

\$~51

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

+ W.P.(C) 12718/2018

DR. HIMANSHU PALIWAL

..... Petitioner

Through: Dr M. C. Gupta and Mr R. K. Pandey,  
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Rakesh Kumar, CGSC for UOI.  
Mr Praveen Khattar, Advocate for R-  
2 with Mr L. D. S. Uppal, Astt. Sey.  
DMC.  
Mr T. Singhdev, Ms Amandeep Kaur,  
Ms Puja Sarkar, Ms Michelle  
Biakthansangi, Mr Tarun Verma and  
Mr Abhijit Chakravarty, Advocates  
for R-3.

**CORAM:**

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

**ORDER**

% **28.11.2018**

**CM Nos. 49418/2018 & 49419/2018**

1. Allowed, subject to all just exceptions

**W.P.(C) 12718/2018 & CM No.49417/2018**

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 01.11.2018 passed by the Delhi Medical Council (DMC), whereby it is directed that the petitioner's name be removed from the Delhi Medical Register for a period of 180 days.

3. One of the principal allegations against the petitioner is that he had

treated patients which were admitted to the ICU in an inebriated condition. The Delhi Medical Council has found the petitioner to be guilty of medical negligence and, therefore, imposed the punishment as indicated above.

4. The petitioner has filed an appeal under Section 24(2) of the Indian Medical Council Act, 1956, against the said decision before the Central Government. In view of the above, the relief as sought for by the petitioner cannot be granted.

5. At this stage, learned counsel appearing for the petitioner requests that an interim order be passed staying the impugned order dated 01.11.2018.

6. A plain reading of the impugned order indicates that the breath analyser test conducted by the hospital at the relevant time showed the level of alcohol as 99.1 mg/100 ml. In addition to the above, it is also admitted that the petitioner had left the ICU during his duty hours.

7. DMC has also observed that one Dr Sumit Arora was granted access to the ICU by the petitioner although he was not associated with the hospital. The petitioner's explanation for finding high level of alcohol is that he had taken certain homeopathy medicines which had resulted in the positive test. However, there is no material as to which homeopathy medicines were taken by the petitioner and at what time.

8. A perusal of the record also indicates that a search was conducted in the vehicle used by Dr Sumit Arora, which was parked in the premises of the hospital. The said search had revealed the liquor bottle in the said car. The fact that this Dr Sumit Arora was present at the hospital is also not denied. The only explanation given is that Dr Sumit Arora had come to the hospital claiming that he was suffering from a stomach ache. This explanation is also difficult to accept because it is the petitioner's case that he had gone out

with Dr Sumit Arora at 1:50 AM and had come back around 2:55 AM. There is nothing on record to indicate that Dr Sumit Arora was suffering from any emergent ailment that would warrant him to visit the hospital at that hour.

9. The petitioner has premised his case entirely on the FSL report regarding his blood sample, which indicates that no alcohol was found in the sample. He submits that in view of the aforesaid report, the petitioner ought to be exonerated from the allegation levelled against him. This Court also finds the said contention to be unpersuasive, as there is overwhelming material to indicate medical negligence on the part of the petitioner.

10. This Court does not consider it apposite to examine the veracity of the FSL report in these proceedings for the purposes of determining the question as to whether any interim order is required to be passed.

11. Having stated above, it is clarified that nothing stated in this order shall be construed as an expression of opinion on the merits of the petition, and the Central Government shall consider the petitioner's appeal uninfluenced by any of the observations made above. The Central Government shall consider the petitioner's appeal in accordance with law and take an appropriate decision as expeditiously as possible and preferably within a period of eight weeks from today.

12. The petition is disposed of in the above terms. The pending application also stands disposed of.

**VIBHU BAKHRU, J**

**NOVEMBER 28, 2018/MK**