



WEB COPY



W.P.No.27738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27738 of 2022
and
W.M.P.No.27031 of 2022

Dr.Bhairavi Senthil

... Petitioner

-Vs-

The Registrar,
Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam, Chennai – 600 106.

... Respondent

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records with regard to the respondent impugned letter dated 11.10.2022, Reference No.:TNMC/T.No.285/2021 and quashing the same as illegal and ultra vires.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.G.Sankaran,
Standing Counsel



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ORDER

WEB COPY The prayer sought for herein is for a Writ of Certiorari, to quash the respondent impugned letter dated 11.10.2022, Reference No.:TNMC/T.No.285/2021.

2.The petitioner is a Doctor by profession, against whom some complaints had come that, she violated⁶ the professional misconduct. Therefore, a show cause notice already been issued to the petitioner on 13.08.2021 framing three charges against the petitioner.

3.In response to the same, the petitioner had given reply on 26.08.2021 denying all those charges. Thereafter, further notice was issued on 17.08.2022, which was also according to her, replied on 24.08.2022. However, without passing any final orders and without permitting the petitioner to have a legal assistance to face the enquiry before the respondent, the present notice dated 11.10.2022 has been issued, wherein, apart from the earlier three charges, two more charges as additional charges have been framed and this time also, notice has been issued seeking comprehensively the reply from the petitioner. Challenging the same, the present Writ Petition has been filed.



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4.Heard Mr.M.Velmurugan, learned counsel appearing for the petitioner. He raised a point that, already a notice dated 13.08.2021 has been issued, that was replied on 26.08.2021. Pursuant to which, on 17.08.2022, a notice of personal hearing fixed on 24.08.2022 has been issued and on that date, reply has also been submitted by the petitioner and he sought for legal assistance for the petitioner and that was denied by the respondent. However, thereafter, on 11.10.2022, the present impugned notice has been issued, under which, two more charges had been added and once again the reply has been sought for from the petitioner including the charges already replied by the petitioner as stated supra. Therefore, at this juncture, challenging the impugned notice dated 11.10.2022, the petitioner has moved this writ petition. Hence, the petitioner wants indulgence of this Court against the impugned notice.

5.However, Mr.G.Sankaran, learned Standing Counsel appearing for the respondent, on instructions, would submit that, insofar as her reply dated 26.08.2021 to the notice dated 13.08.2021 is concerned, it relates to the three charges already been framed, subsequently, when notice was issued for personal hearing dated 17.08.2022 on 24.08.2022, the petitioner had appeared and sought for some more time to reply or to



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participate in the enquiry and at that time, she did not asked for any legal assistance, even it happened, that would not be permitted by the respondent Council because in the procedure, which is in vogue, no such legal assistance could be permitted for any person against whom charges has been framed and enquiry has been contemplated.

6.Subsequently, further complaint as an additional complaint has come from the complainant which necessitated the respondent to frame additional two charges and therefore, combinedly, $3 + 2 = 5$ charges having been made and comprehensively the reply has been sought for from the petitioner through the impugned notice dated 11.10.2022, for which, instead of giving reply comprehensively or an additional reply only in respect of the two additional charges, the petitioner has rushed to this Court challenging the impugned show cause notice only. Therefore, on that ground, since the challenge is made against the show cause notice, the writ petition cannot be entertained and even otherwise, it is open to the petitioner to give a reply to the additional two charges or to appear before the respondent to the enquiry stated to be conducted on 17.10.2022, where further orders would be passed on merits and in accordance with law based on the available records.



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7.I have considered the said submission made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8.Insofar as the complaint received by the respondent against the petitioner, that has to be enquired into by the respondent Council, for which, if notice was given with definite charges dated 13.08.2021, that should have been replied, which in fact had been replied by the petitioner on 26.08.2021. Thereafter, personal hearing notice was issued on 17.08.2022. In response to the same, the petitioner had given reply on 24.08.2022. On appearing the said date, reserving her rights to file additional reply and file documents she seek for sometime to that effect also.

9.When that being so, now the impugned letter or notice since has been issued on 11.10.2022, under which, two more additional charges have been shown and one week time to appear before the respondent, for which, date has been fixed as 17.10.2022 and insofar as this notice, which is impugned herein is concerned, since two additional charges have been now framed and communicated through the said impugned letter,



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further opportunity to the petitioner should be given to give additional reply and thereafter only, the hearing should be fixed by the respondent to appear before them, where if at all the respondent is not having the practice of permitting the petitioner to have legal assistance atleast some assistance from the same profession can be permitted. Therefore, this Court feels that the petitioner can be given one more chance to give additional reply to the additional charges, as has been shown in the impugned notice and thereafter, a date can be fixed for personal hearing, on that date, the petitioner can be permitted to participate in the same with the assistance of another medical practitioner of her choice and since some complaint has been made by the petitioner against the respondent council i.e. the respondent Council Committee members, who conducts the enquiry or proposed to conduct the enquiry that, they are not properly treating the petitioner and in fact, there was an allegation from the petitioner side that the petitioner was abused during the last hearing when she appeared, this Court feels that the entire proceedings of enquiry can be video-graphed for the record purpose and if any need arises in future that can be made use of it.



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10. In that view of the matter, this Court is inclined to dispose of

this writ petition with the following orders:

- ◆ That the petitioner is hereby given two weeks time to give reply to the additional charges as mentioned in impugned letter dated 11.10.2022 from the date of receipt of a copy of this order. Along with the said reply, any further documents in support of her defence can also be filed.
- ◆ After the receipt of the same, it is for the respondent to evaluate the same and to decide, whether the proceedings can go on or to be dropped. In that case, if the respondent decides to proceed against the petitioner by conducting an enquiry, a date can be fixed by sending a notice to the petitioner. On the date to be fixed, the petitioner shall without fail appear before the respondent and participate in the enquiry, during which time, the petitioner shall be permitted to have a medical practitioner as her assistance.
- ◆ The enquiry to be conducted in this regard as indicated above shall be video-graphed by the respondent and the same can be kept in record for future purpose.
- ◆ In view of the above, the impugned letter shall only be treated as a show cause notice to give reply to the said two additional charges and therefore, pursuant to the said show cause notice, dated 11.10.2022, no hearing can be conducted as indicated therein on 17.10.2022 i.e., today.



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11. With these observations and directions, the Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index: Yes/No
Speaking/Non-speaking order
sp/sgl

Note: Issue order copy on 18.10.2022.

To

The Registrar,
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New No.914, Old No.569,
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Arumbakkam, Chennai – 600 106.



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R. SURESH KUMAR, J.

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