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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8131/2017 and CM APPL. 33417/2017**
DR. NIKHIL RAHEJA Petitioner
Through: Mr V. Hari Pillai, Advocate.

versus

MEDICAL COUNCIL OF INDIA
AND ORS. Respondents
Through: Mr T. Singhdev, Mr Tarun
Verma and Mr Abhijit
Chakravarty, Advocates for R-1.
Mr Praveen Khattar, Advocate
for R-2/DMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **19.07.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 19.08.2017 (hereafter 'the impugned order') passed by the Medical Council of India (MCI) in an appeal preferred by respondent no. 4 (Ms Shalini Gupta) against an order dated 30.08.2012 passed by the Delhi Medical Council (DMC). By the said order, DMC had accepted the decision of the Executive Committee of DMC not to entertain the complaint against the petitioner.

2. The complainant (respondent no.4) had filed a complaint with the DMC alleging that the petitioner was involved in criminal conspiracy with her father-in-law and others. She alleged that she was compelled to withdraw certain complaints and proceedings that she had instituted

against her husband and his family. She had also alleged that the petitioner had submitted a fake medical document before this Court on 02.05.2008.

3. The Executive Committee of DMC had examined the complaint and found that it was not apposite for them to entertain any dispute regarding criminal conspiracy considering that the criminal proceedings initiated by the respondent no.4 against her husband and in-laws had been quashed by this Court. The Executive Committee of DMC had observed that since the allegations made by respondent no. 4 were of criminal conspiracy and fraud, it would not be apposite for DMC to consider the same till the investigating agencies under the criminal justice system examine the same.

4. Aggrieved by the decision of the DMC rejecting her complaint, respondent no.4 filed an appeal before MCI.

5. The said appeal was considered by the Ethics Committee of MCI at various meetings. During the said deliberations, an issue was raised with regard to the petitioner claiming to be a Psychiatrist.

6. It was found that the petitioner has secured an additional qualification of Diploma in Psychological Medicine from the College of Physicians and Surgeons of Bombay. The petitioner had also submitted his additional qualification registration certificate dated 16.09.2015 from the Maharashtra Medical Council.

7. The Ethics Committee of MCI noted that the said qualification –

Diploma in Psychological Medicine from the College of Physicians & Surgeons of Bombay – was not a recognised qualification after 02.12.2009.

8. The Ethics Committee had noted that the Central Government had issued a notification dated 02.12.2009, whereby various post graduate qualifications, which were included in the First Schedule to the Indian Medical Council Act, 1956, were deleted. The Ethics Committee of MCI held that since the said qualification was not registered as an additional qualification, the petitioner was not entitled to practice as a specialist and his doing so was in violation of Section 15 of the Indian Medical Council Act, 1956 (hereafter ‘the IMC Act’).

9. In view of the aforesaid finding, the Ethics Committee of MCI held that the petitioner was guilty of professional misconduct and decided to remove his name from the Indian Medical Register for a period of one year. The recommendations of the Ethics Committee of MCI were approved by the Executive Committee of MCI at a meeting held on 11.07.2017.

10. Aggrieved by the aforesaid impugned order, the petitioner has filed the present petition.

11. It is apparent from the record that there are matrimonial and family disputes between the complainant and her husband and his family. The petitioner has also produced the Discharge Summary relating to respondent no.4. This indicates that the petitioner had diagnosed respondent no.4 with Schizoaffective Disorder and she had

been admitted to the National Institute of Psychiatry on 08.12.2007 and was under the treatment of the petitioner as well as one other doctor. Respondent no.4 was discharged from the said institute on 02.05.2008.

12. There is no dispute that during the period, when respondent no.4 was under medical treatment of the petitioner, he was holding a qualification that was duly recognised as a specialist qualification. It is also not disputed that the same was included as a post graduate qualification in the First Schedule to the IMC Act. As is apparent from the impugned order, the said qualification was deleted from the First Schedule of the IMC Act with effect from 02.12.2009. Notwithstanding that the petitioner held a qualification entitling him to claim himself to be a specialist at the material time, the Ethics Committee had found that the petitioner was guilty of professional misconduct. This decision is premised solely on the ground that the said qualification had not been entered as an additional qualification in the Indian Medical Register (maintained by MCI) against the name of the petitioner. MCI proceeded on the basis that the conduct of the petitioner acting as a specialist was violative of Section 15 of the IMC Act as well as Regulation 7.20 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

13. At this stage, it would be relevant to refer to Regulation 7.20 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The said Regulations reads as under:-

“7.20 A Physician shall not claim to be a specialist unless he has a special qualification in that branch.”

14. Plainly, the aforesaid Regulation has not been violated as it is not disputed that the petitioner did hold the qualification as a specialist in Psychological Medicine. As noted above, the qualification of a Diploma in Psychological Medicine awarded by the College of Physicians & Surgeons of Bombay, was a recognised post graduate qualification at the material time. In this view, the finding of MCI that the petitioner had violated Regulation 7.20 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, is manifestly erroneous.

15. The conclusion of MCI that the petitioner had violated Section 15 of the IMC Act is also unsustainable. Section 15 of the IMC Act reads as under:-

“15. Right of persons possession qualifications in the Schedules to be enrolled.-

1. Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

2. Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register:-

- a. shall hold office as physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;
- b. shall practise medicine in any State;
- c. shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required

by any law to be signed or authenticated by a duly qualified medical practitioner;

- d. shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

3. Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.”

16. A plain reading of Clause (b) of sub-section (2) to Section 15 of the IMC Act indicates that no person would be entitled to practice medicine in any State unless he / she is enrolled as a medical practitioner on the State Medical Register. In this case, there is no dispute that the petitioner was enrolled as a medical practitioner on the state medical register since 2001.

17. According to MCI, the fact that the petitioner had practised as a Psychiatrist, without the additional qualification being entered against his name in the Indian Medical Register, falls foul of Section 15 of the IMC Act.

18. Section 15(2) of the IMC Act does not refer to any additional qualifications. It proscribes any person from practising as a medical practitioner or ‘practice medicine’ unless enrolled in the State Medical Register. Admittedly, the petitioner is registered as a medical practitioner and therefore, it is not possible to accept that the provisions of Section 15 of the IMC Act have been violated. Practicing as a

specialist, without the additional qualification being entered in the State Medical Register, is not proscribed under Section 15 of IMC

19. The provision relating to entering additional qualifications against the name of the medical practitioner enrolled on the Indian Medical Register is contained under Section 26 of the IMC Act. The said section reads as under: -

“26. Registration of additional qualifications.—

1. If any person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine which is a recognised medical qualification, he shall, on application made in this behalf in the prescribed manner be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.
2. The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.”

20. A plain reading of Sections 15 and 26 of the IMC Act clearly indicates that there is a material difference in language of said Sections. Whereas Section 15 of the IMC Act proscribes any person from practicing medicine unless enrolled on the State Medical Register, Section 26 does not contain any such prohibition. Section 26(1) of the IMC Act entitles a medical practitioner who has obtained an additional qualification to have the same entered against his name. This confers a right on a medical practitioner, who has acquired additional

qualifications. It does not create any obligation for him/her to exercise the same.

21. In this view, the decision of MCI that a medical practitioner, who holds the necessary specialist qualification, is proscribed from practicing as a specialist unless such additional qualification is entered in the Indian Medical Register, is flawed. There is no such requirement under the IMC Act. In absence of any such mandatory requirement and any law providing the consequences of failure to comply with it, the impugned order cannot be sustained.

22. By virtue of Regulation 7.20 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, a physician is proscribed from claiming himself to a specialist unless he has a special qualification in that branch. As stated above, this provision has not been violated by the petitioner. It is also relevant to note that the said Regulations also do not postulate that a medical practitioner must to apply for entering his additional qualification as a specialist before practicing as such.

23. In view of the above, the petition is allowed and the impugned order is set aside. Consequentially, the order dated 24.08.2017 passed by DMC removing the petitioner's name from the State Medical Register is also set aside. The pending application is also disposed of.

24. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 19, 2019/RK