

6th December,
2024
(AK)
04

C.P.A.N 952 of 2024
in
WPA 22821 of 2022

Dr. Harsh Vardhan Agarwal
Vs.
Dr. B.N. Gangadhar and another

Mr. P. Kr. Srivastava
Mr. Raushan Kr. Ray
Mr. Shuvajit Roy

...for the petitioner.

Mr. Indranil Roy
Mr. Sunit Kr. Roy

...for the National Medical Commission.

1. Learned senior counsel appearing for the alleged contemnors files an affidavit in the form of a petition in terms of the order dated November 8, 2024 disclosing, *inter alia*, the reasons for the rejection of the petitioner's representation after consideration by the concerned committee.
2. Para 25 of the said affidavit discloses that the petitioner had not cleared any examination after concluding the training/residency in USA and hence, had not been certified by any of the Boards in USA.
3. As such, it is submitted that on the said premise, the petitioner's representation was turned down.
4. It is further contended that sufficient compliance has been done with regard to the directions passed

by this court in the parent order and as such, the alleged contemnors should be absolved of the allegations of contempt.

5. Learned senior counsel further hands over a photocopy of the relevant internal files of the alleged contemnors.
6. In one of the said files, bearing File No.22603 (Legal/EMRB) signed on May 9, 2024, it is disclosed that the concerned committee, constituted to decide the petitioner's representation, was aware of the Notification dated March 7, 2008 and the petitioner's argument in respect thereof, which was noted in paragraph no.3 of the said file.
7. Paragraph no.4 of the file recorded the order of this court dated August 24, 2023.
8. More importantly, in paragraph no.5 of the file, it was recorded that further, EMRB, NMC conducted a personal hearing with the petitioner and AOR in Kolkata and his elder brother was also present during the hearing.
9. During such hearing, it was pointed out that MD equivalent to MBBS for PG was not reflected in the licenses issued by the Carolina State.
10. The petitioner, it is recorded, in support of his claim, submitted certain documents.

11. Ultimately it is recorded that the meeting concluded with the remarks that the decision would be conveyed after discussing the matter further in coordination meeting of PGMEB and EMRB at the earliest possible date.
12. Hence, I find from the said file that not only was the Notification dated March 7, 2008, including its contents, considered by the alleged contemnors but the alleged contemnors had also adverted to why the said notification was not applicable in the case of the petitioner.
13. In the affidavit filed today, the alleged contemnors have also pointed out the exact composition of the committee which was formed to consider the representation of the petitioner in compliance of this court's order.
14. Learned counsel for the petitioner contends that contrary to the spirit of the parent order of this court, detailed reasons for the decision to refuse the petitioner's representation have not been given in the concerned file.
15. It is further argued that the reasoning given by the alleged contemnors is cryptic.
16. Furthermore, the individual comments of all the committee members constituted for deciding the representation of the petitioner are not reflected

anywhere in the papers handed over on behalf of the alleged contemnors.

17. It is further argued that whereas the affidavit filed today ought to have been affirmed by both the alleged contemnors independently, the same has only been affirmed by the alleged contemnor no.2.
18. Insofar as the last contention of the petitioner is concerned, although in answer to a Rule of contempt, individual show cause affidavits are required to be affirmed by the alleged contemnors, since vide order dated November 8, 2024, the court had directed the alleged contemnors merely to file an affidavit-of-compliance annexing the full copy with reasons of the decision taken by the alleged contemnors, I am of the opinion that individual affidavits reiterating the same statements would be a redundancy.
19. Insofar as the consideration of the representation of the petitioner is concerned, I am satisfied that the spirit of the order of this court has been complied with by taking into consideration the contents of the relevant portion of the Notification dated March 7, 2008 as well as giving a personal hearing to the petitioner and his Advocate-on-record as well as attributing specific reasons for the rejection of the petitioner's representation.

20. The contempt court can only go this far and no further, since the merits of the ultimate decision taken by the alleged contemnors could only be the subject-matter of a further challenge by the petitioner, if so preferred.
21. However, I find that there is substantial compliance of the parent order of this court, thereby purging the contempt alleged against the alleged contemnors.
22. In such view of the matter, CPAN 952 of 2024 is disposed of.
23. However, it is made clear that it will be open to the petitioner to prefer an independent challenge to the decision taken on the representation of the petitioner by way of a properly constituted challenge.
24. If so preferred, nothing in this order shall prevent the appropriate court/authority from deciding the said challenge independently and in accordance with law.
25. The photocopies of documents and the affidavit filed today by the alleged contemnors are made part of the record.
26. It may further be noted that copies of both have been handed over to the learned Advocate for the petitioner.
27. There will be no order as to costs.

28. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)