

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.144 OF 2021
(LD-VC-CW-5-2020)

DR. LALITA FERNANDES

..... Petitioner

V/S.

STATE OF GOA, THR. THE SECRETARY
HEALTH AND 4 ORS

Respondents

Mr. Shivam Fadte, Advocate for the petitioner.

Ms. Maria Correia, Additional Government Advocate for the respondent
Nos. 1 and 4.

Coram:- M. S. SONAK &

SMT. M.S. JAWALKAR, JJ.

Date :- 30th MARCH, 2021.

P.C.:

Heard Mr. Shivam Fadte, learned Advocate for the petitioner and Ms. Maria Correia, learned Additional Government Advocate for the respondent – State.

2. On 30/04/2020, the learned Single Judge of this Court made following order granting interim reliefs to the petitioners:

“Issue notice to the respondents no.2,3 & 5, returnable in four weeks.

2. The petitioner, a pulmonologist, working in Tuberculosis and Chest Disease Department, in Goa Medical College, Goa, besides being lecturer in Department of Pulmonology Medicine. She faced an allegation of conducting field trial of a medicine in violation of regulation 6.8.1(d) of Indian Medical Council (Professional Conduct, Etiquette and Ethics)

Regulations 2002. Eventually, the petitioner has been handed down a punishment: the petitioner's name be removed from the State Medical Register for one year and one month. This was on 16.03.2020. Later, the departmental head– Dean of the Goa Medical College– through communication, dated 22.04.2020, asked the petitioner not to report to the duty, in the light of Goa Medical Council's order dated 16.03.2020. Thus, aggrieved, the petitioner has approached this Court.

3. The learned Senior Counsel for the petitioner has submitted that initially the Regulations came into being in 2009, but they contained no penal provision. According to him, the penal provision was introduced on 01.02.2016. Even going by the allegations the petitioner faced, the violation was before that amendment in February 2016. Therefore, the learned Senior Counsel contends that this punishment, which is substantial, cannot be retrospective, cannot be for an alleged offensive committed before the amendment. He reminds me that the Regulations have not spelt out how the penalty should be imposed.

4. In other words, according to the learned Senior Counsel, in the absence of any express indication in the Regulations, we shall presume that the punishment, if any, must be only prospective. He stresses that it is not a matter of mere procedure that has been amended, so inescapably the amendment is only prospective. Finally, the learned Senior Counsel has submitted that the petitioner violated no regulation after 2nd February 2016, the date of amendment. Thus, he stresses that the impugned order, dated 16.03.2020, cannot be sustained.

5. The learned Advocate General appearing for respondents no.1 & 4 informs me that it is appropriate if the Court puts the Goa Medical Council on notice, for the issue concerns the order passed by the Council.

6. To my specific query, the learned Senior Counsel for the petitioner has fairly submitted that the petitioner does have an efficacious alternate remedy of an appeal before the Medical Council of India, New Delhi. But during the lockdown, as he points out, it is impossible for the petitioner to invoke that remedy. At any rate, he submits that if the lockdown is lifted, the petitioner is willing to approach the Medical Council of India, ventilating her grievance. So, the petitioner wants this Court to protect her right to practice as a doctor only till she gets an opportunity to approach the Medical Council.

7. Agreed, given the lockdown we cannot say that the remedy the petitioner has is efficacious. I reckon, there is force in the petitioner's submissions. There exists an alternate remedy, but under these circumstances, it cannot be termed efficacious. More so, it is a punishment of striking off the petitioner's name from the medical register for one year one month. It affects the petitioner's— a doctor's— fundamental right to practice her profession and such a right cannot be disregarded until the petitioner exhausts all her statutory remedies. Looked from another perspective, eventually, if the appropriate authority at higher echelons, such as the Medical Council of India, on appeal or otherwise, concludes that the punishment is justified, it is always open for the authorities concerned to enforce the punishment. Therefore, there is no irreversibility if the operation of the order is stayed.

8. On the other hand, the petitioner will suffer irreparable loss and hardship to her profession and reputation unless the Court stays the impugned order and the consequential order passed by the Dean of the Goa Medical College, until the appellate forum reexamines the issue.

9. Under these circumstances, I also find balance of convenience in the petitioner's favour. As a result, the

impugned order dated 16.03.2020 issued by the Goa Medical Council stands suspended retroactively for two months. Needless to observe that even the consequential order passed by the Dean of Goa Medical College also stands suspended. The peitioner may resume her practice as a pulmonologist whose services are invaluable, especially, during this COVID-19.

Post the Matter in four weeks.”

3. Mr. Fadte, learned Advocate pointed out that the petitioner has by now preferred an appeal before the National Medical Commission and has also applied for interim relief.

4. Now when the appeal has already been preferred, it is appropriate that this petition is disposed of with liberty to the petitioner to pursue the alternate and efficacious remedy of appeal which he had already availed. Mr. Fadte, learned Advocate further submits that the application for interim relief is yet to be considered by the Commission and therefore interim relief granted by this Court be extended until the application is considered.

5. We extend the interim relief by period of Two months from today or till the Commission considers and dispose of the application for interim relief whichever is earlier. Mr. Fadte, learned Advocate states that necessary steps will be taken to pursue the matter before the Commission so that the application for interim relief is heard and disposed of one way or the other within a period of Two months.

6. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

7. All concerned to act on the basis of an authenticated copy of this order.

8. The National Medical Commission is requested to dispose of the petitioner's appeal as expeditiously as possible.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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