

D/L. 27.
July 5, 2023.
MNS.

WPA No. 15494 of 2023

Dr. Analdeb Basu
Vs.
State of West Bengal and others

Mr. Debajyoti Datta,
Mr. Sabyasachi Roy

... for the petitioner.

Mr. Saibalendu Bhowmik,
Mr. Biplab Guha,
Mr. Subrata Bhattacharyya,
Mr. Raj Sekhar Basu,
Mr. Rajat Dhar

...for the respondent no. 3.

Affidavit-of-service filed in Court today be
kept on record.

Learned counsel appearing for the
petitioner contends that although there was a
direction by the Division Bench of this Court,
granting opportunity to the petitioner to move
before the Appellate Forum, which was to take up
the appeal for consideration and decide the same
on merit and in accordance with law, the
Appellate Forum, while passing the impugned
order pursuant to the direction of the Division
Bench, merely reiterated the finding of the first
Forum mechanically by upholding the order of the

first Forum against the petitioner without assigning any reason independently.

It is submitted that since all the documents were not considered either by the first Forum or the Appellate Authority, the matter may be relegated to the first Forum for the purpose of re-adjudication on the issues involved.

Heard learned counsel for the parties, upon which it is seen that the Appellate Forum, undoubtedly, reaffirmed the order of the first Forum mechanically without assigning any independent reason whatsoever.

From the impugned order of the Appellate Forum, it is seen that the same is comprised merely of the narrative of the facts of the case and the arguments of parties.

Only in paragraph 4 of the said judgment and order, the appellate forum, in a cryptic manner, records that considering the facts and circumstances and also taking into account the relief sought by the appellant, it was in consensus with the order passed by the West Bengal Medical Council on February 17, 2023, which was assailed before the Appellate Forum.

The order of the Division Bench in MAT 541 of 2023 dated April 20, 2023, clearly shows

that the Division Bench was of the opinion that interim protection was to be granted to the present writ petitioner, who was the appellant therein, during pendency of the appeal before the Appellate Forum.

In paragraph 5 of the said judgment, it was recorded that both the appeal and the writ petition pending before the said court were 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 were 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 the date of receipt of the server copy of the order. The appellant was granted ten days' time to prefer an appeal to the State Government from the date on which all the documents were furnished to the appellant in terms of the above direction.

The appropriate authority of the State Government was 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 were passed by the State Government in terms of the direction of the Division Bench, the impugned order of the Medical Council dated February 17, 2023 directing removal of the name of the petitioner from the Register of Registered Medical Practitioners was to remain stayed and the West Bengal Medical Council was directed to restore the name of the petitioner in the said Register within two days from the date of receipt of the server copy of the Division Bench order and to publish the same in the Gazette.

Although other paraphernalia were complied with, the order of the Appellate Authorities is palpably vitiated, being entirely bereft of all reasons. There is, in fact, no reflection in the impugned order of the Appellate Authority as regards the documents and minutes which were placed before the said authority, apart from a mere narrative, recording the respective cases of the parties.

In fact, there was no independent application of judicial mind by the Appellate Authority at all to the materials produced before

the said authority and/or before the Medical Council.

As such, the impugned order passed by the Appellate Authority, that is, the Principal Secretary, Department of Health and Family Welfare, Swasthya Bhawan, dated June 21, 2023, cannot survive judicial scrutiny.

Hence, WPA No. 15494 of 2023 is allowed, thereby setting aside the impugned order dated June 21, 2023 passed by the Appellate Authority, being the Principal Secretary, Department of Health & Family Welfare, Government of West Bengal.

The interim order of stay granted by the Division Bench in MAT 541 of 2023 vide its order dated April 20, 2023 is hereby revived. The order dated February 17, 2023 passed by the West Bengal Medical Council, directing removal of the name of the writ petitioner from the Register of Registered Medical Practitioners shall remain stayed and the restoration of the petitioner's name in the said Register shall continue till disposal of the appeal afresh by the appellate authority pursuant to the direction of this Court.

While rehearing the appeal and deciding the same afresh, the Principal Secretary shall

advert to all the materials and evidence produced before it by both sides as well as the materials produced before the First Forum and give the parties fresh opportunity, if necessary, to produce further materials which are germane to the issue and re-decide the challenge of the petitioner in accordance with law upon giving adequate opportunity of hearing to the parties.

The entire exercise, it is expected, shall be completed within eight weeks from the date of communication of this order to the Principal Secretary, Department of Health & Family Welfare, Swasthya Bhawan.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)