

*** THE HON'BLE SRI JUSTICE R.KANTHA RAO**

+ WRIT PETITION No.16970 of 2015

%27.07.2015

Dr.J.Balachandrudu

....Petitioner

Vs.

**\$ Union of India rep., by its Secretary
and others**

... Respondents

! Counsel for the Petitioner: Sri K.Ramamohan Mahadeva

Counsel for Respondent Nos 3 & 4.: Government Pleader for
Medical & Health

Sri Nimmagadda Venkateswarlu for R2

Sri B.Narayana Reddy for R1

Sri V.V.Anil Kumar Reddy for R4

<Gist :

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.16970 OF 2015

ORDER

Heard learned counsel appearing for the petitioner,

Sri B.Narayana Reddy, learned Assistant Solicitor General appearing for the 1st respondent, Sri Nimmagadda Venkateswarlu, learned Standing Counsel appearing for the 2nd respondent, learned Government Pleader for Medical and Health appearing for respondents 3 and 4 and Sri V.V.Anil Kumar, learned counsel appearing for respondent No.5.

The petitioner was appointed as Assistant Professor Venereology, and posted to Siddardha Medical College, Vijayawada. He used to teach students in Dermatology and Venereology. His articles were published in various journals. While so, he was transferred from Siddardha Medical College to Guntur Medical College on work order

basis (deputation) in 2012. The 7th respondent, who was promoted recently as Associate Professor in the department of DVL, is also placed in-charge professor/head of the Department DVL, Guntur Medical College. According to the petitioner, there were some disputes between him and the 7th respondent as he objected in several administrative issues in the department. Thus, the 7th respondent developed some sort of enmity against the petitioner. The 7th respondent is the examiner of PG students and she has to approve the thesis/dissertation. She hatched a plan to send the petitioner and in the said process, a complaint was lodged against him alleging that he is sexually harassing lady PG students. On the said complaint, the Principal, Guntur Medical College, enquired into the matter and thereafter, appointed a committee, which after recording the statements of the witnesses, submitted a report to the Principal on 12.09.2014. The said report was communicated to the Director of Medical Education, Andhra Pradesh, Hyderabad, who in turn, cancelled the deputation of the petitioner with immediate effect and requested the Principal, Guntur Medical College, to relieve him immediately. Accordingly, the petitioner was

relieved on 16.10.2014 and he joined in the parent department. While so, on 14.09.2014, news item was published on 14.09.2014 in Deccan Chronicle. Based on the news item, the 6th respondent submitted a complaint along with paper clippings to the 4th respondent to take appropriate action against the petitioner. Pursuant thereto, the 4th respondent vide proceedings dated 8.10.2014 directed the petitioner to submit explanation on or before 18.10.2014, for which he submitted his explanation. Thereafter, the 4th respondent vide notice dated 7.11.2014 directed the petitioner to appear before the Ethics Committee on 26.11.2014. Accordingly, the petitioner appeared before the Ethics Committee and a questionnaire was supplied by the 4th respondent, and the petitioner answered all the questions. Thereafter, the 4th respondent submitted a report to the Committee, which took a decision on 21.5.2015 and concluded that the conduct of the petitioner is disgraceful, in violation of Code of Medical Ethics Regulations, 2002 and placed the matter before the General Body. The General Body of the APMC has approved the decision of the Executive Committee to remove the name of the petitioner from the Medical Register

with effect from 20.5.2015 for a period of two years as provided under Section 17 (2) read with Section 15 (Code of A.P. Medical Practitioners Registration Act, 1968. Hence, the present writ petition is filed seeking to call for the connected records including the proceedings dated 26.5.2015 and quash the same as arbitrary and illegal.

Counter-affidavit has been filed by the 4th respondent contending *inter alia* that after receiving the complaint from lady PG students, the Principal, Guntur Medical College, forwarded the same to Dr.C.Padmavathi, Professor & HOD of Pathology, Guntur Medical College, Guntur, who is the Chairperson of the Sexual Harassment Committee, to conduct enquiry immediately. The Chairperson of Sexual Harassment Committee conducted detailed enquiry on 11.09.2014 and submitted report to the Principal of the College. Further, on receipt of complaint from the 6th respondent, registered notice dated 8.10.2014 was issued to the petitioner to submit his explanation. A letter dated 9.10.2010 was addressed to the Principal, Guntur Medical College, Guntur, to furnish the details of the incident and copy of the report submitted by the Disciplinary Committee, so

that the matter will be placed before the Ethics Committee of APMC for its consideration and making necessary recommendations. In reply dated 3.11.2014, the Principal, Guntur Medical College, informed that the original enquiry report along with all original connected papers were forwarded to the Director of Medical Education on 12.09.2014, who in turn, cancelled the work order of the petitioner vide letter dated 15.10.2014 and directed the petitioner to report before the Principal, Siddhartha Medical College, Vijayawada. The 6th respondent vide complaint dated 19.09.2014 along with paper clipping of the Deccan Chronicle dated 14.09.2014 requested Andhra Pradesh Medical Council to take action against the petitioner as per MCI Regulations. In reply, the petitioner stated that in order to victimize him, the 7th respondent moved hand in glove with lady PG students of DVL Department and made false accusation against him. As per the decision taken, summons were issued to the petitioner directing him to appear before the Ethics Committee. Accordingly, the petitioner appeared before the Committee on 26.11.2014 and he was put several questions to elicit the information relating to the incident, which

took place in the Medical College and the complaint lodged by lady PG students of DVL Department. The entire material on record and the statement of the petitioner was considered by the Ethics Committee and it was decided to issue summons to the *de facto* complainant-Dr.S.Nageswaramma, the 7th respondent and the lady PG students of DVL Department with a view to record their submissions. Accordingly, the 7th respondent and eleven PG students of DVL Department appeared before the Ethics Committee and explained about the harassment. Among them, Dr.J.Usha Rani, service PG in DVL Department explained the way in which she was subjected to sexual harassment by the petitioner.

The contention of the petitioner that the respondents did not follow Regulation 8.2 of the IMC Regulations is not accepted by the respondents. According to them, the petitioner was provided with reasonable opportunity twice. The first opportunity was given to submit his explanation and further opportunity was given to appear before the Ethics Committee to make his submissions as well as to engage an advocate and instruct him to appear before the Committee at the

time and date mentioned in the summons in order to assist the petitioner. Taking into consideration the statements of 7th respondent as well as lady PG students of DVL Department, the Ethics Committee came to the conclusion that the behavior of the petitioner is un-becoming and disgraceful of a doctor and the same is in violation of Code of Medical Ethics vide IMC Regulations, 2002. The contention that the charges levelled against the petitioner do not fall under Regulation-7 of Regulations 2002 is not accepted by the respondents. According to Regulation 1.1.1 the petitioner shall uphold the dignity and honour of his profession. As per Regulation 1.1.2, the petitioner should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick. According to Regulation 1.2.1, the principal objective of the honoured ideals of medical profession implied that the responsibilities of the physician extend not only to individuals but also to society. The contention of the respondents is that Regulation 8.8 provides an appeal against the impugned order before the 2nd respondent. As per Section 25 of the Andhra Pradesh Medical Practitioners Registration Act,

1968, the petitioner ought to have filed an appeal before the Government of Andhra Pradesh and the petitioner failed to avail the statutory remedy made available to him.

Reply affidavit has been filed by the petitioner, wherein it is stated that the PG students having left no option supported the 7th respondent to save their career, made a complaint before the Ethics Committee. Except the statement, no evidence has been placed by the PG students before the Ethics Committee. He never harassed any PG student and never invited them to his house and there is no complaint in his past career and only the students under the influence of the 7th respondent made a complaint to the Principal. The petitioner furnished four testimonials of

Dr. T.V.Narasimha Rao, Dr. D.S.S.S.Prasad, Dr.M.N.Sravani and Dr.T.Vinay Kumar and none of them referred the incident took place in the college or stated anything about the complaint lodged by the 7th respondent or the PG students of DVL Department. Further, in the show cause notice, there is no reference to Smt J.Usha Rani, who is one of the PG students, made a complaint along with others under the influence of 7th respondent,

who developed enmity against the petitioner. It is the version of the petitioner that mere calling for explanation in response to the complaint lodged against him by issuing summons, directing him to appear before the Ethics Committee on 26.11.2014 would not answer the mandatory provisions of 8.2 of Regulations, 2002. According to the petitioner, Regulation 8.2 provides an opportunity of being heard in person or through his advocate. In the instant case, on receipt of notice dated 7.11.2015, the petitioner went to a lawyer viz., Joseph Ravi Kumar, explained his entire case and handed over a set of documents and requested him to appear before the 4th respondent on 26.11.2014, for which he agreed. Accordingly, the petitioner along with his counsel attended the office of the 4th respondent, and when he was called, he along with his counsel tried to enter into the office, but the respondents denied the entry of his counsel stating that there is no need of hearing an advocate and only the petitioner has to answer the questionnaire supplied by the Committee. In fact, the 4th respondent in notice dated 7.11.2014 mentioned that he has to engage an advocate. Denying opportunity to the counsel to argue the matter

before the 4th respondent would amount to violation of Regulation 8.1. Further, the alleged complaint lodged by J.Usha Rani has not been supplied to him nor mentioned in the show cause notice given to him. For the first time, new material has been brought before the Court, which is prejudicial to the case of the petitioner.

The issue requires to be determined for the purpose of disposing of the writ petition is as to whether an opportunity as provided under Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, (for short 'Regulations') has been provided to the petitioner to defend his case or whether the proceedings are vitiated on account of non-compliance of the said regulation.

Learned counsel appearing for the respondents submits that each and every department will have separate procedures for conducting enquiry. In the instant case, the petitioner was given an opportunity to submit his explanation for the so called allegations levelled against him. Questionnaire was supplied to him, for which, he submitted his answers and thereafter, a decision was taken by the Ethics Committee by recording the statements of the witnesses, who are

lady PG students, and hence, the procedure as contemplated under Regulation 8.2 has been complied with.

On the other hand, learned counsel appearing for the petitioner submitted that basic requirements of the enquiry have not been followed in the instant case and therefore, the entire enquiry proceedings are liable to be vitiated.

It is appropriate to refer to Regulation 8.2 of the Regulations, 2002, which reads as under:

“It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/bodies.”

Thus, the regulation provides that the Medical practitioner who was charged with misconduct can not only be heard in person but

also can defend his case by a pleader at the time of enquiry. In order to call for a procedural enquiry, certain basic requirements have to be complied with. They are, the charged employee must be given an opportunity to submit his explanation to the charges levelled against him and thereafter, the Enquiry Officer shall take oral and documentary evidence before the charged employee. If the rules provide for assistance of a lawyer in the enquiry, the Enquiry Officer has to afford an opportunity to the charged employee to cross-examine the witnesses either in person or through his counsel. In the case on hand, the petitioner specifically asserted in the reply affidavit that though he was permitted to engage counsel, when he along with his counsel went to the office of the 4th respondent, he was only allowed inside but the lawyer engaged by him was not allowed into the office of the 4th respondent. There is no denial of the said fact by the respondents in the instant case. The respondents also admit that only the petitioner was allowed inside and the questionnaire was supplied to him. Further, the statements of the witnesses were taken behind the back of the petitioner and the answers to the questionnaire were obtained by the

enquiring authority separately. Therefore, in the considered view of this Court, the entire procedure adopted by the respondents is not in accordance with Regulation 8.2 of the Regulations, 2002. Though Regulation 8.2 does not elaborately lay down the procedure in which manner the enquiry has to be conducted, the enquiring authority is not supposed to dispense with all the normal requirements of an enquiry against a misconduct. In this case, examination and recording of statements of the witnesses was conducted behind the back of the petitioner and supplying a questionnaire and bringing back answers to the said questionnaire from the petitioner on a different date cannot be said to be in compliance with Regulation 8.2 of the Regulations, 2002.

Therefore, I am thoroughly convinced that the enquiry allegedly conducted against the petitioner in the present case does not conform to the requirements of Regulation 8.2 of the Regulations, 2002. Therefore, the impugned order is set aside. However, this order does not preclude the respondents from conducting a fresh enquiry against the petitioner in accordance with the procedure contemplated under Regulation 8.2 of the Regulations, 2002.

**Writ Petition is disposed of accordingly.
There shall be no order as to costs.**

**Miscellaneous petitions, if any, pending in
this writ petition shall stand closed.**

JUSTICE R.KANTHA RAO

27th July, 2015

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Note: LR Copy to be marked.