



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.Nos.31901 to 31903 of 2005

Dr.S.Kantha	...	Petitioner
		in W.P.No.31901 of 2005
Dr.M.N.Shahul Hameed	...	Petitioner
		in W.P.No.31902 of 2005
Dr.Usha Kothandavaman	...	Petitioner
		in W.P.No.31903 of 2005

vs

- 1)The Medical Council of India,
rep. By its Secretary, Pocket-14,
Aiwan-E-Galib Marg, Kotla Road,
Opp.Mata Sundari College (for Women)
New Delhi-110 002.
- 2)The Union of India,
Rep. By its Secretary, Ministry of Health,
New Delhi.
- 3)The Registrar,
Dr.M.G.R.Medical University, Guindy,
Chennai-25.
- 4)The Dean
Meenakshi Medical College & Research Institute
Enathur, Kancheepuram-631 552 ...Respondents 1 to 4
in W.P.Nos.31901 to 31903/2005
- 5)The Dean
Narayana Medical College,
Nellore, Andhra Pradesh ..Respondent No.5 in
W.P.No.31901 & 31903/2005
- 6)The Dean
Katuri, Medical College
Guntur, Andhra Pradesh. ..Respondent No.5 in
W.P.No.31902/2005



7) Fr. Mullar Medical College
Mangalore

... Respondent No.6 in
W.P.No.31903/2005

WEB COPY

Prayer in W.P.No.31901 of 2005:-

Writ Petition filed praying to issue a Writ of Certiorarified Mandamus calling for the records in No.34(C)/2004-MED/19807, dated 03.11.2004 on the file of the 1st respondent and quash the same as illegal and direct the 1st respondent to include the petitioner's name in the Indian Medical Council Register.

Prayer in W.P.No.31902 of 2005:-

Writ Petition filed praying to issue a Writ of Certiorarified Mandamus calling for the records in No.34(C)/2004-MED/19662, dated 01.11.2004 on the file of the 1st respondent and quash the same as illegal and direct the 1st respondent to include the petitioner's name in the Indian Medical Council Register.

Prayer in W.P.No.31903 of 2005:-

Writ Petition filed praying to issue a Writ of Certiorarified Mandamus calling for the records in No.34(C)/2004-MED/19373, dated 01.11.2004 on the file of the 1st respondent and quash the same as illegal and direct the 1st respondent to include the petitioner's name in the Indian Medical Council Register.

For Petitioners : Mr.R.Sundaram in all wps
For Respondents : Mr.M.S.Seshathri
for Mr.V.P.Raman, for R1
Mr.D.RaviChander for R3
Mr.Elumalai, Addl Govt. Pleader
for R4 and R5.
Mr.K.Subbu Ranga Bharathi for R2

COMMON ORDER

The petitioner in W.P.31901 of 2005 has enrolled and registered as a Doctor in the Medical Council in the State of Tamil Nadu as per the provision of the Medical Council of India. The petitioner states that he retired from the Government service and joined in the Narayana Medical College, Nellore on 01.04.2002 and relieved from the Institution on 15.03.2003 and joined in the Meenakshi Medical College and Research Institute, Kancheepuram, on 18.03.2003. Though the petitioner was relieved from the 5th respondent college and joined in the 4th respondent College, there was an inspection by Medical Council of India team



in the 5th respondent College on 06.03.2003. The petitioner was asked to attend at Narayana Medical College, Nellore, on 06.03.2003 as the academic year was not completed, the petitioner attended and explained the real position. However, the 1st respondent issued a letter No.MCI-34(41)2003-MED 36332, dated 22.03.2004 calling upon him to furnish his comments for allegedly misleading the council.

2. On 30.03.2004, the petitioner explained about the clerical error in typing the month. On 01.06.2004, the 1st respondent issued a communication calling him to appear before the Ethics Committee on 14.06.2004 by 11.30 a.m. The petitioner appeared before the Ethics Committee on 14.06.2004 and submitted that the month has been wrongly shown as February 2003 instead of March. Thereafter, on 03.11.2004, the 1st respondent in his proceedings 34(c) 2004 MED/2004/19807 passed an order erasing the petitioner's name from the Medical Council Register temporarily from 01.11.2004 to 31.07.2007 and he is not eligible to be considered as a Teacher at any Medical College for the academic year 2005-06 and 2006-07. The petitioner thereafter appeared before the Secretary on 18.11.2004. According to the petitioner, he submitted his detailed explanation narrating the events and requested to drop the proceedings. The 1st respondent has passed the order removing the name of the petitioner from the Indian Medical Register for a period from 1.11.2004 to 31.07.2007. Further, ordered that the petitioner's name shall be erased from the Indian Medical Register temporarily from 1st November 2004 upto 31st July 2007 and that the petitioner will not be eligible to be considered a a teacher any any medical college for the academic years 2005-06 and 2006-07.

3. In W.P.No.31901 of 2005, the impugned order reads that an inspection of the following medical institutes was carried out by Medical Council of India. At the time of inspection, the college authorities had submitted a set of declaration forms regarding employment of teachers. These sets of declaration forms also contained a declaration form duly signed by the petitioner declaring that she is working full time in these institutes. The name of the College, date of joining, date of inspection was tabulated in the impugned order as follows:-

Name of the College	Date of joining	Date of inspection
Meenakshi Medical College, Kancheepuram	18.02.2003	09.01.2003 / 03.06.2004
Narayana Medical College, Nellore	01.04.2002	06.03.2003



6. The impugned order dated 1.11.2004 gives the tabular column of name of the college, date of joining and date of inspection to hold that at the time of inspection, the college authorities had submitted a set of declaration forms regarding employment of teachers.

Name of the College	Date of Joining	Date of inspection
Meenakshi Medical College, Kancheepuram	01.06.2003	09.01.2004
Katuri Medical College, Guntur.	07.06.2003	08.09.2003

In the impugned order, the voluntarily made statement by the petitioner is reproduced as under:-

"I joined at Meenakshi Medical College, Kancheepuram as Assoc.Prof.in Anatomy on 1/6/2003 and still working there. On 8/9/2003 I was physically present before the MCI inspection team during their visit at Katuri Medical College, Guntur and signed the declaration form in my own hand writing there.

I accept that I am guilty and it will never be in future. I feel very sorry for the same. I may please be excused for the same."

7. By the impugned order, the name of petitioner in W.P.31902 of 2005 was decided to be erased from the Indian Medical Register temporarily from 1st November 2004 upto 31st July 2007 and that he will not be eligible to be considered as a teacher at any medical college for the academic years 2005-06 and 2006-07. Further the petitioner was requested to appear before the Secretary on 19.11.2004 along with original permanent registration certificates.

8. The petitioner in W.P.No.31903 of 2005 would state that after his resignation from Government service on 08.03.2002, he joined in Fr.Mullar Medical College, Mangalore on 01.12.2002 and after resignation from the Medical College, he joined the Narayana Medical College, Nellore on 02.02.2003 and also relieved from the institution and joined in the Meenakshi Medical College and Research Institute, Kancheepuram, 4th respondent with effect from 03.02.2003. Though he joined the 4th respondent college, he was asked to attend on 06.03.2003 as the academic year was not completed and that there was an inspection by Medical Council of India Team in the 5th respondent college on 06.03.2003. The petitioner attended and explained the real position. However, the



1st respondent issued a letter dated 28.03.2004 calling to furnish his comments for allegedly misleading the council. The 1st respondent issued a communication calling upon to appear before the Ethics Committee on 14.06.2004. the petitioner appeared before the Ethics Committee on 14.06.2004 and submitted his case. Thereafter, on 01.11.2004 1st respondent passed an order erasing petitioner's name from the Medical Council Register temporarily from 1.11.2004 to 31.07.2007 and that he will not be eligible to be considered as a Teacher at any Medical College for the academic year 2005-06 and 2006-07. According to the petitioner, even though he narrated his position and submitted detailed explanation and requested to drop the proceedings, the 1st respondent has passed the order without reference to any misconduct or any infamous conduct in any professional respect. Therefore, challenging the same, W.P.31903 of 2005 is filed before this court.

9. In W.P.No.31903 of 2005, the impugned order reads that an inspection of the following medical institutes was carried out by Medical Council of India. At the time of inspection, the college authorities had submitted a set of declaration forms regarding employment of teachers. These sets of declaration forms also contained a declaration form duly signed by the petitioner declaring that she is working full time in these institutes. The name of the College, date of joining, date of inspection was tabulated in the impugned order as follows:-

Name of the College	Date of joining	Date of inspection
Narayana Medical College, Nellore	02.02.2003	06.03.2003
Fr.Mullar Medical College, Mangalore	01.12.2002	19.03.2003
Meenakshi Medical College, Kanchipuram	03.02.2003	29.05.2003 & 09.01.2004

10. The petitioner given her explanation dated 01.04.2004 to the show cause notice dated 28.03.2004. The matter was considered by the Ethics Committee at its meeting held on 14.06.2004, wherein, the petitioner voluntarily made a statement as under:-

".....I do agree that I was physically present during the MCI inspection at Narayana Medical College, Nellore, Fr.Mullar Medical College, Mangalore & Meenakshi Medical College, Kanchipuram on 06/3/2003, 19/3/2003 and 29/05/2003 respectively. I agree that I have signed the declaration form of these institutions



in my own hand writing and I have signed in all those forms. I joined at Meenakshi Medical College, Kanchipuram on 3.2.2003 and still working there

I am extremely sorry for the same and it will not be repeated in future. I may please be excused for the same"

Learned counsel for the petitioners placed reliance on the decision of the Supreme Court reported in 2015 SCC Online Bom 5060 [Dr. Shalik Bhaurao Ade Vs. Medical Council of India and others] and a decision of this court reported in (2013) 3 Mad LJ 263 [Dr. K. Nedumaran Vs. The Chairman, Ethics Committee, Medical Council of India and others] to contend that prejudice has been caused to the petitioners by the non-grant of opportunity of hearing.

11. In the impugned order, it is further pointed out as under:-

" This issue was considered by the General Body of the Council with all required seriousness. Undoubtedly, such kind of misconduct is much more serious than the alleged negligence in cases of treating the patients by doctors. Such misdeclarations and misstatements by the medical teachers have been placed for consideration. The Ethics Committee of the Council, after granting opportunity of being heard to all of the doctors, has recommended imposition of punishment of removal of their names from the Indian Medical Register maintained by the Council.

The issue was considered by the General Body of the Council with all required seriousness. Undoubtedly, such kind of misconduct is much more serious than the alleged negligence in cases of treating the patients by doctors. Such misdeclarations/misstatements are made to cause deception not only to the Council but also on the Central Government for extracting permissions/renewals under Section 10A of the Act.

The worst part is that ultimately, it is those innocent students who get admissions in such medical colleges where the minimum required medical teachers are shown only in such a dubious manner, causes irreparable prejudice to the fair interest of those students and further also to the patients who may be treated by such half-baked students who would not get their exposure and training with the minimum required number of medical teachers available to them.

The General Body was clearly of the view that such



a tendency has to be completely eliminated and not only curbed. The situation does not brook any lenience in this regard and deserves to be dealt with a heavy hand. No doctor should ever be allowed to make such false declaration and get away with it. Timely efficient action in this regard is the need of the hour. It should also act as an effective deterrent so that others who are getting tempted to indulge into such activities should feel reluctant to do so.

The Council, therefore, without any ambiguity unanimously decided that the names of all these doctors are removed from the Indian Medical Register for a period from 1.11.2004 to 31.07.2007.

As such, consequently, these doctors shall not be entitled to work as medical teacher in any medical college during this period."

12. A reading of the impugned orders in the above Writ Petitions would go to show that the petitioners while working in the particular institution also stated to be working in other institution and signed the declaration forms in those institutes and they were physically present at the time of MCI inspection, which is nothing but misleading the Council in discharging its statutory duties and also illegal and in violation of law. Claiming employment at more than one medical college at the same point of time is detected by the 1st respondent at the time of inspection. The petitioners were called upon by the show cause notice to explain the said misdeclaration. The explanation submitted by them was not found satisfactory by the Medical Council of India and therefore, they were called before the Ethics Committee. Before the Ethics Committee, the petitioners given statement admitting their guilt and that they were physically present during the MCI Inspection in the colleges, where they were not employed at the relevant point of time.

13. The explanation submitted before the Medical Council of India was not found satisfactory and thereafter the petitioners given statement before the Ethics Committee agreeing with the misdeclaration. Such misdeclaration is to be strictly viewed. The representation of the petitioners seeking apology cannot be accepted. The voluntarily given statement before the Ethics Committee clearly proved that these petitioners mislead the council. The records clearly proved that the petitioners were working in more than one institutions at the same time. There is no question of violation of principles of natural justice as the



Medical Council of India given show cause notice, asked for explanation, thereafter, communicated by way of letter to appear before the Ethics Committee and based on the inspection report and the voluntary statement made by the petitioners before the Ethics Committee and on considering the matter by General Body at its meeting held, considered the entire issue and passed the impugned order. It is pointed out by the Medical Council of India that the misstatements are not only causing deception to the Council but also on the Central Government for extracting permissions/renewals under Section 10A of the Act. Since there is no violation of principles of natural justice and no prejudice caused to the petitioners, the citations referred to by the learned counsel for the petitioners are not applicable to the present case on hand.

14. The plea of the counsel for petitioners is that the 1st respondent does not have the powers to take action against the petitioners who are teachers enrolled and governed by the State Act, is also unmerited. The impugned action is a decision which emanated in the General Body Meeting after taking into consideration the fact that teaching faculty present in a college is not working actually there but in other place and that too other State. Teaching faculty who has shown themselves to be teaching at a particular college is not working but "on paper teacher". In such circumstances, this court is of the considered view that the petitioners are not entitled for any relief and the impugned orders passed is in accordance with the Regulations. Accordingly, the writ petitions are dismissed.

15. As far as the issue in question is that a number of Medical teachers who submitted their declaration forms and their names found in the records in the Medical Colleges are not in fact teaching in the colleges and are shown as faculty members merely on paper whereas they are physically practicing and working for gain at a different venue / place. Therefore, this court deems it fit to pass the following observations and also certain directions to the Medical Council of India as well as the State Council for complying with the same, in order to curb the malpractice adopted by the medical teachers.

16. Interest of the Student and patient public should be taken into paramount consideration and not the individual interest. The conduct of the petitioners would prove that there is no professional ethics followed by them. They are misleading the institution. The Teachers who work in the schools, colleges are expected of professional ethics rather motivating the students in teaching how to earn more money from their profession/extract money from patient public.



17. Medical Profession is a noble profession. Such unscrupulous methods adopted by the petitioners claiming employment as medical teachers in any given medical college, would affect the students training and resultantly the medical profession itself would become a mere profession for earning money alone and not for service to the poor and needy persons.

18. It is not out of context to observe that most of the Private Medical Colleges and also some of the Government Medical Colleges are not having adequate infrastructure and qualified teaching faculties to give proper training to medical students and to treat the patients. Therefore, in the interest of justice, this court directs as under:-

(i) Medical Council of India is directed to get the approved list of teaching faculties and the infrastructure facilities from all medical colleges under its control and to verify as to whether they have fulfilled the qualifying criterion as per the Regulations.

(ii) Such approved teaching faculties list shall be directed to be furnished within a month of every fresh academic year, annexing the list of medical teachers working in their institutions every academic year.

(iii) Medical Council of India is also directed to get the detailed report as regards the changes whenever occur due to a teacher retirement or resignation or new appointment or the teacher left the college. MCI is directed to publish the list of the medical colleges/institutions/Universities with their approved faculties list and notifying the changes occurred from time to time and the infrastructural facilities available therein, in the Official Government Website so that the students and colleges can verify as to whether any faculty's name is shown in more than one college and he/she has been employed in any other Medical College/University/Institution.

(iv) The MCI at the time of inspection of the Medical Colleges, shall verify the faculties present in the college along with the list of faculties already submitted by the college and if there is any deviation, the MCI shall take stringent action not only against the teaching faculty who found to give false declaration but also against the College, by cancelling their approval or not granting approval as the case may be. Mere suspension of licence to the Medical faculties alone would not curb the malpractice adopted in the college as both teaching faculty and Medical Colleges/institutions/Universities are



responsible for such action.

(v) The Medical Council of India is also directed to get the updated documents from the Medical Colleges with respect to compliance with the Regulations and statutory requirements as per the amendments made from time to time.

(vi) The Medical Council of India is directed to make its intervention for stressing adequate infrastructure facilities to adapt the situation to the Medical Colleges under its control.

19. Lastly, this court likes to point out that it is not only unjustifiable, undesirable but also unethical to permit any faculty who is working in one place and present in other college on the date of MCI inspection by filing misdeclaration and not following the statutory requirements as prescribed under the Regulations to work as a medical teacher. Further, running the medical college/institution with such compromised teaching faculty will result into degradation of the standards of medical education as the graduates from such institute will be dealing with lives of human beings without getting adequate training from the medical teachers. Hence, considering all the factors in totality, action in such cases is to be taken as contemplated under the provisions of the Act and no leniency could be shown in such cases. Accordingly, the Writ Petitions are dismissed with the above directions. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

nvsri

To

1)The Secretary, Medical Council of India,
Pocket-14, Aiwan-E-Galib Marg, Kotla Road,
Opp.Mata Sundari College (for Women)
New Delhi-110 002.

2)The Secretary, Union of India,
Ministry of Health, New Delhi.

3)The Registrar,
Dr.M.G.R.Medical University,
Guindy,Chennai-25.



4.The Dean,
Meenakshi Medical College & Research Institute
Enathur, Kancheepuram-631 552

5.The Dean,
Narayana Medical College,
Nellore, Andhra Pradesh.

6.The Dean,
Katuri, Medical College,
Guntur, Andhra Pradesh.

7.Fr.Mullar Medical College,
Mangalore.

W.P.Nos.31901 to 31903 of 2005

SSD(CO)
CB(30/11/2021)
CB(14/12/2021)