



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.4219, 4227, 4230, 4233 and 4237 of 2019
and W.M.P.Nos.4742, 4745, 4753, 4755, 4757, 4759, 4762, 4763,
4767 and 4768 of 2019

Dr.M.A.Seyed Ismail	... Petitioner in W.P.No.4219/2019
Dr.J.Mubarak Raja	...Petitioner in W.P.No.4227/2019
Dr.Ahamed Naina	...Petitioner in W.P.No.4230/2019
Dr.D.Mohamed Kizhar Irshath	...Petitioner in W.P.No.4233/2019
Dr.Z.A.Mohamed Nawaz	...Petitioner in W.P.No.4237/2019

Vs.

- 1.The Union of India,
rep.by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
- 2.The Medical Council of India,
Presently changed as
The National Medical Commission,
Pocket 14, Sector 8,
Dwarka Phase 1,
New Delhi 110 077.
- 3.The Government of Tamil Nadu
rep.by its Principal Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai 600 009.
- 4.The Tamil Nadu Medical Council,
rep.by its Registrar,
New NO.914, Old No.569,
Poonamallee High Road,
Arumbakkam, Chennai 600 106.

...Respondents in all petitions

Common Prayer: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records and to quash the 4th respondent Impugned Order dated 10.10.2018 having Reference No. TNMC/ G502/ 2018 in G.O. No. 41 in pursuant of all those Medical Practitioners to



update in Form 5 for those who non updating Doctors like petitioners were declared "Dormant and Inaccessible Practitioners" is totally unconstitutional and illegal and consequently direct the 1 to 3 respondents to restore that all registered doctors to be considered by their length of practices in their respective field and not to be disturbed and compelled to pay charges to obtain credit hours marks in Continuous Medical Education (CME).

For Petitioners in all petitions: Ms.P.Kotteeswari

For RR2 in all petitions : Mrs.Subaranjani Ananth

For RR3 in all petitions : Ms.C.Sangamithirai
Special Government Pleader

For RR4 in all petitions : Mr.G.Sankaran

For R1 in all petitions : Ms.R.Durga Rani, CGSC

COMMON ORDER

The present petitions have been filed challenging the impugned order in Reference No. TNMC/ G502/ 2018 in G.O. No. 41 dated 10.10.2018 in and by which the non-updation of Form -5 had rendered the period of practice of the said medical practitioners being declared dormant and inaccessible and being compelled to pay charges to obtain credit hour marks for the purpose of counting the period of practice.

2. The case of the petitioners is that the petitioners are senior doctors and having years of experience in their profession and doing private practice in Chennai District. As of now, the respondents 3 and 4 never published the Chief Medical Senior List. Under such circumstances, the 4th respondent passed the impugned G.O. No.41 to keep the updates as per continuing Medical Education and compulsorily to have 5 hours as compulsory reading credit hours in a year (30 hours for 5 years) and the general doctors and senior doctors concern are being asked to comply the same retrospectively from 2012 onwards to 2017 and further those doctors who have not updated their compliances information will be declared as "Dormant and Inaccessible Doctors" and the 4th respondent also imposing cost as fees for those doctors who have not updated their details for the period of 2012-2017 onwards. The grievance of the petitioners is that the petitioners were forgot to update their 30 credit hours, in a given 5 years and they were declared Dormant and Inaccessible Practitioners. Aggrieved by the same, the petitioners are before this Court.



3. The learned counsel appearing for the petitioners submitted that the impugned Government Order issued by the Medical Council of India, which directly debarring / suspending the Doctors in profession, for not obtaining 30 credit hours in continuous medical education in last five years, is totally unconstitutional and apprehension of the petitioners is that as per resolution dated 11.04.2018, they are going to charge Rs.50/- for carrying over the shortage of one credit hour and hence prays for appropriate orders.

4. The learned Special Government Pleader appearing for the respondents submitted that the Indian Medical Council Act empowers Medical Council of India to make regulations for the professional conduct of doctors and the Tamil Nadu Medical Council adopts the Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, whereby in Clause 1.2.3, it is contemplated that 'a physician should participate in professional meetings as part of Continuing Medical Education Programmes for at least 30 hours every five years, organized by reputed professional academic bodies or any other authorized organizations. The compliance of this requirement shall be informed regularly to Medical Council of India or the State Medical Council as the case may be'. Further accounting and crediting the credit hours to the individual medical practitioners account involves manpower and necessary computer software and these entire infrastructures involve cost and therefore, the Tamil Nadu Medical Council has to charge a nominal fee in this regard. Therefore, as per the resolution, it is not a penalty amount, it is a fee collected from the Doctors. In fact, if any doctors have not participated in the continuing medical education programme for 30 hours as mandated under the Professional Conduct, Etiquette and Ethics Regulations, 2012, they have to continue the course after 2018 on payment of Rs.50/- as per hour fees, which is not a penalty.

5. This Court has carefully considered the arguments advanced by the learned counsel on either sides.

6. A perusal of the materials available on record reveal that as a part of the Continuing Medical Education Programmes, the doctors need to undergo Continuing Medical Education Programmes for at least 30 hours every five years. It is not the case of the petitioners that the said prescription is bad and that is to be done away with. The apprehension of the petitioners is only to the limited extent that they are made to shell out Rs.50/- per hour as fee for the 30 hours of participation in the continuing medical education programmes, which according to them, is in the nature of a penalty, which cannot be charged by the respondents.



7. A careful perusal of the above Government Order coupled with the submissions advanced on behalf of the respondents reveal that only to enhance the quality of the doctors, the continuing medical education programmes are conducted, which is to be organised by organized by reputed professional academic bodies or any other authorized organizations. It is to be borne in mind that the quality of the doctors reflects in the quality of medical service they render to humanity and the continuing education is a necessity so that the citizens benefit from the reputed medical advice given by the said professionals. Therefore, the prescription of 30 hours in a period of five years cannot be found fault with and, as stated above, it is not the case of the petitioners even that the said prescription is bad.

8. Insofar as the grievance of the petitioners that the debarring/suspending the doctors, who have not gained the 30 hours credit rating over a period of five years is only for the purpose of collecting Rs.50/- for every hour of credit rating, which is nothing but a penalty, which cannot be imposed as it is arbitrary and unreasonable is concerned, it is the stand of the respondents that the aforesaid amount is collected not as penalty but only towards the maintenance and infrastructure charges. The above stand clearly shows that no penalty is being charged from the petitioners but only for the purpose of maintenance and infrastructural development. It is to be pointed out that it is within the realm of the respondents to prescribe fee for the purpose of maintaining the data, such being the case, the complaint of the petitioners that any fee that is being imposed would only partake the character of penalty and the same is only charged to put pressure on the petitioners or to take vindictive action against them such as debarment/suspension does not merit acceptance. When the respondents have revealed the reason for collection of charges and when this Court is also of the opinion that continuing medical education programmes are important, as stated above, the grievance of the petitioners pales into insignificance.

9. In the facts and circumstances of the case, this Court permits the petitioners who have not completed the continuing medical education programme for the block period of 2012-2017, to complete the Continuing Medical Education Programmes for at least 30 hours in 2018-2023 block by paying the prescribed fee of Rs.50/- as per hour fees, which would not be deemed to be a penalty, but only a charge towards infrastructural improvement and maintenance.



10. These Writ Petitions are disposed of with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Union of India,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
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The National Medical Commission,
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Arumbakkam, Chennai 600 106.

+1cc to Mr.G.Sankaran, Advocate SR.No.7201

W.P.Nos.4219, 4227, 4230, 4233 and 4237 of 2019

SSV(CO)
GMY(12/04/2022)