

Sunil Dhull vs National Medical Commission Through ... on 29 March, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4067/2023 and CM APPL. 15872/2023
SUNIL DHULL

..... Pe
Through: Mr. Ganesh Chand Sharma & M
Saurabh Tyagi, Advocates.
8960896896)

versus

NATIONAL MEDICAL COMMISSION THROUGH CHAIRMAN
/AUTHORISED REPRESENTATIVE & ORS. Re

Through: Mr. T. Singhdev, Mr. Abhiji
chakravarty, Mr. Tanishq S
Ms Anum Hussain & Mr. Bhan
Gulati, Advocate for R-1.
9044153267)
Mr. KG Gopalakrishnan & Ms
Mohandas, Advocates for R-
8800556341)

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 29.03.2023

1. This hearing has been done through hybrid mode. CM APPL. 15872/2023 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 4067/2023
3. The present petition challenges the order dated 23rd February, 2023 passed by Respondent No.1-National Medical Commission (NMC). By way of the impugned order, the appeal filed by the Petitioner against the Delhi Medical Council's (DMC) order dated 4th November, 2022 was returned by the NMC as being not maintainable under Section 30(3) of the NMC Act, 2019.
4. The grievance of the Petitioner is that the NMC is biased and since the standards of medical professionals are still continuing to be in terms of the old Act i.e., Indian Medical Council Act, 1956, the appeal ought to be entertained by the NMC.
5. Ld. Counsel for the Respondent submits that this issue has been decided by at least two decisions, copies of which have been handed over.

6. Heard ld. Counsel for the parties and perused the record. A perusal of Section 30(3) of the NMC Act shows that in terms of the said provision, an appeal is maintainable only at the instance of a medical practitioner or professional. The said section reads as under:

"30(3) A medical practitioner or professional who is aggrieved by any action taken by a State Medical Council under sub-section (2) may prefer an appeal to the Ethics and Medical Registration Board against such action, and the decision, if any, of the Ethics and Medical Registration Board thereupon shall be binding on the State Medical Council, unless a second appeal is preferred under sub-section (4)."

7. The said provision has been considered in the judgment dated 9th December, 2022, passed the ld. Division Bench of this Court in LPA 687/2022 titled Amit Kumar Agarwal v. Union of India wherein it was observed as under:

"24. If the argument of the learned Senior Counsel for the Appellant is accepted and is held that any person aggrieved by an order of the Ethics and Medical Registration Board can file an appeal to the Medical Council then Section 30(4) of the Act becomes otiose. It is a well settled principle of law that each Section is enacted/legislated for a specific purpose and the Courts cannot interpret a provision to make it nugatory. It is further settled law that effort should be made to ensure that each provision has its play and is harmoniously construed to iron out any repugnancy or inconsistency that exists between two provisions in the same enactment.

25. In view of the above, Section 30 of the Act is a special provision dealing only with disciplinary actions taken against a medical practitioner or professional for ethical and professional misconduct and restricts the right to appeal from an order of the Ethics and Medical Registration Board only to medical practitioners or professional. Section 22(3) of the Act would not apply in case of professional misconduct."

8 This decision has also been followed by a ld. Single Judge of this Court in W.P.(C) 13757/2022 titled Surender Kumar Dabas v. National Medical Commission of India in order dated 22nd September, 2022.

9. In view of the above decisions, the present petition is not maintainable and is accordingly disposed of. All pending applications are also disposed of.

10. The Petitioner is permitted to avail of his remedies in accordance with law in respect of the DMC's order dated 4th November, 2022.

11. It is clarified that all contentions of parties are left open.

PRATHIBA M. SINGH, J.

MARCH 29, 2023 dj/sk