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

Date of Decision:- 21.12.2021

+ **W.P.(C) 14624/2021 & CM APPL. 46085/2021 (exemption)**

PRIYANKA CHARLA Petitioner
Through Mr. S. S. Tripathy with Mr. G. S.
Bagga, Advs. with petitioner in
person

versus

MEDICAL COUNCIL OF INDIA AND ORS. Respondents
Through Mr. T. Singhdev, Ms. Sumangla
Swanmi, Advs. for Respondent no.1
Mr. Praveen Khattar, Adv. for
Respondent no.2

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 46085/2021 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner, who claims to have taken IVF treatment at respondent no.3 hospital on 28.05.2013, has *inter alia* approached this Court with a grievance that the respondent nos. 1 & 2 have refused to take any decision on her complaint made against the respondent nos. 3 to 6.
4. Learned counsel for the petitioner submits that the petitioner's complaint has been rejected by respondent no.2 solely on the ground that the petitioner has already filed a criminal complaint in this regard.

He, contends that it was incumbent upon the respondent no.2, which has been enshrined with an important statutory regulatory duty, under the Delhi Medical Council Act to examine the petitioner's complaint on merits.

5. After some arguments, learned counsel for the petitioner submits that the petitioner would for the present be satisfied if her complaint against respondent nos. 3 to 6 is examined by respondent no. 2 on merits, and a reasoned order passed thereon after following the principles of natural justice
6. In the light of this limited prayer, once Mr. T. Singhdev and Mr. Praveen Khattar are already present on behalf of respondent no. 1 and 2, no notice is required to be issued to the other respondents.
7. Having perused the communication dated 21.10.2019 issued by respondent no.2, whereby it has simply deferred consideration of the petitioner's complaint on account of the pendency of the criminal proceedings initiated by the petitioner against the respondent nos. 3 to 6 herein, I am of the considered opinion that despite the pendency of the criminal proceedings, the respondent no. 2 was required to deal with the complaint preferred by the petitioner on merits. The stand adopted by the respondent no. 2 cannot be appreciated, especially when the scope of the two proceedings are different. Reference may be made to the decision of the Apex Court in ***Syed Askari Hadi Ali Augustine Imam and Ors. vs. State (Delhi Admn.) and Ors.*** AIR 2009 SC 3232. Para 9 and 10 thereof reads as under -

...Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance

in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case.

The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.”

10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible.”

8. The communication dated 21.10.2019 issued by respondent no.2 is therefore not sustainable and is accordingly, set aside.
9. At this stage, learned counsel for the respondent no.2 submits that since the complaint filed by the petitioner was not comprehensive as the petitioner had merely annexed a copy of her legal notice, it may not be possible for the said respondent to deal with the petitioner's grievances. In response, learned counsel for the petitioner prays that the present writ petition be treated as the petitioner's representation.
10. In the light of the aforesaid, the writ petition is disposed of by directing respondent no.2 to treat the present writ petition as the petitioner's representation and take a decision thereon by passing a reasoned and speaking order, within a period of four months, after following the principles of natural justice and adhering to the prescribed procedure.
11. While taking a decision on the petitioner's complaint, the respondent no.2 will also consider the petitioner's prayer that though she has been

regularly making payments to the respondent no.3 for preservation of her embryos, she has not been provided any information in this regard by the said hospital.

12. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claim and in case the petitioner is still aggrieved, it is open for her to seek legal recourse as permitted in law.

REKHA PALLI, J

DECEMBER 21, 2021

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