



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2021
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.38 of 2020
and W.M.P.No.43 of 2020

Dr.Sugandhan Selvendran

... Petitioner

Vs.

1.The Registrar Tamil Nadu Medical Council
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam, Chennai 600 106.

2.The Disciplinary Committee Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam, Chennai 600 106.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st Respondents pertaining to the proceedings under Ref. No. TNMC / DC 117/2019, quashing the order in Letter dated 17.12.2019 and consequentially directing the 1st Respondent to restore the name of the Petitioner in the Medical Register of Tamil Nadu Medical Council.

For Petitioner : Mr.Manuraj
For RR1 : Mr.G.Sankaran

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the 1st Respondents pertaining to the proceedings under Ref. No. TNMC / DC 117/2019, quashing the order in Letter dated 17.12.2019 and consequentially directing the 1st Respondent to restore the name of the Petitioner in the Medical Register of Tamil Nadu Medical Council.

2. The case of the petitioner is that the petitioner is a qualified Dermatologist with consultancy at various clinics and hospital in Chennai and has previously worked as Senior Resident at AIIMS and was a clinical Fellow at the National Skin Centre and he completed his M.D.(Dermatology) from Kakatiya Medical College (Warangal), Diploma in Dermatology from the Royal College of Physicians and Surgeons (Glasgow, U.K) and



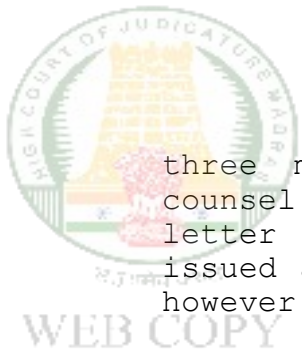
M.B.B.S. from PSG Institute of Medical Sciences and Research (Coimbatore). The petitioner is registered himself as a Medical Practitioner with the Tamil Nadu Medical Council.

3. While so, the petitioner received a letter from the 1st respondent dated 16.06.2016, wherein he was charged of violations under the Indian Medical Council Act, 1956 and Sections 1.4.2, 6.1, 7.1, 7.3, 7.11, 7.12, 7.12 and 7.20 of the Code of Medical Ethics. The petitioner subsequently submitted a detailed reply in writing along with necessary annexures, which was taken on record and the matter was treated as closed.

4. However, the petitioner was shocked to receive another letter dated 05.07.2019 from the 1st respondent, after a period of three years, wherein he was charged with resorting to advertisement with photograph in online search site 'Practo' in violation of regulations of Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003, which stipulates that, 'Soliciting of patients directly or indirectly by a physician is unethical. A physician shall not make use of him as subject of any form or manner of advertising or publicity through any mode'. In response to the same, the petitioner submitted a written reply dated 20.07.2019, stating that there is no advertisement in Practo carrying his photograph and that he has no financial or any agreements with Practo, in individual capacity.

5. In spite of the said reply, the petitioner was shocked to receive summons from the 1st respondent, nearly after four months, asking the petitioner to attend an inquiry before the disciplinary committee / 2nd respondent herein on 12.11.2019 at 10.00 am and the above said summons has not made reference to his written reply dated 20.07.2019. On receipt of the said summons, the petitioner attended the inquiry before the 2nd respondent and provided a detailed explanation. In spite of the same, the petitioner has received a letter dated 17.12.2019, wherein it was stated that the petitioner was resorting to advertisement in 'Practo.Com' in violation of Code of Medical Ethics and thereby decided to impose the penalty of removing his name from Medical Register of Tamil Nadu Medical Council for three months. Against the said impugned letter dated 17.12.2019, the petitioner is before this Court.

6. Learned Counsel appearing for the petitioner submitted that though explanations were given both in person on 12.11.2019 and in writing on 19.11.2019, the same were not considered by the respondents either before the conduct of the proceedings or even thereafter. Further in the said impugned letter dated 17.12.2019, there is no reason was given as to how the 2nd respondent or the Registrar, the Tamil Nadu Medical Council, arrived at the decision to impose a penalty of removing the petitioner's name from the Medical Register for a period of



three months. It is the further submission of the learned counsel appearing for the petitioner that aggrieved by the letter dated 17.12.2019, the petitioner, through his advocate, issued a legal notice to the respondents 1 and 2 on 28.12.2019, however no reply has been received to the said legal notice.

7. It is the stand of the petitioner that he has not been soliciting any business by giving any advertisement in the social media and, therefore, issuance of show cause notice to him, without appreciating his explanation is wholly unsustainable. It is the submission of the learned counsel for the petitioner that immediately on receipt of the notice, the petitioner had sent a letter to "Practo.Com" for removing his name to which reply was sent by Practo.Com stating that the service offered is free of cost in view of the partnership agreement entered into between the clinic/hospital and Practo.Com. In spite of repeated request from the petitioner, initially Practo.Com did not remove the photograph and profile of the petitioner, but later, in response to the request of the petitioner, Practo.Com intimated the petitioner vide their communication dated 15.11.19 that the petitioner's profile and photo has been removed from Practo.Com. Though the aforesaid details were provided by the petitioner in his explanation in person on 19.11.2019 to the 1st respondent, the 1st respondent, without properly appreciating the aforesaid facts, in a hasty manner, has passed the impugned letter removing the name of the petitioner from the Medical Register for three months, which clearly reflects total non-application of mind on the part of the respondents and, therefore, the said order deserves to be set aside.

8. Per contra, Mr.G.Sankaran, learned counsel appearing for the respondent submitted that the advertisement of the petitioner indulging in soliciting business in Practo.Com, which is against the Code of Medical Ethics, was brought to the knowledge of the respondents, which resulted in issuance of show cause notice initially based on the assurance of the petitioner to remove the advertisement, action was dropped, however, non-compliance with the assurance resulted in the further show cause notice and receiving the explanation from the petitioner and after following the procedure prescribed, the Tamil Nadu Medical Council, agreeing with the findings tendered by the disciplinary authority, has inflicted the punishment on the petitioner vide the impugned letter.

9. It is the further submission of the learned counsel for the respondent that the advertisement of the petitioner carrying his name and photograph and his profile in Practo.Com was acknowledged by Practo.Com and that the availability of the



photograph and profile of the petitioner was acknowledged by Practo.Com, which has stated that its partnering with the clinic/hospital has resulted in publishing the photograph and profile of the petitioner, which act of the petitioner in having his profile and photograph being advertised through Practo.Com and, thus, soliciting business, is in clear violation of the Code of Medical Ethics, which having found true, action was initiated by the respondents resulting in the imposition of punishment aforesaid on the petitioner and the same being on the basis of materials, no interference is warranted with the said order passed by the respondent.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. The petitioner has been charged for resorting to advertisement with photograph and profile in online search site 'Practo.com' in violation of the Code of Medical Ethics, which has resulted in the imposition of penalty on the petitioner by removing his name from the Medical Register of the Tamil Nadu Medical Council for three months. However, it is the case of the petitioner that he has not caused any advertisement of his profile and photograph in the website "Practo.Com" and, in fact, on receipt of the notice from the respondents, he has taken earnest efforts with Practo.Com to have his profile and photograph removed. After insistent efforts from the petitioner, Practo.Com has removed his profile and photograph from its website.

12. Though the respondents claim that the advertisement soliciting business carrying the profile of the petitioner and his photograph are in violation of the Code of Medical Ethics, however, from the reply submitted by Practo.Com, which is not disputed by the learned counsel for the respondents, the website, viz., Practo.Com, in partnership with the clinic/hospital has uploaded the profile and photographs of the doctors in the clinic/hospital, in which the petitioner was also a visiting physician. From the above reply of Practo.Com, it is evident that it is not the petitioner who has solicited business by having his photograph and profile advertised in Practo.Com. If Practo.Com, in partnership with the hospital/clinic had carried the profile and photo of the petitioner, without his knowledge, the petitioner cannot be fastened with liability and be held to have violated the Code of Medical Ethics.

13. Further, there is no material available on record, either before the disciplinary authority or the respondent or even before this Court to suggest that it was the petitioner who had solicited business in advertising his profile and photograph



in Practo.Com. In the absence of any material connecting the petitioner directly with Practo.Com relating to the advertisement of his photo and profile, fastening the liability on the petitioner for imposing the punishment of removal of the name of the petitioner from the Medical Register for a period of three months, clearly reveals total non-application of mind not only on the part of the disciplinary committee, but equally on the respondents, who have, without application of mind accepted the findings of the disciplinary committee. The above act of the respondents is unjust, arbitrary, illegal and perverse and the said impugned letter imposing punishment on the petitioner deserves to be interfered with.

14. In the result, the Writ Petition is allowed and the letter dated 17.12.2019 in Ref. No. TNMC / DC 117/2019, passed by the 1st respondent, is set aside and the matter is remanded to the 1st respondent for fresh consideration and the 1st respondent, after taking into consideration the reply given by Practo.com, dated 15.11.2019 and the explanation submitted by the petitioner and all other materials, shall pass appropriate orders in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar Tamil Nadu Medical Council
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam, Chennai 600 106.

2.The Disciplinary Committee Tamil Nadu Medical Council,
New No.914, Old No.569,
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Arumbakkam, Chennai 600 106.

+1 cc to Mr.G.Sankaran, Advocate Sr.NO. 68485

W.P.No.38 of 2020

ksm(CO)
A.SK(10.02.2022)