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

Reserved on: October 09, 2017
Pronounced on: October 27, 2017

\+ **LPA 577/2017& CMs 31824-25/17**

MEDICAL COUNCIL OF INDIA ..... Appellant
Through: Mr. Vikas Singh, Senior Advocate with Mr.T. Singh Dev, Ms. Biakthansangi, Mr. Tarun Verma and Ms. Puja Sarkar, Advocates

versus

DR ANIL GROVER &ORS .....Respondents
Through: Ms. Bina Madhavan and Ms. Akanksha Mehra, Advocates for respondent No.1
Mr. Vivek Goyal, CGSC with Mr. Rajeev Ranjan Shahi, Advocate for respondent-UOI

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE SUNIL GAUR

1. The first respondent (hereafter "the doctor") is a Professor of Cardiology who was debarred from undertaking any post of an administrative nature/teaching post of similar nature in any university and/or a medical college for a period of five years because the Ethics Committee of the appellant-Medical Council of India (hereinafter referred to as MCI) found that he was working in more than one medical college in the same academic session. The doctor's debarment was challenged by

a writ petition which was allowed by learned Single Judge by the impugned order of 03.07.2017. It was held that there is no evidence on record to hold that two institutes simultaneously employed the doctor.

2. The undisputed facts are that the doctor was appointed as Professor and Head of Department of Cardiology in Mamta Medical College, Khammam, Andhra Pradesh (hereafter referred to as MMC) on01.02.2013. According to him, due to certain differences with the administration, he had left the service of MMC on 12.05.2014 and sent an e-mail to the Chairperson of MMC on 14.05.2014 tendering his resignation effective from the said date. He had joined National Institute of Medical Sciences and Research, NIMS University, Jaipur (hereinafter referred to as NIMS) on 14.05.2014 itself. By letter of 11.05.2014, MCI sought clarification from MMC and NIMS regarding the doctor's being shown as working in two different institutions in the same academic session. Upon being put to notice, the doctor had sent a reply to the MCI on 19.05.2014 along-with a copy of his resignation letter(which he had sent to MMC). He maintained that MMC had accepted his resignation and had handed over the charge of Head of Department of Cardiology to one Vinod Kumar and that he (the first respondent) was paid salary upto 12.05.2014 only. The respondent doctor also stated that according to the biometric records in MMC, he had last entered the said premises on 12.05.2014.

3. To assert that the respondent doctor had joined NIMS on 14.05.2014 after he had resigned from MMC on 12.05.2014, reliance was placed upon his appointment letter issued by NIMS administration as well

as the joining letter of 14.05.2014. It is a matter of record that on directions of the MCI, the respondent/doctor had appeared before MCI's Ethics Committee and on the same day, the Ethics Committee also recorded the statement of the Principal of MMC. The record reveals that the Principal of MMC had deposed before MCI's Ethics Committee that the respondent doctor had gone to it (MMC) on12.05.2014 and not thereafter and that this was reflected from the biometric record and furthermore, that as he had resigned from his post on 14.05.2014 no response to the resignation letter could be sent as MMC did not have his current address.

4. It is evident from the minutes of the meetings of the Ethics Committee held on17.11.2014 and 18.11.2014 that the respondent doctor was directed to submit copy of a cable TV bills/telephone bill or bank statement in support of his residential/quarter address at the Campus of MMC but first respondent had failed to do so. Upon taking a serious view, the Ethics Committee decided to debar the respondent/doctor from undertaking any post of an administrative nature/teaching post of similar nature in any university and/or a medical college for a period of five years.

5. The appellant-MCI's stand in the writ petition was that there is no document to show that the first respondent was relieved from service by MMC and in the absence of a relieving letter from MMC, the respondent/doctor could not take up service in NIMS.

6. After taking note of the factual position and the respective stands taken by both the sides the learned Single Judge, in the impugned order,

concluded that action was taken by MCI on the presumption that the respondent/doctor was simultaneously employed by two colleges, but what had emerged from the record is that he first resigned from MMC and thereafter, had joined NIMS, though on the same date. The learned Single Judge held that there is no evidence on record establishing that the first respondent was employed simultaneously by two institutes and that merely the absence of a relieving letter from MMC did not mean that the resignation of the respondent/doctor was not accepted or he was not relieved from service. It is also noted in the impugned order that the MCI had not produced any regulation to show that an employee has to await a relieving order from the previous employer prior to joining service in another institute. The learned Single Judge allowed the writ petition and quashed the MCI's order debarring the respondent/doctor for five years from taking up any post of an administrative nature/teaching post of a similar nature in any university and/or a medical college.

7. Mr. Vikas Singh, learned senior counsel for MCI argues that the respondent/doctor's appointment letter of 14.05.2014 bears Reference No.88 and mentions his address as that of Mamta Medical College, Khammam. He however, had asserted that he had left MMC on12.05.2014 for a medical checkup and reached Mohali, Punjab on 13.05.2017 and had resigned through an e-mail of 14.05.2014. The said appointment letter could not therefore, have been addressed to Mamta Medical College, Khammam. Attention of this Court was drawn to the respondent/doctor's joining letter of the same date i.e. 14.05.2014 to urge that it also bears the same Reference No.88 and the address given therein

is of Mohali. This anomaly makes it clear that the respondent/doctor had misled MCI to benefit private medical college in starting a new course.

8. It was asserted on behalf of MCI that the respondent/doctor deliberately did not produce a copy of cable TV/telephone bill as proof of his stay at his residential address in Campus of MMC till 12.05.2014 and this lapse gives rise to a reasonable inference that he was working in two medical colleges simultaneously. It was submitted by MCI that in view of Regulation 8.1 of *Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002*, the disciplinary action taken against the respondent/doctor was justified.

9. Mr. Vikas Singh relied upon a Division Bench decision of this Court in LPA 702/2015 titled *Balbir S. Tomar v. Union of India & Another* and a judgment of the Single Judge of this Court in W.P. (C) No.6792/2010 titled *Sri Kanchi Kamakoti Peetam Charitable Trust v. The Union of India & Anr.* to reiterate that faculty members have to be in full time employment of medical colleges. Thus, it was submitted that debarment of the respondent/doctor was justified and therefore, the impugned order is liable to be set aside and debarment of the respondent/doctor should be restored.

10. Ms. Bina Madhavan, learned counsel for the first respondent/doctor supported the impugned order and submitted that when the doctor had submitted his joining report, his address at that time was of Mohali, Punjab and the appointment letter had been sent by NIMS at the MMC address and on this aspect, the respondent/doctor had no control.

Therefore, the impugned order suffers from no infirmity and so, this appeal deserves to be dismissed.

11. This court has considered the respective submissions of both the sides and has perused the impugned order as well as the record of this case. The mere circumstance that the appointment letter was sent by NIMS to the respondent/doctor at his previous address i.e. of MMC and the joining letter too showed his current address as of Mohali, Punjab, *ipso facto* could not justify a conclusion that something was amiss or that the respondent/doctor was practicing deceit. The same reference number (mentioned on the appointment letter and joining letter) is an aspect on which MCI could have sought clarification from NIMS and not from the respondent/doctor. The appellant sought no such clarification. Therefore, this circumstance cannot be used against the respondent/doctor.

12. It is quite evident from the record that this is not a case where the respondent/doctor was found to be simultaneously working in two medical colleges, as a result of any inspection or based on any oral testimony, or even documents available on the same dates, in both institutions. Apparently, the respondent/doctor had first resigned from MMC and thereafter had joined NIMS. It is a matter of coincidence that the resignation as well as the joining letter is of the same date, but that by itself would not justify any disciplinary action against him. The evidence of the Principal of MMC shows that acceptance of the resignation letter could not be sent for want of the respondent/doctor's current address, meaning thereby, the relieving letter could not be issued. This aspect is far from clinching. The two decisions relied upon by the appellant-MCI

were correctly distinguished by learned Single Judge in the impugned order as the instant case is not one where a teaching faculty member has been found to be simultaneously working at two different places.

13. In our opinion, the Regulation relied upon by the appellant merely permits initiation of disciplinary action, to which there is no challenge; however, the fairness of a disciplinary inquiry can always be the subject of judicial scrutiny. Non-production of cable TV/telephone bills cannot justify the impugned debarment either as no prudent person is expected to preserve such bills for months together, after leaving the medical college. It must be remembered that the MCI's Ethics Committee is a domestic tribunal, whose decisions, when accepted lead to adverse civil consequences, impinging on an individual doctor's ability to practice his profession- and likely to affect her or his livelihood. Adverse findings also impact the reputation, integrity and professional ability of the individual. Therefore, due care is to be adopted in the fact-finding and quasi-judicial adjudicatory processes, that a conjectural "may have done it" does not result in a "must have done it". In a judgment of the Supreme Court, this aspect was highlighted (albeit in a slightly different context, but nevertheless involving standard of evidence to be adopted by domestic tribunals), in *Maharashtra State Board of Secondary Education v K.S. Gandhi* (1991) 2 SCC 716, in the following terms:

> *"It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with*

the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inference in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred with as much practical as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation on conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight Jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

14. In the circumstances of this case, this court is of the opinion that the nature inference drawn by the Ethics Committee of MCI, which led to the decision to debar the respondent doctor from undertaking any post of

an administrative nature/ teaching post of similar nature in any university and/or a medical college for a period of five years was not justified by the materials on record. This court is of opinion that a different view from the findings and conclusion of the learned Single Judge, cannot be taken. This appeal consequently has to fail and is dismissed. The pending applications are also dismissed. No costs.

SUNIL GAUR
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

OCTOBER 27, 2017
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