

HIGH COURT OF CHHATTISGARH, BILASPURWPC No. 1878 of 2021

Dr. Manish Kumar Pandit S/o Late Shri Jagannath Pandit Aged About 37 Years R/o Atharva, Archit Nagar, In front of Media City, Mahoba Bazar, Heerapur Road, Raipur Chhattisgarh Proprietor Shri Sai Super Speciality Dental Hospital Raipur, District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Health and Family Welfare Department, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh
2. The Director Health Services Cum Chief Executive Officer, State Nodal Agency, Dr. Khoobchand Baghel, Swasthya Sahayata Yojana Avam Mukhya Mantri, Vishesh Swasthya Sahayata Yojana, Directorate, Health Services Raipur, Chhattisgarh
3. Director Health Services Cum Chief Executive Officer, Ayushman Bharat, Pradhanmantri Jan Arogya Yojana Avam Mukhya Mantri, Swasthya Bima Yojana, Raipur, Chhattisgarh
4. Chhattisgarh State Dental Council through the Registrar, 304 3rd Floor, Dental Department, Dr. Bhimrao Ambedkar Memorial Hospital, Raipur, Chhattisgarh --- **Respondents**

For the Petitioner	: Mr. Prafull Bharat, Advocate
For the State	: Mr. Gagan Tiwari Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

07.04.2021

Heard.

1. The grievance of the petitioner is that the impugned order dated 18.03.2021 (Annexure P-1) passed by respondent no.4 in exercise of power under Section 41(1) of the Dentists Act, 1948 is without jurisdiction as it has suspended the registration of the petitioner from 18.03.2021 to 18.03.2022. Learned counsel for the petitioner would submit that the

order suspending the petitioner's practice is not embodied in section 41 of The Dentists Act, 1948 which speaks only about removal from register and such removal will not include the suspension. It is further contended that on the basis of secret information, certain enquiries were conducted wherein it was alleged that the petitioner has provided the treatment by wrongly applying fixed orthodontic appliances over 280 children of different villages and in the said enquiry proper facts were not ascertained. He would submit that according to the scheme of Government, the implementation agency was the State Government and after approval of the patient to undergo the treatment, the treatment is carried out. Thereafter, after treatment, his photograph is uploaded. He submits that this due procedure was followed by the petitioner, consequently it cannot be said that the petitioner has wrongly administered the medical treatment to the children. He would further submit that initially the notice was given to the petitioner which was replied by him and thereafter, without further giving any opportunity of hearing, the said orders have been passed suspending the petitioner's practice for one year. He would submit that the provisions which has been reflected in the order dated 18.03.2021 will also not include the nature of treatment provided and would not fall beyond the professional ethics performed by the Doctor and the professional ethics are notified and codified by the Dental Council. Therefore the order dated 18.03.2021 is without jurisdiction and is liable to be set aside.

2. Per contra, learned State Counsel would submit that Section 41 of The Dentist Act, 1948 speaks about the removal from

register and the removal of registration in this case was made for a specific period from 18.03.2021 to 18.03.2022. It is further submitted that the nature of allegations levelled against the petitioner was enquired and the petitioner was given opportunity of hearing and thereafter the orders were passed. He would further submit that if the petitioner is aggrieved by the order passed u/s 41(1) of the Act, 1948 he has statutory remedy to file appeal before the State Government.

3. Perused the documents. It was alleged that as many as 1400 children of 6 villages were treated by placing wire on teeth and part of such treatment was carried out by this petitioner. The allegation against the petitioner is that in order to get the advantage of government scheme, the petitioner used the scheme of fixed orthodontic appliances over 281 children of different villages. The document also purports that apart from the petitioner from whom some children were treated, other children had also underwent such treatment by other doctors. The document (Annexure P-8) prima facie would show that the petitioner was given a notice which was replied by him and the details of treatment provided by the Doctor were furnished. Therefore, providing the nature of treatment to number of children is not in dispute. The question comes for consideration here is that whether such treatment is required to the children and the petitioner went beyond the professional ethics and in order to avail the financial benefit had given such treatment to the children. This logical aspect of treatment of the children by placing wire on teeth in large number comes to fore as to

whether such treatment was required or not. The State conducted the enquiry and came to a conclusion that the nature of treatment which was given was not befitting to the professional ethics. The necessity/requirement of children for such treatment and want of desire of doctor to treat has not been matched by result of enquiry by State. So need and want should ethically match each other. Consequently in exercise of power under section 41, the order of removal of petitioner restraining from practice for one year has been passed.

4. Relevant portion of Section 41 of the Dentists Act, 1948 is quoted below:

“41. Removal from register.--(1) Subject to the provisions of this section, the State Council may order that the name of any person shall be removed from any register where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make,--

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact, or

(ii) that he has been convicted of any offence or has been guilty of any infamous conduct in any professional respect [or has violated the standards of professional conduct, and etiquette or the code of ethics prescribed under Section 17A], which in the opinion of the State council renders him unfit to be kept in the register, or

(iii) that he having been permitted temporary registration under clause (b) of sub-section(2) of Section 34 has, on such registration, been found to practise the profession of dentistry for personal gain.

(2) An order under sub-section (1) may direct that any person whose name is ordered to be removed from a register shall be ineligible for registration in the

State under this Act either permanently or for such period of years as may be specified.

(3) An order under sub-section (1) shall not take effect until the expiry of three months from the date thereof.

(4) A person aggrieved by an order under sub-section (1) may, within thirty days from the date thereof, appeal to the State Government and the order of the State Government upon such appeal shall be final.”

5. A reading of sub-section (4) of section 41 purports that if a person feels aggrieved by an order passed under sub section (1), he may file an appeal to the State Government. It is the case of the respondent-State that the petitioner has violated the standards of professional conduct and ethics or Code prescribed under the The Dentists Act, 1948. Therefore, if such opinion has been formed in the preliminary enquiry, to which the petitioner has replied would be a subjective satisfaction of the authority who passed the order. Even otherwise, the petitioner if is aggrieved by the order can avail statutory remedy of filing an appeal before the State Government under sub-section (4) of Section 41 of the Act. Under the circumstances, I am not inclined to interfere with the order dated 18.03.2021. The petition sans merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**