

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :18.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.7551 & 7669 of 2015
& M.P.Nos.1 to 3 of 2015

Dr.N. Ganga .. Petitioner in W.P.No.7551/2015
Dr. Sankararaman.B .. Petitioner in W.P.No.7669/2015

-Vs.-

1. Medical Council of India
Through its Secretary
Pocket-14, Sector-8
Dwaraka Phase - I
New Delhi-110 077.
2. Tamil Nadu Medical Council
No.914, Poonamallee High Road
Arumbakkam
Chennai-600 106.
3. Vinayaka Mission Medical College
Rep. by its Dean/Principal
Karaikal
Puducherry. ..Respondents in both W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent comprised in its Show cause Notices dated 7.5.2014, bearing reference Nos.MCI-211(2) (621)(CBI-130)/2012-Ethics 106227 and MCI-211(2) (621)(CBI-129)/2012-Ethics 106227 as well as the consequent show cause notices dated 7.7.2014 and 23.08.2014 and quash the same as being illegal, arbitrary, without jurisdiction and violative of the fundamental rights of the petitioner and to consequently forbear the first and second respondents, their officers, employees, subordinates and any other persons claiming or acting under them from in any manner interfering with the right of the petitioner to practice their profession, including any post of medical teacher.

For Petitioners
in both W.Ps. : Mr.Anand Venkatesh

ORDER

The notices issued by the Medical Council of India to show cause as to why disciplinary action should not be taken and refer the cases to the Ethics Committee are under challenge at the instance of two medical practitioners primarily on the ground that the Medical Council of India has no jurisdiction to take disciplinary action.

W.P.No.7551 of 2015:

2. The petitioner is a registered Medical Practitioner. While she was working as Professor in Department of Paediatrics at Vinayaka Missions Medical College, Karaikal, she received a show cause notice dated 7 May 2014 issued by the Medical Council of India as a preliminary to refer her case to the Ethics Committee. The Medical Council of India in its notice dated 7 May 2014 stated that the enquiry conducted by Central Bureau of Investigation revealed that the name of the petitioner did not figure in the attendance register and she worked simultaneously in few other institutions. The Medical Council of India issued another notice dated 23 August 2014. The petitioner submitted her reply. Thereafter the petitioner has come up with this writ petition challenging the show cause notice.

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3. The petitioner is a registered medical practitioner. While he was working as Associate Professor in the the department of General Surgery at Vinayaka Missions Medical College, Karaikal, he received a show cause notice dated 7 May 2014 issued by the Medical Council of India. In the said notice it was alleged that the enquiry conducted by the Central Bureau of Investigation proved that the name of the petitioner did not find place in the attendance register as well as in the monthly salary statement maintained for regular staff and that he worked simultaneously in few other institutions. The petitioner was issued with another notice dated 23 August 2014. The petitioner submitted his reply. Thereafter the petitioner has come up with this writ petition challenging the show cause notice.

4. Heard the learned counsel for the petitioner.

5. The show cause notices issued by the Medical Council of India are under challenge. By issuing the show cause notices, the Medical Council of India has not rendered any adverse finding against the petitioners. The petitioners have already submitted explanation pursuant to the show cause notices. Even before allowing the Medical Council of India to consider the issue in the light of the explanation, the petitioners have rushed to this Court.

6. The petitioners have taken up a contention that the State Medical Council is the appropriate authority to initiate disciplinary proceedings. According to the petitioners, Medical Council of India

is the appellate authority and as such it is not open to the said authority to initiate disciplinary proceedings.

7. The Medical Council of India is a statutory body constituted under the provisions of Indian Medical Council Act, 1956. The Medical Council of India has been given wide responsibility for the purpose of maintenance of standards of medical education in India. The Medical Council of India is empowered to prescribe the minimum standards of medical education and maintenance of good professional conduct by the medical practitioners.

8. The Medical Council of India, in exercise of its powers conferred under Section 20A r/w Section 33(m) of the Indian Medical Council Act, 1956 and with the previous permission of the Central Government, made the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Ethics Regulations contain the Code of Medical Ethics, which includes the duties and responsibilities of the Physician in general, duties of Physicians to their patients, duties of Physician in consultation, responsibilities of Physicians to each other, duties of Physician to the public and to the paramedical profession and Unethical Acts.

9. Chapter 8 of the Ethics Regulations provides for punishment and disciplinary action. Regulation 8.1 very clearly states that the Medical Council of India is empowered to initiate ethics proceedings against the medical practitioners. The said provision reads thus:

"8.1 It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils."

10. The Regulation extracted above very clearly shows that concurrent power is given to the Medical Council of India and the State Medical Council to initiate ethics proceedings. The Regulation also contains a clear indication that the unethical practices mentioned in the Code are only illustrative and it would not preclude the Medical Council of India or State Medical Councils from considering and dealing with any other form of professional misconduct on the part of a registered medical practitioner. This is also evident from the relevant provision which states that circumstances may and do arise from time to time, in relation to which there may occur questions of professional misconduct which do not come within any of these categories. The Regulation further provides that every care should be taken that the Code is not violated in its letter or spirit. Therefore, it is very clear that not only the State Medical Council but the Medical Council of India is also entitled to initiate proceedings under the Ethics Regulations against registered medical practitioners.

11. These notices are nothing but show cause notices. The petitioners were given sufficient opportunity to submit their explanation. Even if the Medical Council of India takes a decision and refer the matter to the Ethics Committee, still the petitioners would be given an opportunity to appear before the Ethics Committee and to substantiate their contentions. Therefore it is too premature on the part of the petitioners to approach this Court with these two writ petitions.

12. The jurisdiction of the High Court in a matter of this nature is very limited. It is not open to the High Court to consider the correctness of the show cause notices at this point of time. The Medical Council of India is yet to pass final orders as to whether the matter should be referred to the Ethics Committee. No decision as such has been taken by the Medical Council of India. I am therefore of the view that there is absolutely no merit in the contention taken by the petitioners.

13. In the upshot, I dismiss the writ petitions. Consequently the connected MPs are closed. No costs.

Sd/-
Assistant Registrar

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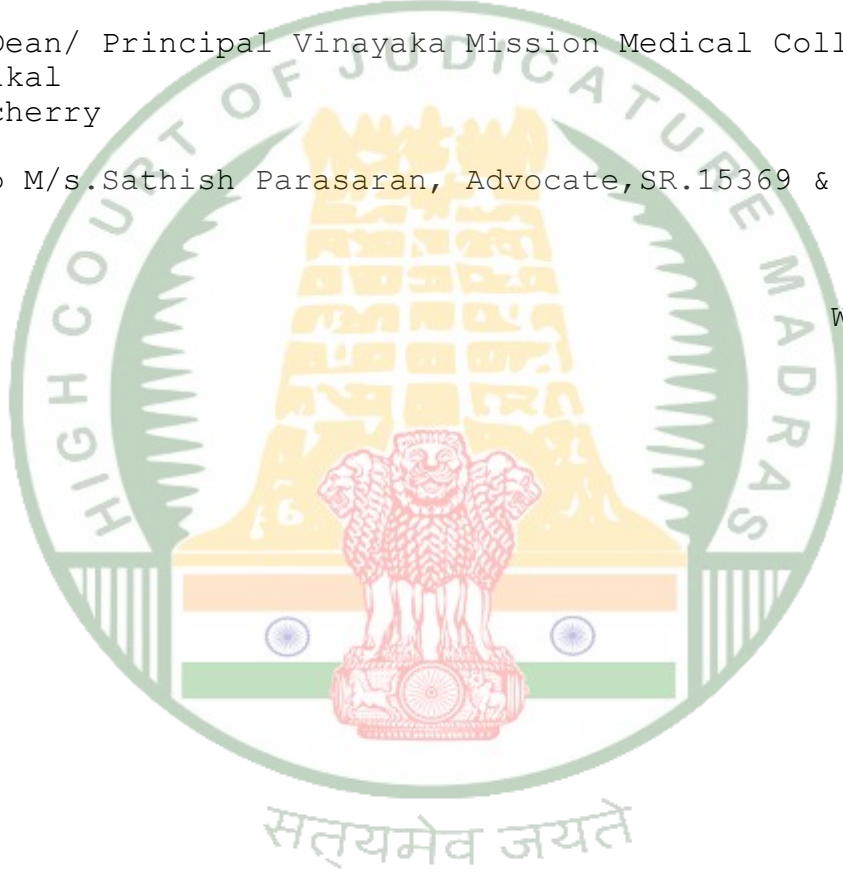
Sub Assistant Registrar

To

1. The Secretary, Medical Council of India
Pocket-14, Sector-8
Dwaraka Phase - I
New Delhi-110 077.
 2. The Tamil Nadu Medical Council
No.914, Poonamallee High Road
Arumbakkam
Chennai-600 106.
 3. The Dean/ Principal Vinayaka Mission Medical College
Karaikal
Puducherry
- +2 cc's to M/s.Sathish Parasaran, Advocate, SR.15369 & 15370.

mp(co)
krd 28/4

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7669 of 2015



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