

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2562 OF 2017

Dr. Muralilal Nagarmal Saraf ...Petitioner

vs.

Medical Council of India and Others ...Respondents

Mr. Milind Sathe, Senior Counsel a/w. Dr. Birendra Saraf, Mr. Ankit Lohia, Mr. Ameya Gokhale, Ms. Radhika Periera, Mr. Neekesh Shetty, Ms. Sukriti Jaiswal i/b. S.A. Mangaldas, for the Petitioner.

Mr. Ganesh Gole, for Respondent No. 1.

Mr. Rahul Nerlekar, for Respondent No. 2.

Ms. Indrayani Deshmukh, for Respondent No. 3.

Mr. Aditya Pratap a/w. Mr. Shyam Panchmukh and Mr. Abhinandan Waghmare, for the Intervener.

**CORAM : SHANTANU KEMKAR &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : SEPTEMBER 18, 2017

P.C.:

. Parties through their counsel.

2. The Complainant has filed the Intervention Application.

The same is taken on record.

3. By this Petition, the Petitioner, Head of the Department of Orthopedics at Bombay Hospital, Mumbai has challenged the order dated 25th August, 2017 passed by the first Respondent – Medical Council of India as also the consequential order dated 12th September, 2017 passed by the second Respondent- Maharashtra Medical Council.

4. The grievance of the Petitioner is that the Petitioner has not been supplied with the reasons for passing the impugned orders by which the Petitioner's name has been removed from the Indian Medical Register. The copies of the various decision in the Ethics Committee referred to in the impugned order dated 25th August, 2017 have also not been supplied to him. In the circumstances, according to the Petitioner, the impugned orders are in clear violation of the principles of natural justice. It is also the case of the Petitioner that in the absence of reasons in the impugned order though the Petitioner has challenged the impugned orders by filing an Appeal before the Appellate Authority but he could not raise the grounds effectively for want of reasons in the impugned orders.

5. We have gone through the impugned order dated 25th August, 2017 and the consequential order dated 12th September, 2017. The operative part of the order dated 25th August, 2017 reads thus :

“The operative part of proceedings of the said meeting are reproduced as under:

The Ethics Committee perused the expert opinion provided by the experts and also the documents available in record and discussed the matter. After detailed discussion, it is observed that all the treating doctors managed the patient as per standard protocol/guidelines for the medically ill patient.

The Ethics Committee unanimously decided to exonerate all the treating doctors namely Dr. Borges (Cardiologist), Dr. E. Bharucha (Neurologist), Dr. Parekh (Dermatologist), Dr. Asmita S. Sakhale (Pathology MD), Dr. Anand Gokhani (Endocrinologist), Dr. Kunjal Bhatia (Gynaecologist) and Dr. Sujata Mehta (Intensivist) from all the charges levelled against them.

The Ethics Committee further noted that the matter of Dr. Murarilal Nagarmal Saraf has already been decided by the Committee at its meeting held on 7th and 8th March, 2017 and decided to remove his name from Indian Medical Register for a period of 5 (five) yeats.

The Ethics Committee directed the Ethics Section to place the full recommendations of the Ethics Committee before the Executive Committee.

The above recommendations of the Ethics Committee has been approved by the Executive Committee at its meetings held on 01/07/2017.

You are therefore requested to take necessary action to implement the above decision of the Council."

6. Having gone through the aforesaid order dated 25th August, 2017, it is clear that it lacks reasons for taking decision to remove the Petitioner's name from Indian Medical Register for a period of five years.

7. Having regard to the aforesaid, we are of the considered view that the Petitioner deserves to be supplied with the copy of the reasons as also the various decisions of the Ethics Committee referred to in the impugned order dated 25th August, 2017. In the circumstances, we direct the Respondent No. 1 – M.C.I. to supply the Petitioner within two weeks, copies of the orders on the basis of which the impugned action has been taken as also the decision of

the Ethics Committee and the material forming the basis of passing of order of removal of the Petitioner's name from the Indian Medical Register for a period of five years.

8. Thereafter the Appellate Authority shall consider the Petitioner's prayer for interim relief made in the said Appeal and take appropriate decision. Till the Petitioner's application for interim relief is decided by the Appellate Authority, the implementation of the impugned orders so far as it relates to the Petitioner shall remain in abeyance.

9. In case the interim order is passed against the Petitioner, the same shall not be given effect to for a period of two weeks enabling the Petitioner to seek appropriate remedy as may be available in accordance with law.

10. So far as the application for intervention is concerned, the learned counsel for the Petitioner submits that the intervener has already been made party in the Appeal filed before Respondent No. 3. In the circumstances, we grant liberty to the Intervener to make her submission before the Appellate Authority in regard to the interim relief. The intervention application is accordingly disposed of.

11. We also make it clear that the Appellate Authority will

not be influenced by this interim order and shall consider and decide the Petitioner's prayer for interim relief/Appeal on its own merits. We expect that the Appellate Authority shall decide the Petitioner's application for interim relief as expeditiously as possible but in any case not later than four weeks.

12. With the aforesaid direction, the Petition is disposed of.
13. Parties to act on the authenticated copy of this order.

(SMT.ANUJA PRABHUDESSAI, J.) (SHANTANU KEMKAR, J.)