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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 17136 of 2021
and
WMP. No. 18154 of 2021

Dr. Praveen B. Nilgar
No.43/12A, 4th Main Road
Kottur Garden
Kotturpuram
Chennai - 600 085

.. Petitioner

Versus

1. Tamil Nadu Medical Council
represented by its Registrar
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

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent comprised in impugned order bearing Reference No.TNMC/DC/136/2018 dated 04.05.2021 and quash the same as being arbitrary and illegal and contrary to the principles of natural justice and Indian Medical Council Regulations (Professional Conduct, Etiquette and Ethics) 2002.

For Petitioner : Mr. R. Parthasarathy

For Respondents : Mr. G. Sankaran



ORDER

The challenge made in this writ petition is to the order dated 04.05.2021 passed by the first respondent, imposing the punishment of removal of name of the petitioner from the medical register maintained by the Karnataka State Medical Council for a period of one year.

2. Briefly stated facts are that the petitioner completed his Master's Degree in Hospital Administration from KLE University, Belgaum and has more than 10 years of experience in hospital administration. Earlier, the petitioner was employed as a Medical Administrator in Sagar Hospital, Bangalore and subsequently, at Narayana Group of Hospitals. Thereafter, he joined as Medical Superintendent at Fortis Malar Hospital in the cadre of Deputy General Manager (Chief of Medical Services) where he worked from 17.05.2016 to 20.07.2018.

3. According to the petitioner, while he was working as Deputy General Manager (Chief of Medical Services) in Fortis Malar Hospital, one Sri Subhitha gave a complaint on 19.10.2018 to the Medical Council of India, against one Dr.Radhakrishnan, which was forwarded to the respondents herein to take appropriate action thereof. It was alleged in the complaint that the said Dr.Radhakrishnan has issued a medical fitness certificate to one N.Pitchaimani, father of the complainant, who was being treated at Fortis Malar Hospital, Chennai, by a team of experts in various medical disciplines and who was in ventilator support, without the knowledge of doctors and based on such certificate, a requisition letter for home registration from the complainant's father was prepared by Dr.Radhakrishnan team and the Sub Registrar, Neelankarai created false records of having visited patient's place of residence and completed registration of various properties worth about Rs.50 crores through fraudulent settlement deed in the name of Sakthi Kumar using the thumb impression of the patient, which was taken, while he was unconscious and on ventilator support. In this regard, a FIR in Crime No.374 of 2016 was registered and the investigation is going on.

4. The petitioner further stated that on the basis of such complaint dated 19.10.2018, for conducting an enquiry, disciplinary committee was constituted. The committee issued summons to the said Dr.Radhakrishnan. Accordingly, he appeared on 26.08.2019 and gave statement that the patient was conscious on 08.10.2015, on which date he issued the said medical certificate. On the basis of such statement of Dr.Radhakrishnan, summons was issued to the petitioner, former Medical Superintendent and Dr.Anand Mohan Pai, present Medical Superintendent of Fortis Malar Hospital, as witnesses to the



incident. Pursuant to the same, the petitioner appeared before the committee and deposed that both of them were not employed at Fortis Marlar Hospital during the relevant point of time and all the statements were made based on the available medical records as on 08.10.2015. Whereas, as on the said date, the patient was in the ICU and the following was recorded in the medical records of the patient:

"Pt. Sensorial - altered, disoriented. GLS: E4 M6 V4 (As per Glasgow Coma Scale) confused or disoriented."

5. It is also stated by the petitioner that thereafter, the disciplinary committee summoned Dr.P.Basumani, who was one of the primary consultants among the team of specialist Doctors treating the patient during the relevant period. Accordingly, he appeared before the committee on 22.04.2021 and deposed that there were several complications faced by the patient and that, the patient was shifted to the ICU on 07.10.2015 and put on ventilator support; and that, the patient finally succumbed to a respiratory arrest on 11.10.2015. The disciplinary committee further noted that the Inspector of Police (Central Crime Branch), Vepery, Chennai, sent a letter dated 27.03.2017 to the petitioner, enquiring about the health conditions of the patient. The petitioner vide his reply dated 29.03.2017, stated that the patient was conscious as on 08.10.2015. Such reply was contrary to the actual health conditions of the patient and Dr.P.Basumani, failed to ensure the correct reply indicating the actual conditions of the patient, to the police authorities. Therefore, the disciplinary committee recommended penalty for all the three delinquents viz., Dr.Radhakrishnan, petitioner and Dr.P.Basumani. As regards the petitioner, the punishment of removal of his name from the medical register of the Karnataka State Medical Council for a period of one year, was proposed to the first respondent. Upon receipt of the decision of the second respondent / disciplinary committee, the first respondent upheld the decision of the second respondent and passed an order dated 04.05.2021, inflicting the said punishment on the petitioner. Aggrieved by the same, the present writ petition came to be filed by the petitioner.

6.1 Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that on receipt of the complaint from the Medical Council of India, the case was referred to the disciplinary committee, which issued summons to Dr.Radhakrishnan and accordingly, he appeared before the committee and gave his deposition. During the course of personal hearing, Dr.Radhakrishnan submitted a letter addressed to the police authorities by Fortis Malar Hospital, stating that the patient was conscious on 08.10.2015, whereas the entries in the case records were contrary to the condition of the patient



stated in the said letter. Therefore, the disciplinary committee called upon the petitioner, former Primary Consultant as well as the present Medical Superintendent of the said Hospital. Though the petitioner and Dr.Anand Mohan Pai, were unable to appear before the committee on 23.09.2019, but they appeared on 12.11.2019 and gave statement that at the time of incident, they were not employed in the said hospital and all their statements were made based on the available medical records. In such circumstances, the disciplinary committee sent summons to Dr.P.Basumani, who treated the patient at that time. On receipt of the summons, he appeared before the committee on 22.04.2021 and gave his deposition.

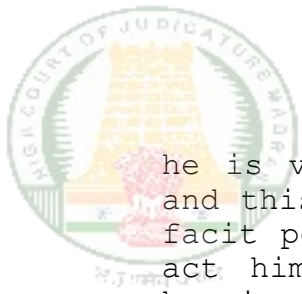
6.2 The counter affidavit further proceeds to state that a letter dated 27.03.2017 was addressed to the Medical Superintendent, Fortis Malar Hospital, by the Inspector of Police, Central Crime Branch, EDF II, Team IX-A, Vepery, Chennai seeking answers to certain queries about the health condition of the patient N.Pitchamani, in connection with the investigation in CCB Crime No.374 of 2016 registered for the offences under sections 465, 467, 468, 474, 420 and 120(b) IPC, to which, reply was sent by the petitioner, on 29.03.2017, after having discussion with the said Dr.P.Basumani, to the effect that the patient was conscious on 08.10.2015, which is contrary to the actual condition of the patient as revealed in the case sheets. On the other hand, the said Dr.P.Basumani, during enquiry, has stated that the patient was not conscious on 08.10.2015 and not oriented to understand the legal documents and that, he discussed the status of the patient with the petitioner, the former Medical Superintendent. Therefore, the disciplinary committee was of the opinion that the petitioner's failure to furnish the correct status of the patient has crippled the investigation and facilitated the accused to escape from the clutches of law; and thereby, he fell short of the integrity and conduct expected from the medical practitioner, besides violating the trust the public placed in the medical profession. Based on the same, the first respondent imposed the punishment of removal of the petitioner's name from the Medical Register of the Karnataka State Medical Council for a period of one year, by the order impugned herein. Stating so, the respondents sought to dismiss this writ petition.

7. The learned counsel for the petitioner would vehemently contend that there was no complaint given by the complainant against the petitioner and no allegation was levelled against him, in the said complaint; and he was called for enquiry citing him as a witness, in the case registered against the said Dr.Radhakrishnan. The learned counsel further submitted that the petitioner was not in employment at Fortis Malar Hospital, during the relevant point of time (i.e.,) at the time of



issuance of medical certificate dated 08.10.2015 by Dr.Radhakrishnan; he joined the services of Fortis Malar Hospital as Medical Superintendent on 17.05.2016 and worked till 20.07.2018 and thereafter, he left the services of the said hospital; and hence, he sent reply on 29.03.2017 to the letter dated 27.03.2017 to the police authorities, only on the basis of the available medical records. Adding further, the learned counsel submitted that though the petitioner pleaded ignorance and there was no nexus about the so-called medical certificate issued by Dr.Radhakrishnan, the disciplinary committee came to a finding that the petitioner failed to furnish the correct information about the health conditions of the patient N.Pitchaimani, to the letter dated 27.03.2017 sent by the police authorities and thereby, he committed the professional misconduct and accordingly, proposed the punishment of removal of his name from the medical register as per Regulation 7.7 of the Regulations, 2003, which is arbitrary and illegal. It is also submitted that before passing the order of removal of his name from the Medical Register for a period of one year, by the respondent, the petitioner was not issued with any show cause notice nor provided any opportunity of cross examination as contemplated under Regulation 8.2 of the Regulations, 2003 and hence, the same is violative of the principles of natural justice.

8. On the contrary, the learned counsel for the respondents, by placing reliance on the counter affidavit, submitted that the respondents followed the Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003, which prescribes an inclusive definition of professional misconduct; the different acts of misconduct given in the said Regulation are only extensive and not exhaustive; and the violation of any provision of the Regulation is a ground for action under professional misconduct, according to which, if a medical practitioner is found guilty of professional misconduct, he may be awarded punishment which includes removal of name from the register of medical practitioner permanently or for a specified period. The learned counsel also submitted that the petitioner furnished incorrect information through letter dated 29.03.2017 to the police authorities on a crucial point of consciousness of the patient, contrary to the actual condition of the patient and the said letter was instrumental for the accused to escape from the clutches of law, who clandestinely transferred the properties of the patient worth about Rs.50 crores through home registration, when the patient was in the ICU of the hospital in a disoriented stage. Therefore, the petitioner, being a medical superintendent, ought to have stated the correct condition of the patient, whereas his reply to the police authorities was incorrect as per the medical records of the patient and thereby,



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he is vicariously responsible for the act done in the hospital and this liability is based upon the maxims "qui facit per alium facit per se" which means, he who acts through another does the act himself. It is also submitted that during the personal hearing, the petitioner was given opportunity to defend himself and hence, there is no violation of the principles of natural justice, as alleged by the petitioner; and that the disciplinary committee being a quasi judicial authority can examine the circumstances of the particular case upon their own judicial prudence, even if there is no complaint against any one, and take cognizance of the offence. Therefore, the learned counsel submitted that the order passed by the respondent authorities, which is impugned herein, is perfectly correct and the same does not call for any interference by this court.

9. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the material records placed before this Court.

10. Concededly, the petitioner joined the services of the Fortis Malar Hospital as a Medical Superintendent on 17.05.2016 and worked till 20.07.2018. Whereas the father of the complainant N.Pitchaimani was admitted in the said hospital on 27.09.2015, having the complications of disorientation, generalized weakness, giddiness and turbid urine and died on 11.10.2015, despite best treatment given. Dr.P.Basumani was a primary consultant of the said patient. As per the death summary, the immediate cause of death is due to severe sepsis, septic shock and multi organ failure and the antecedent cause is T-cell lymphoma, chronic liver disease, T2 DM, CKD (chronic kidney disease), peripheral Arterial disease, urethral fistula and gangrene in Rt. Toe. Thereafter, the daughter of the said N.Pitchaimani, viz., Sri Subhitha, gave a complaint to the Medical Council of India alleging that Dr.Radhakrishnan of Coimbatore has issued a false medical certificate dated 08.10.2015 without the knowledge of the hospital doctors, based on which home registration of various properties worth about Rs.50 crores had been taken place in the name of Sakthi Kumar, who is son-in-law of the said Dr.Radhakrishnan. In this regard, FIR in Cr.No.374 of 2016 was registered and during the course of investigation, the Inspector of Police, Central Crime Branch, EDF II, Team IX-A, Vepery, Chennai, sent a letter dated 27.03.2017 to the Medical Superintendent of the hospital, seeking answers to certain queries, about the health condition of the patient N.Pitchaimani, to which, the petitioner, based on the medical records, sent a reply dated 29.03.2017 to the police authorities, stating that the patient was conscious on 08.10.2015, which according to the respondents, is contrary to the actual conditions of the patient as revealed from the case sheet / medical records. Further, Dr.P.Basumani, during the



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course of enquiry, asserted that the patient was not conscious on 08.10.2015 and not oriented to understand the legal documents. Thus, the disciplinary committee found the petitioner guilty of the professional misconduct as contemplated under Regulation 7.7 of the Regulations, 2003, as he failed to give correct reply to the police authorities and thereby, he is liable to be punished under Regulation 8.2. Accordingly, the first respondent passed an order dated 04.05.2021 imposing the punishment of removal of his name from the medical register for a period of one year, which is impugned herein.

11. It is evident from the documents placed before this court that there was no complaint against the petitioner for the alleged professional misconduct and he was summoned to appear before the disciplinary committee on 12.11.2019 only as a witness to the case registered against Dr.Radhakrishnan of Coimbatore, based on the complaint lodged by the complainant Sri Subhitha D/o.N.Pitchaimani. Further, he did not work in the said hospital during the relevant point of time and he joined the services of the hospital only on 17.05.2016, as such, he has no connection with the medical certificate dated 08.10.2015 issued by Dr.Radhakrishnan. In fact, in the complaint, there was no allegation against the petitioner and it was specifically averred therein that the medical certificate dated 08.10.2015 was issued by Dr.Radhakrishnan, without the knowledge of the doctors in Malar Hospital, which was also categorically admitted by the respondent in paragraph 17 of the order impugned herein. Hence, there is absolutely no ground for taking disciplinary action against the petitioner.

12. The next aspect to be considered herein is the main delinquency on which the petitioner was inflicted with the punishment of removal of his name from the medical register for a period of one year, for the alleged professional misconduct as laid down under Regulation 7.7 of the Regulations, 2003, that he failed to give a correct reply to the police authorities about the physical conditions of the patient N.Pitchaimani. At this juncture, it is apropos to refer to the said Regulation, which reads as follows:

"7.7 Signing professional certificates, reports and other documents:

Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix-4. Any



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registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register."

The aforesaid Regulation can be invoked, only if a medical practitioner has signed or given under his name and authority any certificate, notification, report or document of a similar character, which is untrue, misleading or improper.

13. In this case, the letter dated 27.03.2017 sent by the police authorities seeking answers for certain queries about the health conditions of the patient N.Pitchaimani, was addressed to the Medical Superintendent of the Fortis Malar Hospital, to which, the reply dated 29.03.2017 was sent by the petitioner. For easy understanding, the relevant contents of both the letters are reproduced hereinbelow:

Letter dated 27.03.2017 from the Inspector of Police, CCB, Vepery, Chennai to the Medical Superintendent, Fortis Malar Hospital, Adyar, Chennai:

"One Pichaimani M/A 66, S/O.Narayasamy, Male, I.P.No.15-7176 MHID-146832, who was admitted on 27.09.2015 and later died on 11.10.2015 some more particulars is requested for our investigation purpose.

1) At the time of treatment if the above patient have the following disease. On 08.10.15 the above patient was affected by the following disease or not.

1.Decompensate liver disease due to lymphoma of liver.

2.Chronic renal failure

3.Diabetes and vascular gangrene of the right leg

4.Are he was emaciated.

5.Whether he was conscious or not on 08.10.15.

6.Whether he was fit for travel or not.

2) If one Dr.S.Radhakrishnan, MBBS, FRCS, Reg.No.TN38590 visited the above patient during his treatment at your hospital on 08.10.15.

3) On 08.10.2015 the above patient was conscious or not.

....."

Reply dated 29.03.2017 given by the petitioner, Medical Superintendent of the Hospital to the Inspector of Police, CCB,



EDF-II, Team -IX(A), Vepery, Chennai-600 007.

"Please find the requested information as per the Patient Case Records in Fortis Malar Hospital.

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1.

- (i). Yes.
- (ii). Yes.
- (iii). Yes.
- (iv). Yes.
- (v). Yes, he was conscious on 08.10.2015

2. Yes, as per the primary consultant's information.

3. Yes, he was conscious on 08.10.2015."

14. According to the petitioner, the aforesaid reply given by him to the queries raised by the police authorities in respect of the physical conditions of the patient N.Pitchaimani, was based on his understanding of the medical records of the patient. The said statement was contrary to the case sheet / medical records of the patient, according to the respondent and that, the clinical findings pertaining to the patient are as follows:

"Pt. Sensorial - altered, disoriented. GLS: E4 M6 V4 (As per Glasgow coma scale) confused or disoriented"

15. The learned counsel for the petitioner, during the course of argument, filed a memo, stating explanation about the terms mentioned in the medical reports, as per Glasgow Coma Scale. According to the same, the explanation to 'E4' 'M6' 'V4' would run thus:

'E' represents Eye Response

Best eye response (E) has 4 grades with the higher number representing the higher grade.

- 1.No eye opening
- 2.Opening to response to pain to limbs as above.
- 3.Eye opening in response any speech (or shout, not necessarily request to open eyes)
- 4.Spontaneous eye opening.

The patient was recorded to have the highest grade in Eye response i.e., E4.

'M' represents Motor Response

Best Motor response (M) has 6 grades with the higher number representing the higher grade.

Apply varied painful stimulus: trapezius squeeze, earlobe pinch, supraorbital pressure, sternal rub, nail-bed pressure, etc:

- 1.No response to pain



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2.Extensor posturing to pain: the stimulus causes limb extension (abduction, internal rotation of shoulder, pronation of forearm, wrist extension) - decerebrate posture.

3.Abnormal flexor response to pain: stimulus causes abnormal flexion of limbs (abduction of arm, internal rotation of shoulder, pronation of forearm, wrist flexion - decorticate posture).

4.Withdraws to pain: pulls limb away from painful stimulus.

5.Localising response to pain: purposeful movements towards changing painful stimuli is a localising response.

6.Obedient command: the patient does simple things you ask (beware of accepting a grasp reflex in this category)

The patient was recorded to have the highest grade in Motor response i.e. M6.

'V' represents Best verbal Response - It has 5 grades with the higher number representing the higher grade.

Record best level of speech. If the patient is intubated, a derived verbal score is calculated via a linear regression prediction:

1.No verbal response

2.Incomprehensible speech: moaning but no words

3.Inappropriate speech: random or exclamatory articulated speech but no conversational exchange.

4.Confused conversation: the patient responds to questions in a conversational manner, but some disorientation and confusion.

5.Orientated: the patient knows who he/she is, where he/she is and why, the year, season and month.

The patient was recorded to have the 2nd highest grade in verbal response i.e., V4.

In the light of the aforesaid explanation given in the Glasgow Coma Scale and on the basis of the medical records of the patient, the petitioner has correctly responded to the question, 'whether the patient was conscious or not' as 'the patient was conscious' and he was not asked about the status or consciousness level of the patient to be responding in detail. Further, it is to be noted that the other responses to the queries on travel ability and presence of Dr.Radhakrishnan were correctly given by the petitioner and there was no dispute in this regard. More over, the police authorities have not sought



for a certificate, but they asked for particulars. Therefore, the reply submitted by the petitioner, qua question no.1, cannot be said to be incorrect or misleading statement to the police authorities, in the opinion of this court.

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16. In respect of question no.2 that 'If one Dr.S.Radhakrishnan, MBBS, FRCS No.TN38590 visited the above patient during his treatment at your hospital on 08.10.2015', the petitioner gave his response that 'yes, as per the primary consultant's information'. The said query is only with respect to visitation of Dr.Radhakrishnan in the hospital and there is a reference about his visitation and hence, the Primary consultant Dr.P.Basumani, said 'yes'. It is also to be noted at this juncture that in the complaint filed by Sri Subhitha, there is no dispute raised about the visitation of the said Dr.Radhakrishnan. Thus, there is no material evidence made available even to allege that the petitioner gave an incorrect / misleading information to the police authorities contrary to the case sheet / medical records of the patient. In such event, the petitioner cannot be liable to be punished for the alleged professional misconduct, in terms of Regulation 7.7 of the Regulations, 2003 and the order of punishment inflicted on him, hence, deserves to be set aside.

17. At this juncture, it is to be noted that in the larger interest of the society, the highest degree of care, caution, propriety and rectitude be expected from and followed by the medical practitioners, who discharge a noble profession. On the other hand, in the same breadth, it is important to acknowledge the services of medical practitioners. Regard must be had to the fact that they work under tremendous pressure - physically, mentally, morally and also professionally. They cannot be expected to perform their best, if the swords of damocles are kept hanging on their head constantly. Enough protection needs to be given to the medical practitioners in order that they may not be penalised, targeted or punished, unjustly. This principle finds support in the decision of the Apex Court in Jacob Mathew v. State of Punjab and another [2005 (6) SCC 1] wherein it was observed as follows:-

"51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence, there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for



pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against."

In A.S.V. Narayanan Rao v. Ratnamala and another [2013 (10) SCC 741] the Supreme Court, reiterated with approval, the judgment in Jacob Mathew referred to above and held that though the doctors are not immune from legal clutches/proceedings in the event of their negligence in discharge of their professional duties, however, it is necessary to protect them from frivolous and unjust prosecution. The Supreme Court in Vinod Dua v. Union of India [2021 SCC Online SC 414 decided on 03.06.2021] once again reiterated on the above lines. Applying the said legal proposition to the facts of the present case, this court is of the considered view that the order of punishment inflicted on the petitioner, cannot be allowed to be sustained.

18. Yet another ground raised in this writ petition is that before passing the order of punishment, the petitioner was not issued with any show cause notice to put forth his defence nor provided any opportunity to cross examine the witnesses to justify the reply sent by him and to prove his innocence. Regulation 8.2 of the Regulations, 2003, explicitly provides that any complaint with regard to professional misconduct can be brought before the Tamil Nadu Medical Council for disciplinary action, the Tamil Nadu Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. On the contrary, the petitioner was summoned only for giving evidence in the case registered against Dr.Radhakrishnan on 12.11.2019 and accordingly, he appeared and gave his statement before the disciplinary committee. Thereafter, he was issued with the order of punishment of removal of his name from the medical register for a period of one year, which would disclose that no opportunity was provided to the petitioner to defend the allegation of professional misconduct levelled against him and the same is totally in violation of the principles of natural justice.

19. In this context, it is aptly quoted the observation of the supreme court in Canara Bank v. V.K.Awasthy [(2005) 6 SCC 321 : 2005 SCC (L&S) 833], which reads as follows:

"7. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, ``useless formality theory'' can be pressed into service.



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8. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions ``natural justice'' and ``legal justice'' do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural



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justice requires to 'vocate interrogate and adjudicate''. In the celebrated case of Cooper v. Wandsworth Board of Works, (1863) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam' says God, 'where art thou? has thou not eaten of the tree whereof I commanded thee that thou should not eat'".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

12. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in Ray v. Local Government Board, (1914) 1 KB 160: 83 LJKB 86 (KB at p. 199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman, (1943) AC 627: [1943] 2 All ER 337, Lord Wright observed that it was not desirable to attempt 'to force it into any procrustean bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity', to every party of being heard.

13. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice, (1911) AC 179:80 LJKB 796), where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. ... It will, I suppose, usually be of an administrative kind; but sometimes, it will involve matter of law as well as matter of



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fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think that they are bound to treat such a question as though it were a trial.' The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination, either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view'. To the same effect are the observations of Earl of Selbourne, L.C in *Arthur John Spackman v. Plumstead District Board of Works*, (1985) 10 AC 229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice".



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Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

From the above extract, it is lucid that the principles of natural justice is not an empty formality. In the absence of observance to the said principle, the element of 'fairness' in the action is removed and "arbitrariness" creeps in. The principle derives its recognition in legal jurisprudence from the maxim "Audi Alteram Partem" that means 'no man shall be condemned without being heard'. The natural justice requires that any person, who is likely to be punished for any act or omission, is entitled to know the charge against him and sufficient and reasonable opportunity must be given to him to defend himself. The principle of natural justice is encompassed in fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. Any action taken contrary to the same would have to be declared as arbitrary and in violation of the fundamental rights.

20. In the case at hand, the petitioner has taken a clear stand that he was caught unaware of the action taken against him behind his back. The copy of the report was not furnished to him. As stated earlier, the enquiry was not against the petitioner and he was summoned only to give evidence, citing him as a witness. He was not afforded any opportunity to cross



examine the witness, whose statement or document was used against him and put forth his defence before the committee. According to him, during the relevant point of time, he was not in employment of the hospital and he joined the services of the hospital only on 17.05.2016 and that, he gave such a reply to the police authorities, based on his understanding of the medical records of the patient. Thus, the violation of the principles of natural justice has caused serious prejudice to him. Therefore, this court is of the opinion that without any complaint, the act of the disciplinary committee being quasi judicial authority, to recommend for imposition of punishment on the petitioner, that too, without providing any opportunity to him, is wholly unjustified and the same is liable to be set aside.

21. Thus, for the discussions held above, the order dated 04.05.2021 passed by the respondent is set aside insofar as the petitioner is concerned and accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh

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
Poonamallee High Road
Arumbakkam, Chennai - 600 106

+1cc to Mr.G.Sankaran, Advocate, S.R.No.55288

Delivery Order in
WP No. 17136 of 2021

BS(CO)
SU(10/11/2021)