

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.532 OF 2019**

Mr. Michael Rodrigues,
63 years of age,
r/o. H.No.143/2,
Porie Bhat, Verna,
Salcete-Goa – 403722.

... Petitioner

Versus

1. The Goa Medical Council,
Through its Registrar,
Faculty Block, G.M.C. Complex,
Bambolim – Goa.

2. Dr. Shridhar Pai,
C/o. Pai Hospital, Vasco,
Mormugao, Goa.

3. Dr. Dilip Amonkar,
Miramar, Goa.

4. Dr. Shantaram N. Surme,
H.No.21/8, Lane no.9,
Alto Chicalim, Goa.

5. Dr. Padmanabh Vaman Rataboli,
President of the Goa Medical Council,
Faculty Block, G.M.C. Complex,
Bambolim-Goa.

... Respondents

Mr. Nigel Da Costa Frias and Ms. Laxmi Sawant, Advocates for the
Petitioner.

Mr. R.G. Ramani, Advocate for Respondents No.1 & 5.

Mr. Pankaj P. Pai, Advocate for Respondent No.2.

Mr. S.D. Lotlikar, Senior Advocate with Mr. N. Amonkar, Advocate for Respondent No.3.

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates for Respondent No.4.

**Coram:- M.S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date :- 30th JULY, 2019

ORAL JUDGMENT :(Per M.S. SONAK, J.)

Heard learned Counsel for the parties. Rule. Rule returnable forthwith with the consent of and at the request of the learned Counsel appearing for the parties.

2. The challenge in this petition is to the communication dated 20th February 2018, made by the Registrar of Goa Medical Council purporting to return the appeal instituted by the petitioner against the order dated 12/09/2016 made by the Ethics and Disciplinary Committee, Goa Medical Council in respect of certain proceedings taken out against respondent nos.3,4 & 5 on basis of complaint by the petitioner.

3. The case of the respondents is that there is no appeal against the decision of the Ethics and Disciplinary Committee, since Rule 64 of the Goa Medical Council Rules, 1995 provides that the

decision of the Ethics and Disciplinary Committee shall be final. The respondents also submit that on basis of the decision of the Ethics and Disciplinary Committee, the Goa Medical Council in its meeting held on 16/09/2016 has taken a decision to accept the decision of the Ethics and Disciplinary Committee and accordingly directed the Registrar to inform the parties the decision of the Committee. The respondents submit that as against the decision of the Goa Medical Council, obviously, no appeal lies to the very Council, rather, the appeal lies to the Medical Council of India in terms of regulation 8.8. of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

4. According to us, from the scheme of the Goa Medical Council Act, 1991, the Rules made thereunder as well as the Indian Medical Council Act, 1956 and the regulations of 2002, a complaint against a medical practitioner has to be made to the State Council in the first instance. The State Council, if satisfied, refers the matter to the Ethics and Disciplinary Committee for inquiring into the matter. The Ethics and Disciplinary Committee then holds an inquiry into the matter and takes a decision, which, in terms of Rule 64 of the Goa Medical Council Rules, 1995 has been accorded some sort of finality.

5. The meaning of this 'finality' at least, *prima facie*, only means that the parties to the proceedings cannot institute an appeal

against the same under the provisions of the Goa Medical Council Act and Rules made thereunder or for that matter the Indian Medical Council Act and the Regulations of 2002. The reason for this is obvious. The decision of the Ethics and Disciplinary Committee has thereafter to be considered by the State Council and the decision of the Council thereafter made appealable to the Medical Council of India.

6. This means that the Medical Council of India in the appeal instituted before it can always go into the issue of the legality or otherwise of the decision of the Ethics and Disciplinary Committee whilst examining the decision of the State Council. The scheme of the said Act and said Rules contemplates that there is no appeal filed against the decision of the Ethics and Disciplinary Committee since, the said decision is required to be deliberated upon by the Council at the first instance. When considered from this perspective, the learned Counsel appearing for the respondents are quite correct in submitting that no appeal was maintainable against the decision of the Ethics and Disciplinary Committee.

7. The next issue is whether in the facts of the present case, the Goa Medical Council has at all taken any action in terms of Rule 65 of the said Rules on the basis of the decision of the Ethics and Disciplinary Committee. Although, the communication dated 20th

February 2018 leaves much to be desired, Mr. Ramani, learned Advocate appearing for the Goa Medical Council has placed before us the minutes of the meeting of the Goa Medical Council on 16/09/2016.

Item 5 of the minutes dated 16/09/2016 reads thus:

(5) To consider the report presented by the Chairman, Ethics & Disciplinary Committee, Goa Medical Council in respect of complaint received from Mr. Micheal Rodrigues, Verna, Salcete Goa, against Dr. S.R. Pai, Dr. S.N. Surme, Dr. Dilip Amonkar and Dr. Rajesh Patil.

The orders have been placed before the Council for information and records. The Chairman of the committee informed the members that the charged doctors have been exonerated for lack of legal evidence in support of the charges and directed the Registrar to inform the parties the decision of the Committee.

8. Again, it is not quite clear whether the Council has in fact taken action in terms of Rule 65 of the said Rules or not. However, looking at the matter from its entirety, it is reasonable to proceed on the basis that in the meeting held on 16/09/2016, the Goa Medical Council did take a decision to accept the decision of the Ethics and Disciplinary Committee and on the said basis exonerate the medical practitioner against whom the petitioner had made complaints. The minutes direct the Registrar to inform the parties the decision of the Committee. Here again, there is a slight ambiguity because it is not clear as to whether the direction was to inform the parties the decision of the Ethics and Disciplinary Committee or the decision of the

Committee which comprises the Goa Medical Council. However, Mr. Ramani, submits that the direction should be construed as a direction to inform the decision of the Council to accept the decision of the Ethics and Disciplinary Committee.

9. Mr. Ramani, has placed on record communication dated 19/09/2016 issued by the Registrar of the Goa Medical Council, which states that the Ethics and Disciplinary Committee of Goa Medical Council has directed him to forward the orders made by the Committee on 12/09/2016, in respect of the medical practitioners to the petitioner. This means that even Registrar construed the decision recorded in the minutes dated 16/09/2016, as a decision to communicate the orders made by the Ethics and Disciplinary Committee. Surprisingly, the Registrar makes a reference to the directions issued, not by the Goa Medical Council, but to some directions issued by the Ethics and Disciplinary Committee of the Goa Medical Council. Such errors and ambiguities cannot be made to operate to the detriment of the petitioner.

10. All the above factors naturally confused the petitioner into instituting an appeal before the Council itself. As of date, we cannot say that there is any clear communication of the decision of the Council to the petitioner. Therefore, the cause of action for the petitioner to institute an appeal to the Indian Medical Council is yet

to arise.

11. Mr. Ramani, learned Counsel for the Goa Medical Council states that within two weeks from today, the Registrar of the Goa Medical Council will communicate to the petitioner, the decision/order of the Council at the petitioner's address indicated in the cause title to this petition. This statement is accepted.

12. There is no dispute raised even by any of the respondents that the petitioner will have the right to institute an appeal under regulation 8.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 within a period of 60 days from the date of receipt of the decision/order passed by the concerned Medical Council which in this case would be the Goa Medical Council.

13. Accordingly, without adverting to the issues of merits, we only direct the Goa Medical Council to communicate its decision/order on the report of the Ethics and Disciplinary Committee to the petitioner within a period of two weeks from today. Upon receipt of the same, the petitioner is at liberty to avail of the remedy of appeal, in terms of regulation 8.8. of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

14. In view of the aforesaid direction, there is no necessity to interfere with the communication dated 20th February 2018, though, as noted earlier, the said communication leaves a lot to be desired. This is because we do not wish to pre-empt any contentions of any parties based upon the said communication dated 20th February 2019. This is more so because we have now held that the petitioner will have a remedy of appeal as against the decision/order of the Goa Medical Council to be communicated to the petitioner within two weeks from today. Accordingly, we clarify that all contentions of all parties on merits are expressly kept open.

15. The rule in this petition, is therefore disposed of in the aforesaid terms. There shall be no order as to costs.

16. All concerned to act on the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M.S. SONAK, J.

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