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

+ W.P.(C) 10560/2024, CM APPL. 43389/2024 & CM APPL.
43390/2024

DR RUPALI MISHRA

.....Petitioner

Through: Dr. Amit Mishra, Advocate

versus

THE NATIONAL MEDICAL COMMISSIONRespondent

Through: Mr. T.Singhdev, Mr. Abhijit
Chakravarty, Mr. Sourabh Kumar,
Mr. Bhanu Gulati, Mr. Anum
Hussain, Mr. Tanishq Srivastava, Mr.
Aabhaas Sukhramani, Advocates for
R-1

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.11.2024

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1. The Petitioner has filed the instant writ petition impugning order dated 24th July, 2024 passed by the National Medical Commission¹ in second appeal preferred by the Petitioner against the removal of her name for 30 days from the State Medical Register as directed by the Delhi Medical Council.²
2. The NMC, through the impugned order, issued the following directions:

“After detailed discussion and considering that Dr. Rupali Mishra is the owner of Diagnostic Centre Dr. Rupali's Medical & Diagnostics, 35 A Pul Prahladpur, Main Surai Kund Road, South East Delhi, New

¹ “NMC”

² “DMC”



Delhi-110044, the Appeal Committee, NMC, in the light of all evidences, decided to uphold the quantum of punishment ordered by E M R B vide its order no R-11011/53/2022/Ethics/009354-362, dated: 20.02.2024 wherein, it was decided to uphold the DMC Order for removal of appellant's name from State Medical register for 30 days. Appeal Committee further directs the owner of Centre to close the Centre for a period of one month from the issuance of the letter and the order shall also be pasted on the front notice board of the hospital and record / evidence of the same to be submitted to NMC in compliance.”

3. Through the aforesaid order, the NMC upheld the removal of the Petitioner's name from the State Medical Register, and also directed the closure of the Petitioner's centre for a period of one month. In light of the same, this Court considered the contentions of the parties in detail, and passed an interim order dated 31st July, 2024 to the following effect:

“4. The Petitioner, Dr. Rupali, a qualified sonologist, operates “Dr. Rupali's Medical & Diagnostics,” a medical centre that has been duly registered under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, with the Government of NCT of Delhi since the year 2009 and under the Medical Termination of Pregnancy Act, 2003 since 5th February, 2020. This case arises from an incident that occurred in the said medical centre relating to her medical practice.

5. On 21st July, 2021, Ms. Babita Bisht, a patient experiencing severe bleeding, sought medical assistance at the Petitioner's facility. An initial ultrasound conducted by Dr. Rupali indicated an incomplete abortion as the cause of the bleeding. To address this urgent medical issue, a dilation and curettage procedure was performed on the patient the same day. The procedure was conducted by one Ms. Ranjeeta, assisted by an anaesthetist and a staff nurse. Despite the medical intervention, the patient's condition did not improve, necessitating her referral to Safdarjung Hospital for further medical care. It later emerged that Ms. Ranjeeta, who performed the D&C procedure, was not a qualified medical practitioner. She held a certificate from the National Council of Alternative Medicine and Research, purporting to qualify her as an MBBS (ASM) holder. However, this certificate is not recognized under the Indian Medical Degree Act, 1916, thereby rendering her qualifications and the legality of her practice into question.

6. On the basis of the aforementioned incident, the Delhi Medical Council appointed a Disciplinary Committee to examine a representation received by the Police regarding medical negligence in terms of the treatment of Ms. Bisht on 21st July, 2020. The Disciplinary Committee, after its



enquiry, determined that the Petitioner - Dr. Rupali Mishra, has violated Regulation 1.6 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002. This regulation stipulates that a registered medical practitioner shall uphold the standards of professional conduct and shall not associate professionally with anyone who is not registered with the State Medical Council or the Medical Council of India. The Disciplinary Committee's findings led to a recommendation to remove Dr. Mishra's name from the State Medical Register for a period of 15 days, a penalty that was later enhanced to 30 days by the Delhi Medical Council. Aggrieved by this order of the Delhi Medical Council, the Petitioner filed a first appeal before the Ethical & Medical Registration Board of the National Medical Commission. The EMRB, after reviewing the case, on 20th February, 2024, upheld the decision of the DMC affirming the aforesaid disciplinary measures imposed on Dr. Mishra.

7. Thereafter a second appeal was preferred by the Petitioner before the Chairman, National Medical Commission under Section 30(4) of the National Medical Commission Act, 2019. Accordingly, an Appeal Committee was constituted under the aegis of the Chairman, National Medical Committee, which through order dated 24th July, 2024, upheld the punishment ordered by EMRB in so far as the removal of the Petitioner's name from the State Medical Register for 30 days is concerned. However, at the same time they extended the scope of penalties by ordering the temporary closure of Dr. Rupali's Medical & Diagnostics Centre for a period of one month from the issuance of the order.

8. In light of the abovementioned facts, Dr. Amit Mishra, counsel for the Petitioner contends that the National Medical Commission has exceeded its jurisdiction by directing the closure of the Petitioner's medical centre. He further submits that the Appeal Committee failed to appreciate that in the first instance, the Delhi Medical Council did not have jurisdiction to punish the owner/proprietor of the Hospital/Diagnostic centre under Section 21 of the Delhi Medical Council Act.

9. Dr. Mishra brings to the court's attention the significant impact of the closure order on public health services and employment. He underscores that the Petitioner's diagnostic centre caters to approximately 50 to 60 out-patient department (OPD) patients daily, providing essential medical services including ultrasound scans, medical termination of pregnancy (MTP) procedures, pathology tests, digital X-ray services, ECG, and OPG among others. He stresses that these services are performed by fully qualified and competent doctors. Hence, it is unjust to penalize the entire facility and its staff for the deceit of one individual who falsely represented herself as being qualified.

10. At this juncture, counsel for the Petitioner gives an undertaking to the Court to mitigate concerns regarding the ongoing operations at Dr. Rupali's Medical & Diagnostics Centre. He states that, should the Court decide to grant a stay against the impugned order dated 24th July, 2024 passed by the National Medical Commission—which mandates the closure



of the diagnostic centre—Dr. Rupali Mishra will abstain from visiting the centre or engaging in any medical practice or consultations during the period in which her name has been directed to be removed from the State Medical Register. The aforementioned statement is taken on record and the Petitioner shall remain bound by the same.

11. On the other hand, Mr. Singhdev, counsel for Respondent opposes the petition and states that the registration of the Medical centre being in the name of the Petitioner necessarily entails closure of the facility till her name is restored on the State Medical Register.

12. The Court has considered the submissions of the parties. In light of the facts of the present case, the court would have to consider whether the punitive actions directed in terms of the medical centre itself are justified and proportionate to the misconduct involved. The legal framework governing medical ethics and medical facility operations must also be carefully scrutinized to determine if the National Medical Commission's decision is within the statutory and regulatory provisions.

13. The ramifications of a diagnostic centre's closure on patient care and public health also necessitate a careful evaluation of the case. The decision to close a medical facility impacts not only the employment of its staff but also the accessibility of healthcare to the community it serves. The principle of proportionality demands that sanctions imposed should not extend beyond what is necessary to address the specific infraction, particularly when such measures significantly affect third-party rights and public health services. Furthermore, it has been assured by the Petitioner's counsel that all medical services and consultations at the centre will be exclusively conducted by other medical professionals who hold valid qualifications and are fully competent under the relevant medical regulations. In light of the above, till the next date of hearing it is directed that the direction in the impugned order regarding closure of the Petitioner's Medical Centre shall remain stayed.

14. Issue notice. Mr. T. Singhdev, counsel accepts notice on behalf of Respondent. Reply, if any, be filed within a period of four weeks from today. Rejoinder, if any, be filed within two weeks thereafter.

15. Re-notify on 29th November, 2024.

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16. The Petitioner is directed to take the necessary steps to implead the patient/complainant, as a party to the present petition.

17. Issue notice. Mr. T. Singhdev, counsel accepts notice on behalf of Respondent.

18. Let the counter affidavit be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of four weeks thereafter.

19. Re-notify on 29th November, 2024."

4. As regards the issue of removal of the Petitioner's name from the



State Medical Register for 30 days, this Court did not interfere or grant any stay. The Petitioner then preferred an appeal assailing the aforesaid interim order before the Division Bench in LPA No. 747/2024, which was dismissed. The Petitioner then preferred Special Leave Petition bearing No. 17800/2024 against the order of the Division Bench, which was also dismissed by the Supreme Court.

5. As a consequence of the aforementioned interim order as well as the dismissal of the LPA and SLP filed by the Petitioner, the direction with respect to the removal of her name from the State Medical Register has already been implemented. In fact, Dr. Amit Mishra, counsel for the Petitioner, states that the Petitioner's name has now been restored with effect from 25th August, 2024. In light of the foregoing, the Petitioner does not wish to continue with the present proceedings in so far as removal of her name is concerned, as the said relief is now rendered infructuous.

6. The Petitioner's limited grievance is now with respect to the direction issued by the NMC to the owner of the centre, to close the centre for a period of one month from the date of the impugned order. On this issue, the Court had already observed that there is no provision under the framework of the National Medical Commission Act, 2019 empowering the NMC to issue a direction for closure of any nursing home or centre. Therefore, the direction to that effect in the impugned order is set aside.

7. In view of the above directions, the present writ petition is disposed of.

SANJEEV NARULA, J

NOVEMBER 29, 2024/ab