$~8

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

\+ W.P.(C) 9980/2015

SUNIL KUMAR BAKSHI ..... Petitioner

Through: Mr Rakesh Malhotra, Advocate.

Versus

MEDICAL COUNCIL OF INDIA AND ORS ..... Respondents

Through: Mr T. Singhdev, Mr Tarun Verma, Ms Amandeep Kaur, Ms Michelle Das, Ms Puja Sarkar and Mr Abhijeet, Advocates for R-1.
Ms Charu Sachdev with Ms Baley Sharma, Advocates for R-2.
Mr Praveen Khattar, Advocate for R-3/DMC with Mr L. D. S. Uppal, Asstt. Secretary, DMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 18.01.2018

1. The petitioner has filed the present petition, *inter alia*, impugning the order dated 15.05.2015 (hereafter 'the impugned order') passed by the Medical Council of India (hereafter 'MCI') rejecting the petitioner's appeal against an order dated 02.12.2013 passed by the Delhi Medical Council (hereafter 'DMC') directing that the petitioner's name be removed from the Medical Register for a period of one month.

2. Briefly stated, the relevant facts necessary to address the controversy

involved in the present petition are as under:-

2.1 Petitioner is a senior consultant of Internal Medicine at Sukhmani Hospital (hereafter 'the Hospital') and has been held guilty of Medical Negligence in the treatment of complainant's husband R.K.Srivastava (hereafter 'the patient'), who has since expired. It is alleged that he was a patient of diabetes mellitus and was suffering from high fever, swelling in right leg and nausea/vomiting on 24.12.2008 and was taken to the petitioner for check up, who prescribed certain tests and medicines to control the problem. But the fever did not come to normal, the patient was asked to get himself admitted at the Hospital on 31.12.2008. There was puss discharge from the right leg which was diagnosed as cellulites.

2.2 The patient was admitted at the Hospital on 31.12.2008 and was suffering from swelling and severe pain in the right leg accompanied by high fever. The patient was operated on 08.01.2009.

2.3 It is alleged that the Hospital lacked facilities; there was no ambulance service, no blood bank, no ICU facility, no facility of an intensive post-operative care unit. The patient's family was asked to shift the patient to Apollo Hospital. No doctor from the Hospital accompanied the ambulance. No intravenous drip, breathing aid was available in the ambulance. It is stated that the patient went into coma and stopped breathing. According to MCI, the transfer hastened the death of the patient.

3. The learned counsel appearing for the petitioner contended that the Ethics Committee of MCI had failed to consider the relevant material. He submitted that the impugned order is unreasoned. He submitted that the

petitioner had furnished certain expert opinions, which established that there was no medical negligence in the treatment afforded to the patient. However, none of the said opinions had been referred to by the Ethics Committee. He further contended that the finding that there was no justification in delaying the institution of insulin therapy was incorrect as the medical records of the patient indicated that his blood sugar was under control during the relevant period and thus there was no necessity for immediately commencing insulin therapy. Lastly, he submitted that the case records clearly indicated that there was a cardiac event or possibility of a cardiac and therefore necessary precautions were required to be taken while transferring the patient. He contended that the petitioner had no further role in such transfer and therefore could not be faulted for not arranging a qualified doctor to accompany the patient in the ambulance.

4. I have heard the learned counsel for the parties.

5. The Disciplinary Committee of DMC had found the petitioner to be negligent and had directed that his name should be removed from the State Medical Register for a period of one month of the order. The Disciplinary Committee had also found certain shortcomings in the facilities available at the hospital; however, that by itself does not indicate that there was any medical negligence on the part of the petitioner. Thus, the principal findings on the basis of which the petitioner has been held guilty of medical negligence are three fold: (i) That there was no justification in delaying the institution of insulin therapy despite severe infective process and septicaemia; (ii) That the events on 08.01.2009 and 09.01.2009 indicated an acute cardiac event or pulmonary thromboembolism, which was not

considered while making the decision to transfer the patient; (iii) the delay in surgery despite discharge of Puss and worsening sepsis was unjustified. The relevant extract of the findings of the Disciplinary Committee of the DMC is set out below:-

> "5. There seems to be no problem regarding the selection of antibiotics because in a case of soft tissue infections in a diabetic, the choice is largely empirical as the infections are caused by a mixture of organisms which are at times not obtained in culture, however, there seems no justification in delaying the institution of insulin therapy despite such a severe infective process and septicemia.
>
> 6. The events on the evening of the 8th January 2009 and 9th January, 2009 indicate an acute cardiac event or Pulmonary thromboembolism, which were not even considered while making therapeutic/transfer decision.
>
> 7. The delay in surgery despite discharging pus and worsening sepsis was unjustified."

6. The Ethics Committee was required to examine whether the aforesaid findings were warranted and if so whether the same amounted medical negligence on the part of the petitioner.

7. There is merit in the petitioner's contention that the order passed by the Ethics Committee is somewhat unreasoned inasmuch as it does not refer to the expert opinions furnished by the petitioner. Further, the Ethics Committee has also not expressly rejected the petitioner's contention that there was any delay in instituting insulin therapy as the patient's blood sugar was not under control. Lastly, the Ethics committee has also not considered the petitioner's contention that he had no role to play in the manner in which the patient was transferred to the Hospital.

8. Although, the Ethics Committee has noted the course of events as well as the statements made by the petitioner and other persons and has concurred with the decision of the DMC, it has not dealt with the contentions of the petitioner as noticed above.

9. In view of the same, this Court sets aside the impugned order and remands the matter to MCI to specifically consider the petitioner's contention as noticed above and pass a reasoned order accepting or rejecting the same. It is clarified that the scope of the remand is limited to the aforesaid contentions.

10. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

JANUARY 18, 2018
pkv