

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 32722 of 2010

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings No.APMC/ DC/ 015/ Case No.12/ 2010-3 dated 14.12.2010 issued by the second respondent as illegal and arbitrary and violative of principles of natural justice; and consequently to set aside the said proceedings.

2) The averments in the affidavit filed in support of the writ petition are as under:

After completing the M.B.B.S in Guntur Medical College, the petitioner got himself registered with the second respondent on 22.05.1993. He took Diploma in Venerology in the year 1997 from University of Health Sciences, Andhra Pradesh at Vijayawada. He set up his practice at Vijayawada by running K.R.Polyclinic and Nursing Home. While things stood thus, the petitioner received a notice, dated 21.04.2010, from the second respondent directing him to submit an application on the complaint made by Indian HIV and AIDs Service Society, Andhra Pradesh, alleging that the petitioner is indulging in unethical practices through fake doctors. Pursuant thereto, the petitioner submitted his explanation, dated 07.05.2010, denying the allegations made in the complaint. Thereafter, the petitioner was

directed to attend before the Ethics Committee on 07.10.2010. The petitioner attended before the Ethics Committee, but without giving any opportunity to adduce evidence and relying on the answers given to the questionnaire submitted therein, the impugned order came to be passed removing the name of the petitioner from the medical register for a period of five years. Challenging the same, the present writ petition came to be filed.

3) Though various grounds are referred to in the affidavit filed in support of the writ petition, learned counsel for the petitioner mainly submits on the procedure ie. followed by the Ethics Committee in recommending the removal of the name of the petitioner from the register. In support of his plea, he places reliance on the judgment of this Court in *L.C.Obulesu v. Andhra Pradesh Medical Council and another*¹.

4) A counter came to be filed by the respondents disputing the averments in the affidavit filed in support of the writ petition. It is stated in the counter that the petitioner herein was indulging in un-ethical practices, which is gross violation of medical code and ethics. It is also stated in the counter that the petitioner was issuing paper and T.V. advertisement, printing books and posters stating that HIV/ AIDs patient should not use ART medicines even if given free of cost. It is stated that the petitioner made the patients to believe that there is a vaccine for AIDs and suggested to get treatment for seven weeks @ Rs. 800/- for wife and husband

¹ (1996) 4 ALD 388

and Rs.400/- to children. The counter further states that the petitioner has suffixed the qualifications of MBBS-DV and claimed as Specialist in AIDs, Skin and venereal diseases which is contrary to clause 1.4.2 of Indian medical Council (Professional conduct, Etiquette and Ethics) Regulation 2002. Insofar as the procedure that was adopted it has been stated that there is no defect and the same is in consonance with Section 15 and 17 of the Andhra Pradesh Medical Practitioners Registration Act, 1968 (for short "the Act"). It is further stated that after giving due opportunity and considering the explanation given by the petitioner, the impugned order is passed, which warrants no interference.

5) It is to be noted here that by an order, dated 29.12.2010, this Court while admitting the writ petition granted interim suspension of the impugned order.

6) As stated earlier, the main ground urged by the learned counsel for the petitioner is that the procedure that is followed by the Ethics Committee, while recommending removal of the name of the petitioner from the rolls of the Medical Register for a period of five years, is incorrect and improper.

7) Before dealing with the rival contentions, it is useful to refer to the relevant provisions of the Act and the Rules. The Act No. 23 of 1968, which has been amended by the [Amendment Act](#) of 1986, is an Act to consolidate and amend the law relating to the registration of medical practitioners of modern scientific medicine in the State of Andhra Pradesh and to provide for

matters connected therewith. [The Act](#) extends to the whole of State of Andhra Pradesh. As per [Section 2 \(h\)](#), 'register' means the register maintained under [Section 15](#). Clause (i) which defined 'registered practitioner' states that a practitioner of modern scientific medicine whose name is for the time being borne on the register. The expression "infamous conduct in a professional respect" is not defined either in the Act or the Rules. Chapter II comprising of [Sections 3 to 10](#) deal with constitution and composition of the Andhra Pradesh Medical Council. Chapter III, which comprises of only one Section i.e., [Section 11](#), deals with Executive Committee of the Council and its powers. [Section 12](#) of Chapter IV, which is relevant for our purpose, deals with special committees and their functions. According to sub-section (1) of [Section 12](#), "The Council may, from time to time appoint one or more special committees, each consisting of:"

8) As per sub-section (4) of [Section 12](#), the Council may, refer to any such committee for enquiry and report any matter relating to any of the purposes of this Act, or, delegate to it any of its functions by resolution, subject to such conditions as it deems fit to impose and may cancel any such delegation. [Sections 15 to 17](#) in Chapter VI deal with registration of medical practitioners and issue of a certificate of registration in the prescribed form. Sub-section (4) of [Section 15](#) provides that the Council may refuse to permit the registration of any person, who was convicted of an offence involving a moral turpitude with imprisonment for a period of not less than six months or with fine of not less than

rupees five hundred and a period of five years has not elapsed from the date of such conviction, or who after due inquiry by the Council or a Committee thereof was found guilty by the Council of infamous conduct in any respect. [Section 17](#) deals with cancellation or alteration of entry made in the register. Sub-section (2) of [Section 17](#), states that that the Council may direct the removal, permanently or for a specified period, from the register the name of any registered practitioner for the same reasons for which registration may be refused by the Council under sub-section (4) of [Section 15](#) and the provisions thereof, shall apply to any inquiry under this Section. Sub-section (3) provides that nothing in sub- section (2) shall relieve a registered practitioner of any obligation or code of ethics which may be imposed on registered practitioner's generally by the Council. Sub-section (5) provides that a person whose name has been removed or deleted from the register under this section shall forthwith surrender his certificate of registration to the Registrar, and the name so removed or deleted shall be published in the Andhra Pradesh Gazette.

9) In exercise of the power conferred by [Section 31](#) of the Act, the State Government framed rules regulating the procedure at an enquiry held under [Sections 15 & 17](#) of the Act. Rules 1 to 4 lay down the preliminary procedure to be followed. Rule 1 provides that whenever information is received that a Medical Practitioner, who is an applicant for registration, or whose name has already been registered, has been guilty of conduct which prima facie

constitutes infamous conduct, in his professional respect, the Registrar shall make an abstract of such information. Rule 2 provides that where the information in question is in the nature of a complaint by a person or body charging a Medical Practitioner with infamous conduct in his professional respect, such complaint shall be made in writing addressed to the Registrar, setting forth the grounds of complaint and accompanied by one or more declarations as to the facts of the case. Rule 3 prescribes the mode of making declarations referred in Rule 2.

10) Rule 4, reads as follows:

"4. (1) The abstract and, where a complaint has been lodged, the complaint, and all other documents bearing on the case, shall be submitted by the Registrar to the Chairman who may, thinks fit, instruct the Registrar to furnish the Medical Practitioner concerned with a copy of the complaint and other documents, and invite him by means of a registered letter to submit any explanation he may have to offer. The documents, including any explanation submitted by the Practitioner to the Registrar, shall then be placed before the Council, The Council may then;

- (a) Order that all further proceedings be stopped, or
- (b) appoint a Committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted under [Section 15](#) or 17 of the Act, or
- (c) direct that a regular enquiry be held by Council or a Committee thereof appointed under [Section 26](#) of the Act.

The Committee appointed to make a preliminary enquiry shall have power to cause investigation to be made and take further evidence and also any legal advice or procure any legal assistance as it may think necessary.

(2) if the Council consider, that the case is one in which an enquiry under [Sections 15](#) to [17](#) of the Act ought to be held, the Chairman shall direct the Registrar to take steps for the institution of any enquiry and for having the case heard and determined by the Council."

Rule 5 provides that the Council or Committee thereof appointed under [Section 26](#) of the Act shall observe the procedure laid down in the following rules.

Rule 6 reads as follows:

"6. When the charge is brought by a complainant, they shall require complaint to be reduced to writing and verified by oath or solemn affirmation of the complainant. The articles of charge and a list of documents and witnesses, by which each charge is to be sustained shall then be prepared and the Registrar shall then issue a notice in writing on behalf of the Council addressed to the Medical Practitioner concerned.

Such notice shall be accompanied by a copy of the articles of charge and list of witnesses and documents referred to above and shall inform the Medical Practitioner concerned the day on which and the hour at which the Council or Committee intend to deal with the case and call upon him to attend in person or by Counsel before the Council or committee on that day and hour. The notice shall be in the form appended to these rules, with such variation as may require. It shall be served on the Medical Practitioner fifteen dear days before the beginning of the enquiry, and shall be accompanied by a copy of the provisions contained in [Sections 15](#), 1,7 and, 26, of the Act and ...of ..the. rules regulating the procedure for conducting any inquiry. Service of the notice may be made either by delivery to the Medical Practitioner in person or by registration letter addressed to his usual residence."

Rule 7 provides that the complainant (if any) and the Medical Practitioner concerned, shall, upon request in writing signed by the party or his counsel, be entitled to be supplied by the Registrar with a copy of any declaration, explanation, answer or

other document given or sent to the Council by or on behalf of the other party, which such other party will be entitled on proper proof to use at the hearing as evidence in support of, or in answer to, the charge specified in the notice of inquiry. Rule 10 lays down that at the hearing of the case by the Council or Committee the complainant and also the Medical Practitioner concerned may, if they so desire, be represented or assisted by Counsel. Rule 11 details the elaborate order of procedure which has to be followed for recording the evidence of the complainant as well as the medical practitioner concerned and it reads as follows:

"11. When the complainant appears personally or by Counsel, the order of procedure shall be as follows:-

(1) The Complainant shall, exhibit the articles of charge to the Council or Committee, which shall be openly read.

(2) The Medical Practitioner concerned shall then be called upon to plead "guilty" or "not guilty" to each of the charge, which plea shall forth- with be recorded with the articles of charge. If the Medical Practitioner refuses or .without reasonable cause neglects to appear to answer the charge either personally or by Counsel, he shall be taken to have admitted the truth of the articles of charges.

(3) The complainant may then address the Council or Committee in explanation of the articles of charge and of the evidence by which they are proved.

(4) The oral and documentary evidence shall then be exhibited. The witnesses shall be examined by or on behalf of the complainant and may be cross-examined by or on behalf of the Medical Practitioner concerned, The complainant shall then be entitled to re-examine the witnesses on any point on which they have been cross-examined. No question should be asked in re-examination on any new matter without leave of the Council. The Council or Committee may put such questions as they think fit.

(5)

(6) When the case for the complainant is closed the Medical Practitioner concerned shall be required to make his defence, orally or in writing, as he shall prefer, if made in writing, it shall be openly read and a copy shall be given at the same time to the complainant.

(7) The evidence for the defence shall then be exhibited, on oath witnesses examined, who shall be liable for cross-examination and re- examination and to examination by the Council or Committee in the same manner as the witnesses for the complainant.

(8) The Council or Committee or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary explain to him in the language in which it was given, and shall be recorded with the proceedings.

(9)

(10) When the Council or Committee shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the Council or Committee may/ in their discretion, require the same to be amended, and may thereupon on the appliances (sic. application) of the complainant or the Medical Practitioner concerned, adjourn the enquiry for such time as they may consider reasonable. The Council or Committee may also, if they think fit, adjourn the inquiry from time to time, on the application of either the complainant or the Medical Practitioner concerned, on the ground of sickness or unavoidable absence of any witness or such other cause as they may consider reasonable. When such application is made and refused, the Council or Committee shall record the application and their reasons for refusing to comply with it.

(11)

(12)

(13)

(14) (1) Upon the conclusion of the case, the Council or Committee will deliberate thereon in private and at the conclusion of the deliberations the Council or the Committee shall vote on the question whether the articles of charge are proved or not and whether they show that the medical Practitioner concerned has been guilty of infamous conduct in a professional respect or not.

(2) If the Council or Committee by a majority find the Medical Practitioner guilty of infamous conduct in a professional respect, the Chairman shall direct the Registrar not to register his name if he be an applicant for registration, or to erase his name altogether or for a specified period from the register of Medical Practitioner if he is already a registered practitioner, except in cases where the Council or Committee consider that in view of extenuating circumstances, the Practitioner may be let off with a warning.

(15)"

11) Examination of the above provisions, reveal that the Act is a self-contained code and an elaborate procedure has been prescribed for conducting an enquiry for taking action under [Sections 15](#) and [17](#) of the Act. The Council or its committee is invested with the powers of a Civil Court for enforcing the attendance of witnesses and compelling the production of documents. The Rules also envisage that the Council on receipt of a complaint, may either appoint a committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted under [Sections 15](#) and [17](#) of the Act or direct that a regular enquiry be held by the Council or a committee thereof appointed under [Section 26](#) of the Act. [The Act](#)

and the Rules thus envisage two types of enquiry i.e., a preliminary enquiry and a regular enquiry.

12) A reading of the above provision and the material placed on record would show that a notice has been given to the petitioner, pursuant to which he gave an explanation. Not being satisfied with the explanation given, the petitioner was directed to appear before the Ethics Committee. On the date of his appearance before the Ethics Committee, a questionnaire was given to him asking to answer the same. Thereafter, the matter was referred to the Medical Council, which has passed the impugned order.

13) The question that falls for consideration is whether any opportunity to adduce evidence should be given to the petitioner when he is asked to appear before the Ethics Committee or is it sufficient for the Ethics Committee to decide basing on the statement/questionnaire.

14) It is to be noted here that the Act prescribes a procedure to deal with the cases where there is no complaint or where no complainant appears. But here is the situation where a complaint was made by a society which was unsigned.

15) Though much comment is not made about issuing notice in directing the petitioner to appear before the Ethics Committee, but the grievance appears to be that the petitioner should not be given an opportunity to adduce oral or documentary evidence

before the Ethics Committee, which is the body which decides the fate of a doctor.

16) Referring the judgment of the Apex Court in *Bhandari v. Advocates Committee*² a learned Single Judge of this Court in L.C.Obulesu case (1 supra) observed as under:

“Right to adduce evidence in his defence is a valuable right which could not be denied to the petitioner.”

17) While confirming the findings of the learned Single Judge in a case referred to above, a Division Bench of this Court in Writ Appeal No.1410 of 1996 dated 28.03.1997 observed as under:

“Following the principles laid down in the above cases and in view of the learned single Judge finding in the instant case that the enquiry was vitiated for the non-examination of the witnesses, 1st respondent not being afforded proper opportunity for his defence and also not being permitted to engage a counsel to argue his case, it has to be held that though there was an enquiry, it was no enquiry in the eye of law and that the same is null and void. A fresh enquiry is the only consequences. The Medical Counsel has therefore to conduct a fresh enquiry from the stage of service of memo of charges and issue of show-cause notice.”

18) In view of the judgments referred to above, which are almost identical to the case on hand, this Court is of the view that before arriving at a finding in holding the petitioner guilty, atleast petitioner should be asked whether he intends to adduce any evidence in support of his plea and if he intends to do so an opportunity should be given to him to adduce evidence.

² 1956 (3) All.E.R.742

19) In the instance case the explanation given by the petitioner shows that he is ready to prove his bonafides and sincerity. Such being the position, the action of the authorities in coming to a conclusion, without giving any opportunity to the petitioner to adduce evidence is illegal, improper and incorrect. Hence, the order under challenge is set aside.

20) Accordingly, the writ petition is allowed directing the Ethics Committee, to issue notice to the petitioner giving an opportunity to him to adduce evidence and thereafter pass orders in accordance with law. However, the enquiry shall be completed as early as possible, preferably, within a period of six months from the date of receipt of a copy of this order and the parties shall co-operate in the expeditious conduct of the enquiry.

21) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

21.09.2017

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