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In the Delhi High Court

Case No : WP (C) No. 5677 of 2012 and CM No. 11629 of 2012

Dr. Alka Gupta — APPELLANT

Vs

Medical Council of India and Another — RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 45
Indian Medical Council Act, 1956 — Section 20A, 33, 33(m)
Penal Code, 1860 (IPC) — Section 304A

Citation : (2013) 133 DRJ 373 : (2013) 1 ILR Delhi 669

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Anil Goel and Mr. Rajeev Kumar, for the Appellant; Amit Kumar and Mr. Ashish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—This is a writ petition which is directed against the order dated 15.05.2012 passed in Appeal no. 597/2010 by respondent no. 1 i.e., the Medical Council of India (hereinafter referred to in short as MCI). The impugned order passed by MCI is an interlocutory order whereby, on an application filed by the petitioner challenging its jurisdiction, it took the view that it had the jurisdiction to hear the matter on merits. The judgment in this matter was reserved at the notice stage itself. MCI which had advance notice of the writ petition being filed in this court; was hence represented by counsel. It was for this reason, there was no representation on behalf of respondent no. 2.

Background

2. The writ petition has thus been filed in the background of the following brief facts:-

2.1. Late Nikita Manchanda was admitted in Max Hospital situate at Pitam Pura

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for delivery of a child, on 03.05.2009, at about 5.00 a.m. The child was in a breech condition which required performance of a lower segment caesarean section procedure, under general anesthesia. At about 5.41 a.m. on 03.05.2009 Nikita Manchanda delivered a male child. At around 8.30 p.m. on 04.05.2009, Nikita complained of severe pain in her lower abdomen and back, whereupon the patient was administered an injection. The pain, however, reoccurred alongwith cold chills. The patient was again injected with medicine and also given tablets. Evidently, the patient had two episodes of vomiting at around 2.00 a.m. on 05.05.2009. By 7.00 a.m., the patient complained of severe pain, which is when, the patient was shifted to SICU. In the interregnum, it appears, that blood investigation and ultrasound were also prescribed to be conducted qua the patient. Apparently, as the patient''s condition deteriorated, she was intubated for ventilatory support. The family members were apparently asked to arrange for blood, for which purpose, the family members approached a blood bank, at Shalimar Bagh, Delhi. However, unfortunately, Nikita''s condition worsened and she was declared dead at 12.30 p.m., on 05.05.2009.

2.2. Nikita''s husband Mr. Aman Sarna, lodged a complaint with the Police station located at Saraswati Vihar, Delhi wherein, after giving a brief summary of the events, as they had transpired between the time of his wife''s admission in Max Hospital and her death, he alleged that she died on account of "wrong treatment and negligence". He also demanded a post mortem to be carried out on his wife''s body.

2.3. Evidently, on 06.05.2009 a post mortem was carried out. A report on which, was deferred till the receipt of, the chemical analysis report. It would be pertinent to note that, neither the post mortem report nor the chemical analysis report, is on record.

2.4. On 28.05.2009, the Dy. Commissioner of Police, Head Quarters, Delhi wrote to the Dy. Secretary (Home), Govt. of NCT of Delhi, to request the Delhi Medical Council to give its opinion: as to whether there was any negligence involved in this case, since the family members of the deceased had lodged a complaint and alleged therein, that she died in suspicious circumstances, on account of medical negligence of the doctors at the Max Hospital.

2.5. Based on the above, the Delhi Medical Council examined the case and disposed of the same vide order dated 07.06.2010. It may be important to note, that the petitioner has raised an argument before me that, the Delhi Medical Council had erroneously referred to its decision of 07.06.2010, as an order, whereas it is really an opinion, which was sought by the police authorities, in line with the judgment of the Supreme Court, in the case of Jacob Mathew Vs. State of Punjab and Another, . I would deal with this aspect of the matter in the latter part of my judgment.

2.6. The Delhi Medical Council, after hearing the aggrieved parties, which included, the father and the husband, as also, the uncle of the deceased and, the

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doctors involved in the episode, came to the conclusion that, in their opinion no medical negligence could be attributed to the doctors in the treatment administered to late Nikita Manchanda. The operative part of the decision reads as follows:-

...The Delhi Medical Council observed that the patient had an elective caesarean section on 3.5.2009 Max Hospital, Pitampura, New Delhi. Her operative and immediate postoperative period was uneventful. However, on 4.5.2009 (11 PM), she had pain abdomen which is generally associated with a LSCS procedure. She was attended to by Dr. Pooja Bhatia, a resident in third year of her DM training (Obst. & Gynae) who was qualified to attend to the patient. As per the clinical condition the patient recorded at 11 PM (4.5.2009) and 2 AM (5.5.2009), there was no medical reasons to order for any diagnostic investigation under those circumstances. Administration of inj. Voveran and prescribing Tab. Mobizox, hot water bottle massage for lower backache and then administration of inj. Emset 4 mg. for vomiting, by the resident doctor was as per the standard protocol. Unfortunately, in spite of adequate care, patient collapsed in the morning and could not be resuscitated and even autopsy could not ascertain the cause of death, though idiosyncrasy drugs and pulmonary oedema have been mentioned in autopsy finding as a possibility.

In view of the above and autopsy report, the Delhi Medical Council is of the opinion that no medical negligence can be attributed on the part of the doctors of Max Hospital, Pitampura, New Delhi, in the treatment administered by them to late Nikita Manchanda....

2.7. The father of the deceased being dissatisfied with the decision arrived at by Delhi Medical Council, preferred an appeal under Regulation 8.7 and 8.8 of the Indian Medical Council (Professional, Etiquette and Ethics) Regulations, 2002 (in short the MCI Regulations).

2.8. The appeal was considered by the Ethics Committee of the MCI. By an order dated 08.03.2011, the Ethics Committee found the petitioner guilty of negligence in addition to Doctor Rajeev Kapoor, who was found negligent in providing incorrect information. Two other doctors i.e., Dr. Mohammed Nabi and Dr. Preeti Bobal, being junior doctors, were apparently let off as, "they did not have any major contribution towards the negligent management", of the deceased. The Ethics Committee had thereafter adjourned their deliberations to the next meeting to decide on the quantum of punishment to be imposed on those found guilty.

2.9. This order was challenged by the petitioner alongwith two others who were aggrieved by the decision of the Ethics Committee dated 08.03.2011, by way of a writ petition being: WP (C) 3015/2011. The writ petition was disposed of by a Single Judge of this court vide order dated 06.05.2011, with the following observations:-

..5. In as much as that the hearing of the appeal is to take place on 10th May

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2011 and the Petitioners are yet to be heard, this Court is not inclined to pass any order at this stage. It is obvious that no final order will be passed by the MCI without giving each of the Petitioners a full opportunity of being heard and considering all their submissions, including those raised in this petition and on the question of jurisdiction. The MCI will pass the final order without being influenced by any prima facie opinion which may have been formed by those at its meeting held on 8th March, 2011. If aggrieved by the Final order passed by the MCI, it will be open to the petitioners to seek such appropriate remedies as may be available to them in accordance with law.

6. The writ petition and the pending application are disposed of....

2.10. The petitioner was apparently satisfied with the manner in which the writ petition was disposed of, by this court, as there was no further challenge to the order dated 06.05.2011, passed by this court. The petitioner, however, contrary to the directions issued by this court that MCI would pass a final order both on the merits as well as on the question of jurisdiction after giving due opportunity to the aggrieved parties without being influenced by the prima facie opinion formed at its meeting of 08.03.2011, evidently moved a short application, on 10.05.2011 seeking dismissal of the appeal, at the very threshold, on the grounds of jurisdiction without entering into the merits of the case. The grounds raised in the application were briefly as follows:-

(i) the DCP (HQ) had made a representation to the Delhi Medical Council through Department of Home, Govt. of NCT of Delhi to seek its opinion as to whether there was negligence on the part of the doctors and the hospital in the treatment of the deceased. There is no provision for appeal against an opinion rendered by the Delhi Medical Council;

(ii) the original complaint with the police is filed by the husband of the deceased i.e., Mr. Aman Sarna, who had neither any objection to the opinion rendered by the Delhi Medical Council nor, had he preferred an appeal to MCI; and.

(iii) lastly, the appeal had been preferred by Sh. S.P. Manchanda, the father of the deceased. The appeal was not maintainable, as he was neither a class-I heir as per the Hindu Succession Act nor the original complainant.

2.11 The MCI by the impugned order dated 15.05.2005 framed three issues:-

...1. Whether the Ethics Committee has the jurisdiction to deliberate on this issue.

2. Whether there is any distinction between a representation and a complaint.

3. Whether the representation/complaint of the father is tenable.

2.12 The said issues were decided by a brief order, which is the impugned order, whereby it concluded that by virtue of powers vested in the Ethics Committee by regulation 8 of the MCI Regulations, it had the jurisdiction to deal with the matter; it also concluded that there was no distinction between representation and a complaint; and lastly, in so far as the Ethics Committee was concerned,

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any representation/a complaint filed by any member of the public was sufficient for it to take up the matter for consideration.

2.13 Accordingly, the Ethics Committee of MCI unanimously decided to issue notices to the concerned parties for consideration of the matter at their next meeting.

2.14 It is against the aforesaid order of the MCI that a writ petition has been filed under Article 226 of the Constitution of India.

Submissions of Counsels

3. Before me the petitioner was represented by Mr. Anil Goel and Mr. Rajeev Kumar, Advocates, while MCI was represented by Mr. Amit Kumar and Mr. Ashish Kumar, Advocates.

4. On behalf of the petitioners, the following submissions were made:-

4.1. The decision of the Delhi Medical Council was in the nature of an opinion sought by the police authorities through the aegis of Department of Home, Govt. of NCT of Delhi, in line with the judgment of the Supreme Court in Jacob Mathew''s case;

4.2. Even though the decision of Delhi Medical Council was given the nomenclature of an order, it was really in substance an opinion and hence, no appeal could have been maintained against such a decision;

4.3. As a consequence of submissions made above, it was contended, that MCI had thus no jurisdiction to deliberate and decide on the matter;

4.4. The opinion rendered by the Delhi Medical Council was, in sum and substance, an opinion of an expert body which would be tested in a proceeding in court: whether of civil or criminal nature; as it could only be treated as corroborative evidence and not conclusive evidence. Reliance in this regard was placed on section 45 of the Evidence Act, 1872. Much stress, was also laid on the composition of the body of the Delhi Medical Council which had examined the case. It was contended that it comprised of seven members, of which, five were doctors and the other two, an advocate and an eminent person involved in social work.

4.5. The MCI and the State Medical Council, in this case, the Delhi Medical Councils are bodies which can deal with professional misconduct of a doctor. The power to grant and suspend a licence of a doctor is vested with the State Medical Council. The State Medical Council can entertain a complaint against professional misconduct of any doctor as defined in Chapter 5 of the MCI Regulations under regulation 8.2 of the said regulations. It is when, the State Medical Council takes a decision under regulation 8.2, that an appeal would lie to the MCI under regulation 8.8 of the MCI Regulations.

4.6. In this case, a criminal case was sought to be triggered based on the alleged

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acts of negligence, which if, sustained would perhaps attract the provisions of Section 304-A of the Indian Penal Code, 1860 (in short IPC). It was in the process of investigation of those allegations by the police that an opinion was sought and rendered by the Delhi Medical Council. There was no complaint which was made to the Delhi Medical Council. The decision rendered by the Delhi Medical Council therefore, on 07.06.2010 could not have given respondent no. 2, in law, a right to prefer an appeal to MCI. Consequently, MCI in seeking to exercise jurisdiction qua the matter before it is without jurisdiction.

4.7. In support of the aforesaid submission, a reference was made to the provisions of section 20A and section 33(m) of the Indian Medical Council Act, 1956. Section 20A briefly, empowers the MCI to prescribe standards of professional conduct and etiquette and also code of ethics for medical practitioners. Sub section (2) of section 20A empowers the MCI to make regulations which would specify as to the violations which shall constitute "infamous" conduct, in other words professional misconduct, which regulations shall have effect notwithstanding anything contained in any law for the time being in force. Section 33 is the provision which empowers the MCI to generally make regulations to carry out the purpose of the Act. In particular, clause (m) empowers MCI to frame standards of professional misconduct and etiquette as also the code of ethics to be observed by the medical practitioners. A reference was thus made to the said provisions to buttress the contention made on behalf of the petitioner that the regulation 7 deals with various kinds of misconduct, while regulation 8.2, as indicated above, provides for the remedy to file a complaint before the "appropriate Medical Council" for disciplinary action with regard to professional misconduct. Regulation 8.8, as indicated above provides for a provision of appeal to the MCI within the stipulated period of sixty days with a provision for extension by another sixty days on sufficient cause being shown against the decision of the State Medical Council.

5. The sum and substance of the aforesaid was that the entire proceedings before the MCI were without jurisdiction and hence, the writ petition.

6. On the other hand, the learned counsel for respondent no. 1 relied upon the impugned order, and the record of the case, to contend that the matter required examination on merits and that the present writ petition was filed only to interdict the conclusion of the proceedings, before the MCI.

6.1. On the question of jurisdiction, learned counsel for respondent no. 1 laid emphasis on regulation 8.1 of the MCI Regulations, to contend that, MCI had concurrent jurisdiction to deal with offences and complaints of professional misconduct alongwith the State Medical Council. It was emphasised by the learned counsel for MCI that, regulation 8.1 of the MCI regulations, quite clearly, in no uncertain terms, indicated that the instances of offences as also of professional misconduct set out in the regulations, in particular, regulation 7 neither constituted nor were intended to constitute a complete list of "infamous" acts which called for disciplinary action.

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7. It was thus contended that the writ petition ought to be dismissed in limine, as the only purpose with which it had been filed was, to somehow, delay the conclusion of the proceedings before MCI.

Reasons

8. I have heard the learned counsels for parties and perused the record. Upon consideration of the matter, in my view, the following emerges in the case:-

8.1. The deceased Nikita Manchanda was admitted to the hospital at around 5.00 a.m. on 03.05.2009.

8.2. She delivered a male child at 5.41 a.m. on 03.05.2009.

8.3. Nikita Manchanda died at 12.30 p.m. on 5.05.2009.

8.4. She had complained of severe lower abdomen pain in the night of 4.05.2009, which was followed by atleast two episodes of vomiting.

8.5. Nikita Manchanda was administered various pain killers and other medicines despite which she died, nearly 39 hours post delivery of a child through caesarean section.

8.6. The aggrieved husband Aman Sarna instituted a complaint on the very same date i.e., 05.05.2009 with the police. Evidently, the police after nearly 23 days of the complaint being lodged sought the opinion of the Delhi Medical Council i.e., 28.05.2009.

8.7. The Delhi Medical Council gave its decision on 07.06.2010.

8.8. Aggrieved by the same, an appeal was preferred by the father of the deceased Sh. S.P. Manchanda.

8.9. At the meeting of 8.3.2011, held by MCI, a prima facie view was formed with regard to the guilt of the petitioner and two other persons.

8.10 A writ petition was preferred being WP (C) No. 3015/2011, whereby this court directed MCI not to pass any final order, without giving the petitioners, in that case (which included the petitioner herein), a full opportunity of being heard and considering all their submissions, including those raised in the petition and on the question of jurisdiction. MCI, was thus, directed to pass a "final order" without being influenced by any prima facie opinion formed at the meeting held on 8.3.2011. The petitioners, in that case, were given an opportunity to assail the "final order" of the MCI, if so aggrieved, in accordance with law.

9. Having regard to the aforesaid facts, it is quite evident that this court while passing order made it clear that there would be no piecemeal adjudication. Issues raised with regard to the merits as well as the jurisdiction, were required to be disposed of by the MCI, by a "final order".

9.1 The petitioner, however, has triggered a situation by moving an application

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before MCI, seeking decision on the issue of jurisdiction without allowing MCI to deliberate upon the merit of the case. Since, MCI has passed the impugned order, at the behest of the petitioner, it may be relevant to deal with the objections raised therein. The upshot of the objection to the jurisdiction raised is as follows:

9.2 Both MCI and the Delhi Medical Council can only deal with aspects of professional misconduct of medical practitioners under the MCI Act and the MCI Regulations framed thereunder. The decision of the Delhi Medical Council of 7.6.2010 is in the nature of an opinion sought by the police authorities prior to their taking a decision as to whether the criminal proceedings ought to be lodged against the petitioner. There being no complaint before the Delhi Medical Council with regard to professional misconduct, the decision of the Delhi Medical Council dated 7.6.2010 could not give rise to an appealable order. Therefore, the appeal preferred by the father of the deceased Nikita Manchanda was not maintainable. As noticed above, in the application filed before the MCI there was also an issue raised that the father of Nikita Manchanda could not have preferred an appeal as he was not a class-I heir. This aspect though was not argued before me.

10. In order to appreciate the contentions made on behalf of the petitioner, one would have to advert to regulations 7 and 8 of the MCI Regulations 2002 under which MCI claims to have exercised the jurisdiction. The relevant clauses are referred to hereinafter:

7. MISCONDUCT:

The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action...

7.1. xxx

to

7.24 xxx

(Regulation 7.1 to 7.24 detail out what, under the said regulations are regarded as acts of professional misconduct).

8. PUNISHMENT AND DISCIPLINARY ACTION

8.1. It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the

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code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

8.2. It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies.

8.3. In case the punishment of removal from the register is for a limited period, the appropriate Council may also direct that the name so removed shall be restored in the register after the expiry of the period for which the name was ordered to be removed.

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

8.5. During the pendency of the complaint the appropriate Council may restrain the physician from performing the procedure or practice which is under scrutiny.

8.6. Professional incompetence shall be judged by peer group as per guidelines prescribed by Medical Council 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.

8.8. Any person aggrieved by the decision of the State Medical Council on any

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complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council:

Provided that the MCI may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of 60 days....

11. A perusal of clause 8.1 would show that the instances of offences and/or professional misconduct which constitute an infamous act, and which call for disciplinary action, both MCI and/or the State Medical Council are empowered to deal with such a matter, and in this exercise they are not precluded from considering and dealing with any other form of professional misconduct which is not listed/categorized under regulation 7.

11.1 Regulation 8.1, when read alongwith regulation 8.2 and 8.8, would show that under regulation 8.1, the MCI, exercises both original as well as appellate jurisdiction. If MCI, is made cognizant of certain facts pertaining to what would constitute ordinarily in "letter or spirit" a professional misconduct by a registered medical practitioner then, it would have the necessary authority to deal with the matter. This power emanates, in favour of MCI from regulation 8.1.

11.2 Where a complaint is filed with regard to professional misconduct, it would have to be brought before the appropriate medical council, which could, in a given case be the State Medical Council or MCI, for disciplinary action. In the eventuality of, the medical practitioner being found guilty of professional misconduct and awarded punishment, the medical practitioner would have the right to file an appeal with the MCI, if the original complaint is filed and thereafter decided by the State Medical Council. But this is not to say that, MCI cannot on its own take action on an infraction of the regulation or an infamous act or professional conduct coming to its notice.

11.3 These aspects become clear on a careful scrutiny of regulation 8.1 and 8.2. Regulation 8.1 provides the power to issue notice for committing a professional misconduct to both the MCI and/or the State Medical Council. In regulation 8.2, the expression used is: not the State Medical Council but an ''appropriate'' Medical Council which in a given case could be the MCI. In regulation 8.8, consciously, the expression used is, once again, the ''State Medical Council''; as it provides for an appellate remedy. An appeal would lie, if the decision under regulation 8.2 is taken by the State Medical Council, which in such a case would be the appropriate Medical Council and not where MCI, has taken a decision.

11.4 The argument, therefore, of the petitioner that there was no complaint under regulation 8.2 with Delhi State Medical Council and therefore no decision had been rendered by it which could in turn be carried in appeal to MCI, is misconceived, if regard is had to construction put forth hereinabove. Regulation 8.2 enables the MCI to entertain a complaint, call it by whatever name. Accordingly, the appeal provision would have no relevance, since MCI has

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exercised original jurisdiction. The MCI, in the impugned order, has quite correctly concluded that, it makes no distinction between a representation and a complaint.

11.5 It is not the form but the substance of the representation, which would decide that: whether or not it raises an issue and, in that sense, a complaint of professional misconduct by a registered medical practitioner.

11.6 If such aspects come to the notice of MCI in whichever form then, in my view, the MCI would have, apart from anything else, concurrent original jurisdiction to deal with the alleged acts of professional misconduct.

11.7 While the learned counsel for the petitioner is right in his submission that the decision of the Delhi State Medical Council is, an opinion, which was sought, by the police authorities pursuant to the directions of the Supreme Court in Jacob Mathew''s case; it cannot deride from the fact that if, MCI was made cognizant of an act which prima facie had ingredients of professional misconduct then, MCI would have the necessary original jurisdiction to deal with such material placed before it. In that respect, rules of locus will not fetter the power conferred on MCI under regulation 8.1, therefore, while the learned counsel for the petitioner may be right in saying that there can be no appeal if the decision rendered by the Delhi State Medical Council is not an order in terms of regulation 8.2 that by itself, as indicated above, would not exclude the jurisdiction of MCI to take cognizance of the material placed before it, irrespective of the nomenclature given to it.

11.8 That MCI has original jurisdiction, is an argument, which finds resonance even in regulation 8.7. Regulation 8.7 clearly indicates that, where the State Medical Council fails to decide a complaint against a delinquent physician within a period of six (6) months from the date of receipt of complaint by it, and the MCI has reason to believe that there is no justifiable reason for the State Medical Council not to decide the complaint within the prescribed period of six (6) months, the MCI has two options available with it. The first one being: to direct the concerned State Medical Council to conclude and decide the complaint within a time bound schedule. The second option, with which we are concerned, is the power of MCI, to either straightaway withdraw the complaint to itself or, after expiry of the extended period stipulated by MCI, under the first option, to withdraw the complaint to itself and refer the same to the Ethics Committee. It may only be noted that regulation 8.7 was introduced by the MCI pursuant to the observations made by the Supreme court in the case of Malay Ganguly Vs. Medical Council of India and Others in, (2002) 10 SCC 93 . Therefore, there is no doubt in my mind that, the MCI has concurrent original jurisdiction, vested in it.

11.9 In this context, I have no difficulty in observing that the nomenclature given to the action filed by father of the deceased Nikita Manchanda, before the MCI, would have no relevance. Even though the action is titled as an appeal under the provisions of regulation 8.2 read with regulation 8.8 of the MCI Regulations, that

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by itself, would not take away the jurisdiction of the MCI to deal with the matter. Therefore, the argument of the petitioner that appeal would not lie from an opinion rendered by the Delhi Medical Council, is also misconceived, for the reason that MCI can treat the action of the father of the deceased, as an original complaint, and thereafter, deal with the matter in accordance with the extant provisions of the MCI Regulations.

11.10 While dealing with cases of professional misconduct, MCI is not fettered with rules of locus and, therefore, the fact that the father of the deceased was not the original complainant, or that he was not a class-I legal heir of the deceased, would make no difference.

11.11 The police authorities on their part having not proceeded in the matter so far, continue with the investigation and perhaps await the decision of the MCI with regard to the matter in issue.

For the foregoing reasons, I find no merit in the writ petition. The same is, accordingly, dismissed.

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