

**(2017) 11 DEL CK 0687**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 3407 Of 2017, Civil Miscellaneous No. 14904 Of 2017

Pradeep Govil

APPELLANT

Vs

Medical Council Of India & Ors

RESPONDENT

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**Date of Decision :** 06-11-2017

**Acts Referred:**

**Citation :** (2017) 11 DEL CK 0687

**Hon'ble Judges :** Vibhu Bakhru, J

**Bench :** Single Bench

**Advocate :** K. G. Sharma, T. Singhdev, Amandeep Kaur, Tarun Verma, Riya Sarkar, Praveen Khattar, Bapi Das

**Final Decision :** Disposed Of

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## **Judgement**

Vibhu Bakhru, J

1. The petitioner - a practicing medical doctor - has filed the present petition impugning an order dated 18.11.2016 (hereafter "the impugned order") passed by the Medical Council of India (hereafter "MCI").

2. The impugned order was passed in an appeal preferred by Mr Ram Singh Panwar (respondent no.3) against an order dated 30.07.2015 passed by the Delhi Medical Council (hereafter "DMC"). The petitioner's principal grievance is that the punitive measure of warning as was issued by DMC by its order dated 30.07.2015 has been sustained by MCI against the petitioner and respondent no.5 but respondent no.4, who was the operating surgeon and had conducted surgery on respondent no.3's wife, has been fully absolved of any negligence/misconduct. The petitioner contends that in view of the aforesaid decision absolving respondent no.4 of any medical negligence, the punitive measure against the petitioner and respondent no.5 could not have been sustained by MCI.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:

3.1 Respondent no.3's wife, Smt Kamla Panwar (hereafter "the patient") was treated at Primus Super Speciality Hospital, Chanakya Puri, New Delhi (hereafter "the hospital") by the petitioner as well as respondent nos. 4 & 5.

3.2 The patient came to the Out Patient Department (OPD) of the hospital on 02.06.2012 complaining of pain in both knees. The patient was admitted to the hospital for Bilateral Knee Replacement on 13.07.2012. She was operated upon for knee replacement on 14.07.2012. The condition of the patient deteriorated after the operation and she expired shortly thereafter.

3.3 Respondent no.3 filed a complaint with DMC alleging negligence on the part of the attending doctors (petitioner, respondent no. 4 and respondent no. 5). The said complaint was examined by the Disciplinary Committee of DMC. The Committee found that the patient was suffering from urinary infection and on 13.07.2012 "The patient was started on injection Augmentation and injection amikacin for Urinary Tract Infection" and the surgery was performed on the next date. The Committee held that there was no reasonable justification for performing surgery when the patient was being treated for urinary infection. The Committee noted that the surgery was an elective surgery and could have been performed after the patient had fully recovered. It held that "it was necessary to first completely treat the urine infection before undertaking surgery as per accepted professional practices". Consequently, the Committee also concluded that the surgery was performed for extraneous consideration.

3.4 Accordingly to the Disciplinary Committee of DMC, "the C.T. angiography finding of acute pulmonary edema and not of pulmonary embolism would suggest transfusion resulted acute lung infection (TRALI) as a rare cause of death". The Committee also observed that an autopsy should have been done to confirm the cause of death.

3.5 In view of the above, the Disciplinary Committee of DMC recommended that a warning be issued to respondent no. 4 (Dr Surya Bhan), respondent no. 5 (Dr Ajay Singhal) and the petitioner (Dr Govil) and they be advised to be careful. The aforesaid recommendations were confirmed by DMC and the DMC awarded the punishment of warning to the three attending doctors including the petitioner.

3.6 Respondent no.3 was aggrieved by the quantum of punishment awarded as according to him the punishment ought to have been more severe. He, accordingly, preferred an appeal before the Ethics Committee of MCI which was disposed of by the impugned order. The Ethics Committee of MCI held that the condition of the patient had deteriorated after the second blood transfusion in the ICU and this made it clear that there was no negligence on the part of Dr Surya Bhan, respondent no.4 who was the operating surgeon. The Ethics Committee of MCI further held that Dr Ajay Singhal and the petitioner "did not manage the patient properly". Accordingly, the Ethics Committee of MCI decided to exonerate Dr Surya Bhan and warned the petitioner and Dr Ajay Singhal to be more cautious in future. The aforesaid punishment was approved by the Executive

Committee of MCI on 23.08.2016 and the impugned order was passed thereafter.

4. Mr K.G. Sharma, learned counsel appearing for the petitioner contended that DMC had imposed the punishment for the sole reason that surgery was performed on the patient without completely treating the urinary tract infection. Since, MCI had not accepted the said reason and had absolved Dr Surya Bhan, there would be no reason to uphold the punishment awarded to the petitioner and Dr Ajay Singhal.

5. Mr T. Singhdev, learned counsel appearing for MCI contended that the petitioner had no ground to challenge the impugned order as the petitioner had accepted the punishment imposed on him and had not filed any appeal against the decision of DMC. He submitted that the petitioner could not be permitted to re-agitate the issue at this stage. He further contended that since the Ethics Committee found that the problem was with the blood transfusion, Dr Surya Bhan could not be held accountable for the same and it was only the petitioner and Dr Ajay Singhal who were responsible.

6. The contentions advanced on behalf of MCI are not persuasive. DMC had clearly observed that "there were no irregularities in the blood transfusion protocol followed in this case". Thus, it is clear that DMC had not found any negligence on the part of doctors in providing blood transfusion. The only reason for imposing punishment was that the patient had been operated upon without fully completing the treatment for the urinary tract infection. Apparently, MCI has differed with the above finding and absolved Dr Surya Bhan.

7. It is clear from the above that the punishment imposed by MCI on the petitioner and Dr Ajay Singhal is for completely different reasons and the petitioner is well within his right to seek an opportunity to contest the same.

8. Although, it is held in the impugned order that the petitioner and Dr Ajay Singhal did not manage the patient properly, no reasons for the said finding are ascertainable from the impugned order. Plainly, if MCI had come to the conclusion that the petitioner and Dr Ajay Singhal were guilty of medical negligence other than that found by DMC, it was incumbent upon MCI to clearly specify the reasons for its finding.

9. It is also relevant to note that the impugned order is silent as to whether the surgery was justified while the patient was suffering from a urinary tract infection. DMC had found that it was necessary to treat the infection before undertaking surgery as per accepted profession practices.

10. In view of the above, the impugned order is set aside and the matter is remanded to MCI to consider afresh in the light of the observations made above.

11. The petition alongwith the pending application is disposed of. No order as to costs.