

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4905 OF 2014

Dr.(Ms.) Anuja D/o Awadh Pandey

-vs-

The Maharashtra Medical Council, Chinchpokli and another

WRIT PETITION NO. 4922 OF 2014

Dr.Sachin Bhaurao Gathe

-vs-

The Maharashtra Medical Council, Chinchpokli and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.B.G.Kulkarni, counsel for the petitioners.
Mr.V.Panpalia, counsel for the respondent No.1.
Mr.R.M.Bhangde, counsel for the respondent No.2.

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 21.07.2015.

Since the issue involved in these petitions is identical and since the petitioners have challenged almost identical orders of the Maharashtra Medical Council, Mumbai, suspending the registration of the petitioners with the Maharashtra Medical Council for a period of six months and prohibiting the petitioners from working as teachers/lecturers in any institution imparting medical education, they are heard together and are decided by this common order.

After securing the M.B.B.S. and M.D. Degrees, the petitioners were appointed as lecturers in the college at Chennai in the year 2009. A C.B.I. Enquiry was conducted in the matter pertaining to the appointments in the college and the petitioners were called as witnesses in the enquiry. It is not in dispute that on the basis of the statements made by the

petitioners in the enquiry, the Medical Council of India issued show cause notices to the petitioners in July, 2012 and further directed them to appear before the Ethics Committee on 21/08/2012. By the orders, dated 18/10/2012 and 22/10/2012, the Medical Council of India suspended the registration of the petitioners for a period of four years. The petitioners challenged the order of suspension by filing separate petitions. The writ petitions are admitted and this Court has stayed the order of suspension of the registration of the petitioners. The Medical Council of India issued copies of the orders, dated 18/10/2012 and 22/10/2012 to the Maharashtra Medical Council for appropriate action. After receiving the copies of the orders of the Medical Council of India, the Maharashtra Medical Council issued a show cause notice to the petitioners on 11/02/2014 asking them to file their statement of defence, as they were required to face the charge of professional misconduct. Certain provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 were mentioned. The petitioners were asked to file their written statement within a period of fourteen days and were further asked to state why the order of the Medical Council of India of removing the names of the petitioners from State Medical Register for a period of four years should not be considered as good and sufficient ground for taking appropriate action against the petitioners. By the show cause notice, the petitioners were informed that it was *prima facie* established that the petitioners were involved in providing forged/false certificate/or false information in the declaration. Since the petitioners did not file the written statement and since one of the petitioners failed to appear before the Enquiry Committee and the other appeared before the Enquiry Committee and stated that the Maharashtra

Medical Council could not have initiated action against him, as the order of the Medical Council of India, dated 18/10/2012 was stayed, the Maharashtra Medical Council, by the impugned orders, dated 22/07/2014 suspended the registration of the petitioners for a period of six months and prohibited the petitioners from working as teachers/lecturers in any institution imparting medical education.

Shri Kulkarni, the learned counsel for the petitioners, submitted that the impugned orders are liable to be quashed and set aside, as the principles of natural justice have been violated by the Maharashtra Medical Council. It is stated by relying on the provisions of Rule 67 of the Maharashtra Medical Council Rules, 1967 that in the show cause notice, it was necessary for the Maharashtra Medical Council to specify the nature and particulars of the charge. It is stated that the notice issued to the petitioners does not specify the nature and particulars of the charges. It is stated that in view of sub-rule (2) of rule 67, the notice is required to be accompanied by a statement of allegations on which each charge is based. It is stated that the relevant allegations as to the facts, the inferences which they lead to, and the circumstances supporting such inferences are required to be clearly mentioned along with any other circumstances proposed to be considered while passing orders. It is submitted that the notice is not accompanied by a statement of allegations on which the charge is based. It is stated that since the statement of allegations is not accompanied with the show cause notice, it is clear that the relevant allegations of facts and the circumstances supporting the inferences which the facts lead to could not have been furnished to the petitioners at all. It is stated that in breach of the provisions of Rule 67 of the Maharashtra Medical Council Rules, 1967, the impugned

orders cannot be sustained. It is submitted that from the show cause notice, it cannot be gauged as to what charges were levelled against the petitioners. It is stated that the show cause notice was not accompanied by the statement of allegations. It is submitted that the show cause notice is as vague as it could be and the respondents could not have proceeded to initiate any action against the petitioners on the basis of the vague show cause notice.

Shri Panpalia, the learned counsel for the respondent-Maharashtra Medical Council, submitted that this Court may not entertain the writ petition in view of the existence of the alternate remedy. It is submitted that the petitioners are entitled to file an appeal before the Central Government against the orders of the Maharashtra Medical Council, even if it is assumed that no appeal could be filed by the petitioners before the Medical Council of India, as the Medical Council of India had suspended the licence of the petitioners for four years. On merits, it is submitted that the petitions are liable to be dismissed, as the show cause notice clearly refers to the material that was examined by the Registrar and the relevant provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 were also mentioned. It is stated that the registration of the petitioners was suspended only for a period of six months and the said period has expired. It is also submitted by placing reliance on the judgment of the Hon'ble Supreme Court, reported in 2008 (3) SCALE 72 (Board of Director v. K.C.Rahi) that the petitioners have waived the plea of violation of principles of natural justice and they are estopped from raising the question of non-compliance of principles of natural justice, as they have failed to participate in the enquiry.

On hearing the learned counsel for the parties and on a perusal of the show cause notice and the provisions of Rule 67 of the Maharashtra Medical Council Rules, 1967, it appears that the impugned orders cannot be sustained. The objection raised by the counsel for the Maharashtra Medical Council in respect of the existence of an alternate remedy is rejected. Firstly, the existence of an alternate remedy is not a bar to the entertainment of the writ petition and secondly, since the principles of natural justice are claimed to have been violated in this case, the plea of existence of alternate remedy is not entertained.

In the instant case, according to the petitioners, the principles of natural justice have been violated and the mandatory rules which relate to service of notice of charges on the registered practitioner, under the Maharashtra Medical Council Rules, 1967 have not been followed. On a perusal of the notice, it is clear that the notice does not specify the nature and particulars of the charges. The notice, dated 11/02/2014 only mentions that it is *prima facie* established that the petitioners are involved in providing forged/false certificate/or false information in the declaration form. The Registrar of the Maharashtra Medical Council did not feel the necessity of even striking off the clauses that were not applicable. We find on a perusal of the reply and the documents tendered by the Maharashtra Medical Council that the petitioners have been charged of supplying false information in the declaration. There is no charge against the petitioners of providing forged or false certificate. However, the show cause notice is casually issued to the petitioners without striking out the clauses that were not applicable to the case of the petitioners. No reasonable person could gauge the charge levelled against him/her on a perusal of the show

cause notice, dated 11/02/2014. In fact, the show cause notice does not bear any charge at all. It is only stated in the show cause notice that certain provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 are violated and the petitioners have committed professional misconduct. What is the professional misconduct is not mentioned in the show cause notice. It is also not mentioned that the petitioners had supplied false information or false or forged certificate to a particular authority or college. The show cause notice is as vague as it could be. Also, the vague show cause notice is not accompanied by a statement of allegations, that are required to be served on the petitioners along with the notice, in view of the provisions of Rule 67(2) of the Maharashtra Medical Council Rules, 1967. There is no question of serving the relevant allegations as to facts, the inferences which they lead to, and the circumstances supporting such inferences, as the notice is not accompanied by a statement of allegations at all. In the absence of any statement of allegations being served on the petitioners, it was all the more necessary for the Maharashtra Medical Council to have clearly specified charges against the petitioners. We have already mentioned and we repeat that the show cause notice does not refer to any charge and surprisingly the same mentions that on failure on the part of the petitioners to furnish the written statement, action/punishment ordered by the Medical Council of India on 18/10/2012 would be initiated against the petitioners and the Council would be at liberty to pass appropriate orders. We find that there is a clear breach of the provisions of Rule 67 of the Maharashtra Medical Council Rules, 1967 as the mandatory requirements of Rule 67 have not been followed by the Maharashtra Medical Council. Even

in the absence of Rule 67, we would have held that the principles of natural justice were violated in this case inasmuch as the notice is as vague as it could be and does not cull out the charges that were sought to be levelled against the petitioners. In the circumstances of the case, the impugned orders are liable to be set aside.

Hence, for the reasons aforesaid, the writ petitions are allowed. The impugned orders are quashed and set aside. The Maharashtra Medical Council is free to take appropriate action against the petitioners, if permissible, in accordance with law.

JUDGE

JUDGE