

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.NO.11995 OF 2015

AND CONNECTED MISCELLANEOUS PETITIONS

Dr.Shankar. R. ... Petitioner

Vs.

- 1.The Medical Council of India
Through its Secretary
Pocket - 14, Sector - 8,
Dwarka Phase - I,
New Delhi - 110 077.
 - 2.Tamil Nadu Medical Council
Rep. By its Registrar
No.914, Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.
 - 3.Vinayaka Missions Medical College
Represented by its Dean / Principal
Karaikal,
Puducherry.
 - 4.Vinayaka Missions Kirubanandavariyar
Medical College
Represented by its Dean / Principal
Salem.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent dated 16.03.2015, bearing reference No.MCI-211(2)(621)(CBI)/2012-Ethics 165860, in so far as it relates to the petitioner and quash the same as being illegal, arbitrary, without jurisdiction and violative of the fundamental rights of the

petitioner and to consequently forbear the 1st and 2nd respondents, their officers, employees, subordinates or any other persons claiming or acting under them from in any manner interfering with the right of the petitioner to practice his profession, including any post of medical teacher or any post of a similar nature in any university or medical college.

For Petitioner : Mr.J.Raja Kalifulla
Senior Counsel
for Mr.Jayendra Krishnan

For Respondent-1 : Mr.V.P.Raman

For Respondent-2 : Mr.Veerakathiravan

O R D E R

Mr.V.P.Raman, learned Standing Counsel takes notice for the first respondent and Mr.Veerakathiravan, learned Standing Counsel takes notice for the second respondent. In view of the order passed herein, notice to the third and fourth respondents are not necessary.

2.The petitioner is a registered medical practitioner.

3.On 08.12.2012, the Central Bureau of Investigation, Anti Corruption Branch sent a communication to the Medical Council of India (for short 'the MCI'), to the following effect :-

"A consolidated list shows 131 doctors who are not in the actual faculty payroll of the institute, had attended one or more of the three MCI inspections, as if they were regular faculty members of the medical college. (List attached)"

4.The said communication dated 08.12.2012 also requested the MCI to take suitable action against the doctors mentioned therein. The relevant passage from the communication is extracted in this regard:-

"The Medical Council of India may initiate such action as deemed fit against the 131 doctors as per list attached along with copies of the declaration forms submitted by them during Inspection."

5.Pursuant to the aforesaid communication, a Show Cause Notice was issued by the MCI to the doctors mentioned therein to show cause as to why disciplinary action as permissible in terms of

the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Shortly MCI Regulations) should not be initiated against them. The petitioner gave his reply to the said Show Cause Notice.

6.While so, the impugned order dated 16.03.2015 came to be passed by the MCI in respect of 90 doctors. In the impugned order, the name of the petitioner is found at Sl.No.31. The relevant portion of the impugned order reads as follows:-

"The Ethics Committee also noted that some of the doctors in the above mentioned list have submitted reply of their Show Cause Notice in written. The same were perused by the Ethics Committee but the Committee did not agree with the same and unanimously observed that physical appearance of respective medical professional / doctor is required to hear their side. Therefore, the Ethics Committee after detailed deliberation decided to take suo-motto action against the above said medical professional/doctor who have not appeared before the Ethics Committee till date.

"The Ethics Committee subsequent to the deliberation is of the considered opinion that the conduct of the above said teachers/doctors doing practice in two medical colleges at the same time constitutes towards professional misconduct.

Henceforth, pursuant to the powers granted under Clause 8.2.of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the Ethics Committee directs as under:-

1. The name of respective medical professional / doctor be suspended from the IMR to practice medicine for a period of 3 months. The respective State Medical Council may kindly implement the decision accordingly, and also;
2. He/She be debarred from undertaking any post of medical teacher or any post of similar nature in any university or medical college for a period of Five Years."

The above said decision of the Ethics Committee has been approved by the Executive Committee of the Council at its meeting held on 20.11.2014 while considering the minutes of the Ethics Committee.

In view of the above, you are requested to take further necessary action in the matter accordingly under intimation to this office.

This issues with the approval of the competent authority."

7.The learned counsel for the petitioner would submit that the official respondents failed to consider the explanation offered by the petitioner. It is further submitted that when the doctors, whose names are found in the impugned order gave separate explanations, the MCI should not have passed a common order. The delinquency of each and every doctor should be considered independently based on his explanation. The learned counsel would further submit that before passing the impugned order, an opportunity of personal hearing should have been afforded to the petitioner. Hence, the impugned order is violative of principles of natural justice and the same deserves to be set aside.

8.On the other hand, the learned Standing Counsel for MCI has sought to sustain the impugned order. It is submitted that the concerned doctors failed to appear before the Committee and therefore, the Committee has no option, except to pass the impugned order.

9.I have considered the submissions made by the learned counsel on either side.

10.A reading of the impugned order would go to show that it is a non-speaking order. The doctors gave individual explanations and therefore, MCI/Ethics Committee should have considered those explanations separately and should have passed separate orders in respect of each and every doctor. The impugned order also does not disclose the application of mind on the part of MCI as to consideration of the separate explanations submitted by the doctors.

11.Hence, I am of the view that MCI fell in error in passing a common impugned order in respect of 90 doctors and as such, the same is liable to be interfered with, insofar as it relates to the petitioner.

12. Accordingly, the impugned order dated 16.03.2015 passed by the first respondent is quashed insofar as it relates to the petitioner and the matter is remanded back to MCI to consider the matter afresh and to pass an appropriate order. While doing so, the MCI shall consider the explanation offered by the petitioner individually and shall pass a separate order on the same. The learned counsel for the petitioner sought personal hearing as provided under clause 8.2 of the MCI Regulations. The MCI shall also furnish the documents, which they rely on for passing the ultimate order. It is needless to state that before passing such order, MCI shall also give an opportunity of personal hearing to the petitioner as per clause 8.2 of the MCI Regulations. It is made clear that if the petitioner fails to appear for personal hearing in spite of being given an opportunity for the same or if he expresses his unwillingness to take part in personal hearing, the MCI can proceed further and pass orders based on the explanation and other materials provided by the petitioner. All the issues, including merit as well as jurisdiction of MCI are left open. The petitioner is at liberty to raise all issues, including jurisdiction and the MCI can decide the same on merits and in accordance with law and more particularly, with reference to the MCI Regulations.

13. The writ petition stands allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar (CS III)

/true copy/

Sub Asst. Registrar

TK

To

1. The Secretary
Medical Council of India
Pocket - 14, Sector - 8,
Dwarka Phase - I,
New Delhi - 110 077.

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2.The Registrar

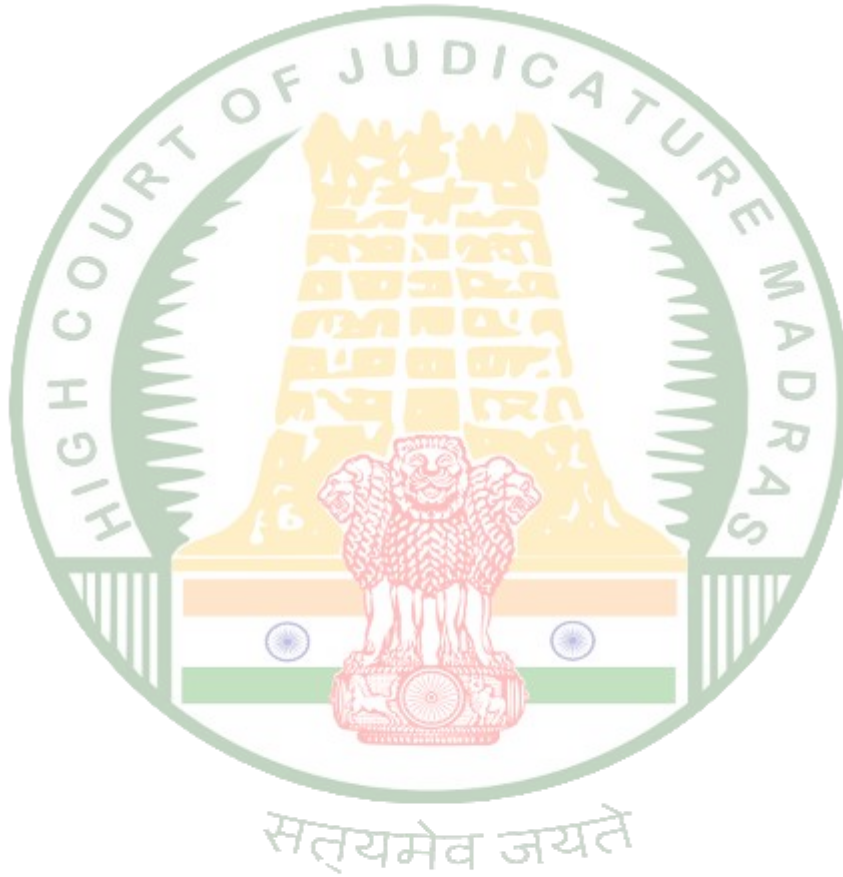
Tamil Nadu State Medical Council
No.914, Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

1 cc to Mr. Veerakathiravan, Advocate, Sr. 24343

1 cc to Mr.Jayendrakrishnan, Advocate, Sr. 23964

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