

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.13051 of 2018

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon’ble Court may be pleased to issue a Writ or order more particularly one in the nature of WRIT OF MANDAMUS directing the quashing of order/ decision being the decision taken by the respondent no.1 dated 10/01/2018 whereby, the registration of the petitioner is sought to be cancelled on such terms and pass such further order or orders as this Hon’ble court may deem fit and proper in the interest of justice and circumstances of the case.”

2. I have heard the submissions of Sri *Vempati Mallikarjun Shastry*, learned counsel appearing for the petitioner, of learned Government Pleader for Medical & Health (Telangana), appearing for the 1st respondent, of Sri *D.Bhaskar Reddy*, learned Standing Counsel appearing for the 2nd respondent, and of Sri *Talaat Sajjad*, learned counsel appearing for the 3rd respondent Caveator. I have perused the material record.

3. The case of the petitioner is this: The petitioner is a qualified medical practitioner and is enrolled with the 2nd respondent-Telangana State Medical Council with registration No.HMC 13872. He is a medical graduate (MBBS) from Deccan College of Medical Sciences, Hyderabad, and possesses an FRCS certificate in General Surgery from Royal College of Physicians and Surgeons of US, Michigan. He completed fellowship programme and received relevant certificate in December, 2011. The petitioner has got enhanced skills as he went to VASA’s hair academy in Ahmedabad

and was trained under Dr.Sanjeeva Vasa, MS.MCH, who is a renowned senior hair transplant surgeon. The petitioner became a member of International Society of Hair Restoration Surgery, USA and also a member of Association of Hair Restoration Surgeons. The 3rd respondent approached the petitioner for hair transplant. The petitioner explained the procedure to the 3rd respondent before the surgery and also the consequences. All necessary tests were conducted and examinations were done before undertaking the procedure/surgery. Having been made aware of the procedure and consequences, the 3rd respondent signed a consent letter. The petitioner has done hair transplant treatment of the 3rd respondent diligently and prudently, with due care and caution. No doubt, in the case of the 3rd respondent, certain medical complications arose. However, the same were not on account of the deficiencies in service or negligence on the part of the petitioner. When the petitioner received a phone call, on 26.07.2016 at 6.00 PM., from a relative of the 3rd respondent stating that the condition of the 3rd respondent is bad, he advised them to come to the hospital. However, when the 3rd respondent pleaded inability, the petitioner went to his house at Sultanpura and performed his professional duty. At that time the petitioner came to know that the 3rd respondent carelessly suppressed certain facts about his health and that the same is the main cause for the superfluous post transplant issues. Immediate hospitalization and treatment was advised. Petitioner addressed a letter to the emergency department of Care hospital, with necessary instructions, and believed that the 3rd respondent would be taken to the hospital. The petitioner was later informed that the 3rd respondent was admitted in ICU in Care hospital and was on

ventilator. Petitioner has seen the 3rd respondent, on 27.07.2016 between 04.00 and 04.30 PM. The petitioner provided necessary post-operative care and extended medical support. The petitioner has not misused his powers as a professional and he is not incompetent to conduct the hair transplant procedure. However, on the false complaint of the 3rd respondent, the order impugned, dated 10.01.2018, was passed by the Chairman of State Medical Council removing the name of the petitioner from the medical register for a period of two (02) years and he was directed to surrender his Permanent Registration Certificate and also the Renewal Registration Certificate. Therefore, the present writ petition is filed.'

4. Learned counsel for the petitioner fairly submits that a right of appeal is available under Medical Council of India Act, 1956, and that an appeal also has been preferred. However, he further submits that at present, Medical Council of India is not having any sittings and hearing the appeals.

5. Learned Government Pleader for Medical & Health appearing for the 1st respondent, the learned Standing Counsel appearing for the 2nd respondent and the learned counsel appearing for the 3rd respondent strongly opposed for granting any orders *inter alia* stating as follows: - 'The petitioner performed the procedures without having necessary qualifications, training and experience. The petitioner grossly violated the ethical conduct and failed to follow the required procedures and take the necessary precautions which are required to be taken before and after conducting the transplant procedure/surgery. The petitioner failed in discharge of

his professional duties. The petitioner without obtaining opinion of an expert before the surgery, acted carelessly and negligently. On account of the negligence, deficiency in service and lack of qualification & experience, the patient developed infection, cellulites and gangrene. The gangrene which developed within a short time of surgery resulted in loss of right eye and other septic complications of Gangrenous facialis. In the facts and circumstances of the case, the impugned order has come to be passed.'

6. It is further submitted by the learned counsel appearing for the respondents that even after passing the impugned order, the petitioner indulged in hair transplant procedures and the said fact is revealed in a string operation and that therefore, the respondents are taking steps for initiating appropriate action against the petitioner.

7. In reply, learned counsel for the petitioner submitted that the regulation 8.2 of the Indian Medical Council Regulations, 2002, is not applicable to the case facts and that in any view of the matter, the order removing the name of the petitioner from the register for a period of two years is unsustainable under facts and in law and that the validity of the order and the proportionality of the punishment require detailed examination. The learned counsel for the petitioner also submits that if the petitioner is debarred and is kept out of profession for two years, the same would forever affect his professional career and will have a deleterious affect on his profession and reputation.

8. I have given earnest consideration to the facts and submissions. As rightly contended, the sustainability of the order

impugned and in any event the proportionality of the punishment require detailed examination.

9. Having regard to the facts and submissions, the Writ Petition is disposed of reserving liberty to the petitioner to pursue the appeal, which is admittedly filed. However, there shall be a suspension of the order impugned for a period of two (02) months, from today, subject to the condition that the petitioner shall only do medical practice, which he is qualified to do, provided his registration certificate is in force, but, shall not deal with any other practice, which he is not qualified to do, including hair transplant procedures/surgeries until the appeal stands disposed of. Notwithstanding this order, within the above said period of two (02) months, the petitioner is at liberty to obtain necessary further interim orders in the pending appeal, provided his Registration Certificate for medical practice is in force or is renewed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 24th April, 2018

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