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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19-01-2022

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 11983 of 2021
and
WMP.No.12753 of 2021

Dr. S. Radhakrishnan
4-A, Radhakrishna Apartments
No.33, Sarojini Street
Ram Nagar
Coimbatore - 641 009

.. Petitioner

Versus

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
3. S. Shri Subitha
Wife of Dr. Saravanan
4/315, CLRI Nagar Road
Ruby Complex Road
Neelangarai
Chennai - 600 115

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records and quash the proceedings under Ref.No.TNMC/DC No.136/2018 dated 04.05.2021 before the first and second respondents and consequently direct the respondent No.1 to restore the name of the petitioner in the Medical Register of Tamil Nadu Medical Council.



For Petitioner

:Mr. N.R. Elango, Senior Advocate
for Mr. S. Manuraj

For Respondents

:Mr. G. Sankaran for RR1 and 2
Mr. J. Ashok for R3

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ORDER

The petitioner calls in question the order dated 04.05.2021 passed by the first respondent, in and by which, he was imposed with the punishment of removal of his name from the medical register of Tamil Nadu Medical Council for two years, with further direction that during such period of deletion of his name from the medical register, he is not entitled to practice Medicine.

2. The case projected in the writ petition is as follows:

2.1 The petitioner completed his M.B.B.S. degree from Madras Medical College and also acquired A.S.T.S. Certified Clinical Fellowship in Transplant Surgery from United States of America. It is also stated that he is a member of F.R.C.S. Ireland, Royal College of Surgeons of Ireland and F.R.C.S. England, Royal College of Surgeons of England. It is further stated that he is a registered Medical Practitioner with the Tamil Nadu Medical Council vide Registration No. 38590 in 1984. The petitioner claims to have performed several extensive surgeries including Kidney, Pancreas and small bowel transplantation; and he worked as a Consultant Surgeon in Sri Ramakrishna Hospital, Coimbatore and as Transplant Surgeon in Coimbatore Kidney Centre.

2.2 On 19.10.2018, the third respondent preferred a complaint to the Medical Council of India, alleging that the petitioner herein had issued a fraudulent medical certificate dated 08.10.2015 certifying the medical condition of her father deceased N. Pitchaimani as on 08.10.2015. According to the third respondent, on the basis of such certificate, her brother Mr. Sakthi Kumar had prepared a requisition letter addressed to the Sub-Registrar, Neelangarai and registered a settlement deed by which valuable properties of her father were transferred in his favour. According to the petitioner, the medical certificate dated 08.10.2015 issued by him had allegedly facilitated the execution of the settlement deed in favour of the brother of the third respondent by which a prime properties worth about 50 crores have been alienated fraudulently and therefore, she has given the complaint dated 19.10.2018 against the petitioner.



3.1 Mr. N.R.Elango, learned Senior Counsel for the petitioner submitted that there was undue delay in preferring the complaint by the complainant. The disputed medical certificate was issued on 08.10.2015 but the complaint was given three years thereafter on 19.10.2018. As per Regulation 8.4 of the 2003 Regulations, complaint relating to medical negligence or omission or commission in treatment has to be preferred within six months. Regulation 8.1 of the 2003 Regulations reads as follows:-

"8.1. It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

3.2 By placing reliance on Regulation 8.1 referred to above, it is submitted by the learned senior counsel that the Tamil Nadu Medical Council is bound to decide solely upon facts and not act upon mere statements given by the complainant. According to the learned Senior counsel, the respondents 1 and 2 have merely placed reliance on uncorroborated or unsubstantiated allegations of the complainant which would tend to have an adverse effect on the parallel criminal proceedings initiated against the petitioner.

3.3 It is further contended by the learned Senior counsel for the petitioner that the disputed medical certificate issued by the petitioner is strictly as per the medical norms. He invited the attention of this Court to the contents of the disputed medical certificate issued by the petitioner, which reads as follows:-

"Mr. N. Pitchaimani aged 66 years is residing at 3/3 B, Sivasamy Avenue, MGR Road,



and 2 have exceeded the scope of the enquiry to examine the professional misconduct on the part of the petitioner and inflicted the punishment of debaring him from practising medicine based on unsubstantiated allegations. Such an order of punishment is not legally sustainable and it is liable only to be set aside.

3.6 The learned Senior counsel for the petitioner, by placing reliance on the additional grounds raised, would submit that the respondents 1 and 2 proceeded against the petitioner on the basis of statements made by Dr. P. Basumani in the inquiry held on 22.04.2021. According to the learned Senior Counsel, Dr. Basumani was inquired about an incident which had taken place six years ago. There are also contradictions in the statement of Dr. Basumani and therefore, the petitioner disputed his statements. However, the respondents 1 and 2, based on the statement of Dr. P. Basumani, passed the impugned order. Furthermore, the petitioner was deprived of an opportunity to cross-examine the medical professionals whose evidence were recorded and relied as against the petitioner. Therefore, such statements cannot be relied on to inflict the punishment as against the petitioner and it is in violation of principles of natural justice. The learned Senior counsel therefore prayed for allowing this writ petition to enable the petitioner to continue his medical profession.

4.1 Per contra, Mr. G. Sankaran, the learned counsel appearing for the first and second respondents would contend that on receipt of a complaint dated 19.10.2018 from the third respondent, the Board of Governors, in supersession of Medical Council of India, forwarded a copy of the complaint to the first respondent to take necessary action as per Indian Medical Council Regulations (Professional Conduct, Etiquette and Ethics), 2002. The respondents 1 and 2 in turn forwarded the complaint to the petitioner on 28.11.2018 and his response was sought. The petitioner submitted his explanation on 11.01.2019 repudiating the averments made in the complaint. Therefore, the case was referred to the disciplinary committee of the Council and summon was issued to the petitioner for his appearance on 26.08.2019. The petitioner also appeared on 26.08.2019, on which date, an enquiry was conducted and he was heard by the committee. The Committee also summoned the former Medical Superintendent as also present Medical Superintendent of Fortis Malar Hospital where the patient took treatment till his death. Accordingly, Dr. Praveen Nilagar, former Medical Superintendent and Dr. Anand Mohan Pai, present Medical Superintendent appeared on 12.11.2019 and deposed that they were not employed in Fortis Malar Hospital during the period of incident. Their statement was recorded by



the committee on 12.11.2019. Subsequently, the committee summoned Dr. P. Basumani, who treated the patient, for his appearance on 22.04.2021. After recording the statement of Dr. Basumani and taking note of the norms to be adhered to by a medical practitioner, the Committee felt that the certificate issued by the petitioner fell short of the integrity and conduct expected of a medical practitioner. The committee also concluded that the petitioner violated the trust and faith reposed towards a medical professional thereby he committed professional lapses which was not expected of him. Therefore, for such lapses, to ensure that the punishment to be imposed must act as a deterrent to other practitioners, the Committee recommended for imposition of punishment of removal of the name of the petitioner from the Medical Register. Such decision of the committee was placed before the Tamil Nadu Medical Council in the meeting held on 25.04.2021 and the Council accepted the recommendation of the committee and imposed the punishment of removing the name of the petitioner from the medical register for a period of two years.

4.2 The learned counsel for the respondents 1 and 2 further submitted that the enquiry conducted by the committee clearly established that the petitioner has issued the certificate to the father of the third respondent without the knowledge of the Doctors, who were treating him in Fortis Malar Hospital. The enquiry also disclosed that the petitioner is based in Coimbatore and did not treat the patient at any time, who was taking treatment at Fortis Malar Hospital, Adyar, Chennai. Therefore, the petitioner has no locus standi to issue such a certificate, as he may not be aware of the actual physical condition of the patient. The medical certificate issued by the petitioner is contrary to the health condition of the patient and contravenes Regulation 7.7 of Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003. The petitioner has not mentioned in his certificate the identification marks of the patient or obtained the signature of the patient, which is in gross violation of Regulation 1.3.3. Further, as per Regulation 1.9, the petitioner ought to have observed the laws of the Country in regulating the Practice of medicine. The act of the petitioner, in not following the fundamental and basic principles while issuing the certificate infringes Regulation 1.9. Therefore, it is not as though the petitioner was imposed punishment without any basis or any material evidence. The petitioner, who committed lapses, has been imposed the punishment proportionate to the extent of lapses.

4.3 The learned counsel for the respondents 1 and 2 also submits that the enquiry was conducted in accordance with



law and the Committee has not exceeded the limit or travelled beyond the scope of enquiry, as has been alleged by the petitioner. An enquiry of this nature cannot be compared on par with a criminal investigation to go deep into the root of criminal conspiracy or other offences. The Disciplinary Committee is a quasi judicial body and it can interpret law and has been given some powers and procedures to be followed in arriving at a decision. In this context, the learned counsel placed reliance on the decision of the Honourable Supreme Court in Alister Anthony Pareira vs. State of Maharashtra reported in (2012) 2 Supreme Court Cases 648 wherein it was held that while exercising discretion in sentencing the proportionality, deterrence and rehabilitation have to be taken into account. However, what sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of crime, motive for the crime, nature of the offence and all other attendant circumstances. According to the learned counsel, in the present case, the Council, in adherence to such principles laid down by the Honourable Supreme Court, has awarded a just and proper punishment after taking into account all the attendant circumstances appearing against the petitioner.

5.1 Mr.J.Ashok, learned counsel for the third respondent vehemently opposed the writ petition stating that a fair enquiry has been conducted by the respondents 1 and 2 and the punishment imposed on the petitioner is proportionate to the proved charges. According to the learned counsel, the deceased Pitchumani engaged in Real Estate Business and owned various properties in and around Chennai and Dindigul District. Due to ill health, he was admitted in Fortis Malar Hospital on 27.09.2015 as an in-patient until 11.10.2015, when he breathed his last. After the death of the deceased Pitchumani, his daughter, the third respondent, on suspicion, applied for the encumbrance certificate and noticed that a settlement deed dated 09.10.2015 was registered by the deceased Pitchamani in favour of her brother Sakthikumar. Immediately, the third respondent preferred an application dated 03.03.2016 to furnish certain documents, but they were refused by the then Sub-Registrar, Neelangarai, by letter dated 20.06.2016. The third respondent therefore submitted a complaint to the Commissioner of Police, Chennai which was forwarded to Sub-Inspector of Police, Chennai. However, without conducting any enquiry, the complaint was closed. Therefore, the third respondent filed CrI.OP No. 16584 of 2016 before this Court to register a first information report based on her complaint dated 30.06.2016. By order dated 08.08.2016, this Court, taking note of the magnitude of the offence alleged to have been committed in the matter of registration of settlement deed dated 09.10.2015, directed the



Deputy Commissioner of Police, Chennai to nominate a competent officer in the rank of Inspector of Police to re-enquire the complaint and to take action in accordance with law. Pursuant to such direction, a case in Crime No. 374 of 2016 was registered by the Inspector of Police, Central Crime Branch, Chennai in which Mr. Dhamu, Sub-Registrar was arrayed as A-1. The petitioner's brother and the petitioner were also arrayed as accused in the Criminal Case. Upon registration of the case in Crime No. 374 of 2016, the petitioner's brother filed CrI.OP No. 14754 of 2018 and it was dismissed by this Court. Aggrieved by the same, Special Leave Petition (CrI) Nos. 2314 and 2315 of 2019 were filed and ultimately, they were dismissed as withdrawn.

5.2 The learned counsel for the third respondent proceeded to contend that on 15.02.2017, the Sub-Registrar, Neelangarai, who succeeded Mr.Dhamu, the then Sub-Registrar, furnished the documents sought for by the third respondent and on going through the same, the petitioner was shocked to find the Certificate dated 08.10.2015 issued by the petitioner. The certificate issued by the third respondent did not bear the name and address of the practitioner, date of examination, degree of incapacity of the patient etc. In other words, the certificate issued by the petitioner is bereft of mandatory particulars required to be indicated by a Medical Practitioner while certifying the fitness of a patient. Thus, the certificate dated 08.10.2015 was deliberately issued by the petitioner to facilitate his son-in-law to alienate the properties of the father of the third respondent with an element of criminal intention. The fallacy of the certificate dated 08.10.2015 issued by the petitioner could be inferred from the fact that the father of the third respondent was hospitalised in Fortis Malar Hospital, Chennai from 27.09.2015 till his death on 11.10.2015. However, the certificate issued by the petitioner states that the petitioner was attending on the patient at his residence. Thus, the certificate dated 08.10.2015 issued by the petitioner is contrary to the medical records maintained by Fortis Malar Hospital, where the father of the third respondent was admitted. Therefore, for the contravention of Regulations 1.3.3 of the Tamil Nadu Medical Council (Professional Misconduct, Etiquette and Ethics) Regulations, 2003, the second respondent rightly imposed the punishment and it does not call for any interference by this Court.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. It could be seen that a complaint dated 19.10.2018 was received by the Medical Council of India, New Delhi from the third respondent complaining that the petitioner,



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to facilitate his son-in-law to grab the property of her father, deceased Pitchamani, who was admitted in Fortis Malar Hospital, Chennai, has issued a false and fabricated medical certificate dated 08.10.2015 as if he had physically examined the patient and certified that he was conscious and oriented. It is the further complaint of the third respondent that by utilising the certificate dated 08.10.2015 issued by the petitioner, his son-in-law, (who is also the brother of the third respondent) Sakthi Kumar had got a settlement deed registered on the file of Sub-Registrar, Neelangarai, in which the place of registration of the settlement deed is mentioned as "residence of the deceased". The deed relates to various properties worth about Rs.50 crores and as if the same had been executed by way of a settlement in favour of the son-in-law of the petitioner by the deceased. On the contrary, on the date of alleged registration of the settlement deed dated 09.10.2015, the deceased was taking treatment in Fortis Malar Hospital in the Intensive Care Unit. It is on the basis of such complaint of the third respondent, the petitioner was subjected to an enquiry and it ultimately culminated in passing of the order dated 04.05.2021, removing his name from the Medical Register maintained by the Tamil Nadu Medical Council for a period of two years.

8. The main plank of contention advanced by the learned senior counsel appearing for the petitioner is that the certificate was issued by the petitioner bonafide and not with any malafide intention. The certificate has been issued as a travel advisory to the patient and nothing more. Therefore, the issuance of medical certificate by the petitioner will not fall within the realm of professional misconduct warranting imposition of punishment. Above all, it is stated that there is delay in preferring the complaint. The complaint was given three years after issuance of the certificate by the petitioner and therefore, the complaint ought not to have been entertained by the Council and the punishment imposed on the petitioner is untenable.

9. Since the preliminary ground of attack relates to the complaint being made by the third respondent after a period of three years from the date of the execution of the settlement deed, it is appropriate that the said contention be dealt with at the outset. The above narrated line of events would go to show that it is not as if the third respondent had been sleeping over her rights. Right from the time of the death of her father, the third respondent had made several efforts legally and the fact that the registration was done by the Sub-Registrar only on the strength of the certificate issued by the petitioner dated



08.10.2015, came to light only as late as on 15.02.2017. Allowance may also be given to the exploration of legal remedies in such a situation and as such, the complaint being made in 2018 against the petitioner to the Medical Council cannot be found fault with. In any case, where the facts are such as to evoke a sense of shock at the manner in which the petitioner and his son-in-law have acted, and which smacks of a calculated attempt to defraud the third respondent's father, this Court does not find it appropriate to allow the technical plea of delay to thwart an enquiry/disciplinary proceeding against the petitioner. Therefore, this ground of attack fails as the same cannot be countenanced.

10. The primary duty of Tamil Nadu Medical Council is to govern, regulate and ensure the professional conduct and ethics to be adopted by the registered medical practitioners. The medical practitioner has a primordial duty to repose trust and faith in the patients and their relatives about their recovery and well being. Any disregard or violation of the norms will have to be dealt with by the Council, of course, after following the established procedures as contemplated under law. If any complaint is made, complaining that a medical practitioner had contravened the norms, Rules and Regulations or there is abuse of position as a medical professional, such complaints will be dealt with in accordance with the procedures as laid down under the Regulations with the object of ensuring proportionality, deterrence and rehabilitation by imposing proportionate punishment.

11. In the present case, on the basis of the complaint given by the third respondent, a disciplinary committee was constituted. The Committee examined the petitioner as well as others connected with the alleged lapses in the matter of issuance of medical certificate dated 08.10.2015 by the petitioner. It is pertinent to mention here that the complaint was given only against the petitioner herein for having issued a certificate dated 08.10.2015 without even treating the patient. Further, in the certificate dated 08.10.2015, it was mentioned by the petitioner as if the patient was conscious and oriented. However, the medical records maintained by Fortis Malar Hospital as well as the statement of Dr. Basumani, Primary Consultant of Fortis Malar Hospital is to the contrary. According to Dr. Basumani, the patient, on 08.10.2015, was not conscious and oriented. Therefore, the contents of the certificate dated 08.10.2015, with respect to the physical condition of the patient, itself are not correct.

12. Further, the certificate dated 08.10.2015 indicates that the petitioner treated the patient at his



residence on 08.10.2015. This is yet another impropriety as the medical records make it clear that from the date of admission of patient on 27.09.2015 till his death on 11.10.2015, he continued to remain in the hospital in I.C.U and he was not discharged on 08.10.2015 or on any other date. Therefore, when the patient was taking treatment in ICU on 08.10.2015, the certificate dated 08.10.2015 issued by the petitioner that he treated the patient at his residence cannot be accepted and it amounts to a blatant falsity. Further, in the certificate dated 08.10.2015, there is no reference about the identity mark of the patient, the signature of the patient, the signature, seal and address of the medical practitioner who issued it. Therefore, the respondents concluded that such certificate dated 08.10.2015 is contrary to Regulations 1.3.3 of Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003.

13. This Court also takes note of the fact that the case in Crime No. 374 of 2016 was registered by the Inspector of Police, Central Crime Branch, Chennai against the petitioner and others in connection with the certificate dated 08.10.2015 issued by him to the father of the complainant. This was also taken note of by the respondents 1 and 2 while imposing the punishment on the petitioner. In this context, it is important to note that certain glaring aspects like the fact that the settlement deed was executed in favour of the petitioner's own son-in-law, the fact that the petitioner had issued the certificate without the knowledge of the other doctors who were treating the deceased, and that the certificate is issued as if the deceased was at his residence when in fact he was in the ICU of the hospital, all point a clear case of abuse and misuse of authority by the petitioner as a medical professional and issuance of such certificate is based on clear falsehood. The petitioner's conduct falls short of the minimum degree of professional ethics as expected from a medical professional.

14. At this juncture, this Court would like to point out that with the very same set of facts, in the case of Dr P. Basumani v. Tamil Nadu Medical Council, reported in (2021) 8 MLJ 113 this Court has come to the rescue of the doctor who was issued with the punishment of removal of his name from the medical register for six months when no professional misconduct was alleged against him and when he was only summoned before the Disciplinary Committee to give material evidence in the inquiry which was being held against the petitioner herein. Also, the punishment against the said Dr. P. Basumani was imposed without following the principles of natural justice, and he had in the



very same circumstances acted in a different manner in tune with the professional conduct expected of him as a medical professional. In Basumani's case, this Court held as follows-

"13. In this context, it is to be pointed out 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 prefers 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 opinion that the order of punishment inflicted on the petitioner, cannot be allowed to be sustained."

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15. In the very same breath, this Court is firm that where the circumstances so warrant, erring medical professionals such as the petitioner, must be dealt with in a manner known to law and no misplaced lenience can be shown to such professionals. This would point out that every individual case has to be decided on its own merits and the court has to discern the facts carefully, which would alter the decision of the court accordingly. Where the facts are not only glaring but also blatantly shocking, the court cannot turn on Nelson's eye to the same and the consequences that such an act of criminal nature has entailed. It may even be said that the entire facts can be likened to an interesting plot of a criminal thriller and it will be rather too naïve of this Court to believe the version that the certificate was issued by the petitioner only as a travel advisory to his own son-in-law without any rhyme or reason. The line of events and the date on which the settlement deed had been executed can only be said to be too much of a coincidence to be believed to be without any criminal intent. Rather if all the facts are placed together, they simply fall in place like the pieces of the neat jigsaw puzzle. Justice is not blind; her blindfolds only represent her impartiality. It is the duty of this Court to make sure that the scales are always balanced and while every individual is entitled to equality before the law, the concept of equality can be applied only among equals. The very same concept of equality also demands that unequals be treated differently. In the present circumstances this Court finds that the act committed by the petitioner is fundamentally different and hence the punishment imposed on the petitioner cannot be found fault with.

16. In any event, the evidence made available before the respondent established that the petitioner has breached the regulations contained under the Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003. For having committed illegality in relation to issuance of the certificate dated 08.10.2015, the petitioner was imposed with punishment of removal of his name from the medical records for two years. Such punishment imposed on the petitioner, in the view of this Court, does not call for any interference.



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17. In the result, the writ petition fails and it is dismissed confirming the punishment of removal of name of the petitioner from the medical records for two years. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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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

+lcc to Mr.J.Ashok, Advocate SR.No.3125
+lcc to Mr.S.Manuraj, Advocate SR.No.3136

WP No. 11983 of 2021

PP(CO)

CB(18/02/2022)