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

+ **W.P.(C) 2173/2019**

NEVIL VISHNUBHAI PATEL

..... Petitioner

Through: Mr T. Sundar Ramanathan, Mr
Jay Shah and Ms Kumudavalli
S., Advocates.

versus

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

Through: Mr T. Singhdev, Mr Tarun
Verma, Ms Biakthansangi Das,
Ms Puja Sarkar and Ms
Amandeep Kaur Ahuja,
Advocates for R-1/MCI.

Mr Praveen Khattar, Advocate
for R-2/DMC with Mr L. D. S.
Uppal, Assistant Secretary,
DMC.

Mr Waize Ali Noor, Advocate
for Mr Kirtiman Singh,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.04.2019

VIBHU BAKHRU, J

CM No.15750/2019

1. This is an application filed by the petitioner for correctly reflecting his name as Nevil Vishnubhai Patel. The cause title is rectified to reflect the same.

2. The application is disposed of.

CM No.10232/2019

3. Allowed, subject to all just exceptions.

W.P.(C) 2173/2019 & CM No.10231/2019

4. Issue notice. The learned counsel appearing for respondent nos.1 to 3 accepts notice. This Court does not consider it necessary to issue notice to respondent no.4, as the order impugned in the present petition has been passed by respondent no.1 (Medical Council of India – hereafter ‘MCI’).

5. The petitioner has filed the present petition impugning an order dated 20.06.2018 passed by the MCI, whereby the petitioner’s appeal against an order dated 30.01.2018 passed by the Delhi Medical Council (hereafter DMC) has been rejected.

6. Admittedly, the petitioner was caught using unfair means in NEET-PG 2013 and DNB-CET conducted by the National Board of Examinations. The petitioner had appeared in the NEET-PG 2013 on 27.11.2012 and 29.11.2012 under different names. The petitioner had also appeared in DNB-CET January, 2013 under different names. In view of the above, National Board of Examinations passed an order dated 04.08.2014 debarring the petitioner from appearing in any of the NB Examinations till 2019. The said order also clarified that the said punitive measure was without prejudice to any other action under CrPC/appropriate law.

7. The information pertaining to the petitioner’s misconduct was

also forwarded to the DMC. On receipt of the said information, DMC issued a show cause notice dated 02.08.2017 calling upon the petitioner to show cause as to why an appropriate action not be initiated by DMC,

8. Thereafter, DMC passed an order dated 30.01.2018 removing the petitioner's name from the State Medical Register of the Delhi Medical Council for a period of three years. The said punishment come into effect from 02.03.2018.

9. Aggrieved by the same, the petitioner preferred an appeal before the MCI. The Ethics Committee of the MCI considered the petitioner's appeal and recommended that the punishment imposed on the petitioner be set aside. It reasoned that the petitioner was already inflicted with the punishment of being debarred from appearing on examinations conducted by NBE for a period of seven years. The Ethics Committee of the MCI was of the view that the same was commensurate with the allegations made against the petitioner and no further punishment was required to be imposed.

10. The recommendations of the Ethics Committee were considered by the Executive Committee of the MCI and the same were not accepted. At a meeting held on 05.06.2018, the Executive Committee decided as under: -

“The Executive Committee did not approve the proceedings of the Ethics Committee and upheld the decision of the Delhi Medical Council.

The Executive Committee noted that primary

registration of Dr. Nevil Vishnubhai Patel is with Gujarat Medical Council. He has registered with Delhi Medical Council only for additional registration of DNB. Therefore, the Executive Committee decided that the name of Dr Nevil Vishnubhai Patel be removed from Gujarat Medical Council as well.”

11. The learned counsel appearing for the petitioner contends that the petitioner had already been punished for using unfair means by being debarred for appearing in all examinations conducted by NBE for a period of seven years and, therefore, the punishment imposed by the DMC was harsh and onerous. He also submitted that the petitioner could not be punished for the same offence twice. Next, he contended that the order passed by the Executive Committee of the MCI was unreasoned, as it provided no reasons for differing from the opinion of the Ethics Committee. Lastly, he submitted that the Executive Committee had gone beyond the petitioner’s appeal inasmuch as it had not only rejected the petitioner’s appeal and upheld the order of the DMC, but had also passed a further order directing that the petitioner’s name be removed from the State Medical Register maintained by the Gujrat Medical Council as well.

12. Insofar as the petitioner’s contention that the petitioner cannot be punished for the same offence is concerned, the same is unmerited. The action taken by the National Board of Examinations against the petitioner was with regard to the petitioner using unfair means. The said authority was well within its jurisdiction to impose such punitive measure on account of the petitioner’s conduct. The DMC is also empowered to take action for any misconduct on the part of a medical

practitioner registered with it. Since, there is no dispute that the petitioner had used unfair means, the DMC was well within its right to consider the same and impose the punishment as done by the order dated 30.01.2018. Both the said bodies – National Board of Examinations and the DMC – operate in different fields even though their respective decisions are founded on the same misconduct.

13. The contention that the decision of the Executive Committee of the MCI is unreasoned is also unmerited. It is seen that the recommendations of the Ethics Committee of the MCI were also unreasoned. It had merely expressed its opinion that the punishment meted out to the petitioner by NBE was sufficient. The said view had not been accepted by the Executive Committee of the MCI. Thus, apart from stating that the Executive Committee of the MCI did not accept the aforesaid view, it was not necessary to express any other reason. This has been unequivocally expressed by the Executive Committee of the MCI. In this view, the contention that the decision of the Executive Committee of the MCI is unreasoned and, therefore, liable to be set aside, cannot be accepted.

14. The contention that the order passed by the MCI has, in fact, enlarged the punishment imposed on the petitioner, is merited. The Executive Committee of the MCI has not only upheld the order dated 30.01.2018 passed by the DMC, which was appealed against the petitioner but has also issued further direction that the petitioner's name be removed from the State Medical Register maintained by the Gujarat Medical Council. The petitioner has rightly contended that his

appeal could have been dismissed but the punishment imposed on him could not be enhanced without further notice.

15. Mr Singhdev, learned counsel appearing for the MCI contended that the direction to remove the petitioner's name from the State Medical Register maintained by the Gujarat Medical Council is a natural consequence of the order passed by the DMC, as the DMC had also sent a copy of its order to the Gujarat State Medical Council for necessary action. The said contention is unpersuasive. This is so because the Gujarat Medical Council is entitled to take its independent action and this court is informed that it has already issued a notice to the petitioner in this regard. Clearly, it was not apposite for the Executive Committee of the MCI to enlarge the punishment by directing that the petitioner's name be removed from the register maintained by the Gujarat Medical Council without issuing a notice in this regard.

16. In view of the above, the decision of the MCI to direct removal of the petitioner's name from the State Medical Register maintained by Gujarat Medical Council is set aside. The impugned order is confined to upholding the decision dated 30.01.2018 passed by the DMC.

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

VIBHU BAKHRU, J

APRIL 04, 2019/MK