

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.33383 of 2010

ORDER:

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This Writ Petition is filed seeking issuance of mandamus declaring the action of the 1st respondent in passing the impugned order dated 18.12.2010 vide Ref.No.APMC/DC/015/Case No.08/2010 removing the name of the petitioner for a period of three months, as arbitrary and illegal.

2. Facts which led to filing of the writ petition are as under:

The petitioner after completing MBBS degree in the year 1973 got his name was registered in A.P. Medical Council with Registration No.7637 on 11.10.1974. Thereafter, he went to Iran in the year 1976 and after staying there for more than a decade, left to Vienna. While staying at Vienna, he completed his P.G. Diploma (D.C.H) and also completed Fellowship in Neonatology at School of Medicine, Vienna. Thereafter he returned to India and established a Nursing Home, which was run under the name and style of Disney Medi-kid Hospital at Ameerpet, Hyderabad. In the month of June, 2000, the 2nd respondent's daughter Baby Ramya was admitted in the hospital with a complaint of high fever. After taking treatment for three days, it was diagnosed that she was suffering with Tuberculosis. However, she was discharged from the hospital by prescribing medicines. In the month of October, 2000 she was again brought to the hospital, wherein it was observed that she was suffering with blood cancer. On noticing the same, the petitioner called an Oncologist to the hospital and after obtaining his opinion, was referred to Apollo Cancer Institute for further treatment, where she died after taking treatment for a period of 40 days. After death of Baby Ramya, the 2nd respondent, who is father of the deceased, lodged a complaint before A.P.State Consumer Redressal Commission at Hyderabad, claiming compensation of Rs.20,00,000/- and also gave a report to Panjagutta Police for alleged negligence on the part of the petitioner, which came to be registered as Crime No.105 of 2001 for the offences punishable under Sections 304, 304 (A) and 420 read with 120 IPC. After conducting

investigation, police filed Final report referring the case 'as mistake of fact'. Thereafter, the 2nd respondent filed a protest petition, which was referred to police, under Section 156 (3) Cr.P.C. for investigation. The Saifabad police conducted investigation and also sought report from Medical Council of India and thereafter, filed Final report referring the matter 'as mistake of fact'. Again the 2nd respondent filed a protest petition, which was allowed and the case was taken on file as C.C.No.1289 of 2004. After a full-fledged trial, the learned Judge acquitted the petitioner for the offences alleged against him. While things stood thus, A.P.State Commission passed an order granting compensation of Rs.4,00,000/- to the 2nd respondent holding negligence against the petitioner. Challenging the said order, the petitioner preferred an appeal before the National Commission in F.A.No.420 of 2006, wherein the Commission granted stay subject to certain conditions. It is stated that in the meanwhile, the 2nd respondent sent a compliant to A.P.Medical Counsel on 06.02.2001 seeking action against the petitioner for alleged negligence on his part. Pursuant to the said complaint, the Medical Council issued notice to the petitioner on 27.03.2001 and after considering his explanation, referred the matter to an Expert Committee. Basing on the report of Expert Committee, the matter was closed. Against the order of Medical Council, the 2nd respondent filed W.P.No.22298 of 2006 before this Court by way Public Interest Litigation, questioning inaction of the 1st respondent. The Division Bench of this Court, vide order dated 30.10.2006 dismissed the Writ Petition.

After closure of previous complaint by the 1st respondent, the 2nd respondent gave a representation on 24.07.2006 reiterating the earlier allegation stating that the petitioner was doing medical practice without any qualified degree, etc. In pursuance of the said representation, the petitioner was directed to appear before Committee along with reports. The Committee after verification of the record, stated that the P.G. degree obtained from the institution of Vienna was not recognized by the Medical Council of India as per Schedule 1 and Schedule 3 of Indian Medical Council Act, 1956 and warned him not to display his postgraduate diploma in the name plate. After dismissal of W.P.No.22298 of 2006, the 2nd respondent again filed W.P.No.2126 of 2007 challenging the order of the 1st respondent in warning the petitioner, which is almost seeking the same relief in W.P.No.22298 of 2006. After

filing of the writ petition, the 2nd respondent again submitted another representation on 04.03.2010 to the Government and other authorities making allegations identical to the one made in the earlier complaint.

3. Heard learned counsel for the petitioner and learned counsel for respondents 1 and 3. No representation on behalf of 2nd respondent.

4. It appears that representation, dated 04.03.2010, has been forwarded to the Medical Council and basing on the same, the 1st respondent issued a notice to the petitioner on 26.05.2010 asking him to appear on 01.06.2010 for enquiry before the Enquiry Officer and the Chairman. Accordingly, the petitioner appeared before the Committee and submitted written explanation to the allegations made against him. Thereafter, the Committee passed the impugned order on 18.12.2010 informing him that his name has been removed from the Medical Register for a period of three months by virtue of the power conferred on the Council by sub section (2) of Section 17 read with sub section (4) of Section 11 of A.P. Medical Practitioners Registration Act, 1968. Challenging the said removal order, the present Writ Petition is filed.

5. The material placed before this Court would show that the petitioner submitted a representation on 27.12.2010 to the Principal-Secretary-Medical Health & Family Welfare, Government of Andhra Pradesh, Hyderabad, to set aside the impugned order, dated 18.12.2010 passed by the A.P. Medical Council and the same is pending consideration. Though various grounds are raised, the learned counsel for the petitioner restricts his prayer, seeking a direction to the Government to pass orders on his representation, at the earliest. The said request is not objected to by learned counsel for respondents 1 and 3.

6. Having regard to the facts and circumstances of the case, the Writ Petition is disposed of directing the 3rd respondent to pass appropriate orders on the representation, dated 27.12.2010, submitted by the petitioner, at the earliest, after giving due opportunity to all the necessary parties. Till the disposal of said representation, the interim stay granted by this Court shall continue. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition

shall stand closed.

JUSTICE C. PRAVEEN KUMAR

NOVEMBER 06, 2015

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