
(2009) 05 DEL CK 0035
In the Delhi High Court
Case No : Writ Petition (C) 6604 of 2003

Praveen Garg

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0035

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : S.L. Gupta and Virender Singh, Virender Mehta, for the Appellant;

Judgement

Sanjiv Khanna, J.—The petitioner-Dr. Praveen Garg has challenged in this writ petition letter dated 10th October, 2003 written by Medical Council of India informing him that he has been found "prima facie guilty of infamous conduct in respect of medical profession". Accordingly, the Medical Council of India has decided to remove his name temporarily from registration of the Indian Medical Register for a period of three months with effect from 13th October, 2003. The said letter reads:

Sir/Madam, The General Body of the Council at its meeting held on 20th & 21st Nov., 2002 after taking note that upon information and evidence given by complainant Sh. Vikram Raheja, C/o Smt. Meena Raheja, 123-R., Model Town, Karnal have noted that Dr. Praveen Garg has committed negligence in the treatment/management of the patient namely Sandeep Kumar Raheja. Hence, he has been found prima-facie guilty of infamous conduct in respect of medical profession. In light of the above facts, it has been decided by the Council to remove his name temporarily against Regn. No. MCI-5577, dated 21.4.1986, from the Indian Medical Register for a period of three months w.e.f. 13.10.2003.

2. The letter itself states that Medical Council of India had formed a prima facie opinion and not a final conclusion or decision before imposing punishment, suspending or removing the petitioner's name from the register for a period of

three months.

3. Medical Council of India is duty bound and under an obligation to take action against doctors, who are guilty of misconduct. However, no punishment or finding of misconduct is established by a mere prima facie finding. Conclusion duly supported and fortified by sound reasons is required before a doctor is held to be guilty of misconduct. Prima facie opinion does not justify imposing punishment of suspension. It can only justify further enquiry and investigation. Punishment is to be imposed after reaching the conclusion that the concerned doctor was guilty of negligence or misconduct. Finding of misconduct or professional misconduct is an emotive issue and has serious implications and tarnishes image and casts aspersions on professional skill of a doctor. Misconduct should entail punishment and is required to be uncovered but not in this manner. The Supreme Court in the case of *Martin F. D'Souza Vs. Mohd. Ishfaq*, observed:

35. Before dealing with these principles two things have to be kept in mind:

...(2) A balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalized, it must also be remembered that like all professionals doctors too can make errors of judgment but if they are punished for this no doctor can practice his vocation with equanimity. Indiscriminate proceedings and decisions against doctors are counter productive and serve society no good. They inhibit the free exercise of judgment by a professional in a particular situation.

4. Learned Counsel for the respondent-MCI has, however, referred to the counter affidavit and drawn my attention to minutes of the meetings of the Ethical Committee. In this regard, he has referred my attention to meeting held on 21st May, 2002 by the Ethical Committee, which records that the petitioner was asked to appear before the Ethical Committee on 22nd June, 2002. The second minutes are dated 20th & 28th June, 2002. The Ethical Committee has recorded that the Committee had gone through the reply given by Dr. Praveen Garg, the petitioner and he had appeared before the Committee and clarified various matters asked by the members of the Committee on the complaint and the treatment procedure. The Committee decided to review the whole issue in the next meeting. In the next meeting, the Ethical Committee recommended as under:

The Committee perused the available records and have heard Dr. Praveen Garg in person on 28.6.2002. The Committee arrived at a unanimous conclusion that there is evidence of medical negligence by Dr. Praveen Garg bearing Regn. No. MCI-5577 dated 21.4.96 whereby he failed to take prompt remedial measures during the post operative period while the patient had recovered fully from Anaesthesia, which every diligent doctor is expected to do. The Committee also noted that Dr. Praveen Garg does not possess resuscitation equipment within precincts of his hospital. The Committee therefore unanimously recommends to the General Body of the Medical Council of India that his name be temporarily erased from the medical register for a period of 3 months. The Committee

further recommends that this decision of the Ethical Committee may be placed before the next meeting of the General Body of the MCI for its consideration.

5. The minutes of the Ethical Committee were approved by the Executive Committee on 9th September, 2002 and then in the General Body Meeting on 16th October, 2002, as they were without further clarification, reasons or elaboration.

6. The Ethical Committee in its report has merely recorded that the petitioner had failed to take prompt remedial measures without specifying what prompt remedial measures were not taken and were required to be taken. It again records that the petitioner did not take action as a diligent doctor was expected to do. The Ethical Committee does not specify what a diligent doctor was required to do in the said circumstances, which was lacking or not undertaken by the petitioner. The Committee has then noted that Dr. Praveen Garg did not possess resuscitation equipment within the precinct of the hospital. Whether the said equipment was necessary and required in a hospital/nursing home where laparoscopy operations were/are undertaken as per statute or MCI rules or regulation or as per standard or approved medical practice is not mentioned and stated in the said minutes.

7. It is the contention of the petitioner that he had furnished justification, relevant papers and documents, which were relied upon before the Ethical Committee but his stand has not been considered. Learned Counsel for the respondent-Medical Council of India disputes the said statement. As there is no discussion, it is impossible for the Court to give any firm opinion. Proven professional misconduct requires deterrent action by the Medical Council, but the order imposing punishment should be well informed and reasoned. It should refer to the normal medical procedure, which was not followed or wrong procedure which was followed and examine and consider why and for what reason the doctor under scrutiny adopted the procedure in question. The reasons should be apparent from the order for the concerned doctor to understand and know his fault. The fairness and justice requires that any professional who is held guilty and his professional licence suspended or cancelled, should know the exact reasons and findings. Conclusion without discussion or finding is insufficient. Referring to importance of reasoned orders, the Supreme Court in Vishnu Dev Sharma Vs. State of U.P. and Others, observed:

8. 11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander

Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed: Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

9. 3. ...This Court in State of Orissa v. Dhaniram Luhar has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any license to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: "varying according to the Chancellor's foot". Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. Such ritualistic observations and summary disposal which has the effect of, at times, cannot be said to be a proper and judicial manner of disposing of judiciously the claim before the courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.

8. In these circumstances, I have no other option but to remit this matter back to the Medical Council of India to take a fresh re-look and decide the complaint. Impugned order suspending/cancelling the petitioner's licence is set aside.

9. The petitioner will appear before the Medical Council of India on 12th June, 2009 at 2 p.m. The Medical Council of India will complete the enquiry expeditiously and within a period of four months from the said date. Interveners in the present petition will be also permitted to join the said enquiry as per procedure and Rules of Medical Council of India.

10. The writ petition is disposed of. No costs.

11. It is clarified that this Court has not expressed any opinion on the merits of the complaint and the stand of the petitioner or on the question whether he is guilty of professional misconduct.