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

+ W.P.(C) 2635/2024

DR NAMIT GUPTA

..... Petitioner

Through: Dr. MC Gupta, Advocate with
Petitioner in person

versus

DELHI MEDICAL COUNCIL AND
ANR

..... Respondents

Through: Mr. Praveen Khattar, Advocate for R-
1/DMC
Mr. T. Singhdev, Mr. Aabhaas
Sukhramani, Mr. Abhijit Chakravarty,
Mr. Tanishq Srivastava, Mr. Bhanu
Gulati, Ms. Anum Hussain, Ms.
Ramanpreet Kaur, Advocates for R-
2/NMC

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Date of Decision: 22nd February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The present writ petition has been filed as a Public Interest Litigation ('PIL') seeking quashing of the Public Notice dated 24th December, 2023 ('the Notice'), issued by the Respondent No.1 – Delhi Medical Council ('DMC'), directing any person practicing modern scientific system of medicine (Allotpathy) in Delhi to be mandatorily registered with the DMC in terms of provisions of Delhi Medical Council Act, 1997 ('DMC Act').

1.1 The Notice further directs that all the Medical Establishments i.e.,



Hospitals, Nursing Home, Polyclinics, Charitable Dispensaries, Diagnostic Centers etc., to ensure the validity of DMC registration of the doctors before utilizing their services and to ensure that the DMC registration of the doctors working therein is renewed every five (5) years as per the DMC Act.

2. Learned counsel for the Petitioner states that now that the Respondent No.1 has made it mandatory for the medical practitioners to be registered with it in order to practice the medicine in Delhi, the individuals who are already registered with some other State's Medical Council will have to either surrender the other said State's registration and get themselves registered with Respondent No.1 or they will have to get themselves registered with both State's Medical Council, which will lead to multiple State registration(s).

2.1 He states that a medical practitioner registered with his/her respective State's Medical Council is not necessarily required to be registered with another State's Medical Council. In this regard, he relies upon the erstwhile Medical Council of India's ('MCI') [superseded by Respondent No.2 – National Medical Commission ('NMC')] minutes of Ethics Committee meeting dated 2nd September, 2004, wherein it is stated that there is 'no necessity' of registration in more than one State Medical Council because a doctor, who has registered with any State medical council is automatically registered in the Indian Medical Register ('IMR') and also by virtue of Section 27 of the Indian Medical Council Act, 1956 ('IMC Act'), a person, whose name is included in the IMR, can practice anywhere in India. He states that therefore, this imposition of mandatory registration by the Respondent No.1 is illogical and not mandated by law. The learned counsel



for the Petitioner has also placed reliance on the judgment of *Yash Nigam (Dr.) v. Delhi Medical Council*¹.

2.2 He states that illustratively, the illegality and undesirability of the same can be deciphered from an instance where a medical practitioner, who is predominantly practicing in Gurugram and registered with Haryana Medical Council has to attend to a medical case in Delhi, he cannot do so unless he is registered with Respondent No.1. He states that in similar instances, the registration with two different State Medical Councils is cumbersome.

2.3 He lastly, states that Section 31 of the National Medical Commission Act, 2019 ('NMC Act'), prescribes for maintenance of two (2) separate types of medical registers i.e., National Register and respective State's Medical Register. He states that in terms of Section 31 of the NMC Act, the inclusion of medical practitioner's name in National Register is a prior event and regularly updating the same in respective State's Medical Register is a subsequent event. He states that therefore, the latter event of this nature cannot be forced up on anybody when the prior event i.e., registration in National Register, has taken place.

3. In reply, learned counsel for Respondent No.1 - DMC states that the said Notice has been issued to curb the menace of professional misconduct by medical practitioners practicing in Delhi. He states that this Court in a separate PIL being W.P.(C) 15655/2023 has been approached by the family of patients on account of the alleged professional misconduct of the medical practitioner(s). He states that in pursuance to the aforesaid, the Respondent

¹ (2004) 76 DRJ 64



No.1, in order to enable it to regulate the medical practitioners who are practicing medicine in Delhi, has issued the Notice which is in conformity with powers conferred upon it under Section 15 of the DMC Act and the prayers sought in the other PIL i.e., W.P.(C) 15655/2023.

4. Similarly, learned counsel for Respondent No.2 - NMC states that the Petitioner's contentions are misconceived as the requirement of registration with the respective State Medical Council continues to remain the norm even under the NMC Act. He relies upon Section 31(1) and (6) of the NMC Act and the apposite regulation framed therein i.e., 'Registration of Medical Practitioners and License to Practice Medicine Regulations, 2023' ('Regulations of 2023'). He states that on a combined reading of Regulations 5, 6(b), 6(c) and 9 of Regulations of 2023, it is apparent that a medical practitioner is required to apply for registration with any State/States Medical Council to practice medicine and as per Regulation 9 the said practitioner can also seek a transfer to another State Medical Council. He states that therefore, the intent of the Notice issued by DMC directing the medical practitioners practicing medicine in Delhi to register himself/herself with the DMC is in consonance with the NMC Act and Regulations of 2023. He states that as per Section 31 of the NMC Act, the National Medical Register mirrors the State Register and therefore, the submissions made by the Petitioner that upon a name being entered in the National Medical Register, the medical practitioner is at liberty to practice anywhere in the country, without being registered with the concerned State Medical Council is misconceived. He states that as per Regulations of 2023, the medical practitioners can seek registration in multiple State Medical



Council(s).

5. We have heard the learned counsel for the parties and perused the record.

6. In the PIL being W.P.(C) 15655/2023, the petitioners therein have raised the issue of unchecked rise of fake medical practitioners across Delhi. In the said writ petition, a direction has been sought to the DMC to carry out a verification drive of the medical qualifications and educational certificates of the medical practitioners practicing across the NCT of Delhi.

7. The impugned Notice has been issued by DMC in exercise of its jurisdiction under Section 15 of the DMC Act. The Sub-sections (1), (6) and (7) of Section 15 of DMC Act are regulatory in nature and are recognized and saved by Sections 30 and 31 of the NMC Act. The said Sections are reproduced hereinbelow: -

DMC Act

“15. Preparation of Register.—(1) As soon as may be after the appointed day, the Registrar shall prepare and maintain thereafter a register of medical practitioners for Delhi, in accordance with the provisions of this Act.

(2) The register shall be in such form, and may be divided into such parts, as may be prescribed. The register shall include the full name, address and qualifications with the name of college and university of the registered practitioner, the date on which each qualification was obtained, and such other particulars as may be prescribed.

(3) Any person who possesses any of the qualifications in the First, Second or Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956) shall subject to any condition laid down by or under the Indian Medical Council Act, 1956, at any time on an application made in the prescribed form to the Registrar and on payment of a prescribed fee and on presentation of proof of his registerable qualification, be entitled to have his name entered in the register.

(4)(a) Every person, whose name was entered on a date prior to 1st May, 1961 in Indian Medical Council Register and continued in such register on the day immediately preceding the appointed day, shall be entitled to have



his name continued in the register prepared under this Act.

(b) Within a period of three months from the appointed days or such further period as the Government may allow, the Registrar shall publish a general notice in the Official Gazette and in such newspapers, as the Council may select, in such form as may be prescribed, calling upon every person to whom Clause (a) applies, to pay to the Registrar in the prescribed manner the prescribed fee if he desires to have his name on the register under this Act, and shall also send individual notice for a like purpose by registered post to every such person at his last known address in such form as may be prescribed. The name of every such person who pays such fee before the expiry of the period of two months from the date of publication of the general notice in the Official Gazette shall be enlisted on the register.

(5) After the last date for payment of the prescribed fee under Clause (b) of sub-section (4) has expired and the register prepared in accordance with foregoing provisions is ready, the Registrar, shall publish notice in the Official Gazette and such newspapers as the Council may select, about the register having prepared, and the register shall come into force from the date of the publication of such notice in the Official Gazette.

(6) Any person servicing or practising modern scientific system of medicine in Delhi shall be registered with the Council under this Act. Without registration with the Council any person though qualified in modern scientific system of medicine shall be liable for action as specified by the Council.

(7) Every registered practitioner shall be given a certificate of registration in the prescribed form. The registered practitioner shall display the certificate of registration in a conspicuous part in the place of his practice and if he has more than one such place in any one of them.”

(Emphasis supplied)

NMC Act

“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.

31. National Register and State Register.—*(1) The Ethics and Medical Registration Board shall maintain a National Register containing the name, address, all recognised qualifications possessed by a licensed medical practitioner and such other particulars as may be specified by the regulations.*

(2) The National Register shall be maintained in such form, including electronic form, in such manner, as may be specified by the regulations.

(3) The manner in which a name or qualification may be added to, or removed from, the National Register and the grounds for removal thereof, shall be such as may be specified by the regulations.

(4) The National Register shall be a public document within the meaning of Section 74 of the Indian Evidence Act, 1872 (1 of 1872).

(5) The National Register shall be made available to the public by placing it on the website of the Ethics and Medical Registration Board.

(6) Every State Medical Council shall maintain and regularly update the State Register in the specified electronic format and supply a physical copy of the same to the Ethics and Medical Registration Board within three



months of the commencement of this Act.

(7) The Ethics and Medical Registration Board shall ensure electronic synchronisation of the National Register and the State Register in such a manner that any change in one register is automatically reflected in the other register.

(8) The Ethics and Medical Registration Board shall maintain a separate National Register in such form, containing such particulars, including the name, address and all recognised qualifications possessed by a Community Health Provider referred to in Section 32 in such manner as may be specified by the regulations.”

(Emphasis supplied)

8. Section 31 of the NMC Act and Regulation 5 of the Regulations of 2023, makes it evident that the National Medical Register mirrors the entries made in the State Register(s) maintained by the respective State Medical Council(s). The Regulation 6 of the Regulations of 2023, makes it evident that the procedure for making an application for license to practice medicine has to be made to any State/States Medical Council and it is after the said application is approved by the State Medical Council that the same shall be reflected in the National Medical Register and the State Medical Register as is evident from Regulation 6(e). Regulation 6 in its entirety is reproduced hereinbelow:-

“6. Grant of licence to practice medicine:

Procedure for making application for licence to practice medicine:

a) For the purpose of obtaining licence, a person may apply through a web portal of the Ethics & Medical Registration Board containing such details as specified in the electronic format.

b) The eligible person may opt any State/States to practice medicine and the application so made through the web portal shall be referred to the concerned State/ States Medical Council.

c) The State Medical Council shall satisfy themselves and consider the application for grant of licence to practice medicine in that state after charging appropriate fee within a period of 30 days.

d) The certificate of licence shall contain a registration number which shall



be formed in such a way that a Unique Identification Number shall be suffixed with a Code of the concerned State/Union Territory.

*e) **On approval of the application by the State Medical Council, the same shall be reflected in the National Medical Register and also in the State Medical Register.***

(Emphasis supplied)

9. Consequently, registration with a State Medical Council is mandatory for a medical practitioner to practice and the same is duly recognized under the Regulations of 2023.

10. Pertinently, Regulation 6(b) of Regulations of 2023, recognizes the opportunity available to an eligible person to opt for registration with more than one State's Medical Council to practice medicine.

11. The reliance placed by the Petitioner on the minutes of the Ethics Committee meeting dated 2nd September, 2004, is of no assistance for the reason that Section 27 of the IMC Act referred to in question no. (i) has since been repealed and there is no pari materia provision in the NMC Act. Further, the answer to question no. (ii) in the said minutes records that the said Committee was proposing a legislative amendment to prohibit registrations by medical practitioners in more than one State Medical Council, however admittedly, no such legislative amendment was brought about. On the contrary, as noted hereinabove, the Regulations of 2023, framed under the NMC Act expressly provide an option to the eligible person to seek registration in more than one State Medical Council.

12. It would also be relevant to refer to Sections 15 and 27 of the repealed IMC Act and compare it with Sections 33 and 34 of the NMC Act. Section 15 and 27 of the repealed IMC Act and Sections 33 and 34 of the NMC Act are reproduced hereinbelow:-



IMC Act

“15. Right of persons possessing qualifications in the Schedules to be enrolled.— [(1)] Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

[(2) Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register,—

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.]

...

27. Privileges of persons who are enrolled on the Indian Medical Register.—Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications **to practise as a medical practitioner in any part of India** and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.”

(Emphasis supplied)

NMC Act

“33. Rights of persons to have licence to practice and to be enrolled in National Register or State Register and their obligations thereto.—(1) Any person who qualifies the National Exit Test held under Section 15 shall be granted a licence to practice medicine and shall have his name and qualifications enrolled in the National Register or a State Register, as the case may be:

Provided that a person who has been registered in the Indian Medical Register maintained under the Indian Medical Council Act, 1956 (102 of



1956) prior to the coming into force of this Act and before the National Exit Test becomes operational under sub-section (3) of Section 15, shall be deemed to have been registered under this Act and be enrolled in the National Register maintained under this Act.

(2) No person who has obtained medical qualification from a medical institution established in any country outside India and is recognised as a medical practitioner in that country, shall, after the commencement of this Act and the National Exit Test becomes operational under subsection (3) of Section 15, be enrolled in the National Register unless he qualifies the National Exit Test.

(3) When a person whose name is entered in the State Register or the National Register, as the case may be, obtains any title, diploma or other qualification for proficiency in sciences or public health or medicine which is a recognised medical qualification under Section 35 or Section 36, as the case may be, he shall be entitled to have such title, diploma or qualification entered against his name in the State Register or the National Register, as the case may be, in such manner as may be specified by the regulations.

34. Bar to practice.—(1) No person other than a person who is enrolled in the State Register or the National Register, as the case may be, shall—

- (a) be allowed to practice medicine as a qualified medical practitioner;
- (b) hold office as a physician or surgeon or any other office, by whatever name called, which is meant to be held by a physician or surgeon;
- (c) be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;
- (d) be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine:

Provided that the Commission shall submit a list of such medical professionals to the Central Government in such manner as may be prescribed:

Provided further that a foreign citizen who is enrolled in his country as a medical practitioner in accordance with the law regulating the registration of medical practitioners in that country may be permitted temporary registration in India for such period and in such manner as may be specified by the regulations.

(2) Any person who contravenes any of the provisions of this section shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees or with both.”



13. Sections 15(2)(b) and 27 of the repealed IMC Act permitted a medical practitioner enrolled on a State Medical Register or the Indian Medical Register to practice medicine in ‘any State’ or ‘any part of India’. Pertinently, the said expressions have been omitted in the corresponding provisions of Sections 33 and 34 of the NMC Act. The absence of the said expressions in the NMC Act evidences that the intent of the legislature is to restrict the medical practitioners from practicing in States or Union Territories where they are not registered. Similarly, by expressly enabling registrations with more than one State Medical Council under the Regulations of 2023, the legislative intent is clearly intended to restrict the practice of medical practitioners in the State(s) in which they are registered with the concerned State Medical Council.

14. The intent of making the medical practitioner amenable to the regulatory jurisdiction of the State Medical Council of State in which he/she practices is in public interest as it enables the concerned State Medical Council to hold accountable, the erring medical practitioners for their wrongful conduct and take disciplinary against them, in accordance with law. The mischief caused by a medical practitioner not registered with the DMC is well illustrated in the judgment of this Court in *Yash Nigam (Dr.) v. Delhi Medical Council* (supra) wherein the erring doctor objected to the jurisdiction of DMC on the ground of non-registration with DMC, though the medical treatment had been administered in Delhi.

15. The contention of the Petitioner that it would be inconvenient for the medical practitioner to seek transfer to a new State Medical Council in case of a transfer of job, is without any basis. Regulation 9 of the Regulations of



2023, provides for a convenient web portal-based procedure for seeking transfer of registration to another State Medical Council and also provides for mechanism of deemed approval. There is no basis for alleging that process of transfer and registration is inconvenient

16. Therefore, in view of the aforesaid provisions and Regulations, the Notice issued by Respondent No.1-DMC under Section 15 of the DMC Act is intra vires and there is no conflict with the provisions of NMC Act. The consequence of registration by medical practitioners under Section 15 (1) of the DMC Act is that the DMC will have jurisdiction to take disciplinary actions in case of any professional or ethical misconduct by a medical practitioner practicing in Delhi.

17. Accordingly, the writ petition along with pending application are dismissed as being without any merits.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 22, 2024/msh/aa