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W.P.No.34169 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34169 of 2012

and

M.P.Nos.1 & 2 of 2012

Dr.Jogesh Chandra Choudhury

...Petitioner

-Vs-

1.The Chairman,
Ethics Committee,
Medical Council of India,
Sector – VIII, Pocket 14,
Dwaraka, New Delhi.

2.Board of Governors,
In Supersession of the Medical Council of India,
Rep.by its Secretary,
Sector – VIII, Pocket 14,
Dwaraka, New Delhi-110 007.

3.Melmaruvathur Adhiparasakthi Institute
of Medicine Science and Research,
Memmaruvathur – 603 319,
Tamil Nadu.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records of the Respondents in connection with the minutes of the meeting held on



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21.08.2012 by the 1st respondent in proceedings No.MCI-211(2)/2012

Ethics, which was confirmed on 22.09.2012 and the consequential order of approval by the 2nd respondent in respect of point no.10 of the minutes of the meeting dated 27.09.2012, as set out in the communication issued by the 2nd respondent on 22.10.2012, and quash the same insofar as the petitioner is concerned.

For Petitioner : Ms.Aishwarya S.Nathan for
Mr.T.K.Bhaskar

For Respondents :
(for R1 & R2) : Ms.Shubharanjani Ananth
(for R3) : Mr.A.S.Balaji for
Mr.A.Manoj Kumar

ORDER

The punishment imposed on the petitioner, awarding removal of his name from the State Medical Register for four years with effect from the date of passing of the impugned order dated 22.10.2012, is under challenge in the present writ petition.

2.The writ petitioner completed his M.B.B.S. Course in the year 1970 from S.C.B. Medical College, Cuttak, State of Orissa, and he enrolled his name with the Orissa State Medical Counsel with a registration



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No.3960, dated 06.04.1971. The petitioner passed Anaesthesiology from S.C.B. Medical College, Cuttak. Orissa, in 1977. He joined the department of Anaesthesiology in S.C.B. Medical College, Cuttak, Orissa and he took voluntary retirement in September 1993 and carried on his private practice.

3.The petitioner joined Melmaruvathur Adhiparasakthi Institute of Medical Sciences and Research, Melmaruvathur, on 09.02.2010. He joined as an Associate Professor in Anaesthesiology and during the relevant point of time when the petitioner was serving in the said institute of medical sciences at Melmaruvathur, the officials of the Central Bureau of Investigation conducted a surprise inspections and culled out certain irregularities.

4.A criminal case was registered. The CBI found certain fake certificates and declaration forms and based on that the prosecution was initiated. Simultaneously, disciplinary proceedings were initiated by the medical Counsel of India and accordingly, a Show-cause Notice was issued to the writ petitioner in a proceeding dated 13.07.2012. The Show-cause Notice itself reveals that the letter sent by the CBI was relied upon for the purpose of seeking explanation from the writ petitioner.



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5.The allegation was providing forged and fake certification/ false information in the declaration forms submitted to the M.C.I. during the assessment of Melmaruvathur Adhiparasakthi Institute of Medical Sciences, made on 29.03.2010. With reference to the state allegation and the investigation conducted by the CBI, the Show-cause Notice was issued. The petitioner submitted his detailed explanation pleading innocence of the allegations and the Medical Council of India finally passed an order awarding punishment of removal of the name of the petitioner from the State Medical Register for 4 years. Pertinently, the punishment was imposed in respect of 32 doctors as per the proceedings of the Medical Council of India dated 22.10.2012. All those 32 doctors, belonging to various other states, filed writ proceedings before various High Courts and the Hon'ble Division Bench of the Bombay High elaborately considered the issues with reference to the Show-cause Notice and the punishment awarded to these doctors.

6.The Bombay High Court in W.P.No.11429 of 2012 (A.S.) rejected the writ proceedings filed by these doctors with the following observations:



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“37. We are in complete agreement, therefore, with Mr.Gole that the Council has original and appellate power as well in terms of the IMC Regulations. Once these Regulations and all the chapters thereof are read together and harmoniously, it is evident that nothing which is a misconduct or an infamous conduct, can go without a disciplinary enquiry and unpunished. If the larger public interest is to be served and bearing in mind the role of medical practitioners and physicians, then such comprehensive regulations and measures have to be enacted. Having enacted them, a meaning will have to be placed on its clauses enabling the Councils to deal with the misconduct and/or infamous acts. That would be advancing the remedy. A narrow or restricted interpretation is likely to frustrate and defeat the IMC Act itself. Therefore, we are not in agreement with the learned counsel for the Petitioners insofar as the jurisdiction, power and authority of Council are concerned.

...

39. Mr.Chavan's contentions essentially are based on the understanding of the provisions of IMC Act and the MMC Act. How that understanding is not accurate but erroneous, is demonstrated by us hereinabove. Merely because a misconduct is committed outside the State of Maharashtra but the enrolment of the doctor or medical



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practitioner is in the State of Maharashtra, would not mean that it is the State Council which alone possess the power to take action and the MCI will not be able to exercise any control or regulate the conduct of the doctor concerned. This would be a wholly incorrect, inaccurate and improper reading of the provisions of IMC Act and Regulations framed thereunder. We cannot attribute to the Legislature absurdity or patent incongruity or inconsistency. An enactment must be read as a whole. Each provision, each section, each sub-section and paragraphs of each section and sub-sections have to be read together and harmoniously, so as to make a consistent whole of the enactment. We have done precisely that and we do not find any such legal requirement as has been read by Mr.Chavan. Mr.Chavan referred to Maharashtra Medical Council Act, 1965 but his arguments overlook the fact that it is enacted to regulate the registration of the persons practicing modern scientific medicine in the State of Maharashtra. Chapter-1 of the Act and the sections appearing, particularly definitions, and the provisions of Chapter-2, would not enable us to conclude that preparation and maintenance of register vide Chapter-3 being an obligation of the State Medical Council, it is the sole repository of the disciplinary and regulatory powers. If that had been the position earlier, we do not see how after Section 20A being introduced and brought in the IMC Act,



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1956, can it be urged by the learned counsel for the Petitioners that power of State Medical Council to take action, particularly disciplinary, is exclusive. It is to deal with cases of breach of professional code of conduct, etiquette and code of ethics for which regulations have been made and once MCI has been conferred the requisite powers in pursuance of which it has taken action, then the State Medical Council may or may not take follow up action. But by that, we cannot see how we can accept the contentions of Mr.Chavan. That would mean that the very object of introduction of Section 20A in the IMC Act, 1956 is defeated. The regulations have been, prescribed and they have come into force from 2002. They equally empower the State Medical Council to act and thus both the Councils retain their powers and authority. We do not see any inconsistency and conflict. Once the parent body is empowered by the substantive provisions of Section 20A to prescribe standards of professional conduct, etiquette and a code of ethics for medical practitioners, then, it is futile to urge that the Regulations made by it and to enforce such standards do not enable it to take disciplinary action. Merely because the doctor is registered as such by a State Council, does not mean the MCI does not have power to deal with and proceed against him. Such a stand would render Regulations 8.1 and 8.2 of the IMC Regulations nugatory and meaningless. Thus, the MCI has power to



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order the removal of the Petitioners' name from the register altogether or for a specified period.

40. Now, the only contention which remains to be dealt with, is about non-compliance with the principles of natural justice. From the affidavit-in-reply which has been filed by MCI in case of both Dr.Patel and other petitioners, and to which there is absolutely no rejoinder, it is apparent to us that at the said college, there was a gross and flagrant breach of standards of professional conduct, etiquette and code of ethics. That CBI had to intervene is a shame. That the inspection by the MCI revealed as to how a college styled as a medical college, is running and imparting so called medical education without qualified and competent staff and trained personnel. Persons under bogus appointment letters and orders were brought in and portrayed as professors and teachers. It is hardly open to the petitioners to complain because the affidavit-in-reply demonstrates as to how 32 doctors along with the Dean had to be proceeded against. The facts as narrated reveal a very sorry state of affairs. The affidavit-in-reply indicates as to how elaborate statements of all concerned including the Petitioners were recorded by CBI and which were specifically brought to the notice of the Petitioners. No other material was necessary to be relied upon nor has been relied. It is clear that each of these Petitioners were



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called upon to appear before the Ethics Committee. We have already rejected the arguments of these Petitioners on the point of lack of power in the Ethics Committee. We find that it is completely empowered. CBI wrote a letter to the Secretary of the MCI bringing to his notice the professional misconduct of 32 faculty members of the said college in having falsely signed the declaration forms and appeared before the MCI team allegedly as full time faculty members on the date of MCI inspection. The note forwarded by CBI and the inspection report which came to be equally received by MCI from the inspection team, revealed that there was a shortage of eligible faculty members. A case was registered against Dr.Ketan Desai and whatever may be the outcome of the criminal prosecution against him and others, it is accepted before us that independent thereof and in terms of the settled legal principles, a departmental or disciplinary action can proceed and its outcome is not influenced by that of the criminal prosecution. The standards of proof are different and distinct in both. In the present case, it was revealed that the faculty members and posing as such, were not only not employed in the said college on regular basis as declared in the declaration forms but they were also working in other hospitals. The declaration forms of all these 32 faculty members contained misleading information in the form of an undertaking to the effect that these were full time teachers



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of the said college but actually they were not working as such. The 32 faculty members who attended the MCI inspection on 29 January 2010, were not required to sign any attendance register or to attend the college regularly by the college authorities. They were paid salaries in cash either lumpsum or on case to case basis and not as per UGC Rules for which their acknowledgement of payment was taken on vouchers issued even after the date of inspection on 29 January 2010. The acknowledgements were obtained in some cases even after registration of an offence by CBI. The names of these faculty members were not provided to the Chartered Accountant of the trust managing and administering the said medical college, nor were their details compiled for Income Tax purposes, Professional Tax, nor is there any reference to their names in the Bank Accounts. It is revealed that these persons were brought in for inspection purpose and in most of the cases, what has been discovered is that their self declaratory form or self declaration is signed by Dr.Patel. The appointment order also does not refer to any proceedings much less of a selection process undertaken by a duly constituted selection committee, which has interviewed the candidates. It is no doubt true that Dr.Patel did not sign the appointment orders but having counter-signed the declaration forms, his complicity in the act is proved. There is no reason for these persons to then complain of any breach of principles of



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natural justice. None of them made any grievance of this nature before the Ethics Committee. None of them have objected to the Ethics Committee accepting the report of CBI and the Inspection Team of MCI and in any event, the whole case was based on the statements made by the Petitioners to CBI. That some of the Petitioners were not aware of the fact that these statements may be used against them or that all were not cited as accused but some were referred as witnesses, is a plain after thought. This is not a criminal prosecution. It is not a case where statements to the Police are being relied upon and to the prejudice and detriment of the Petitioner. It is an over all assessment and view taken of the materials collected by the inspection team and compiled in its report. That those coupled with the statements made by the Petitioners to the CBI reveal that there is no dispute nor there is any debatable issue on facts. Everything including the declaration forms, the cash vouchers, the appointment orders were shown to these persons and they have very clearly stated in their statements that they have not paid the income tax on the salary received nor they received any TDS certificate. If they were indeed regularly appointed candidates, they would have clearly stated as to how many classes they have conducted, the attendance slips would have been produced, the number of lecturers and the dates and the details thereof would also have been produced. Nothing of this



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nature has been found in the record. Payment of the amount stated to be salary is made in installments and in cash. This was an arrangement facilitating the said college and in collusion and in connivance with all including the Dean.

...

45. In the backdrop of the peculiar facts and the rules and regulations requiring two opportunities, that the Supreme Court emphasized the need for a dual hearing. This dual hearing and compliance with the principles of natural justice at the stage of enquiry and at the stage of infliction of punishment by the disciplinary authority, was necessitated because of such requirement. We have not been shown any legal requirement of such a nature but everything is being read into the rules, regulations by implication. We are unable to uphold such a contention and apart therefrom having found no prejudice caused to the Petitioners nor any miscarriage of justice, we cannot agree with the learned counsel and their reliance on these judgments of Supreme Court is, therefore, misplaced.

*46. The Hon'ble Supreme Court had an occasion to consider the grievance of parties like the Petitioners of breach of principles of natural justice. In the case of **Nirma Industries Limited Vs. SEBI**, the Hon'ble Supreme Court held as under:*



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"25. In *B.Karunakar & others (supra)*, having defined the meaning of "civil consequences", this Court reiterated the principle that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove the prejudice that has been caused by the non-grant of opportunity of hearing. In the present case, we must hasten to add that, in the letter dated 4th May, 2006, the appellants have not made a request for being granted an opportunity of personal hearing. Therefore, the ground with regard to the breach of rules of natural justice clearly seems to be an after-thought."

*Earlier, in the case of **Kesar Enterprises Limited Vs. State of Uttar Pradesh and others**, the Hon'ble Supreme Court held that these principles guard against arbitrary exercise of power by the State and its functionaries and aim at preventing miscarriage of justice (See para 17 at page 2714). Mr.Chavan sought to rely on the common order passed by the Nagpur Bench of this Court in Writ Petition Nos.4905 of 2014 and 4922 of 2014 dated 21 July 2015 (Coram: Smt.Vasanti A. Naik and A.M.Badar, JJ.) and which we find to be equally misplaced. There, the Petitioners challenged the orders of Maharashtra Medical Council suspending the registrations for a period of six months and prohibiting them from working as*



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teachers/lecturers in any institution imparting medical education. Though the orders refer to the CBI inspection at a college at Chennai, what we find is that an independent disciplinary action was initiated against those Petitioners by MMC. That was found to be vitiated because a notice to show cause did not contain specific allegations. The allegations were found to be vague. There was thus a peculiar breach of the relevant disciplinary rules that enabled the Petitioners to argue that there is a violation of principles of natural justice.

47. Apart from the fact that the above order of Nagpur Bench is distinguishable as a different issue and controversy was raised, additionally we find that the matter was never argued in the manner brought before us and by highlighting the role of MCI. Therefore, the order of Nagpur Bench is of no assistance to the Petitioners.

*48. Before parting, we would like to remind all concerned, what the Hon'ble Supreme Court had to say about Doctors and specifically as Teachers. In the case of **Sukumar Mukherjee Vs State of West Bengal and others**, the Hon'ble Court observed as under:*

"Every teacher-doctor must endeavour to make his institution a brighter institution - a fragment of Heaven on earth, an El Dorado of peace, joy and wisdom. After all, an institution is what its teachers and Professors make it even as a nation is what its patriots make it, a religion is what its prophets make it



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and a home is what its women make it. Without a band of devoted men of medicine who are inspired by a holy zeal, an institution with the paraphernalia of modern conveniences will be like without the spark of life; without soul. When there are all the advantages, it is no virtue if tolerable work alone is turned out. But it is only when there are handicaps, mocking at enterprise should the human spirit triumph and establish that the Will is an all-conquering force. The greatest men of medicine of the past and the present who have profoundly influenced men's minds have been indomitable spirits who have struggled against tremendous odds.

Inner strength which is not cowed down by adversities is what is required. If that noble quality is to be nurtured one must have tremendous faith in one's mission. To practise medicine is not a craft but a calling; not a profession but a vocation.

Sincerity of purpose and earnestness of endeavour are the two wings that will bear one aloft to the tower of success. Given these virtues, other qualifications will follow of their own accord.

It is a cold and irresistible fact of logic that doctors exist for the institution and that the institution does not exist for their convenience and profit. It sustains and nourishes them, and it is up to them to cling to it with steadfast loyalty and to toil to promote its highest interests.

"From good to better, daily self-surpassed", has to be our moto. The nature of the profession is such that it definitely demands a spirit of service and sacrifice. After all what lends dignity to any person is his attitude to work and not the emoluments of his office.

"Honour and shame from no condition rise act well thy part: there all the honour lies." The duty of a true teacher-doctor is to instruct, inspire and illumine."

49.As a result of the above discussion and for the reasons recorded above, each of these petitions fail. The Rule is discharged in each of the petitions, but without any order as to costs."



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7. The judgment of the Hon'ble Division Bench of the Bombay High Court was taken by way of an appeal before the Hon'ble Supreme Court of India in SLP (C) No.32464 of 2015 and the Apex Court dismissed the SLP on 30.11.2015, confirming the judgment of the Bombay High Court. Since the issues raised in the present writ petition is no more *res integra* and are confirmed by the Apex Court of India, no further adjudication needs to be undertaken with reference to the other grounds raised by the petitioner.

8. Accordingly, the writ petition stands **dismissed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

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S.M.SUBRAMANIAM. J.,

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