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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4045 OF 2022

Dr. Kailash Kashinathrao Pawar .Petitioner

Vs.

The State of Maharashtra & ors. .Respondents

Mr. Balasaheb R. Deshmukh, Advocate, for the Petitioner
Mrs. S. S. Bhende, AGP, for the Respondent Nos. 1, 2 & 4
Mr. Sameer Khedekar, Advocate, for the Respondent No. 3

CORAM : S. B. SHUKRE & G. A. SANAP, JJ.

DATE : 07.04.2022

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. Heard learned counsel for the Petitioner, learned AGP for the Respondent Nos. 1, 2 and 4 and the learned counsel for the Respondent No. 3.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.

3. The following contentions are raised on behalf of the Petitioner :-

(i) After having issued NOC on 23.02.2021, by the Deputy Director, Health Services, Aurangabad, Respondent No. 1 could not have passed an order that the Petitioner was not eligible for appearing at the NEET PG examination by taking re-course to para 4.5 of the G. R. dated 19.03.2019 for the reason that NOC can be refused to be issued, if any departmental enquiry is pending or Criminal case is pending and in the present case, no departmental enquiry was pending when the NOC was issued by the Deputy Director, Aurangabad on 23.02.2021;

(ii) Secondly, once NOC is issued, it cannot be refused subsequently on the ground that departmental enquiry is proposed against a candidate to whom the NOC has been earlier granted and in any case, the G. R. dated 19.03.2019 does not contemplate any such criteria as proposed departmental enquiry for refusing grant of NOC;

(iii) At the stage of allotment of incentive marks, the Director cannot say that NOC is refused on the ground that Departmental Enquiry is proposed for the reason that once NOC is issued which is the case here, the Director has only to

consider allotment of incentive marks to a candidate to whom NOC for appearing at the NEET PG examination is granted;

(iv) Filing of Criminal case against the Petitioner on the complaint of his wife was a subsequent event and not previous to the grant of NOC in favour of the Petitioner by the Deputy Director, as the Petitioner had applied for issuance of NOC wayback in November, 2020 and since there was no examination of NEET PG in 2020, the first NOC granted to the Petitioner become infructuous and the Deputy Director was required to issue the second NOC to the Petitioner in pursuance of his Application made in November, 2020;

(v) Even when a Criminal case pends, the presumption that till the offence alleged is proved, the accused is innocent, operates;

(vi) In W. P. No. 4368 of 2021 decided on 16.03.2021, there was enquiry proposed against the Petitioner therein and yet relying upon the G. R. dated 19.03.2019, the Bench at Aurangabad directed the Authorities therein to grant NOC to the Petitioner subject to outcome of the Departmental

Enquiry;

(vii) In another case, decided by the Aurangabad Bench in W. P. No. 1106 of 2014 dated 20.02.2014, even though the Departmental Enquiry was pending, a Division Bench directed the authorities to consider grant of NOC to the Petitioner therein.

4. On these grounds, it has been urged that the impugned order passed by the Director i. e. Respondent No. 1 on 28.03.2022 is illegal. Further prayer for issuance of necessary directions to the Respondent has also been made.

5. Learned AGP has placed before us an office file and invited our attention to the communication dated 16.03.2022 addressed to the Secretary, Health Department by the Joint Director, Health Department, Mumbai. Learned AGP submits that various offences punishable under Sections 498A, 354, 406, 342, 493, 323 and 506 r/w 34 of the Indian Penal Code have been registered at the Jintur Police Station against the Petitioner on 01.02.2021 vide C. R. No. 37 of 2021 and the Petitioner was arrested on

01.02.2021, though, he was released on bail on the same day. She submits that it is because of registration of the Criminal case against the Petitioner, a Departmental Enquiry has been initiated against the Petitioner. She points out that as per para 4.5 of the G. R. dated 19.03.2019, no candidate is eligible to receive NOC, if any Criminal case is pending against the candidate on the date on which NOC is issued and in this case, relevant NOC for the current NEET PG examination has been issued on 23.02.2021, the date on which the Criminal case was already pending against the Petitioner and therefore, the Deputy Director, Aurangabad ought not to have issued NOC on 23.02.2021.

6. On going through the communication dated 16.03.2022, which forms part of the file, we find that on the date on which the relevant NOC was issued, the Criminal case filed vide C. R. No. 37 of 2021 was already pending against the Petitioner and therefore, as per para 4.5 of the G. R. dated 19.03.2019, NOC ought not to have issued by the Deputy Director, Aurangabad in the first place and if it was issued erroneously by the Deputy Director, Aurangabad, it

was necessary for Respondent No. 1, a superior authority, to correct the mistake which, in our opinion, has been corrected by passing the impugned order. According to the learned counsel for the Petitioner, since the Petitioner has already cleared NEET PG examination, it is not within the power of Respondent No.1 to refuse to grant of NOC and even it has done so, it is a mistake for the reason that earlier NOC dated 23.02.2021 has already been acted upon.

7. At this juncture, the conduct of the Petitioner assumes importance. Apparently, the argument raising various points noted above and made on behalf of the Petitioner is impressive but so only on a first blush. Ordinarily, one has to accept the submission that when NOC has already been acted upon, a question of refusal of NOC would not arise, as logical. But when the NOC issued is seen to be the result of some suppression of material facts, it would be null and void in law, as suppression amounts to fraud committed by the Petitioner and it is well settled law that fraud vitiates everything. Although, registration of the offence against the Petitioner was an event occurred in the

2020 it was certainly an event which was already there at the time of issuance of relevant NOC i. e. on 23.02.2021. The crime was registered against the Petitioner on 01.02.2021 and he was arrested on the same date. These facts, having taken place much before the issuance of NOC on 23.02.2021 ought to have been placed before the Deputy Director. However, it appears that the Petitioner has not done so. Therefore, there is suppression of material facts in obtaining the relevant NOC dated 23.02.2021 by the Petitioner and this has amounted to playing of fraud upon the authority and as such, this NOC dated 23.02.2021 itself has been vitiated.

8. Apart from what is stated above, the relevant NOC dated 23.02.2021 shows that it was issued subject to terms and conditions stated in paras 4.1 to 4.5 of the G. R. dated 19.03.2019. One of the conditions stated in para 4.5 of the G. R. dated 19.03.2019 relates to pendency of criminal case and it prescribes that if any criminal case is pending, the candidate would not be eligible for getting issued in his favour any NOC. Since the relevant NOC dated 23.02.2021

having been issued subject to the said condition stated in para 4.5 of the G. R. dated 19.03.2019 and there was, indeed, pendency of criminal case on the date of issuance of the NOC, this NOC dated 23.02.2021 has been hit by the same and therefore, has been rendered as non-est and non-existent in law. As such, we find no substance in the argument of the learned counsel for the Petitioner that if the relevant NOC was acted upon, nothing had remained for the authority to refuse to issue any NOC.

9. Learned counsel for the Petitioner has also raised some other points, which have been noted earlier. We do not think it necessary to consider those other points for the reason that this Petition suffers from the vice of suppression of material facts. Although, the Petitioner has stated about pendency of criminal case against him in this Petition, he has not disclosed it before the authority issuing the NOC. He has also concealed about his having been arrested in C. R. No. 37 of 2021 by the Jintur Police Station. In view of the requirement of para 4.5 of the G. R. dated 19.03.2019, disclosure of pending criminal case and all other facts

relating to the same is necessary and if it is not made, there would be suppression of material facts dis-entitling the Petitioner from any equitable relief in such a case.

10. Then, there is one more aspect which requires consideration. One of the offences against the Petitioner is punishable under Section 493 of the IPC. This offence has been registered on specific allegations made against the Petitioner by his own wife that the Petitioner has been openly indulging in extra marital relations with one woman and even touting her in public as his wife. Registration of this offence under Section 493 which is about co-habitation caused by him with woman who is not lawfully married to him, is something which involves act of immorality on the part of the Petitioner. This offence is punishable with imprisonment of either description for a term which may extend to ten years and is also liable for fine. The offence is serious and it reflects upon the character of the person against whom the crime is registered. In fact, the file of department which we have just perused shows that keeping of extra marital relations with other woman has been

admitted by the Petitioner when the joint Affidavit by the Petitioner and the other woman was sworn in on 28.08.2020. He has also given another Affidavit of the same date undertaking that he was snapping his extra marital relations with the other woman and in future, he would not maintain any relations with her. The file further shows that even the news paper at Jintur published a news about the Petitioner indulging in some immoral acts. The file also shows that the Petitioner, for this very reason, was earlier placed under suspension by his department. All these facts not only involve moral turpitude of the Petitioner but also show that there is ground enough to say that Petitioner may indulge in some acts exceeding his power, authority and position as a Government servant.

11. In the result, we find that this Petition deserves to be summarily dismissed by imposing suitable costs. The Petition stands dismissed. The Petitioner is directed to pay costs of Rs. 10,000/- in the account of the Administrative Officer, Taloja Central Prison, being A/c. No. 34214938872 of SBI (Panvel branch, Navi Mumbai) to enable the jail

authorities to purchase new books for the jail library, within a period of four weeks from the date of the order.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)