

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 15548 of 2019
and
W.M.P. Nos. 15448 and 15449 of 2019

Dr. S. Jaikish

... Petitioner

-Vs-

1. The Medical Council of India
Rep by its Secretary
Having his office at
Pocket - 14, Sector -8, Dwarka Phase - I
New Delhi - 110077.
2. Tamil Nadu Medical Council
Represented by its Registrar
Having his office at
No.914, Poonamallee High Road
Arumbakkam
Chennai - 600 106.
3. M/s. Vinayaka Mission's Medical College & Hospital
Represented by its Dean
Having his office at Keezhakasakudimedu
Kottucherry (P.O.)
Karaikal
Puducherry U.T. - 609 609.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus, call for the records relating to the order passed by the First Respondent in their reference No. MCI- 211 (2) 621 (CBI)/2012-/Ethics dated 16.03.2015 as corrected by Corrigendum in No. MCI.211(2) (621) (CBI) /2012- dated 10.04.2015, in so far as it relates to the Petitioner holding IMR registration No. 55275 and quash the said orders as being illegal, arbitrary and without jurisdiction and forbearing the First and Second Respondents, their officers, employees, subordinates or any other persons claiming or acting under them from in any manner

interfering with the right of the petitioner to practice his profession, including any post of a similar nature in any university or medical college consequently deleting the entry in the Indian Medical Register regarding the alleged punishment imposed by the said orders.

For Petitioner : Mr. Raja Kalifulla, Senior Counsel
for M/s. Thenmozhi

For Respondents: Mr. V.P. Raman (for R1)
Mr. G. Sankaran (for R2)
Mr. L. Swaminathan (for R3)

O R D E R

Heard Mr. Raja Kalifulla, Learned Senior Counsel for M/s. Thenmozhi, Learned Counsel for the Petitioner, Mr. V.P. Raman, Learned Counsel appearing for the First Respondent, Mr. G. Sankaran, Learned Standing Counsel appearing for the Second Respondent and Mr. L. Swaminathan, Learned Counsel appearing for the Third Respondent.

2. Learned Senior Counsel appearing for the Petitioner submits that in the order dated 24.04.2015 in W.P. No. 10603 of 2015, this Court has quashed the impugned order insofar as the Petitioner in that Writ Petition was concerned, and the relevant portions of that order, reads as follows:-

"10. A reading of the impugned order would go to show that it is a non-speaking order. The doctors gave individual explanations and therefore, MCI/Ethics Committee should have considered those explanations separately and should have passed separate orders in respect of each and every doctor. The impugned order also does not disclose the application of mind on the part of MCI as to consideration of the separate explanations submitted by the doctors.

11. Hence, I am of the view that MCI fell in error in passing a common impugned order in respect of 90 doctors and as such the same is liable to be interfered with, insofar as it relates to the petitioner.

12. Accordingly, the impugned order dated 16.03.2015 passed by the First Respondent is quashed insofar as it relates to the petitioner and the matter is remanded back to MCI to consider the matter afresh and to pass an appropriate order. While doing so, the MCI shall consider the explanation offered by the

petitioner individually and shall pass a separate order on the same. The learned counsel for the petitioner sought personal hearing as provided under clause 8.2 of the MCI Regulations. The MCI shall also furnish the documents, which they rely on for passing such order, MCI shall also give an opportunity of personal hearing to the Petitioner as per clause 8.2 of the MCI Regulations. It is made clear that if the petitioner fails to appear for personal hearing in spite of being given an opportunity for the same or if he expresses his unwillingness to take part in personal hearing, the MCI can proceed further and pass orders based on the explanation and other materials provided by the petitioner. All the issues, including merit as well as jurisdiction of MCI are left open. The petitioner is at liberty to raise all issues, including jurisdiction and the MCI can decide the same on merits and in accordance with law and more particularly, with reference to MCI Regulations."

It is contended that the Petitioner, who is similarly placed and whose name has been included in the impugned order, is also entitled to the same relief.

3. The aforesaid contentions of the Learned Senior Counsel for the Petitioner is not disputed by the Learned Counsel for the Respondents.

4. Having regard to the aforesaid submissions made, the Petitioner is entitled to the same relief and accordingly, the impugned order dated 16.03.2015 passed by the First Respondent insofar as it relates to the Petitioner is quashed and the matter is remitted to the Second Respondent, viz., Medical Council of India, to consider the matter afresh on merits in accordance with law in terms of the order dated 24.04.2015 in W.P. No. 10603 of 2015 passed by this Court.

5. Accordingly, the Writ Petition is allowed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vsn/maya

To

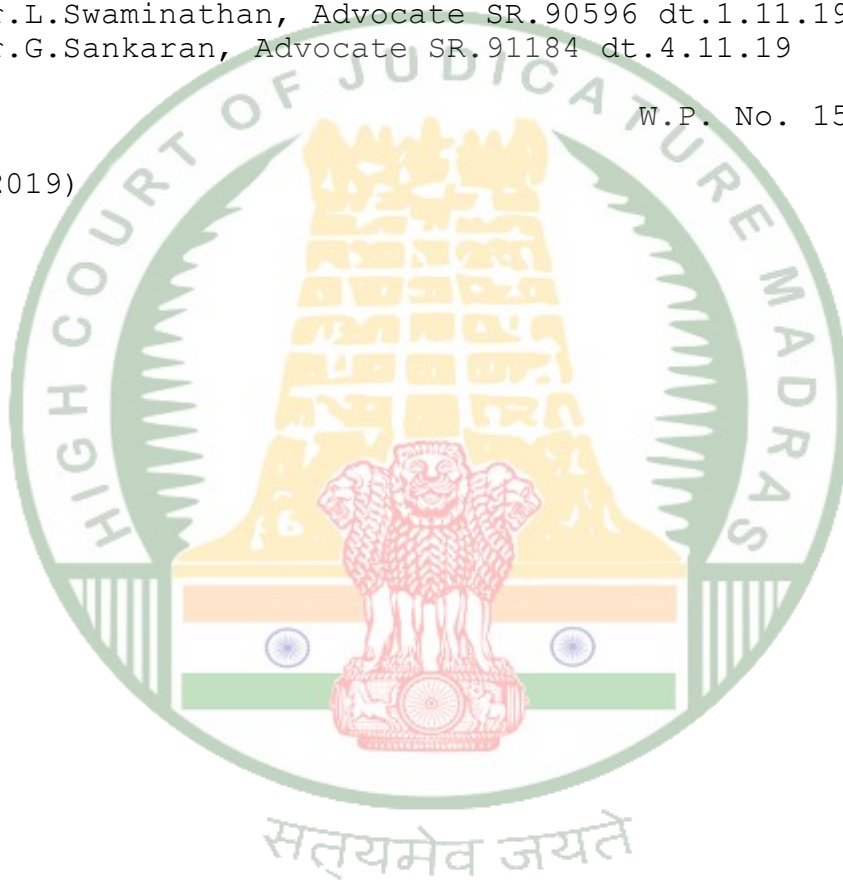
1.The Secretary, Medical Council of India,
Pocket 14, Sector-8, Dwarka Phase-I,
New Delhi-110 077.

2.The Registrar, Medical Council,
914, Poonamallee High Road,
Arumbakkam, Chennai-106.

+1cc to M/s.M.Thenmozhi, Advocate SR.90484 dt.1.11.19
+1cc to Mr.V.P.Raman, Advocate SR.90562 dt.1.11.19
+1cc to Mr.L.Swaminathan, Advocate SR.90596 dt.1.11.19
+1cc to Mr.G.Sankaran, Advocate SR.91184 dt.4.11.19

W.P. No. 15548 of 2019

MR(CO)
CB(18/11/2019)



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