

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.29572 of 2015

ORDER:

The present Writ Petition is filed challenging the order in appeal No.MCI-211(2)(11)(Appeal)/2014-Ethics/128850, dated 20.08.2015 passed by the Medical Council of India (respondent No.2) and the order dated 13.03.2014 vide APMC/DC/015/Case No.16/2013 passed by the A.P. Medical Council (respondent No.3), preferred by the 5th respondent herein, as illegal and improper.

2) The petitioner herein is a Post Graduate M.D., DCH, Pediatrician and Neonatologist and also the Managing Director of Sai Ram Multi-speciality Hospital, Fertility and Test Tube Baby Centre at Dilsukhnagar. The wife of the petitioner is also a Post Graduate in Obstetrics and Gynecology. Both of them have started a 40 bed Hospital in the year 1998.

2.1) A patient by name Mr. V.Bharath Kumar, who was aged about 13 years was taking treatment with the petitioner since 10 years. The boy was suffering from nephritic syndrome. After diagnosing the ailment, the boy was referred to Dr. Raja Ram, D.M. (Nephrology), Hyderabad Kidney Centre, Malakpet, Hyderabad for further treatment. The child was under regular treatment with Dr. Raja Ram for Nephritic syndrome problem, but whenever the child's mother and grandfather visit Dr.Raja Ram, they used to meet the

petitioner also with a request to treat their child if there is any other ailment other than Nephritic syndrome. Over a period of time, the petitioner developed good relationship with the child and they also used to contact the Doctor over telephone as and when required. In the year 2007, when the child developed Septicemia and other related problems, they visited the petitioner, who after thorough diagnosis referred the child to Yashoda Suepr Speciality Hospital, Malakpet for treatment. While things stood thus, on 01.02.2013 when the child, who was aged about 13 years by then, fell sick, the grandfather of the child talked with the petitioner over phone and on the advise of the petitioner, they went to Hyderabad kidney centre for treatment. The boy was admitted in the hospital, given pain-killer injunctions and fluids and then discharged after few hours. Thereafter they approached the petitioner and requested him to check the child as he was suffering with severe abdominal pain. Since the boy was having high temperature, cough, SOB+, bilateral wheeze and palpation of the abdomen which was tender and painful, he advised the attendants of the boy to take him back to Hyderabad Kidney centre. But on their requests, the petitioner admitted the child in his Hospital and initiated symptomatic treatment with antibiotics and pain killers. On the same day night i.e., on the midnight of 03.02.2013, the child developed fits, which never happened to him earlier and accordingly the duty Doctor was said to have informed the petitioner, who stays in the very same complex. He claims to have visited the child and

attended on him, by changing the medicine. He claims to have called the attendants of the child and informed them about the risk involved and also directed them to shift the child to Yashoda Hospital for proper and effective treatment. Though he advised them to take the patient to Yashoda Hospital, Malakpet at 4.00 a.m., but the attendants took the child to Lotus Hospital, Lakdikapool at 6.30 a.m., and got him admitted in the said Hospital at 8.40 a.m. On the next day i.e., on 04.02.2013, the boy died while taking treatment in Lotus Hospital. On 12.04.2013 the petitioner received a notice from the A.P. Medical Council, pursuant to a complaint filed by one V.Bala Prasad, who is a close relative of the deceased child. The petitioner submitted his explanation on 20.04.2013 in the form of a Notarized affidavit enclosing the entire case record. Pursuant to a letter dated 22.10.2013, the petitioner appeared before the Ethics committee on 30.10.2013 and submitted his explanation. The A.P. Medical Council found the petitioner negligent in appointing a non-allopathic Doctor in his Hospital to treat the child patient and as such the Committee decided to impose censure on the petitioner vide proceedings dated 13.03.2014. Aggrieved by the inadequacy of the sentence, the complainant (R-5) preferred an appeal before the Medical Council of India. By the impugned order, the council decided to remove the name of the petitioner from the Indian Medical Register for a period of three months as he is guilty for violating the code of ethics. Challenging the same, the present Writ Petition is filed.

3) Learned counsel for the petitioner mainly submits that there is absolutely no material to show that the petitioner was negligent in his duties or that he has violated the code of ethics. According to him, the child died while taking treatment in Lotus Hospital and as such the negligence, if any, cannot be fastened on the petitioner. He submits that since last 11 years, he was treating the boy and the treatment given to him was to their satisfaction. Since the boy developed complications due to fits, which occurred for the first time, he thought it fit to refer the patient to a Super speciality hospital. Though he advised the attendants to take the boy to super speciality hospital, there was a considerable delay on their part, which proved fatal. He submits that engaging a non-allopathic Doctor to treat the patients, who are taking allopathic treatment, does not amount to any violation. He relies on the notifications issued by the Central Council of Indian Medicine, in support of his plea. In any event, he submits that the punishment imposed is in violation of rules and regulations of Medical Council of India and that the petitioner would be put to lot of embarrassment if the said punishment is not set-aside. He further submits that no reasonable opportunity was given to him to put forward his defence and that the conclusions were arrived at after hearing the counsel for the complainant only by name Sri T.V.George.

4) By an order dated 11.09.2015 this Court suspended the impugned order.

5) A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the writ petition. According to them, the petitioner obtained the interim orders by suppressing facts, which are to his knowledge. It is their case that against the order imposing censure, which was numbered as MCI-211(2)(11)(Appeal)/2014-Ethics/128850, an appeal was preferred by the petitioner which was rejected as time barred on 20.04.2015. Thereafter, he made an application to review the said order, which is pending for consideration. Suppressing these facts, the petitioner herein filed the present writ petition, making a representation that without considering his appeal, the second respondent should not have disposed of the appeal filed by the complainant.

6) It is to be noted herein that the averments in the affidavit filed in support of the Writ Petition are silent with regard to appeal filed by the petitioner against the order of censure dated 13.03.2014. Though the appeal filed by the petitioner was rejected on 20.04.2015, the same is not referred to in this Writ Petition. It may be true that a review is filed, but that by itself cannot be a ground to suppress the said fact. Sri Vivek Chandrasekhar, learned counsel appearing for Medical Council of India would submit that the question of considering the review would not arise as the Medical Council Act

does not anywhere prescribe reviewing of an order by the same authority.

7) Both the Forums viz., the A.P. Medical Council as well as the Medical Council of India categorically held that there was negligence on the part of the petitioner in treating the child. The following facts were held proved by the A.P. Medical Council vide its order dated 13.03.2014. The relevant portion of the order is as under :-

"The Ethics Committee in its meeting held on 29.11.2013 has considered this item together with the material available on record and the statements of the parties concerned. As per the decision taken in this regard, you were requested to produce original inpatient records of the patient as well as prescriptions. Accordingly, you have submitted necessary records and the same were considered by the Ethics Committee together with other material on record in the meeting held on 30.12.2013. The Ethics Committee noted the following:

The patient was admitted in the hospital on 01.02.2013.

1. The Committee also noted that the duty doctor was not an allopathic (non-MBBS) doctor who has seen the patient through the night.
2. The treating doctor, Dr.Goli Venkateswara Rao has not seen the patient in the intervening night inspite of patient developing convulsions and the doctor only saw the patient in the morning hours and advised to shift the patient to the higher center.
3. The Ethics Committee finds these lapses in the treatment to the patient on the part of the respondent, Dr.Goli Venkateswara Rao and at the same time, he employed a non-qualified person to treat the patient in his hospital.

8) While giving the above findings, the Ethics Committee recommended imposition of censure. The Ethics Committee found negligence on the part of the petitioner herein in appointing non-allopathic Doctor to treat the patients, who were taking allopathic

treatment and accordingly he was warned to be careful in discharging his duties. The Executive Committee of A.P. Medical Council met on 28.01.2014 and considered the case of the petitioner again with the material available on record and recommended to impose a punishment of censure. The general body of the A.P. Medical Council met on 28.01.2014(afternoon) and after considering the findings and the material on record, approved the punishment awarded by the Executive Committee. In the appeal filed by the complainant, the Medical Council of India approved the findings of the Ethics Committee, but however, decided to remove the name of the petitioner from medical council register for a period of three months, as he has violated the code of ethics. Since both the forums have appreciated the material available on record, more particularly the factual aspects of the case, it may not be proper for this Court to re-appreciate the evidence, while dealing with the matter under Article 226 of the Constitution of India.

9) It is well established principle of law that this Court under Article 226 of the Constitution of India can interfere only when there is an error apparent on the face of the record or where the authority who dealt with the matter has no jurisdiction to deal with the same or where there is a violation of principles of natural justice. The learned counsel for the petitioner tried to rely upon the circulars issued by the Central Council of Indian Medicine, from time to time, to

show that the word "Indian Medicine" includes "Astang Ayurveda, Siddha or Unani Tibb", whether supplemented or not, by such modern advances, as the Central Council may declare by a notification from time to time. He further contended that there is nothing wrong in petitioner employing non-allopathic Doctor, as a Night-duty in his hospital. I am afraid the same cannot be accepted for more than one reason. Since the patients in the said hospital are being treated with allopathic medicine and if a non-allopathic Doctor is appointed to treat such patients, he would be a stranger to the said medicines to be used on such patients. Further, he would not be knowing the composition of the allopathic medicine, the generic names of the said medicine and the effect of such medicine on the patients. He would be a layman in giving treatment to the patients. Therefore, the interpretation given by the learned counsel for the petitioner, cannot be accepted.

10) Further, a reading of the notification issued by the Central Council of Indian Medicine would only give an expansive meaning to Indian Medicine as defined under Section 2(1)(e) of the Indian Medicine Central Council Act, 1970. It only refers to advances made in the various branches of modern scientific medicine in all its branches of internal medicine etc., made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such modern advances. It does not, by any stretch of imagination would

mean that the students who undergo training in Ayurvedam, Siddha, Unani tibb, can impart treatment by allopathic medicines. In fact a reading of the Act does not anywhere give any scope for such an interpretation.

11) Further, the learned counsel for the petitioner tried to contend that the petitioner attended on the patient during the intervening night of 03.02.2013 and 04.02.2013, when the condition of the patient was critical. But the finding of the fact arrived at by the two forums is otherwise. It was held that the petitioner never attended on the patient, though he was informed about the condition of the patient in the night. It may be true that the petitioner must have advised shifting of the patient, when his condition was critical, but that by itself will not exonerate him with the acts committed during the period when the patient was under his care and custody.

12) Insofar as violating the principles of natural justice is concerned, the order of the Medical Council of India refers to hearing of the petitioner in New Delhi on 12.06.2014, thereafter the counsel for the respondents was heard on 06.02.2015 and basing on the material available on record, the Medical Council passed the impugned order, which was communicated immediately to both the parties. Therefore, the plea that there was violation of principles of natural justice cannot be accepted.

13) In view of the above, I am of the opinion that engaging a non-allopathic Doctor (Ayurveda) in the Hospital of the petitioner and allowing him to treat the patients, who are taking allopathic treatment, amounts to gross negligence. Hence, the finding of facts arrived at by both the Forums cannot be found fault with and the quantum of punishment being reasonable, warrants no interference.

14) Accordingly, the Writ Petition is dismissed. However, it is always open to the authorities to deal with the review filed by the petitioner, if the same is permissible under law, uninfluenced by the observations made herein. No costs. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:06.06.2017
GM

