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

+ **W.P.(C) 10176/2017 & CM No. 41536/2017**

SUDHANK BHARTI

..... Petitioner

Through: Mr Anil Mittal, Advocate.

versus

MEDICAL COUNCIL OF INDIA AND ORS Respondents

Through: Mr T. Singhdev, Mr Tarun Verma,
Ms Puja Sarkar, Ms Biakthansangi
Das and Mr Abhijit Chatterjee,
Advocates for R-1.

Mr Praveen Khattar, Advocate for
R-2 with Mr LDS Uppal, Assistant
Secretary, DMC.

Mr Vikas Vikram Singh and Ms
Santwana, Advocates for R-3.

AND

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+ **W.P.(C) 11583/2017 & CM No. 47182/2017**

DR. SANJIV GUPTA

..... Petitioner

Through: Mr K. G. Sharma, Advocate.

versus

MEDICAL COUNCIL OF INDIA AND ORS. Respondents

Through: Mr T. Singhdev, Mr Tarun Verma,
Ms Puja Sarkar, Ms Biakthansangi
Das and Mr Abhijit Chatterjee,
Advocates for R-1.

Mr Praveen Khattar, Advocate for
R-2 with Mr LDS Uppal, Assistant
Secretary, DMC.

Mr Naveen Pandey, Advocate for R-3.

Mr Anil Mittal, Advocate for R-4.

Mr Rajesh Ranjan and Ms Kritika Sachdeva, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.02.2019

1. The petitioners have filed the present petitions impugning an order dated 07.11.2017 passed by the Medical Council of India (MCI), *inter alia*, accepting the recommendations of the Ethics Committee to remove the name of the petitioners from the Indian Medical Register, for a period of three months.
2. The principal allegation against the petitioners is that they have violated Clause 6.4.1 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which proscribes a medical practitioner from splitting/sharing of fee for medical surgical or other treatment.
3. The impugned order was passed in an appeal preferred by one of the petitioners (Dr Sanjiv Gupta) against the order dated 18.03.2014 passed by the Delhi Medical Council (DMC). In terms of the order dated 18.03.2014, the name of Dr Sanjiv Gupta was directed to be removed from the State Medical Register for a period of 30 days. The DMC had also directed that a warning be issued to Dr Sudhank Bharti (petitioner in W.P.(C) 10176/2017).
4. It is seen that the order dated 18.03.2014 passed by the DMC was

not premised on the allegation of fee splitting. The impugned order passed by the MCI also does not indicate any specific material which led the Ethics Committee of the MCI to conclude that the petitioners were guilty of splitting fees. The relevant extract of the decision of the Ethics Committee reads as under:-

- “1. The Committee noted that it is a matter of fee splitting by Dr. Sndhank Bharti, Dr. Sanjeev Gupta and Dr. K. K. Narang, which is a clear cut violation of Clause 6.4.1. of “Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002”, which reads as under:-

“6.4.1 A physician shall not give, solicit, or receive nor shall he offer to give solicit or receive, any gift, gratuity, commission or bonus in consideration of or return for the referring, recommending or procuring of any patient for medical, surgical or other treatment. A physician shall not directly or indirectly, participate in or be a party to act of division, transference, assignment, subordination, rebating, splitting or refunding of any fee for medical, surgical or other treatment.”

Therefore, the Ethics Committee decided to remove the name of Dr. Sudhank Bharti, Bharti Eye Foundation, Dr. Sanjeev Gupta and Dr. K. K. Narang, from the Indian Medical Register for a period of 3 (Three Months).

2. The Committee also noted that Dr. Sudhank Bharti failed to provide the medical records of the patient which is a professional misconduct in terms of Clause 1.3.1 of “Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002”, which reads as under:-

“1.3.1 Every physician shall maintain the medical

records pertaining to his / her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.”

Therefore, the Ethics Committee also decided to issue a **warning** to Dr. Sudhank Bharti to be more careful in future in maintaining the record of any patient.”

The matter was reconsidered by the Ethics Committee at its meetings held on 6th & 7th June, 2017 and the above recommendations of the Ethics Committee has been approved by the Executive Committee at its meeting held on 08.08.2017 wherein it was decided as under:-

“The Executive Committee further noted that now the Ethics Committee had in its recommendations dated 6th and 7th June, 2017 mentioned that the award of punishment is both for medical negligence (Section 2.3 and 2.4) as well as for violation of Section 6.4.1 & 1.3.1 of Code of Ethics Regulations and approved the same.”

5. As is apparent from the above, the decision of the Ethics Committee does not indicate any specific reasons for its recommendation and in the aforesaid sense, the impugned order passed by the MCI is unreasoned.

6. In the aforesaid view, this Court considers it apposite to set aside the impugned order and remand the same to the MCI to consider afresh. In the event the MCI is of the view that the punishment imposed on the petitioners by the DMC is required to be enhanced, the MCI shall issue notice to this effect, clearly indicating the reasons for proposing to do so.

This would enable the concerned petitioners to meet allegations levelled against them.

7. Needless to state that the MCI shall pass an appropriate order after affording the concerned parties an opportunity to be heard.

8. The petitions are disposed of with the aforesaid observations. The pending applications also stand disposed of.

VIBHU BAKHRU, J

FEBRUARY 19, 2019
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