

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.43638 of 2016

ORDER:

Heard the learned counsel for the petitioner, Sri Vivek Chandrasekhar, learned standing counsel for the 1st respondent, Sri D. Bhaskar Reddy, learned standing counsel for the 2nd respondent and Sri K Kishore Kumar, learned counsel for the 3rd respondent.

2. The petitioner, who was registered with the 2nd respondent, is practicing as doctor and he is a Post-graduate in Orthopedics. He has been conducting surgeries for the last 30 years. Now he is associated with Apollo Hospital and Global Hospital. While so, he performed a surgery on the 3rd respondent for increasing the height of the 3rd respondent at his insistence. However, an adverse news item was published on 06.04.2016, pursuant to which, a show cause notice was issued to him by the 2nd respondent on 13.04.2016. The 2nd respondent came to the *prima-facie* conclusion that the petitioner performed an experimental surgery and the petitioner was asked to submit his explanation for a decision to be taken on 20.04.2016. The petitioner submitted his explanation on 16.04.2016. He appeared before the Ethics Committee on 20.04.2016 and submitted replies to the prepared questionnaire. In the meeting held on 20.04.2016, action was recommended against the petitioner. The Executive Committee met on 04.11.2016 and in the said meeting, a decision was taken to recommend to the general body to remove the name of the petitioner from the Medical Register for a period of two years as per Regulation 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 (for short 'Regulations 2002'). Thereafter, the general body also met on 04.11.2016 and approved the recommendation of the

Executive Committee. Challenging the proceedings dated 04.11.2016 of the 2nd respondent, the petitioner filed the present writ petition.

3. Learned counsel for the petitioner submits that an elaborate procedure is contemplated under Rule 8.2 of the Regulations 2002 and the said procedure was not followed in the case of the petitioner. He placed reliance on a decision of this court in WP No.16970 of 2015 in support of his contention.

4. Though the principles of natural justice were followed by issuing a notice and asking for an explanation, the procedure as contemplated under Rule 8.2 of the Regulations 2002 was not followed in the instant case. No material was shown contrary to the submission made by the learned counsel for the petitioner.

5. In the circumstances, without going into the merits of the case, in view of the procedural lapse in taking decision by the 2nd respondent, the impugned order dated 04.11.2016 is set aside and the matter is remanded to the 2nd respondent for taking appropriate action in accordance with law, by duly following the procedure as contemplated under the Regulations 2002, and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. It is needless to observe that the petitioner, as well as the 3rd respondent, shall cooperate for the conclusion of the enquiry.

6. The writ petition is, accordingly, allowed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed in consequence.

Date: 28.02.2017
BSS

A. RAMALINGESWARA RAO, J