



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.[MD]No.9562 of 2021

and

W.M.P(MD)Nos.7318 and 7319 of 2021

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Dr.M.S.Jackson

... 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 filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in his proceedings in Reference No:TNMC/T.No.601/2020, dated 28.04.2021 and quash the same.

For Petitioner : Mr.T.A.Ebenezer

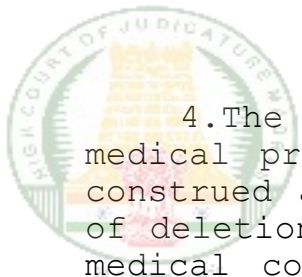
For Respondent : Mr.Sathish Babu

O R D E R

The order impugned dated 28.04.2021, which is an order of punishment removing the name of the writ petitioner from the registration roll by the Tamil Nadu Medical Council, is under challenge in the present writ petition.

2.The petitioner is a medical practitioner and registered his name in the Tamil Nadu Medical Council in the year 1999 in Registration No.62820. The petitioner states that he is a public interest person and further involved in one political party in the name of "Democratic Corruption Liberation Front".

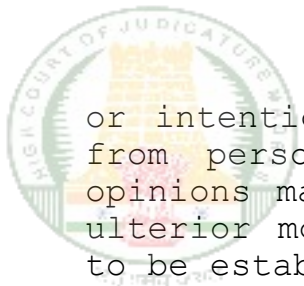
3.The grievance of the writ petitioner is that the respondents issued an order in proceedings dated 28.04.2021 imposing the punishment of deletion of his name from the medical registration of Tamil Nadu Medical Council. Accordingly, the petitioner is not entitled to practice for a period of one year.



4.The question arises whether the opinion offered by the medical practitioner in respect of certain circumstances could be construed as a misconduct or offence, warranting such a punishment of deletion of his name from the medical registration of Tamil Nadu medical council. The charges framed against the writ petitioner reveals that he induced general public to take lightly the risks of COVID-19 and stating that containment measurement of the Government is not proper. At the outset, lock down during the COVID-19 Pandemic period, imposed by the Government was opined as unnecessary by the petitioner. In this regard, the petitioner uploaded videos, whats-Aapp messages and provided informations to the general public. The respondent has formed an opinion that the conduct of the petitioner became unnecessary and caused panic amongst the general public.

5.This Court is of the considered opinion that COVID-19 infection was muted the world and many countries have struggled even to find out the solution for curing the diseases. Even opinions given by the World Health Organization found to be incorrect in certain circumstances by leading medical practitioners at the initial stage as there was lot of informations different opinions were offered by the medical experts across the globe and the people were really in panic during the pandemic period. Several medical experts have offered their opinions based on their experience and based on certain research. All such opinions cannot be said to be correct or such opinions were acted upon by the Government or by the other medical practitioners. Opinions are to be treated as opinion and implementation of the opinion are the prerogative of the authorities competent and the Government concerned. Mere offering an opinion by a medical practitioner with reference to the disease cannot be construed as a misconduct and in such circumstances, a medical practitioner will not be in a position to practice medicine freely and without fear. In the event of initiation of such actions against the medical practitioner, the other medical practitioner will be afraid for offering an opinion even in respect of such new disease and the medicines which are to be provided to the patient. Even in some circumstances, the expert medical opinions were went wrong or became incorrect. In such circumstances, it is unnecessary to initiate action against the medical practitioner, who offered such opinions. The people of every nation realised that many opinions and ideas given by many such medical experts from various reputed universities and hospitals went wrong in certain circumstances and therefore, mere opinion of a medical practitioner is insufficient to hold that he has committed an act of misconduct and the punishment of deletion of the name from the registration for one year unwarranted and disproportionate and scribbling the freedom of medical practitioner.

6.No doubt, if any medical practitioner created unnecessary panic amongst the general public with some motive or intention, then



or intention, no action needs to be initiated. Opinion may differ from person to person. Some opinions may be correct and some opinions may be wrong. However, it has to be enquired into and the ulterior motive and the intention of the medical practitioner, are to be established.

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7. In the present case, the petitioner states he is a public interest person and do public works. However, the respondent has imposed the punishment which is not inconsonance with the established principles of law and the freedom of opinion, which is the basic right of a medical practitioner need not be taken away unnecessarily. However, if such opinion is offered with a wrong intention or with an ulterior motive to disrupt the society, then actions are to be initiated. Such distinction are to be kept in mind by the competent authorities, while dealing with the opinion of the medical practitioner.

8. Freedom of speech and expression is the back bone of Indian Constitution. Whiles, the practitioner including medical practitioner, legal practitioner and other professionals are entitled to offer their opinions with good intention. The opinions may go wrong and such opinion may be incorrect, however if it is not given with an ulterior motive or with an intention to disrupt the society, no action is permissible and such bonafide opinions given based on the knowledge are to be protected under the right to freedom of speech and expression and thus, the respondent is committed an error in imposing the punishment of deletion of name of the writ petitioner from the medical registration for one year. Such a punishment is harsh and not inconsonance with the established principles and further infringes the fundamental rights of the medical practitioner, who offered an opinion on good faith and based on his knowledge on the medical subject.

9. In view of the facts and circumstances, the order passed by the respondent is infirm and consequently, the proceedings in Reference No:TNMC/T.No.601/2020, dated 28.04.2021 issued by the respondent, is quashed. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

The Registrar,
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