

**CM No.9716-CWP of 2022 and  
CM No.9718-CWP of 2022 in/and  
CWP No.12374 of 2022(O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CM No.9716-CWP of 2022 and  
CM No.9718-CWP of 2022 in/and  
CWP No.12374 of 2022(O&M)**

**Reserved on 21.07.2022**

**Date of Decision:26.07.2022**

Nitin Sood

..... Petitioner

Vs.

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present:Mr. Akshay Bhan, Sr. Advocate with  
Mr. Amandeep Singh Talwar, Advocate and  
Mr. Abhijeet Singh Rawaley, Advocate  
for the non-applicant/petitioner.

Mr. Anil Chawla, Advocate  
for respondent No.1.

Mr. Amrit Paul, Advocate  
for respondent No.2.

Mr. Gourav Sharma, Advocate for  
Mr. M.S. Longia, Advocate  
for respondent No.3.

Mr. Ajit Kumar Sinha, Sr. Advocate with  
Mr. Srijan Sinha, Advocate,  
Mr. Naveen Soni, Advocate,  
Mr. Parul Dhurvey, Advocate and  
Mr. Vishavjeet Beniwal, Advocate  
for the applicant(s)/respondent No.4.

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**RAJ MOHAN SINGH, J.**

[1]. CM No.9716-CWP of 2022 has been filed by the applicant Mrs. Anjali Khera mother of Ms. Anandita Khera (deceased) for her impleadment as one of the respondents in the present writ petition, claiming herself to be necessary and proper party.

[2]. Perusal of the record would show that the complaint was filed by the husband of Mrs. Anjali Khera i.e. Mr. Ashish Khera who has been impleaded as respondent No.4 in the present writ petition. The applicant claims to be impleaded as co-complainant along with her husband.

[3]. CM No.9718-CWP of 2022 has been preferred by respondent No.4 for vacation of order dated 31.05.2022 on the premise that the Appellate Authority/Ethics and Medical Registration Board of the National Medical Commission of India has all the powers to decide the application for interim relief during pendency of the appeal.

[4]. Order dated 31.05.2022 is reproduced hereasunder:-

*“Learned counsel for the petitioner contends that against the impugned order dated 11.05.2022, an appeal is pending with the National Medical*

*Commission (NMC), which is also known as The Ethics and Medical Registration Board of the National Medical Commission of India. The aforesaid Board has no power to grant interim relief during pendency of the appeal. Learned Senior Counsel relies upon **Tejesvi Kamra Vs. National Medical Commission of India and other, 2021 SCC OnLine Del 1256** for pressing the interim relief in the present writ petition.*

*Learned Senior Counsel further contends that additional qualifications possessed by the petitioner were duly recognized by the Ministry of Health and Family Welfare vide notification dated 07.03.2008. The allegation against the petitioner is that though he is registered with Haryana Medical Council vide registration No.HN-6785 dated 16.07.2012, but the qualification of CCT Hematology issued by GMC, UK is not recognized with HMC. Learned Senior Counsel further submits that the aforesaid allegation is per se wrong in the light of notification dated 07.03.2008. The Impugned order is totally non-speaking and has been passed without giving any reasonable opportunity of hearing to the petitioner by the President of Haryana Medical Council.*

*Notice of motion for 23.08.2022.*

*At this stage, Mr. Anil Chawla, Advocate appears on behalf of respondent No.1 and Mr. M.S. Longia, Advocate appears on behalf of respondent No.3.*

*Till the next date of hearing, impugned order*

*be kept in abeyance.*

[5]. Notice in both the aforesaid applications was issued on 13.07.2022.

[6]. Reply to the aforesaid applications has been filed by the non-applicant/petitioner and the same is taken on record.

[7]. With the concurrence of the parties, I have heard the applications as well as the main case.

[8]. At the time of issuance of notice of motion and granting interim relief on 31.05.2022, learned Senior Counsel for the petitioner placed reliance upon **Tejesvi Kamra Vs. National Medical Commission of India and others, 2021 SCC OnLine Del 1256** to contend that the Ethics and Medical Registration Board has no power to grant interim relief. Para No.7 of the aforesaid judgment is reproduced hereasunder:-

*“7. It is not disputed that the Ethics and Medical Registration Board has no power to grant interim relief and the appeal may take some time to be decided. Considering the educational qualifications of the Petitioner, as also the fact that in the first round of litigation, the Petitioner was exonerated and the appeal is now pending before the Ethics and Medical Registration Board, during the pendency of the said appeal, the directions given in the impugned order dated 19<sup>th</sup> February, 2021 shall not be implemented. The said directions would be subject to the final*

*decision to be taken by the Ethics and Medical Registration Board in the appeal filed by the Petitioner. All the rights and contentions of the parties, including the Complainant, are left open.”*

[9]. *Per contra*, learned Senior Counsel for the applicant/respondent No.4 submitted that the Court/Appellate Authority having power and jurisdiction to grant final relief implies within its power to grant interim relief, unless it is specifically prohibited by law. In the instant case, there is no such prohibition by any law against the Ethics and Medical Registration Board of the National Medical Commission of India/Appellate Authority for passing any interim relief during pendency of the appeal. Learned Senior Counsel relies upon **Medical Council of India Vs. JSS Medical College and another, (2012) 5 Supreme Court Cases 628** in the aforesaid context.

[11]. Learned Senior Counsel further places reliance upon **W.P. (C) No.10212 of 2022** titled **Dr. Sandeep Bhagat Vs. Delhi Medical Council and another** decided on 07.07.2022 by the Delhi High Court, **W.P. No.589 of 2021** titled **Dr. Ashok Vs. National Medical Commission** decided by the Bombay High Court and **LPA No.400/2022** titled **Dr. Neeraj Agarwal Vs. Delhi Medical Council** decided on 20.06.2022 by the Delhi

High Court to contend that the Ethics and Medical Registration Board of National Medical Commission of India while hearing the pending appeal under Section 30(3) of the National Medical Commission Act, 2019, possesses incidental powers and those powers would include grant or refusal of interim order in accordance with law against an order passed by the State Medical Council under Section 30(2) of the Act of 2019. The Appellate Authority has to devise mode and manner, in which such incidental powers are to be exercised and the terms and conditions to be imposed while exercising such powers in accordance with law. Exercise of such powers would be a matter of discretion of the Ethics and Medical Registration Board.

[12]. Appeal along with an application for interim relief filed by the petitioner is pending consideration before the Appellate Authority, in which pleadings are complete, which is apparent from communication dated 07.07.2022 issued to respondent No.4 by the National Medical Commission, Ethics and Medical Registration Board in respect of appeal dated 27.05.2022 filed by the petitioner against the order dated 11.05.2022 of Haryana Medical Council. Appeal has already been registered at serial No.59/2022. Appeal dated 27.05.2022 filed by the petitioner has

been accepted by the Ethics and Medical Registration Board in the internal meeting on 22.06.2022. Vide the aforesaid communication, respondent No.4 was requested to provide his written submissions by way of affidavit with documentary proof to the Ethics and Registration Board so that the appeal can be processed.

[13]. During arguments, learned counsel for the applicant/respondent No.4 submitted that respondent No.4 has already filed his written submissions before the Appellate Authority.

[14]. At this stage, I am of the considered opinion that during pendency of the statutory appeal before the Ethics and Medical Registration Board of National Medical Commission of India, any observation made by this Court, may prejudice the case of either sides.

[15] In view of facts and attending circumstances of the case, I leave it open to the Appellate Authority to decide its jurisdiction in respect of inbuilt mechanism under Section 30(3) of the Act of 2019 to decide the application for interim relief. Consequently, the present petition is disposed of with an observation that the applicant in CM No.9716-CWP of 2022 may press for her impleadment before the Appellate Authority in

pending appeal in accordance with law. CM No.9718-CWP of 2022 is also disposed of along with main petition as there is no need to vacate the interim order as the main writ petition is being disposed of with a request to the Ethics and Medical Registration Board of National Medical Commission of India/Appellate Authority to take up the application for interim relief and consider the same on merits in accordance with law as expeditiously as possible, preferably within a period of three weeks from the date of receipt of certified copy of this order. Petitioner shall be under legal obligation to take necessary steps to remove any defect, which may be pointed out by the Registry of the Appellate Authority in the form and nomenclature of the appeal (if any). This writ petition is disposed of with a request to the Appellate Authority in the aforesaid manner. After decision of the pending application for interim relief, the Appellate Authority shall proceed to decide the appeal on merits without being influenced by any observations made in this order. The Appellate Authority is requested to dispose of the pending application for interim relief on or before 23.08.2022. In case, the application for interim relief is not disposed of by 23.08.2022, the petitioner would be at liberty to make necessary prayer before the Appellate Authority for extension of interim

relief dated 31.05.2022. It is made clear that the interim relief shall remain in operation only upto 23.08.2022.

[16]. The present writ petition along with the applications is accordingly disposed of.

26.07.2022  
*Prince*

**(RAJ MOHAN SINGH)  
JUDGE**

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|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether reportable</b>        | <b>Yes/No</b> |