

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT APPEAL NO: 472 OF 2015

Writ Appeal under clause 15 of the Letters Patent preferred against the Order dated 24.04.2015 in WP No. 7369/2015 on the file of the High Court.

Between:

DR. Nirmala Agarwal, W/o. Dr. Omprakash Agarwal aged about 55 years,
Occ Doctor R/o. 21-1-366/370. Ricab gunj Hyderabad - 500 002.

...APPELLANT/PETITIONER

AND

1. Medical Council of India, represented by its Secretary Pocket- 1 4, Sector-8 Dwaraka, New Delhi - 110 077.
2. The **Telangana** Medical Council, represented by its Registrar Sultan Bazar, Hyderabad - 500 095.

(Amended as per C.O dated 24/06/2024 in IA No. 1/2024)

3. Dr. Ajay Kumar Nampally, S/o. Sri N. Lingaiah aged about 40 years, Occ Doctor R/o. 1-2-18/1, Near Area Hospital Bhongir, Nalgonda district.

...RESPONDENTS/RESPONDENTS

I.A. NO: 1 OF 2015(WAMP. NO: 1285 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an Order suspending the order dated 24-04-2015 passed in W.P.No.7369/2015 by the single judge of this Hon'ble Court, to the extent of remanding the matter to the first respondent for consideration afresh, pending disposal of the above writ appeal, in the interest of justice

I.A. NO: 2 OF 2015(WAMP. NO: 1412 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order receiving the pleadings and material papers of the case in W.P. No.11355/2015, being filed along with this petition as additional material papers and to make it part of the record of the present case, in the interest of justice

**Counsel for the Appellant: SRI D. PRAKASH REDDY SENIOR COUNSEL
REP SRI. SHYAM S AGRAWAL**

Counsel for the Respondent No.1: SRI SRINIVAS DAMMALAPATI

**Counsel for the Respondent No.2: SRI V. V. ANIL KUMAR
(SC FOR AP MEDICAL COUNCIL)**

**Counsel for the Respondent No.3: SRI. S.V.RAMANA FOR SRI O. MANOHAR
REDDY(SC FOR APTRANSCO)**

The Court made the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT APPEAL No.472 of 2015

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. D. Prakash Reddy, learned Senior Counsel represents Mr. Shyam S Agarwal, learned counsel for the appellant.

Mr. S.V. Ramana, learned counsel represents Mr. O. Manohar Reddy, learned counsel for respondent No.3.

2. This intra Court appeal emanates from the order dated 24.04.2015 passed in W.P.No.7369 of 2015 by which the writ petition preferred by the appellant against the order dated 01.10.2014 passed by the Medical Council of India (hereafter referred to as "MCI") has been disposed of with the direction to MCI to decide the matter afresh.

3. Facts giving rise to filing of this appeal in nutshell are that one Smt. Rama Devi, W/o Dr. N. Ajay Kumar, who is respondent No.3, visited the appellant for consultation of treatment of secondary infertility. Thereupon, she was advised the procedure for diagnostic hysteroscopy. On

11.07.2012, the procedure for diagnostic hysteroscopy took place. Unfortunately, during the course of the treatment, the wife of respondent No.3 expired. Her body was sent for autopsy to Osmania General Hospital. Respondent No.3 thereupon lodged a complaint on 09.01.2013 before MCI marking a copy to the Telangana Medical Council (hereinafter referred to as "TMC").

4. On 30.01.2013, MCI forwarded the complaint to TMC for investigation and TMC on 04.02.2013 registered the case against the appellant as well as three others, including one Dr. Mir Liyaquat Ali, Anesthesiologist, by which the aforesaid persons were asked to submit explanation. The appellant submitted her explanation before TMC.

5. Thereafter, the appellant received notice on 06.06.2014 from MCI by which she was asked to appear on 12.06.2014 before MCI. The appellant, however, sought time and informed MCI by email dated 09.08.2014 that proceedings are pending before TMC. The appellant,

however, appeared before MCI on 13.08.2014 and her statement with regard to the incident was recorded.

6. The appellant thereafter filed W.P.No.24789 of 2014 against the enquiry proceedings, which were pending before MCI along with an application seeking stay of the aforesaid proceedings. A Bench of this Court by an order dated 11.09.2014 stayed the proceedings pending before MCI, but clarified that the proceedings before the State Medical Council shall go on. However, despite the order of stay granted by a Bench of this Court on 11.09.2014, the Executive Committee of MCI approved the recommendations of the Ethics Committee and an order dated 23.01.2015 was passed against the appellant by which the name of the appellant was removed from the IMR for a period of one year. The appellant was served with a copy of the aforesaid order on 02.02.015.

7. In order dated 19.02.2015, TMC did not find mention any deficiency in service or negligence on the part of the appellant. However, the Anesthesiologist, namely, Dr. Mir Liyaquat Ali, was found guilty of negligence and

punishment of removal from the rolls for a period of six months was imposed.

8. Being aggrieved, the appellant filed W.P No.7369 of 2015 against the order dated 23.01.2015 passed by MCI, whereas the aforesaid Dr. Mir Liyaquat Ali, Anesthesiologist, filed W.P.No.11355 of 2015 in which orders passed by TMC as well as MCI were challenged.

9. The learned Single Judge by a common order dated 24.04.2015 decided both the writ petitions and *inter alia* held that the order dated 23.01.2015 passed by MCI removing the name of the appellant from the IMR for a period of one year is in violation of the interim order of stay dated 11.09.2014 passed in W.P.No.24789 of 2014. It is further held that the impugned order is in violation of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter referred to as "the 2002 Regulations"). The learned Single Judge therefore quashed the order dated 23.01.2015 passed by MCI as well as the order dated 19.02.2015 passed by TMC. However, the learned Single Judge remitted the matter for

consideration to MCI afresh. With the aforesaid factual background, the appellant has filed this intra court appeal being aggrieved by the order of the learned Single Judge only to the extent insofar as it relates to remittance of the matter to MCI.

10. Learned Senior Counsel for the appellant has submitted that the learned Single Judge rightly agreed with the contention urged by the appellant that an appeal under Regulation 8.8 of the 2002 Regulations does not lie. It is further submitted that the learned Single Judge has rightly appreciated that MCI did not invoke the powers under Regulation 8.7 and therefore in the facts and circumstances of the case ought not to have remitted the matter. Our attention has also been invited to the judgment dated 18.07.2023 passed in Sessions Case No.406 of 2017 by the Additional Metropolitan Sessions Judge for Communal Offences-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, and it has been pointed out that the appellant has been acquitted in respect of the charge under Section 304-II read with Section 34 IPC.

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11. On the other hand, learned counsel for respondent No.3 has supported the order passed by the learned Single Judge. It is submitted that the appellant herself appeared in the proceedings before MCI. However, the appellant failed to bring to the notice of MCI about the order of stay dated 11.09 2014 passed in W.P.No.24789 of 2014 and therefore, the appellant cannot be permitted to take the plea that the order has been passed in violation of the order of stay dated 11.09.2014. It is further submitted that since the procedure prescribed under the 2002 Regulations was followed by neither MCI nor TMC, the learned Single Judge has rightly remitted the matter for consideration to MCI.

12. We have considered the rival submissions made on both sides and have perused the record.

13. In exercise of power under Section 20-A read with Section 33(m) of the Indian Medical Council Act. 1956, MCI with the previous approval of the Central Government has framed the Regulations, namely, the Indian Medical Council (Professional Conduct, Etiquette and Ethics)

Regulations, 2002 relating to professional conduct and etiquette and code of ethics to be observed by the registered medical practitioners.

14. Regulations 8.7 and 8.8 of the 2002 Regulations are being extracted below for the facility of reference:

“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 complaint against a delinquent physician, shall have the right to file an appeal to the MCI

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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."

15. Thus from a perusal of Regulation 8.7, it is evident that when a complaint is pending before the State Medical Council and is not decided within the period of six months from the date of submission of the complaint, MCI can either direct the State Medical Council to conclude and decide the complaint within a time bound schedule or may withdraw the complaint pending with the concerned State Medical Council or after expiry of the period stipulated by MCI refer the same to Ethical Committee to decide the same within the specified period.

16. Under Regulation 8.8, no other course of action is permissible to MCI.

17. It is trite law that right to file an appeal is a feature of statute. Regulation 8.8 provides for an appeal only against a decision of the State Medical Council.

18. In the instant case, when respondent No.3 approached MCI, there was no decision by the State Medical Council. The MCI instead of resorting to the powers under Regulation 8.7, passed order dated 23.01.2015. In the absence of any decision by the State Medical Council, the appeal under Regulation 8.8 does not lie before MCI. Therefore, the impugned order dated 23.01.2015 is wholly without jurisdiction and on this ground alone, as rightly held by the learned Single Judge, the same is not sustainable in the eye of law.

19. It is also pertinent to mention here that the appellant has appeared in the proceedings before MCI on 13.08.2014 i.e., prior to passing of *ad interim* order dated 11.09.2014 by a Bench of this Court in W.P.No.24789 of 2014. Therefore, there was no occasion on the part of the appellant to apprise MCI about the order of stay.

20. Learned Single Judge ought to have appreciated that there was no order passed against the appellant by the State Medical Council. The appellant was fully aggrieved by the order dated 23.01.2015 passed by MCI. The

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aforesaid order could not have been passed by MCI as the appeal under Regulation 8.8 of the 2002 Regulations does not lie before it. Therefore, in the facts and circumstances of the case, in a writ petition preferred by the appellant, the learned Single Judge erred in remitting the matter for fresh consideration to MCI.

21. For the aforementioned reasons, order dated 24.04.2015 passed in W.P.No.7369 of 2015 insofar as remitting the matter for fresh consideration to MCI is set aside.

22. To the aforesaid extent, the impugned order passed by the learned Single Judge is modified.

23. In the result, the appeal is disposed of

Miscellaneous petitions, pending if any, stand closed.

There shall be no order as to costs.

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SE/-I. NAGALAKSHMI
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Secretary, Medical Council of India, Pocket- 14, Sector-8 Dwaraka, New Delhi - 110 077.
2. The Registrar, Telangana Medical Council, Sultan Bazar, Hyderabad - 500 095.
3. One CC to SRI. SHYAM S AGRAWAL, Advocate [OPUC]
4. One CC to SRI. V. V. ANIL KUMAR (SC FOR AP MEDICAL COUNCIL) [OPUC]
5. One CC to SRI. O. MANOHAR REDD, (SC FOR TS TRANSCO) [OPUC]
6. One CC to SRI. SRINIVAS DAMMALAPATI, Advocate [OPUC]
7. Two CD Copies

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GJP

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HIGH COURT

DATED:24/06/2024

JUDGMENT

WA.No.472 of 2015



**DISPOSING OF THE WRIT APPEAL
WITHOUT COSTS**

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