

Amit Kumar Agarwal & Ors vs Union Of India And Ors on 2 September, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7566/2022, CM APPL. 23216/2022(Stay)

AMIT KUMAR AGARWAL & ORS.

..... Petitioners

Through: Mr. Amit Kumar, Sr. Adv. with Mr.
Jai Bansal, Mr. Tarun Satija, Mr.
Aditya S. Pandey and Mr. Abhishek
Verma, Advs.

versus

UNION OF INDIA AND ORS.

..... Respon

Through: Mr. Nitinja Chaudhry and Mr.
Deepak Kumar, Advs. for R-1 & 9
Mr. Jasbir Bidhuri, Adv. for IC
Mr. T. Singhdev, Ms. Ramanpreet
Kaur, Ms. Michelle Biakthansang
Das, Mr. Abhijit Chakravarty an
Bhanu Gulati, Advs. for R-7 & 8

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 02.09.2022 This writ petition had been preferred seeking the following reliefs:- "a. Issue an appropriate writ, direction or Order in the nature of a Mandamus directing the Respondent National Medical Council to decide the representation/appeal of the Petitioner by affording opportunity of hearing to the petitioners;

b. Grant stay during the pendency of the representation/appeal before the Respondent on the Order dated 31.03.2021 passed by the EMR Board of the National Medical Commission;

c. Issue an appropriate writ, direction or Order in the nature of a Mandamus directing the Respondent National Medical Council to consider the grounds urged in support of appeal and pass speaking order in time bound manner;"

When the matter was taken up on 01 June 2022, the Court had taken note of the contention of Mr. Singhdev, learned counsel representing the Commission, who had submitted that an appeal at the behest of the complainant would not be maintainable under Section 30(4) of the National Medical Commission Act 2019["the Act"].

Mr. Kumar, learned senior counsel who has appeared in support of the petition today, submits that a conjoint reading of Sections 9(6) together with 22(3) of the Act would establish that the perceived exclusion of a complainant from the ambit of Section 30(4) of the Act is clearly incorrect. Learned senior counsel would submit that both Sections 9(6) and 22(3) confer a right on a person aggrieved by a decision of the Commission or an Autonomous Board to prefer an appeal. Undisputedly the Ethics and Medical Registration Board is one of the Autonomous Boards which are contemplated and constituted under Section 16 of the Act.

Be that as it may, the Court notes that Section 22 (3) commences with the statute clarifying that its provisions would operate subject to Section 28 of the Act. Section 28 of the Act deals with issues relating to applications for permission for establishment of new medical colleges and various decisions that may be taken by Autonomous Boards in connection therewith.

The Court notes that the powers and functions of the Ethics and Medical Registration Board stand specified in Section 27. That provision reads thus:-

"27. Powers and functions of Ethics and Medical Registration Board.--(1) The Ethics and Medical Registration Board shall perform the following functions, namely:--

(a) maintain National Registers of all licensed medical practitioners in accordance with the provisions of section 31;

(b) regulate professional conduct and promote medical ethics in accordance with the regulations made under this Act:

Provided that the Ethics and Medical Registration Board shall ensure compliance of the code of professional and ethical conduct through the State Medical Council in a case where such State Medical Council has been conferred power to take disciplinary actions in respect of professional or ethical misconduct by medical practitioners under respective State Acts;

(c) develop mechanisms to have continuous interaction with State Medical Councils to effectively promote and regulate the conduct of medical practitioners and professionals;

(d) exercise appellate jurisdiction with respect to the actions taken by a State Medical Council under section 30.

(2) The Ethics and Medical Registration Board may, in the discharge of its duties, make such recommendations to, and seek such directions from, the Commission, as it deems necessary."

However and insofar as the subject of professional or ethical misconduct is concerned, that appears to be regulated exclusively by section

30. The said provision is extracted hereinbelow:-

"30. State Medical Councils.-(1) The State Government shall, within three years of the commencement of this Act, take necessary steps to establish a State Medical Council if no such Council exists in that State. (2) Where a State Act confers power upon the State Medical Council to take disciplinary actions in respect of any professional or ethical misconduct by a registered medical practitioner or professional, the State Medical Council shall act in accordance with the regulations made, and the guidelines framed, under this Act:

Provided that till such time as a State Medical Council is established in a State, the Ethics and Medical Registration Board shall receive the complaints and grievances relating to any professional or ethical misconduct against a registered medical practitioner or professional in that State in accordance with such procedure as may be specified by the regulations: Provided further that the Ethics and Medical Registration Board or, as the case may be, the State Medical Council shall give an opportunity of hearing to the medical practitioner or professional concerned before taking any action, including imposition of any monetary penalty against such person.

(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).

(4) A medical practitioner or professional who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal to the Commission within sixty days of communication of such decision.

Explanation. - For the purposes of this Act,

(a) "State" includes Union territory and the expressions "State Government" and "State Medical Council", in relation to a Union territory, shall respectively mean the "Central Government" and "Union territory Medical Council";

(b) the expression "professional or ethical misconduct" includes any act of commission or omission as may be specified by the regulations."

The said provision confers powers on a State Medical Council to examine complaints which may allege professional or ethical misconduct against a medical practitioner and further provides for an appeal to be taken against the decision of the said Council to the Ethics and Medical Registration

Board.

Section 30(4) of the Act restricts the right of a further appeal being taken to the Commission to those which may be preferred either by a medical practitioner or professional. Section 30(4) makes no provision for a complainant preferring a further appeal before the Commission against an order that may be passed by the Ethics and Medical Registration Board. Bearing in mind the fact that the trial of complaints and the adjudicatory process in respect thereof stands governed by Section 30 exclusively, the Court finds itself unable to recognise the provisions of Sections 9(6) or 22(3) as conferring a right on a complainant to prefer a further appeal against a decision taken by the Ethics and Medical Registration Board in respect of matters relating to professional or ethical misconduct. It becomes pertinent to note that the exclusion of complainants from Section 30(4) is not assailed or challenged in the present writ petition. The Court must therefore proceed on the basis of Section 30(4) as it stands.

In view of the aforesaid, this Court is of the considered opinion that the appeal as preferred would not lie. Accordingly while the Court refuses to grant the writs as prayed for, it leaves it open to the petitioner to pursue such other remedies as may be permissible in law.

The writ petition along with pending application shall stand disposed of.

YASHWANT VARMA, J.

SEPTEMBER 2, 2022 SU