

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8830 OF 2013

Dy. Jaydeep Arun Date. ..Petitioner.
Versus
Medical Council of India
and Others. ..Respondents.

Mr. Girish Godbole i/b Ms. Pooja Patil, Ishwar Nankani, H. S. Khokawalla i/b Nankani & Associates for the Petitioner.
Mr. Ritesh Ratnam h/f Ganesh K. Gole for Respondent No. 1.
Mr. Rahul Nerlekar for Respondent No. 2.

Coram : RANJIT MORE, J.
Date : **September 25, 2013.**

P. C. :

1. Heard learned Counsel appearing for the respective parties. By the order dated 29th October 2012, the Maharashtra Medical Council held that the Petitioner has not violated any of the provisions of Code of Medical Ethics and refused to proceed further against the Petitioner as no *prima facie* case was made out. Respondent No.3 challenged this order before the Medical Council of India by filing an appeal. The Petitioner, by the notice dated 12th March 2013, was directed to appear before the Ethics Committee of Medical Council of India on 23rd March 2013 at 10.30 a.m. It is the case

of the Petitioner that he only received this notice on 19th March 2013. The Petitioner specifically states that he was not given copy of the appeal-memo filed by Respondent No.3 before MCI. The MCI by the order impugned, has removed the name of the Petitioner for the period of six months from the State Register on following reasons:

“Dr. Jaydeep Date used scrotal skin to bye-pass urethral stricture without explaining to the patient about the complications of hair growth, which is a known complication. Subsequently, he used mucosal graft which should have been his first choice. This act of commission constitute professional misconduct on the party of Dr. Jaydeep Date.”

2. Perusal of the above finding makes it clear that the allegation against the Petitioner is that he ought to have used mucosal graft instead of scrotal graft to bye-pass urethral stricture. While dealing with “*the best judgment case of a medical professional*”, the Apex Court in *Martin D'souza v. Mohd. Ishfaq [(2009) 3 SCC 1]*, in para-34 has made following observations which are relevant in the present case :

“34. A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in

his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation, vide *Achutrao Haribahu Khodwa v. State of Maharashtra* or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.”

3. The above observations are squarely applicable to the present case. Error of judgment in choosing treatment in preference to another, cannot be a ground to hold a medical professional negligent. In above circumstances, arguable case is made out. Hence, **Rule**. Rule on interim relief returnable on 27th November 2013. There shall be ad-interim relief in terms of prayer clause (b).

[RANJIT MORE, J.]