

03 20.04.2023
RP Ct. No. 01
AN

MAT 541 of 2023
with
IA No. CAN 1 of 2023

Dr. Analdeb Basu
Vs.
West Bengal Medical Council & Ors.

Mr. Debajyoti Datta
Mr. Arijit Das Mullick

... For the Appellant

Mr. Saibalendu Bhowmick
Mr. Biplab Guha
Mr. Subrata Bhattacharjee
Mr. Rajsekhar Basu
Mr. Rajat Dahr
Ms. Srilekha Chattopadhyay

... For the W.B.M.C.

Mr. Tapan Kumar Mukherjee, learned senior advocate
Ms. Debdooti Dutta

... For the State respondent

Mr. Subrata Bhattacharyya
Ms. Shipra Santra
Mr. Indranil Dutta

... For respondent no. 3

1. This intra-Court appeal is directed against the order dated 20th March, 2023 passed in WPA 5439 of 2023 by which the learned Single Bench declined to grant any interim order as prayed for by the appellant. The appellant challenged an order dated 17th February, 2023 passed by the West Bengal Medical Council by which the name of the appellant was removed from the Register of Registered Medical Practitioners maintained by the West Bengal Medical Council for a period of six months under Section 25(a)(ii) of the Bengal Medical Act, 1914. The said order further stated that in terms of Section 26 of the said Act an

appeal lies against the said order to the Government.

2. The short issue which falls for consideration in this appeal is whether the appellant is entitled for an interim protection till the writ petition is heard or in the event the appellant should be directed to file an appeal to the Government or till the appeal is disposed of. On perusal of the order dated 17th February, 2023, we find that no reasons have been assigned as to why the Medical Council found the appellant guilty of infamous conduct in professional respect leading to removal of his name from the Register of Registered Medical Practitioner for a period of six months. Therefore, we issued an interim direction directing the Medical Council to place the entire file concerning the issue and, accordingly, the learned Advocate for the Medical Council has placed the entire file from which it is seen that based on a complaint given by the family of the deceased patient, the Medical Council took up the matter for enquiry and had referred the matter to the P.E. Committee and the Committee consisting of four members and the Registrar of the Medical Council being the Convenor. In the original file the minutes of the meeting of the committee finds place and the Committee has found the appellant guilty of professional misconduct and recommended charge sheet to be laid against him.

3. It is the submission of the learned advocate appearing for the Medical Council that when the Bengal Medical Act, 1914 does not stipulate that the Medical

Council has to assign reasons while removing the name of the appellant from the Register of the Registered Medical Practitioner, the Medical Council cannot be compelled to give reasons, more particularly, when it was a case of medical negligence and the Chairman and the members of the P.E. Committee considered the entire matter and had found the appellant guilty of misconduct in professional respect. As pointed out earlier, the order dated 17th February, 2023 communicated to the appellant does not state as to why the appellant has been found guilty of infamous conduct in professional respect. The charge sheet, which was directed to be filed, is based upon the finding recommended by the P.E. Committee. Therefore, we are of the view that the findings need to be communicated to the appellant so that the appellant will be made aware of the basis of which he was found guilty and also what laid to the recommendation of the Committee for issuing charge sheet. Until and unless the minutes of the meeting of the Committee are communicated to the appellant, the appellant will be at a loss to understand as to what was the basis for initiating disciplinary action against him. Therefore, we are of the view that the Medical Council should communicate the minutes of the meeting of the P.E. Committee to enable the appellant to question the correctness of the said report which ultimately lead to the order of punishment dated 17th February, 2023. So far as the issue as to whether

the appellant could have challenged the order dated 17th February, 2023 in a writ petition, we are of the view that the appellate remedy provided under the Bengal Medical Act, 1914 is an efficacious remedy and since the disputed questions of fact are involved, it is advisable for the appellant to avail such appellate remedy as the case cannot be decided based on affidavits in a petition under Article 226 of the Constitution of India.

4. Therefore, we are of the view that the appellant should be relegated to the appellate remedy. As rightly pointed out by the learned advocate for the appellant that already two months have elapsed and the appellant's name has been removed from the Register of the Registered Medical Practitioner and in the event, the appellant has to file an appeal to the State Government or this intra-Court appeal or the writ petition is to be heard, the period of punishment would expire and the entire proceedings will become infructuous. We are conscious of the fact that if the appellant has to be relegated to avail the appeal remedy, the appeal cannot be allowed to be rendered infructuous by efflux of time and, therefore, the appellant is required to be granted interim protection till the appeal is heard and disposed of. Furthermore,

we find that the P.E. Committee enquired into the complaint after 1½ years after the incident and this is also one more reasons which has convinced us that the appellant should be granted interim protection while relegating the appellant to the appeal remedy.

5. In the result, both the appeal and the writ petition stand **disposed of** by directing the West Bengal Medical Council to communicate a copy of the report of the P.E. Committee and the copies of the depositions which are annexed to the report and other material documents which were placed before the Committee. The entire set of documents along with the entire minutes of the meeting be furnished to the appellant within three days from date of receipt of the server copy of this order. The appellant is granted ten days time to prefer an appeal to the State Government from the date on which all the documents are furnished to the appellant in terms of the above direction. The appropriate authority of the State Government is directed to take up the appeal for consideration and decide the same on merit and in accordance with law within a period of fifteen days after affording an opportunity of personal hearing to the appellant. Till orders are passed by the State Government in terms of the above direction within the

time stipulated by this Court, the order dated 17th February, 2023 directing removal of the name of the appellant from the Register of Registered Medical Practitioners shall remain stayed and the West Bengal Medical Council is directed to restore the name of the appellant in the Register of the Registered Medical Practitioners within a period of two days from the date of receipt of the server copy of this order and such restoration shall be published in the Gazette with a rider that this is subject to the outcome of the appeal to be filed before the Government against the order dated 17th February, 2023.

6. We make it clear that we have not gone into the merits of the matter and it is left open to the appellant to canvas all points in the appeal.

7. Consequently, the connected application also stands disposed of.

8. The original file, which was produced before this Court for inspection, is returned back to the learned advocate appearing for the Medical Council.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)

