

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.16 of 2015Order reserved on: 12-4-2019Order delivered on: 17-5-2019

Dr. Pankaj Jaiswal, S/o Late Shri Anil Jaiswal, aged about 41 years,
R/o House No.5, Sai Residency, Lalpur, PS Tikrapara, Raipur,
District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Department of Health, Mantralaya, DKS Bhawan, Naya Raipur, District Raipur (C.G.)
2. Chhattisgarh Medical Council, through its President, First Floor, Dr. Balmukund Sharma Clinic, Kankalipara, Near Nagar Nigam Ayurvedic Hospital, Raipur, District Raipur (C.G.)
3. Chief Medical and Health Officer, Raipur, District Raipur (C.G.)
4. Station House Officer, Police Station Rajim, District Mahasamund (C.G.)

---- Respondents

For Petitioner: Miss Sharmila Singhai, Advocate.

For Respondents No.1, 3 and 4 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Respondent No.2: -

Mr. Rakesh Kumar Jha, Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The petitioner is a registered medical practitioner and is an Anesthesiologist. He takes exception to the impugned order dated 26-12-2014 passed by the Chhattisgarh Medical Council, Raipur, (for short, 'the CMC') by which the CMC exercising the power under Section 29(1) of the Chhattisgarh Ayurvigyan Parishad Adhiniyam, 1987 (for short, 'the Act of 1987') read with Regulations 8.1 & 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and

Ethics) Regulations, 2002 (for short, 'the Regulations of 2002'), has suspended the registration of the petitioner to practice as Anesthesiologist for two years and further directed to lodge first information report (FIR) against him.

2. The petitioner has filed this writ petition stating inter alia that he is running a hospital at Rajim in the name of Mata Seva Sadan, Rajim and hires specialist surgeons for surgical operation as and when required. In the year 2012 and before also some women underwent surgeries of Hysterectomy in his hospital in which uterus of the said patients were removed due to medical exigencies and under advice, care and supervision of expert lady doctors. On the basis of news reports in the year 2012, a committee was constituted by the Chief Medical and Health Officer, Raipur to enquire into the truth of the allegation, who conducted enquiry and submitted report and recommended action against the unidentified guilty doctors vide Annexure P-4. Thereafter, by order dated 22-6-2012, the petitioner was placed under suspension which the petitioner questioned in a duly constituted petition bearing W.P.(C) No.1277/2012 and which was disposed of by this Court directing the respondent State to decide the representation of the petitioner within a period of two weeks. The petitioner made representation and by order dated 4-8-2012, the suspension of the petitioner was revoked with a condition that the petitioner will not conduct any operation until the submission of report by the committee. It is further pleaded that the said committee gave its report finally on 23-10-2012. Thereafter, the petitioner was again banned for a period

of one year by order dated 22-6-2013 which the petitioner challenged by filing a petition bearing W.P.(C)No.972/2013. This Court by order dated 1-8-2013, quashed the aforesaid order dated 22-6-2013 being in violation of the provisions contained in Section 15 of the Act of 1987 and gave further liberty to the respondent Council to proceed in accordance with the provisions as prescribed in Section 15 of the Act of 1987 read with Regulation 8.2 of the Regulations of 2002. It has also been pleaded that by availing liberty granted by this Court, now the petitioner has again been banned for two years and his certificate to practice has been suspended for two years and further, FIR has also been directed to be registered against him, which is unsustainable and bad in law, as neither the list of charges was served to him nor show-cause notice was served to him and no opportunity to lead evidence has been granted to him, as such, it is in complete violation of the provisions contained in Section 15(b) read with Section 17 of the Act of 1987 and Regulation 8.2 of the Regulations of 2002 and therefore it is liable to be quashed.

3. Return has been filed by the Chhattisgarh Medical Council / respondent No.2 stating inter alia that sufficient and adequate opportunity was granted to the petitioner to place his viewpoint and thereafter, the impugned order has been passed which is strictly in accordance with law.
4. Miss Sharmila Singhai, learned counsel for the petitioner, would submit that the impugned order has been passed in violation of the judicially sanctioned liberty granted by this Court in W.P.(C)

No.972/2013 by order dated 1-8-2013, as the entire action of the respondents is against the mandatory provision of Section 15 of the Act of 1987 read with Regulation 8.2 of the Regulations of 2002. She would further submit that the petitioner was neither served without show-cause notice nor served with any documents, nor he was provided opportunity to cross-examine the witnesses, as such, it is violative of the principles of natural justice and, therefore, the impugned order is liable to be quashed.

5. Mr. Rakesh Kumar Jha, learned counsel for respondent No.2, would submit that sufficient opportunity was afforded to the petitioner and documents were supplied to him and thereafter, after hearing the petitioner, the impugned order has been passed which is strictly in accordance with law, as such, no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
7. As noticed herein-above, by order dated 22-6-2013, the registration of the petitioner to practice as a medical practitioner was suspended for a period of one year which he challenged by way of a petition bearing W.P.(C)No.972/2013, that was granted and by setting aside the order dated 22-6-2013, this Court reserved liberty in favour of respondent No.2 which reads as under: -

“15. Thus, without going into the merits of the case as to whether sufficient materials were available or not for passing the impugned order dated 22.06.2013, on

account of the fact that the provisions of Section 15 of the Act, 1987 read with Regulation 8.2 of the Regulations, 2002 was not complied with, the impugned order dated 22.06.2013 (in all the writ petitions) are set aside. However, on the request of learned counsel appearing for the respondent/Council, liberty is reserved to initiate fresh proceedings, if so advised, in accordance with the provisions as prescribed in Section 15 of the Act, 1987 read with Regulation 8.2 of the Regulations, 2002.”

8. Respondent No.2 herein availing the liberty reserved in its favour in accordance with the provisions of Section 15 of the Act of 1987 read with Regulation 8.2 of the Regulations of 2002, issued notice to the petitioner on 18-11-2014. It is a simple letter calling upon and informing the petitioner to appear on 26-11-2014 which states as under: -

क्रमांक सीजीएमसी/शिका.डायरेक्ट/12/2013-14/146-152 रायपुर दिनांक-18/11/14
प्रति,

डॉ० पंकज जायसवाल
सेवा सदन माता राजिम हॉस्पिटल
राजिम, जिला-गरियाबंद

विषय:- गर्भाशय प्रकरण के संबंध में माननीय उच्च न्यायालय के निर्देशानुसार व्यक्तिगत सुनवाई हेतु अवसर प्रदान किये जाने के विषय में ।

उपरोक्त विषयान्तर्गत लेख है कि गर्भाशय प्रकरण के संदर्भ में संबंधित चिकित्सकों के द्वारा माननीय उच्च न्यायालय में याचिका लगाई गई थी । माननीय उच्च न्यायालय द्वारा इस संबंध में दिनांक 05.08.2013 को आदेश पारित किया गया, जिसके अनुसार प्रकरण में जाँच प्रक्रिया पुनः शुरू करने का अधिकार छत्तीसगढ़ मेडिकल कौंसिल हेतु सुरक्षित रखा गया । इस विषय में आपको व्यक्तिगत सुनवाई का अवसर प्रदान करने हेतु छत्तीसगढ़ मेडिकल कौंसिल की बैठक दिनांक 26.11.2014 दिन बुधवार को अपरान्ह 03.00 बजे, पुराना संचालनालय स्वास्थ्य सेवायें, पुराना नर्सिंग हॉस्टल, रायपुर की बैठक हॉल में आहूत की गई है । अतः आपको निर्देशित किया जाता है कि उक्त बैठक में अपना पक्ष रखने हेतु अनिवार्य रूप से उपस्थित होंगे ।

सही/-
रजिस्ट्रार
छ०ग० मेडिकल कौंसिल, रायपुर

9. In response to the letter dated 18-11-2014, the petitioner by his

letter dated 24-11-2014 (Annexure P-19), sought copy of the complaint, charge-sheet and observations of Ethical Committee, so that he may file reply which were not supplied to him and on 24-11-2014, the CMC informed the petitioner that meeting of the committee was convened on 26-11-2014 and documents are being served to him to which the petitioner on 25-11-2014 again reiterated that the relevant documents have not been supplied as per the letter dated 24-11-2014. For the sake of convenience, letter dated 25-11-2014 (Annexure P-21) is reproduced herein-below: -

“25/11/2014

To

Registrar
Medical Council of Chhattisgarh.

Subject: Your letter to Dr. Pankaj Jaiswal 24/11/2014
in response to his letter on 24/11/2014.

Sir,

You have not given the expect documents except the order of honourable high court.

Kindly be issued the relevant legal documents which are per-requisites to execute a legal procedure (Because Medical Council is deemed as a Court).

Again I request

My letter on 24/11/2014 is being attached with this letter.

Sd/-
(Dr. Pankaj Jaiswal)
CGMC2484

10. The petitioner again on 26-11-2014 reiterated his submission for supply of documents particularly copy of complaint, articles of charges, list of documents and list of witnesses, but it appears that no such documents were supplied to the petitioner except the order

of this Court and ultimately, on 26-11-2014, meeting of the respondent No.2 Council was convened and finally, the impugned order Annexure P-1 was passed on 26-12-2014 holding that the petitioner has violated Regulations 1.3.1 and 7.2 of the Regulations of 2002 by not maintaining the medical records of patients namely, Smt. Krishna, Smt. Reeta Sahu and Smt. Lokeshwari Sahu, who underwent surgery in his hospital, and also that his conduct was found to be violative of Regulation 1.2 of the Regulations of 2002 and thus, in exercise of power under Section 29(1) of the Act of 1987 read with Regulations 8.1 and 8.2 of the Regulations of 2002, suspended the petitioner to practice as a medical practitioner for a period of two years and also directed for lodging of FIR against him pursuant to which Crime No.15/2015 for offences punishable under Sections 420, 468 and 471 of the IPC have been registered in Police Station Rajim, District Mahasamund.

11. The question for consideration would be, whether in holding the petitioner guilty for the professional misconduct in terms of Regulation 1.2, 1.3.1 and 7.2 of the Regulations of 2002, the requisite procedure as prescribed in Section 17 of the Act of 1987 has been followed by the competent authority?
12. The M.P. (Chhattisgarh) Ayurvigyan Parishad Adhiniyam, 1987 is an Act to consolidate and amend the laws relating to registration of practitioners of medicine in Madhya Pradesh (now Chhattisgarh) and to make provisions for Constitution of the Medical Council for the State and for matters connected therewith. In Chhattisgarh, the Chhattisgarh Medical Council has been constituted. Section 15 of

the Act of 1987 provides, Power of Council to prohibit entry or to direct removal from State Medical Register. Sub-section (2) of Section 16 of the Act of 1987 provides as under: -

“16. Alteration of State Medical Register by Council.

—(1) xxx xxx xxx

(2) The Council may direct the removal altogether or for a specified period from the State Medical Register of the name of any registered practitioner for the same reasons for which registration may be prohibited by the Council under Section 15.”

13. The aforesaid provision empowers the Council to direct the removal of a registered practitioner for specified time from the State Medical Register for the same reasons for which registration may be prohibited by the Council under Section 15 of the Act of 1987.

14. The procedure for enquiry has been provided in Section 17 of the Act of 1987 which states as under: -

“17. Procedure in enquiries.—For the purpose of any enquiry under Sections 12, 15, or 16 the Council or any Committee authorised by rules made under Section 29 shall be deemed to be a Court within the meaning of the Indian Evidence Act, 1872 (No. 1 of 1872), and shall exercise all the powers of a Commissioner appointed under the Public Servants (Inquiries) Act, 1850 (No. 37 of 1850), and such enquiries shall be conducted, as far as may be, in accordance with the provisions of Section 5 and Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850 (No. 37 of 1850).”

15. As such, in the Act of 1987, the provisions contained in Section 5 of the Public Servants (Inquiries) Act, 1850 has been made applicable for enquiry under Section 16 of the Act of 1987 and the provisions contained in Section 8 to 20 of the Public Servants (Inquiries) Act, 1850 have been made applicable.

16. Section 8 of the Public Servants (Inquiries) Act, 1850 speaks of

powers of commissioners; Section 9 deals with penalty for disobedience to process; Section 10 provides for copy of charge and list to be furnished to accused; Section 11 provides the procedure at beginning of inquiry; Section 12 states about the prosecutor's right of address; Section 13 provides for evidence for prosecution and examination of witnesses; Section 14 is the power to admit or call for new evidence or prosecution; Section 15 is defence of accused; Section 16 provides for evidence for defence and examination of witnesses; Section 17 provides for examination of witnesses and evidence by prosecutor; Section 18 obliges the Commissioner to prepare notes of oral evidence; Section 19 provides for inquiry when closed with defence; and Section 20 deals with power to require amendment of charge and to adjourn the inquiry. As such, detailed procedure has been prescribed to make an inquiry under Sections 12, 15 or 16 of the Act of 1987 in accordance with the provisions contained in Section 8 to 20 of the Public Servants (Inquiries) Act, 1850.

17. In the matter of **Manoj Upadhyay and another v. Medical Council of India and others**¹, the M.P. High Court has held that in the Act of 1987 and the Regulations of 2002, both, the authority and procedure to be followed for dealing with cases against the medical practitioner has been provided and observed as under: -

“6. The M.P. Ayurvedigyan Parishad Adhiniyam, 1987 (for short 'the Adhiniyam of 1987') provides for maintenance of register of all State Medical Practitioners. Section 15 of the Adhiniyam of 1987 provides that the State Medical Council may, upon reference from the Registrar or otherwise, prohibit the entry in, or order the removal from the State Medical Register of the name of any person

1 AIR 2007 MP 286

whom the Council after enquiry at which opportunity has been given to him to be heard in person and which may, at the discretion of Council, be held in camera, finds guilty. Section 17 of the Adhiniyam of 1987 further provides that for the purpose of any enquiry under Section 15 of the Adhiniyam of 1987, the Council or any Committees authorised by rules made under [Section 29](#) shall be deemed to be a Court within the meaning of the [Indian Evidence Act](#), 1872 and shall exercise all the powers of a Commissioner appointed under the [Public Servants \(Inquiries\) Act](#), 1850 and such enquiry shall be conducted, as far as may be, in accordance with the provisions of [Section 5](#) and [Sections 8 to 20](#) of the Public Servants (Inquiries) Act, 1850.”

18. Now, the question is, whether the required procedure under Section 17 of Act of 1987 read with Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850 has been followed by the State Medical Council while holding the petitioner guilty of misconduct in terms of the Regulations of 2002 and thereby imposed penalty under Section 16(2) of the Act of 1987?
19. From the records, it is quite pertinent that after granting liberty by this Court in W.P.(C)No.972/2013 by order dated 1-8-2013, respondent No.2 initiated proceeding against the petitioner by giving notice on 18-11-2014, which has been quoted herein-above in paragraph 8, which informs only the date of holding the meeting as 26-11-2014 has been informed to the petitioner, nothing less, nothing more; copy of charges, list of documents and list of witnesses by which charge has to be sustained were never supplied to the petitioner and thereafter, despite specific claim by the petitioner to supply him the copy of complaint, charge-sheet filed against him, observations of the Ethical Committee the same were never served to him, except a letter dated 24-11-2014 stating that some documents (that was copy of order passed by this Court)

are being sent which was not in accordance with the documents sought for by which the petitioner again on 25-11-2014 and 26-11-2014 reiterated to supply him the copy of charges, list of witnesses, list of documents, etc., but yet, even thereafter, nothing was supplied to him, no procedure envisaged in Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850 was followed, neither the charges were established nor the petitioner was afforded an opportunity to rebut the charges (if any) and the Council in its meeting dated 26-11-2014 came to the conclusion that the petitioner is guilty of professional misconduct warranting his suspension for a period of two years and lodging of FIR for giving false information to the Council.

20. It is well settled law that when any statutory provision provides a particular manner for doing a particular act, said thing or act must be done in accordance with the manner prescribed therefor in the Act. (See J&K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others².)

21. It is pertinent to mention here that this Court while granting opportunity to respondent No.2 in its order dated 1-8-2013 clearly held that if respondent No.2 wanted to proceed against the petitioner, that has to be done in accordance with the provisions as prescribed in Section 15 of the Act of 1987 read with Regulation 8.2 of the Regulations of 2002. Respondent No.2 despite the order passed by this Court and in breach of that order without holding any enquiry and without establishing any charges as envisaged in the manner provided under Sections 8 to 20 of the Public Servants

2 (2011) 10 SCC 714

(Inquiries) Act, 1850 and without supplying the documents in accordance with Section 10 of the Public Servants (Inquiries) Act, 1850, concluded that the petitioner is guilty of violating Regulations 1.2, 8.1 and 8.2 of the Regulations of 2002 and proceeded to impose penalty upon him including direction for registration of FIR.

22. It would be appropriate to notice that the petitioner has been held guilty for violation of Regulations 1.2, 1.3.1 and 7.3 of the Regulations of 2002. Regulation 1.2 provides for maintaining good medical practice. Regulation 1.3 provides for maintenance of medical records. Regulation 7 states about misconduct. They read as under: -

1.2 Maintaining good medical practice:

1.2.1 The principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on scientific basis and should not associate professionally with anyone who violates this principle. The honoured ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society.

1.2.2 Membership in Medical Society.—For the advancement of his profession, a physician should affiliate with associations and societies of allopathic medical professions and involve activity in the functioning of such bodies.

1.2.3 A physician should participate in professional meetings as part of Continuing Medical Education programmes, for at least 30 hours every five years, organized by reputed professional academic bodies or any other authorized organizations. The compliance of this requirement shall be informed regularly to Medical Council of India or the State Medical Councils as the

case may be.

1.3 Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

CHAPTER 7

7. MISCONDUCT

The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action.

7.1 Violation of the regulations.—If he/she commits any violation of these regulations.

7.2 If he/she does not maintain the medical records of his/her indoor patients for a period of three years as per regulation 1.3 and refuses to provide the same within 72 hours when the patient or his/her authorised representative makes a request for it as per the regulation 1.3.2.

23. Chapter 8 of the Regulations of 2002 provides for punishment and disciplinary action. Regulations 8.1 and 8.2 of the Regulations of 2002 state as under: -

“8.1 It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies.”

24. Thus, the petitioner has been found to be guilty of professional misconduct in terms of Regulation 1.2 read with Regulation 1.3 under Regulation 7.2 of the Regulations of 2002 which is punishable under Regulations 8.1 & 8.2 of the Regulations of 2002 read with Section 29 of the Act of 1987, but neither any show cause notice issued with the charges of alleged professional misconduct for not maintaining records and giving alleged false information or any other professional misconduct was served to him nor the CMC adduced any evidence in support of the alleged charges, nor he was allowed to lead his evidence and no enquiry consistent with the provisions contained in Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850 was made which is the mandatory requirement of the Act of 1987 and thereby it is held that the order imposing punishment is in complete and full breach of the provisions contained in the Act of 1987 read with Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850, thereby the petitioner has suffered great prejudice in establishing his defence which is not only in violation of the principles of natural justice, but also he is deprived

of placing before the CMC that he is not guilty of committing professional misconduct which Regulations 1.2 & 1.3.1 read with Regulation 7.2 of the Regulations of 2002 provide.

25. In my considered opinion, despite the liberty having been granted by this Court to the CMC on 1-8-2013 quashing the order imposing penalty upon the petitioner for one year, no enquiry as contemplated by Section 15 of the Act of 1987 read with Sections 10 to 20 of the Public Servants (Inquiries) Act, 1850 was conducted and the petitioner was held guilty for violating the above-stated Regulations of 2002 and thereby, the order suspending him to practice as a medical practitioner was passed and also a decision was taken to lodge FIR against the petitioner which is in teeth of the provisions contained in Section 15 of the Act of 1987 and Sections 8 to 20 of the Public Servants (Inquiries) Act, 1850. As such, the impugned order and FIR registered on the basis of that order cannot stand and it is accordingly quashed.

26. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge