

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA(P) 289 of 2021

Reserved on: 25.04.2022

Pronounced on: 18.05.2022

People for Better Treatment (PBT) through its President, Dr. Kunal Saha

...Petitioner

-Vs-

West Bengal Medical Council (WBMC) and another.

...Respondents

Present:-

Dr. Kunal Saha,

...Petitioner-in-Person

Mr. Saibalendu Bhowmik,

Mr. Biplab Guha,

Mr. Rajsekhar Basu,

Mr. Subrata Bhattacharje,

Ms. Riya Banerjee, Advocates

...for the West Bengal Medical Council (WBMC)

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this petition, the petitioner had prayed for a direction to the respondents to take a strict disciplinary action against all the striking doctors in the State in terms of the order of the Hon'ble Supreme Court in the matter of **People for Better Treatment (PBT) vs. Secretary, Indian Medical Association (IMA) & Ors.** dated 11th November, 2014 passed in **Writ Petition (Civil) No. 253 of 2012.**

2. Learned Counsel for the respondent has raised an objection that on the same issue, second petition at the instance of the petitioner is not maintainable.

3. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that earlier also the petitioner had filed WP No. 3 of 2018 which was disposed of by the Hon'ble Division Bench of this Court vide order dated 18th April, 2019 by holding as under:

“The Court: The issue sought to be raised in the instant writ petition relates to disruption of health care activities due to strikes called by medical practitioners. The parties have exchanged their affidavits in the matter. The writ petitioner has referred to and relied on a judgment and order of the Supreme Court dated 11th November, 2014 which was rendered in Writ Petition (Civil) No. 253 of 2012. Relevant portion of the order dated 11th November, 2014, passed by the Supreme Court, as contained in paragraph 5, is required to be noticed. For convenience paragraph 5 is set out hereinbelow:

“The relief sought in this writ petition is commendable but difficult to either grant or if it is granted to enforce. Reliance must be placed upon the Constitution Bench decision in *Common Cause, A Registered Society v. Union of India & Others* (2006) 9 SCC 295, wherein this Court suggested that the Bar Council of India and State Bar Councils are the relevant authorities which must take disciplinary action against Bar associations on a strike and sponsors of such boycotts. On a perusal of the aforesaid, we are of the considered opinion that the same analogy would be equally applicable in case of the doctors on strike and that the appropriate authority i.e. the Medical Council of India and other State Medical Councils must be approached to take suitable action against such striking doctors.”

Taking into consideration the observation made by the Hon'ble Supreme Court in the paragraph as quoted hereinabove, we are of the view that the writ petition can be disposed of by reiterating the observation made by the Supreme Court in the said judgment and order

dated 11th November, 2014 – as contained in paragraph 6 – which reads as follows:

“Therefore, we would only express our desire that the Doctors, who carry out a noble service as God’s agent by saving lives of people, should not resort to strikes with any intermittent cause but undertake their responsibility with efficiency and utmost sincerity at all times.”

The writ petition stands disposed of accordingly.”

4. The petitioner has filed the second petition substantially on the same issue. The Hon’ble Supreme Court in the matter of **State of Karnataka and Another vs. All India Manufacturers Organisation and Others** reported in **(2006) 4 SCC 683** has held:

“34. Explanation VI came up for consideration before this Court in *Forward Construction Co. v. Prabhat Mandal (Regd.)* (hereinafter “*Forward Construction Co.*”). This Court held that in view of Explanation VI, it could not be disputed that Section 11 applies to public interest litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. Further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others.

35. As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of a public interest litigation. It cannot be doubted that the petitioner in *Somashekar Reddy* was acting bona fide. Further, we may note that, as a retired Chief Engineer, *Somashekar Reddy* had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that

Somashekar Reddy, as a public interest litigation, could bar the present litigation.”

5. Hence, no ground is made out to issue any direction in this second writ petition.

6. That apart, it is also noticed that the petitioner-in-person, during the course of argument, has placed reliance upon the circular of the Medical Council of India dated 22nd April, 2015 issued on the basis of the judgment of the Hon’ble Supreme Court noted above, requesting the State Medical Councils to take cognizance of the directions of the Hon’ble Supreme Court and in case of any incident of strike by the doctors, to take necessary action.

7. Learned Counsel for the respondent, State Medical Council has submitted that the said respondent will duly comply with the circular dated 22nd April, 2015.

8. At this stage, there is no strike by the doctors.

9. Hence, in the above circumstances, no further direction needs to be issued, therefore, we dispose of the present petition taking note of the earlier order of this Court as also the stand of the State Medical Council.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
18.05.2022

PA(RB)

(A.F.R. / N.A.F.R.)