 20 kgs.

3.9 It is in the aforesaid factual context, the complainant filed a complaint with the DMC.

4. The complaint was considered by the Disciplinary Committee of DMC. The petitioner appeared before the Disciplinary Committee and contended that cardiomegaly is a radiological diagnosis and not a clinical diagnosis. He stated that he had only seen a wet film of the X-Ray and did not have the benefit of the X-Ray report. The Disciplinary Committee of the DMC did not accept the said explanation and held that although the petitioner had acted prudently by advising chest X-Ray, he had erred in overlooking the presence of cardiomegaly which was evident from the chest X-Ray film. The Disciplinary Committee of DMC thereafter recommended that a warning be issued to the petitioner with further direction that he should undergo ten hours of Continuing Medical Education (CME) on the subject of radiology relating to interpretation of X-Rays and submit a compliance report to the said effect to the DMC. The said recommendations of the Disciplinary Committee of DMC were considered and confirmed by the DMC on 03.02.2015.

5. The petitioner did not file any appeal against the findings of the DMC. But, the Complainant – being dissatisfied with the quantum of punishment imposed on the petitioner and Dr. Hemant Tiwari – preferred an appeal before the MCI. The Ethics Committee considered the said appeal and recommended enhancement of the punishment imposed on Dr Hemant Tiwari and the petitioner by removing their names from the Medical Register for a period of one year.

6. The said recommendations were accepted by the Executive Committee of MCI on its meeting held on 11.04.2017 and the said decision was communicated to the petitioner by the impugned order.

7. Mr Kher, the learned counsel appearing for the petitioner submitted that the Ethics Committee had grossly erred in enhancing the punishment imposed on the petitioner as there was no negligence on the petitioner's part. He earnestly contended that the petitioner was a physician by training and could not be penalised for the reading of an X-Ray that fell within the scope of specialised radiologist. He further referred to the impugned order and contended that the operative part of the recommendations made by the Ethics Committee of MCI (as reproduced in the impugned order) clearly indicated that the Ethics Committee had proceeded that the petitioner was treating the Patient for a "long time". He stated that the Ethics Committee had erred in not differentiating between Dr Hemant Tiwari and the petitioner. He contended that whilst the other doctors had treated the Patient for almost three years, the petitioner had only examined the Patient on two occasions. Further, the Patient had not come back with the X-Ray to take his advice.

8. This Court finds no merit in the contention that the petitioner is not guilty of medical negligence in the treatment of the Patient. First of all, the petitioner had not preferred any appeal against the decision

of the DMC, whereby the petitioner was found guilty of medical negligence. On the contrary the petitioner had accepted the aforesaid finding. Thus, it is not open for the petitioner to now assert that DMC's finding was erroneous. The facts of the case, which are not in dispute, also clearly indicate that the petitioner had failed to diagnose that the Patient was suffering from cardiomegaly. The Disciplinary Committee of DMC after examining the facts had concluded that the petitioner had *"erred in overlooking the presence of cardiomegaly which was very evidence in the chest X Ray film"*.

9. The contention that the petitioner cannot be penalized for not reading an X-Ray film, as that falls within the scope of specialized radiologist, is plainly unmerited. The Regulations on Graduate Medical Education, 1997 issued by the Medical Council of India clearly indicates that a MBBS student is required to have the necessary skill to interpret the common X-Ray and also to advice appropriate diagnostic procedure in specialized circumstances to appropriate specialist. The petitioner's contention that he was not required to or competent to understand the X-Ray has not been accepted either by DMC or by MCI.

10. The next question that needs to be addressed is with regard to the quantum of punishment. The Ethics Committee of MCI had found that the allegation made against the petitioner with respect to medical negligence was correct. However, the observations that Dr Tiwari and the petitioner had misguided and wrongly treated the Patient for a long

time is not entirely accurate as the patient was not under the treatment of the petitioner for a “long time”. Thus, it would have been apposite for the Ethics Committee to have considered the issue as to the quantum of punishment in respect of the petitioner separately from Dr Tiwari. It is possible that the Ethics Committee could have concluded that the medical negligence on the part of the petitioner was not to the same extent as that of Dr Tiwari.

11. In view of the above, this Court was inclined to remand the matter to MCI to consider the question as to the quantum of punishment imposed on the petitioner. But this is no longer feasible as the petitioner has already undergone the entire term of his punishment.

12. In view of the above, the petition is dismissed. The parties are left to bear their own costs.

JULY 17, 2018
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VIBHU BAKHRU, J