

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1608 of 2017

In
Civil Writ Jurisdiction Case No.13547 of 2016

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National Medical Commission through its Deputy Secretary, Pocket- 14,
Sector - 8, Dwarka Phase -1, New Delhi - 110077.

... .. Appellant/s

Versus

1. Dr. Nigam Prakash Narain S/o Late Hridai Narain R/o 5A, Patliputra Colony, P.S. Patliputra, Patna - 800013.
2. The Registrar, Bihar Council of Medical Registration, Road No. 11D, Rajendra Nagar, Patna - 800016.
3. The Principal/Dean, Patna Medical College, Ashok Rajpath, Patna - 800013, Bihar.
4. The Principal/Dean, Shridev Suman Subharti Medical College, Dehradun - 248007.
5. The State of Bihar through Principal Secretary, Health.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Kumar Brijnandan, Advocate Mr. Girish Nandan Abhishek, Advocate Ms. Nirmala Singh, Advocate Mr. Bibhuti Kumar, Advocate
For the Resp. No. 1	:	Mr. Ankit Katriar, Advocate Ms. Ananya Shivani, Advocate
For the State	:	Mr.S.D.Yadav, AAG-9 Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-08-2023

The appeal is filed by the Medical Council of India (for brevity 'MCI') aggrieved with the judgment of the learned Single Judge dated 20.09.2017 setting aside the order of penalty passed by the MCI (Annexure-8 dated 21.07.2016). The impugned order removed the name of the writ petitioner, the 1st



Respondent herein, a medical practitioner, from the Indian Medical Register for a period of three months.

2. The writ petitioner was a medical practitioner, who retired from the Patna Medical College (for brevity 'PMC') and then got himself employed in a private medical college. Later, after leaving the services of the private medical college, which was also impleaded as the 4th Respondent in the writ petition, the petitioner again joined PMC on contractual basis. The controversy arose on an inspection conducted by the MCI in the PMC when it was disclosed that the petitioner had in the very same academic year declared himself to be a faculty of both the medical colleges. The declarations as furnished with the PMC, did not also indicate his service in the private medical college. Proceedings were taken and the petitioner was imposed with the aforesaid penalty against which the writ petition was filed.

3. The learned Single Judge found that the petitioner had not made any false declaration, especially since he was in the service of the private medical college when the declaration was given and later he resigned from the said service to join the PMC as a Professor in Pediatrics, on contract. Hence, the petitioner was not working as a faculty in two different



institutions simultaneously. As to the finding of the Ethics Committee of non-furnishing of information, it was found that the petitioner was not in station when the MCI Inspecting Team carried out the inspection at the PMC on 05.05.2015. He had never appeared before the inspecting officials of the MCI since he was abroad attending a conference, which was proved through his passport. It was also contended that the inquiry report was never furnished to the petitioner thus, violating the principles of natural justice. The learned Single Judge found non-application of mind on the part of the Ethics Committee. The learned Single Judge also found favour with the contention raised on behalf of the petitioner that Regulation 8.4 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 provided a limitation period of six months within which a decision has to be taken. The learned Single Judge found favour with the petitioner's contention that during the course of inspection on 05.05.2015, somebody from the PMC tendered an incomplete declaration form, which was lying with them to indicate the petitioner as a faculty of the PMC. The decision taken by the Ethics Committee and the conclusion arrived by the Ethics Committee was in haste, that the petitioner was working in two different institutions



simultaneously. Finding that there was no simultaneous employment as faculty in the PMC and the private medical college, the impugned order was struck down, clearly holding that the petitioner who retired as a senior faculty from the PMC would be quite aware of the do's and don'ts, as also the requirements of the MCI.

4. The learned Standing Counsel appearing for the MCI would argue that the learned Single Judge egregiously erred finding the order to be issued for the reason of simultaneous employment in two medical colleges. Annexure-8 was read over to indicate that though initially the charge of simultaneous employment in two medical colleges was levelled against the petitioner; after verification, the Ethics Committee had only levelled the allegation of not disclosing the petitioner's services in the private medical college on the very same academic year, in the declaration made by the petitioner himself at the PMC, when he was employed as a Professor in Pediatrics, on contract. There is no ground to find violation of principles of natural justice, since there was no inquiry report as such since the Ethics Committee had merely verified the declarations, which the respective medical colleges produced at the time of inspection. In fact, a show cause notice was issued at Annexure-



5 dated 09.12.2015 to the petitioner and a reply was submitted by the petitioner as Annexure-7. It is after verification and scrutiny of the declaration forms that the penalty was imposed. As far as limitation provided under Regulation 8.4, the learned Standing Counsel specifically refers to Regulation 8.7 introduced as on 27.05.2004, to argue that six months period is not a limitation period and is only a guideline to ensure that complaints are not kept pending for long.

5. The learned counsel appearing for the appellant, however, would totally deny the contentions raised and seek to uphold the impugned judgment. It is argued that there was violation of principles of natural justice and the declarations itself show a different handwriting. It was the specific contention of the petitioner that when a surprise inspection was conducted, the declaration was filled up and produced by vested interests; which cannot lead to a penalty being imposed on the petitioner. The petitioner admittedly was out of the country when the inspection was conducted and since it was a surprise inspection, there cannot be any fault on the petitioner who was not in station at the relevant time. It is also pointed out that as per the order, the Ethics Committee is required to bring out a notification, which has not been done till



date.

6. On the basis of the order of penalty imposed by the Ethics Committee, the MCI is bound to bring out a notification, which has not been brought out till date.

7. We have examined the records and anxiously considered the arguments put forth before us, especially the petitioner having retired as a senior faculty from a government medical college and that he is a medical professional of long standing.

8. At the outset, we have to observe that there can be no fault found on the MCI for conducting surprise inspection, since, as rightly held by the learned Single Judge, it is the duty of the MCI to ensure that standards of education are maintained and the minimum requirements, as per the guidelines issued by the MCI, are facilitated in every medical college. The issue only revolves around the false declaration submitted by the petitioner. Before proceeding further, it has also to be observed that it is a fact that the petitioner had worked in two medical colleges, rather three stint of service, first in the PMC, then in the private medical college and then again in the PMC on contract, during the very same academic year.

9. The petitioner was the Head of the Department



of Pediatrics in the PMC and he retired on superannuation from the government medical college on 30.09.2014. Later, the petitioner joined the private medical college, the 4th Respondent in the writ petition, on 03.01.2015 and continued therein till 06.04.2015; on which later date, he tendered his resignation and he was relieved from his responsibility on 07.04.2015. Annexure-3 brought on record in the writ petition, proves the aforesaid facts. Later to his resignation from the private hospital, he again received an offer from the PMC to work as a Professor on contract, which he chose since it was nearer home. The petitioner accepted the contractual appointment offered to him by way of a Notification dated 06.04.2015 issued by the Department of Health. Hence, in the academic year 2014-15, he was first in the government medical college, then in a private college and later in the government college, which latter appointment was on contract.

10. We do not find any irregularity in a medical practitioner being the faculty of one or two medical colleges in the same academic year, if he has not worked simultaneously in the same college. Merely because the medical college had given a declaration of faculty to the MCI, that does not preclude one of the faculty from resigning the post. If such resignation occurs



and the college falls below the minimum requirements, it is the responsibility of the college to ensure that a fresh appointment is made, to satisfy the minimum requirement. However, the question raised in the present case is one of a false declaration.

11. The respective declarations issued by the petitioner are produced by the MCI in its reply affidavit dated 08.11.2016. Annexure-R1/2 is the declaration form of the petitioner himself of his employment as a faculty in the 4th Respondent- private medicate college. In the details of previous employment/ teaching experience, the petitioner has specifically indicated his service with the PMC starting from the year 1975 till his superannuation on 2014 and his later employment with the private medical college starting from 03.01.2015. The declaration is signed by him on 04.01.2015. There is no dispute raised on this declaration made by him while he was appointed and continuing as a faculty in the private medical college.

12. The further declaration form dated 21.04.2015, pertaining to the assessment at PMC on 05.05.2015, is also produced along with Annexure-R1/2 in the reply affidavit at page 75. This refers to the next academic year being 2015-16, however, in the said declaration his short stint in the private medical college is omitted. The declaration at Para 4A of the



form is also that before joining the present institution, he was working as Civil Surgeon at Patna, as Medical Officer Leave Reserve Post.

13. Now, we look at the allegations raised against the petitioner as evident from the documents produced in the writ petition itself. By Annexure-5 dated 09.12.2015, the MCI had issued a show notice notice regarding fake faculty declaration form for the academic year 2015-16. It was alleged that on 22.01.2015, the petitioner's name had appeared at the time of inspection in the private medical college and thereafter on 05.05.2015, when there was an inspection carried out at the PMC, his employment in the private medical college, which was evidenced by the declaration form produced before the Inspection Team on 22.01.2015, was not disclosed by the faculty. The petitioner was seen as having superannuated from government services on 30.09.2014, as evidenced from the declaration submitted through the private medical college. The petitioner along with the Principal/Dean of the respective medical colleges were asked to explain about the same.

14. The reply of the PMC is produced at Annexure-6, which indicates that the petitioner had not appeared at the inspection held on 05.05.2015, since he was on



ex-India leave from 04.05.2015 to 09.5.2015, to participate in an international conference at Amsterdam, that, he superannuated from the post of Professor and Head of the Department of Pediatrics, PMC on 03.09.2014, that, he was appointed as a Professor on contract after superannuation from Pediatrics Department, PMC by notification dated 06.04.2015, that, he joined as a Professor on contract on 08.04.2015 and that he was duly incorporated in the list of faculty members of PMC on the forenoon of 10.04.2015. As far as the employment with the private medical college is concerned, it was submitted that from the relevant documents, it appears that the petitioner had resigned from the private medical college and was relieved from duties.

15. The reply of the petitioner is seen at Annexure-7, wherein he asserts that he did not sign any declaration form on the day of inspection in front of the assessors and that the declaration forms are completed much ahead of the inspection because the MCI inspection is always a surprise one. It is also asserted that the Principal of the institution keeps it ready before hand and that is why the declaration form was not updated, with inclusion of the appointment and resignation and relief from other institution.



16. We quite agree with the learned Single Judge that the petitioner, who superannuated as a senior faculty member and Head of the Department from a government medical college, would definitely be aware of the requirements and the minimum standards stipulated by the MCI for carrying on medical education in colleges recognized by the MCI. In fact, in Annexure-7, the petitioner has been very cautious to say that he did not sign any declaration in front of the assessors of the Inspection Team; which is not required even according to his showing that the Principal keeps ready the declarations, before hand, since the inspections are always surprise inspections.

17. It is in this context that the entire issue has to be considered. The petitioner does not distance himself from the declaration filed by him before the PMC. We also have to notice that there is no allegation levelled against the petitioner that he had served two colleges in the same academic year. We have examined the declarations made at the private medical college and the PMC in which later college, he was engaged in the subsequent assessment year. The signatures on both the declaration forms tally. As admitted by the petitioner, the declaration form submitted and kept with the Principal, signed by the petitioner at the PMC is dated 21.04.2015. The said



signature was affixed in the presence of the Head of the Department Pediatrics, Patna Medical College & Hospital and the Principal of the Patna Medical College. The signature of the HOD is also dated 27.04.2015, far earlier to the inspection. Hence, the mere absence of the petitioner on the date of inspection or proof of his absence in the country itself does not help the petitioner in disowning the declaration made. The academic year insofar as the medical colleges, extend beyond one year in the first year of the course and in the very same calendar year, the petitioner was working in two medical colleges, though not simultaneously, but at different times. The declaration made in the subsequent college in which he joined on contract did not contain the earlier service in a private medical college, in the very same calendar year, which should also be overlapping as the very same academic year at least for the first year of the MBBS course. The declaration at the latter college did not contain the service at the private medical college that too for a short stint. The issue arises as to whether the petitioner had facilitated a private college to enable approval from the MCI, wrongly.

18. We cannot condone the omission in the declaration and treat it as a mere *bona fide* omission on



inadvertence. The issue assumes significance insofar as the intention behind making such declarations, which facilitate approvals from the apex body of medical education, is also to ensure maintenance of the minimum standards and requirements stipulated through the statutory regulations issued by the apex body.

19. We do not find any violation of principles of natural justice merely for the reason that the petitioner was not present on the inspection date. As we have found, the petitioner's presence on the inspection date is not significant and what assumes relevance is the production of a declaration made by him, which admittedly was submitted earlier to the Principal for safekeeping, to enable production at the time of surprise inspections conducted by the apex body. The petitioner cannot disown the declaration made by him in the presence of the Head of the Department and the Principal of the College, wherein he omitted to show his earlier stint in the service of a private medical college in the same calendar year; which we found would also overlap with the academic year of the first year of the MBBS course. The declaration having been submitted before the MCI, the MCI had issued notice, obtained explanations and then proceeded with the matter after



considering the explanations.

20. As far as the limitation period stipulated under Clause 8.4, we extract it hereunder:-

“8.4 Decision on complaint against delinquent physician shall be taken within a time limit of 6 months.”

21. As submitted by the learned Standing Counsel, this has to be considered keeping in mind the subsequent amendments made at Clause 8.7, which are also extracted hereunder:-

“8.7. The following Clause No. 8.7 & 8.8 are incuded in terms of Notification published on 27.05.2004 in Gazette of India.

"8.7 Where either on a request or otherwise the Medical Council of India is informed that any complaint against a delinquent physician has not been decided by a State Medical Council within a period of six months from the date of receipt of complaint by it and further the MCI has reason to believe that there is no justified reason for not deciding the complaint within the said prescribed period, the Medical Council of India may-

(i) Impress upon the concerned State Medical council to conclude and decide the complaint within a time bound schedule;

(ii) May decide to withdraw the said complaint pending with the concerned State Medical Council straightaway or after the expiry of the period which had been stipulated by the MCI in accordance with para(i) above, to itself and refer the same to the Ethical Committee of the Council for its expeditious disposal in a period of not more than six months from the receipt of the complaint in the office of the Medical Council of India."

22. As per Clause 8.7, when a complaint against a delinquent physician has not been decided by a State Medical



Council within a period of six months from the date of receipt of the complaint, then, if the MCI is satisfied that there is no justifiable reason for not disposing of the complaint, the apex body has the option to impress upon the concerned State Medical Council the need to conclude and decide the matter within a time bound schedule or to withdraw the complaint from the concerned State Medical Council and proceed in accordance with para-1 above and refer the same to the Ethics Committee of the Council, for expeditious disposal, again within a period of not more than six months from the receipt of the complaint in the office of the MCI. Hence, when a complaint is filed before the State Medical Council, if not disposed of within six months, it can be withdrawn to the apex body and considered within a further period of six months. We cannot find Clause 8.4 to be a limitation barring any decision beyond the said period. Clause 8.4 only is a caution on the State Medical Council and the apex body to ensure expeditious disposal of a complaint against a medical practitioner. This is a caution on the Medical Council for expeditious disposal and not a bar created, which would frustrate the very complaint against a medical practitioner.

23. We find absolutely no ground to interfere with the order of the apex body, which, as of now, is the



National Medical Commission; which has been substituted in the place of the appellant MCI. We have referred to the appellant as the MCI only for convenience since the proceedings taken and the orders passed are by the earlier apex body, which only has a change in nomenclature and denomination.

24. We set aside the judgment of the learned Single Judge and restore the order of the Ethics Committee of the apex body. If any notification is required, the same shall be issued within three weeks from the date of receipt of the certified copy of this judgment.

25. Needless to say that the penalty shall operate only for the period it is imposed by the apex body.

26. The Appeal would stand allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	04.09.2023
Transmission Date	

