2023:DHC:7792

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

Date of decision: 19th OCTOBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 13499/2019**

DR. NEENA RAIZADA ..... Petitioner

Through: Mr. Trilok Nath Saxena, Mr. Abhinav Saxena and Dr. Shiv Kumar Tiwari, Advocates.

versus

MEDICAL COUNCIL OF INDIA THROUGH ITS SECRETARY & ORS. ..... Respondents

Through: Mr. T. Singhdev, Mr. Aabhaas Sukhramani, Mr. Abhijit Chakravarty, Mr. Tanishq Srivastava, Ms. Anum Hussain, Mr. Bhanu Gulati and Ms. Ramanpreet Kaur, Advocates for R-1. Ms. Sugandha Anand and Mr. Vaibhav Srivastava, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner seeks to challenge the Order dated 13.08.2019 passed by the Medical Council of India issuing a warning to Dr. Ravi Kumar and Dr. Arti Lalchandani not to issue any opinion letters without seeing the patients.

2. The Petitioner herein is the complainant. The Petitioner approached the UP State Medical Council alleging misconduct on the part of one Dr. Arti Lalchandani and Dr. Ravi Kumar for issuing a certificate dated 09.07.2014. The said certificate reads as under:-

2023:DHC:7792

Indian Medical Association

Kanpur Branch

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KANPUR 2013-2014

President
Dr. Arati Lalchandani
9839870077

Hony. Secretary
Dr. Ravi Kumar
9839104901

Date 9th July, 2014

TO WHOM IT MAY CONCERN

This is with reference to letters / complaints and plea for help from Members of IMA Kanpur Dr. Jyotsana Mohan and Dr. Maneesh Mohan Vs Dr. Neena Mohan. On speaking to the above complainants and perusal of prescription dt. 10-04-2007 by Dr. S.S. Agnihotri H.O.D. Psychiatry, G.S.V.M.Medical College, Kanpur, it is evident that Dr. Neena Mohan is suffering from Paranoid Schizophrenia, has delusions of persecution, does not have insight into her problems, as well as her judgment is severely affected. Such patients are very suspicious of everyone around them and fear that they will be killed. They start acting upon imaginary fears and become a danger to others and even themselves. These patients put weird, elaborate and serious allegations often of a sexual nature on persons around them. Threats, abuses, violence, and destructive activities become a part of their routine life. They often need hospitalization and forced treatment because of lack of insight.

So before acting on the complaint of a patient of Paranoid Schizophrenia, a psychiatrist's opinion and utmost discretion is required.

The IMA Kanpur shall be glad to help the administration and the police in this regard.

Arati Lalchandani सत्यापित

Dr. Arati Lalchandani
President

Dr. Ravi Kumar
Hony. Secretary

3. The allegation of the Complainant, who herself is a Doctor, is that Dr. Arti Lalchandani and Dr. Ravi Kumar issued the certificate even without examining the Complainant/Petitioner.

4. The UP State Medical Council warned the said doctors not to issue certificates/opinions without examining the patients. The said decision was challenged by the complainant before the Medical Council of India.

5. The Medical Council of India by the order impugned herein after examining the Petitioner herein, who is a Doctor herself and MD in Anesthesia, and after examining the concerned doctors, observed as under:-

> *"The Committee further noted that now, the appellant namely Dr. Neena Raizada has received an order dated 04.06.2018 from / passed by Uttar Pradesh Medical Council. The relative part of the order is as under :-*
>
> > *"... Looking into records and listening to version of doctors as well as complainant, it was observed that Dr. Ravi Kumar and Dr. Arti Laldandani should not have given their opinion on their official letterhead without having examined the patient personally. Both Dr. Ravi Kumar and Dr. Arti Lalchandani are warned not to issue any opinion letters on official letterhead in future."*
>
> *Further, the committee noted that Dr. Neena Raizada was not satisfied with the order dated 04.06.2018 passed by Uttar Pradesh Medical Council and Filed an appeal dated 26.07.2018 before the Medical Council of India within the stipulated time frame of 06 months.*
>
> *The Ethics Committee further discussed the matter in*

detail and after detailed deliberation, the Committee decided to accept the said appeal.

The Committee further decided to call both the parties the appellant namely Dr. Neena Raizada and the respondent doctors for hearing alongwith all the supportive documents available with them in the next/subsequent meeting.

Whereas, the Ethics Committee of the Council investigated the matter and recorded the statements of Dr. Neena Raizada, Dr. Arti Lalchandani & Dr. Ravi Kumar.

The above matter was considered by the Ethics Committee at its various meetings and lastly meeting held on 19t" February, 2019. The operative part of proceedings of the said meeting is reproduced as under:-

> *" The Committee deliberated upon the matter at length and is of the unanimous opinion that issuing such type of letter/certificates to a patient without seeing/examining the patient under the letter head of IMA is a professional misconduct on the part of doctors. The Committee after detailed discussion and deliberation is of the unanimous opinion that both Dr. Ravi Kumar and Dr. Arti lalchandani are guilty for violation of Clause 7.7 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 which reads as under:"*
>
> > *7.7 Signing Professional Certificates, Reports and other Documents:*
> >
> > *Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give*

> *certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix -4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register.*
>
> *The Committee further noted that both Dr. Ravi Kumar and Dr. Arti Lalchandani have been warned by the Uttar Pradesh Medical Council not to issue any opinion letters of official letterhead in future.*
>
> *The Committee after detailed discussion and deliberation is of the unanimous opinion that there is no infirmity in the order dated 04.06.2018 of the Uttar Pradesh Medical Council and therefore, the Ethics Committee decided to uphold the same.*
>
> *The above recommendations of the Ethics Committee have been accorded approval by the Board of Governors at its meeting held on 11.05.2019."*

6. The only contention raised by learned Counsel for the Petitioner is that Regulation 7.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, does not postulate any punishment by way of warning rather the only punishment which is stipulated under the Regulations is of removal of the Doctor from the rolls of the Medical Council.

7. Learned Counsel for the Respondent/National Medical Commission,

which is successor body of the Indian Medical Council, draws the attention of this Court to Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, to contend that the Medical Council has the power to award any punishment as deemed necessary and it has also the power to award the punishment of removal of name from the rolls.

8. Regulation 7.7 and 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, read as under:-

> *"**7.7 Signing Professional Certificates, Reports and other Documents:** Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix –4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper, **is liable** to have his name deleted from the Register.*
>
> *xxx*
>
> ***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. "*
>
> (emphasis supplied)

9. Regulation 7.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, prescribes that professionals are bound by law to give certificates in their personal capacity. It is stated that if a certificate which is given by a medical practitioner is untrue, misleading or improper, is liable to have his name removed from the rolls. The period of the removal is mentioned in the order debarring such practitioner from practicing. Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, gives power to the Medical Council to award punishment in case of misconduct.

10. From a perusal of the Rules it cannot be said that for the misconduct as prescribed in Regulation 7.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the only penalty that can be levied is one of removal from the rolls and that the penalty stipulated in Regulation 7.7 is excluded by implication from powers given to the Medical Board in Regulation 8.2. Regulation 8.2 gives power to the Medical Council to impose penalties in case of misconduct including that, which is one mentioned in Regulation 7.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The penalty may extend to removal of the practitioner from the rolls altogether or for a specified time as prescribed in Regulation 8.2 & 8.3.

11. Learned Counsel for the Respondent draws the attention of this Court to a decision passed by the Full Bench of the Allahabad High Court in Sukh Dev v. State of U.P., **2017 SCC OnLine All 2992** and more particularly to paragraphs 17, 18 and 19, which read as under:-

> *"**18**. It is well settled that a statute is not to be interpreted merely from a lexicographer's angle. The Court must give effect to the will and inbuilt policy of the legislature as discernible from the object and scheme of the enactment and the language employed therein. If the language of penal provisions in I.P.C. is taken as a whole, it shows that the legislation empowers the Court to impose fine and it does not mandate it, except where it is made clear. In other words, whether to impose fine or not is left to the discretion of the Court and if that was not the case, the legislature would have used similar language as has been used in section 326-A of I.P.C. It is true that it is desirable for Courts to impose fine also along-with the sentence of imprisonment with direction to undergo further imprisonment if the fine is not paid, as contemplated by section 63 of I.P.C. but merely because sentence of fine is not inflicted, it would not either vitiate the order of punishment or render unsustainable in law.*
>
> ***19**. The Supreme Court in Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Matty,1 considered the word 'liable' while dealing with the question whether the vehicle carrying contraband items was liable to be confiscated under section 63 of the Bengal Excise Act, 1909. This provision uses the expression "shall be liable to confiscation.' There, the Supreme Court considered the word 'liable' and observed thus:*
>
> > *"Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of*

> *an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used alongwith the words "shall be". Thus, where an American Revenue Statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law. (See Kate Heron, 14 Fed Cas 139, 141 : 6 Sawy, 106 quoted in Words and Phrases, Vol. 25, page 109, Permanent Edition, West Publishing Co.) Similarly, it has been held that in section 302, Penal Code, 1860, the phrase "shall also be liable to fine" does not convey a mandate but leaves it to the discretion of the Court convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life."*
>
> *(Emphasis supplied)"*

12. Though this case deals with an offence under the IPC, the same principle can be followed while construing the scope and ambit of Regulation 7.7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

13. Learned Counsel for the Respondent also draws the attention of this Court to the judgment passed by the High Court of Kerala in State Tax Officer, Investigation Branch-I & Ors. v. Y Balakrishnan, **2021 SCC OnLine Ker 4651.** The relevant portion of the said judgment reads as under:-

> *"*
>
> ***36**. The words 'be liable' indicates that the tax, penalty and charges will fall due upon the owner of the goods or the person referred in sub-clause (1), at any point of time thereafter, and not necessarily along with the*

payment of fine in lieu of confiscation. The words 'in addition' 'be liable' and 'payable' in section 130(3) are indicative of the burden of obligation that will befall, over and apart from fine. These words cannot be stretched to mean that the liability will have to be paid immediately. There is a necessity to conduct an adjudication before ascertaining the quantum of tax, penalty and other charges payable. Before such adjudication, the dealer cannot be compelled to pay the tax or penalty.

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***40**. The words in a statute often take their meaning from the context of the statute as a whole, as is clear from the legal maxim 'exposition ex visceribus actus'. The words cannot be construed in isolation. The words 'be liable' in the context in which it occurs in section 130(3) of the Act only imports a possibility of attracting liability. Merely because the owner of goods or conveyance opts to pay fine in lieu of confiscation does not mean that the facts essential for incurring the liability to order confiscation automatically stands proved. That proof has to come out through the process of adjudication, as otherwise, there would be conferment of unbridled powers upon the Proper Officer to coerce every dealer to pay fine, tax, penalty and other charges without even any adjudication. Such a procedure is against fairness and contrary to the principle of rule of law.*

***41**. In the decision in Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity [(1979) 4 SCC 85], though the words 'be liable' in that decision was held to have a compulsive force, it was observed as follows;*

> *"Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of*

> *an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words 'shall be'. Thus, where an American Revenue Statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law. Similarly, it has been held that in Section 302, Penal Code, 1860, the phrase "shall also be liable to fine" does not convey a mandate but leaves it to the discretion of the Court convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life."*
>
> ***42**. Thus the words "be liable" in section 130(3) of the Act only conveys a possibility of attracting the obligation and not an imperative obligation, shorn of fair procedure. In view of the above deliberations, this Court is of the view that, when fine in lieu of confiscation is paid by a dealer under section 130(2) of the Act, the liability for payment of tax, penalty and charges will fall upon the dealer, in addition to the fine and they need be paid only after adjudication. To obtain the release of the goods or conveyances, while the adjudication proceedings are continuing, the taxpayer needs to pay only the fine and not the tax, penalty and charges thereon. The tax, penalty and charges can be paid after adjudication.*
>
> *Issue No. (iii) What is the basis or rate for calculating the fine under section 130 of the Act?"*

14. The said judgment arises out of a case under the Central Goods and Services Tax Act, 2017 and deals with interpretation of Section 130 of the

Central Goods and Services Tax Act and more particularly the term "be liable".

15. The contention of the Petitioner that the only penalty which can be imposed on a Doctor who gives a certificate which is untrue, misleading or improper is the removal of the name of the Doctor from the rolls of the register of Medical Council cannot be accepted. Regulation 7.7 only postulates that a Doctor who gives an untrue, misleading or improper certificate can be removed from the rolls of the register of Medical Council. However, it does not mean that that the only punishment that can be given to such a Doctor is the removal of the name from the rolls of the register of Medical Council. Regulation 8.2 on the other hand deals with punishments that can be imposed on a Doctor for his professional misconduct. Regulation 8.2 gives power to the Medical Council to impose any punishment as is deemed necessary which can also include the removal of the name of the Doctor from the rolls of the register of Medical Council permanently or for a specified period.

16. In view of the above, there is no merit in the writ petition. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 19, 2023
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