

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

Date of Decision: 23rd October, 2018

+ LPA 863/2015 & CM APPL. 28932/2015

M K GUPTA

..... Appellant

Through: Mr. Nishant Datta, Adv.

Versus

DR RAM AVTAR GARG & ORS.

..... Respondents

Through: Mr. Arun K. Sharma, Adv. for R-1.

Mr. T. Singhdev with Mr. Tarun Verma, Advs. for R-2/MCI.

Mr. Praveen Khattar, Adv. for R-3/DMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

Rajendra Menon, Chief Justice (Oral)

1. Seeking exception to an order passed by the learned writ court on 10.07.2015 in W.P.(C) 4220/2011 titled Dr. Ram Avtar Garg v. Medical Council of India & Ors., this appeal has been filed under Clause 10 of the Letters Patent.

2. The appellant herein Shri M.K. Gupta had made a complaint before the Delhi Medical Council against the writ petitioner – Dr. Ram Avtar Garg to the effect that a child patient was brought to the casualty of Holy Family Hospital, Okhla, New Delhi around 8:00 p.m. on 04.12.2009. The child was sick for more than three months with various complaints. The child was admitted, examined by a resident paediatrician who was on call duty,

treatment was prescribed in the casualty and ultimately the child was admitted to Room No.324 at 08:30 p.m. The child was examined and finally it is stated that child died and he was declared dead at 01:08 a.m. on 06.12.2009. Shri M.K. Gupta filed a complaint with regard to negligence and improper treatment before the Delhi Medical Council which heard four doctors including the appellant Dr. Ram Avtar Garg and finally disposed of the matter by issuing a warning to Dr. Ram Avtar Garg and one Dr. Sachin Jain.

3. Being aggrieved by the warning issued on 07.12.2010, respondent No.2 filed an appeal against the order of the Delhi Medical Council before the Medical Council of India. The Ethics Committee considered the matter and passed the impugned order dated 18.05.2011 enhancing the punishment of warning to three months removal of name from the Indian Medical Register as well as the State Medical Register. Challenging this enhancement of punishment passed on 18.05.2011 by the Medical Council of India, the writ petition in question was filed by Dr. Ram Avtar Garg and the writ court allowed the writ petition, went into the merit of the matter, the treatment granted and exonerated the doctor of the culpability and quashed not only the punishment but also held that the doctor has not committed any negligence or misconduct in the treatment. Aggrieved by this order passed by the learned writ court, this writ petition has been filed.

4. On behalf of the petitioner and the Medical Council of India, primarily two contentions have been raised. The first one was that on 07.12.2010 the Delhi Medical Council has issued warning to the doctor – appellant herein finding him culpable, responsible for negligence and

improper treatment resulting in death of the child. This order passed on 07.12.2010 was never challenged. It had attained finality and Dr. Ram Avtar Garg – the appellant herein did not impugn this order. It was only when on 18.05.2011 that Medical Council of India enhanced the punishment that the second order dated 18.05.2011 was challenged meaning thereby that the appellant herein i.e. Dr. Ram Avtar Garg only challenged the enhancement of punishment. It is argued that while considering the question of enhancement of punishment, the learned writ court committed grave error and illegality in entering into the question of culpability on merit and exonerating the doctor by examining various technical and factual aspects when the original order of punishment dated 07.12.2010 was never challenged. That apart, it was argued that if Dr. Ram Avtar Garg had any grievance with regard to the original order passed on 07.12.2010 holding him guilty, he should have challenged it by filing an appeal under Clause 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereafter referred to as “the Regulations”) before the appropriate Council and this having not been done, the writ petition directly challenging the enhancement of punishment dated 18.05.2011 was not maintainable.

5. Learned counsel appearing for the respondent – Dr. Ram Avtar Garg tried to indicate that it was the hospital where the child was admitted and the treatment granted. The doctor could not be singled out for imposing punishment and on merit of the matter he tried to justify the order of the learned writ court.

6. Having considered the submissions made, we are of the considered

view that in this case once the order holding Dr. Ram Avtar Garg culpable and issuing him a warning was passed by the Delhi Medical Council on 07.12.2010 and when this order was not challenged by Dr. Ram Avtar Garg and it had attained finality then when challenge was made to the appellate order passed by Medical Council of India on 18.05.2011, only enhancing the penalty, the learned writ court could have only considered the question of enhancement of penalty and could not go into the merits of the matter and examine the culpability of the doctor with regard to the merit of the allegation. In entering into the culpability of the matter, while considering the enhancement order by the appellate authority, namely, Medical Council of India on 18.05.2011 the learned writ court has committed a grave error and acted in excess of jurisdiction available. That apart, once concurrent findings with regard to culpability were recorded both by the Delhi Medical Council and the Medical Council of India in their orders passed on 07.12.2010 and 18.05.2011, the learned writ court in exercise of its limited jurisdiction under Article 226 of the Constitution of India could not act as a further appellate authority and go into the question of culpability on merit, particularly, when remedy was available to the petitioner Dr. Ram Avtar Garg under Clause 8.8 of the Regulations.

7. In our considered view, the learned writ court has misdirected itself, acted in excess of jurisdiction and interfered into the matter which was not permissible for the reasons recorded hereinabove. Accordingly, we allow this appeal quashing order dated 10.07.2015 passed by the writ court. However, we grant liberty to Dr. Ram Avtar Garg, the original writ petitioner and the respondent herein to challenge the orders passed on

07.12.2010 or 18.05.2011 if permissible in accordance with the statutory provision before the statutory authority.

CHIEF JUSTICE

OCTOBER 23, 2018/kks

V. KAMESWAR RAO, J

