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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 15274/2022 and CM APPL. 47351/2022

SURENDER KUMAR DABAS & ANR.

..... Petitioners

Through: Mr. K. G. Sharma, Advocate. (M:
9958801096)

versus

DELHI MEDICAL COUNCIL & ORS.

..... Respondents

Through: Mr. Praveen Khattar, Advocate for R-
1. (M:9868212700)
Mr. T. Singhdev, Mr. Bhanu Gulati &
Ms. Michelle B. Das, Advocate for R-
2.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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25.01.2023

1. This hearing has been done through hybrid mode.
2. In the present petition, the Petitioners had filed a complaint alleging medical negligence in the treatment administered to Smt. Swati, the daughter in law of Petitioner No. 1- Surender Kumar Dabas and new born baby of Smt. Swati before the Police Station, Dwarka South, New Delhi. The said police station then made a representation to the Delhi Medical Council (*hereinafter 'the Council'*) seeking medical opinion of the Council.
3. Vide order dated 5th January, 2022, the Executive Committee of the Council observed that no case of medical negligence was made out against the concerned doctor or hospital. Thereafter, the Petitioners filed an appeal dated 28th January, 2022 before the Ethics and Medical Registration Board of the National Medical Commission. However, the said appeal was dismissed by an order dated 26th May, 2022 by the National Medical



Commission as non-maintainable. The said order of the National Medical Commission is extracted as under:

"I am directed to refer to your appeal dated 28.01.2022 received against the decision dated 05.01.2022 of the Delhi Council Medical Council and to inform you that Section 30(3) of the NMC Act, 2019 states as follows:-

"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)."

2. Further, the National Medical Commission in its meeting held on 06.10.2021 reiterated that based on the NMC Act, 2019 appeals from only Medical practitioners or professionals should be allowed as appeals before Ethics & Medical Registration Board (EMRB) under section 30(3) of the National Medical Commission Act, 2019.

3. Accordingly, it has been decided by EMRB that all the appeals of non-Medical Practitioners or Professionals which were filed on or after coming into force of all the provisions of the National Medical Commission Act, 2019 w.e.f 25th September 2020 shall be returned in pursuance of the provision under pursuance of section 30(3) of the NMC Act, 2019.

4. In view of the above, your appeal against the decision of Delhi, Medical Council is returned herewith. Original demand No-221100, dated 01.02.2022 is also returned herewith."

4. The case of the Petitioner is that no provision for appeal is provided against the order passed by the Executive Committee of the Delhi Medical



Council, where doctors against whom the complaint was made by the Petitioner were exonerated of the liability of medical negligence.

5. Issue notice to Respondent Nos.1, 2 and 3.
6. Let the counter affidavit be filed within four weeks. Rejoinder, thereto, be filed within four weeks.
7. List before the Registrar for completion of pleadings on 28th April, 2023.
8. List before Court on 25th July, 2023.

PRATHIBA M. SINGH, J.

JANUARY 25, 2023
dj/am