

D/L.4.
April 16, 2024.
MNS.

WPA No. 17708 of 2021

Dr. Anirban Chatterjee
Vs.
The West Bengal Medical Council
and others

Dr. Anirban Chatterjee

... petitioner in person.

Mr. Saibalundu Bhowmik,
Mr. Biplab Guha,
Mr. Rajsekhar Basu

...for the WBMC.

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner, appearing in person with leave of court, contends that the notice issued by the West Bengal Medical Council (WBMC) on August 31, 2021 annexed at page 101 of the writ petition and, in furtherance thereto, the notice dated March 15, 2024 annexed at page 24 of the supplementary affidavit filed by the petitioner, contains pre-conceived perceptions of the WBMC against the petitioner and as such, are vitiated on such score alone.
3. Over and above, the petitioner argues that he was directed to produce his original certificates as a pre-condition of the hearing as per the notice. It is pointed out that even if such original certificates were not produced

irrespective of the petitioner being himself present, the WBMC would proceed with *ex parte* hearing.

4. It is argued that the proposition that the original certificates, which can only be the subject-matter of the outcome of the consideration before the Council, are to be produced at the outset is unheard of.
5. The petitioner thirdly complains that the self-same complaint against the petitioner was taken before National Consumer Disputes Redressal Commission (in short 'NCDRC') where a report was filed by an expert panel of eminent doctors of the All India Institute of Medical Sciences (AIIMS). It is contended by placing reliance on the said report that in the opinion of the Board, there is no evidence of gross medical negligence on the part of the treating doctor during the treatment procedure as well as after the detection of complications. It was further stated in the report that the best possible medical care has been provided.
6. In the teeth of such report, which completely exonerates the petitioner, it is argued that the renewed efforts of the WBMC in pursuance of a complaint which was filed in the year 2016 are *de hors* the law and *mala fide*.

7. The petitioner points out that even the medical report issued by the department of Vascular and Endovascular Surgery of Sir Ganga Ram Hospital in the form of a Discharge Summary annexed at page 75 of the writ petition corroborates the clinical diagnosis of the petitioner.
8. It is further argued that a clinical diagnosis at the inception cannot be the sole basis of alleging medical negligence, particularly since the same was confirmed subsequently by surgical procedure.
9. Thus, it is argued that the entire procedure initiated by virtue of the said notices ought to be quashed.
10. Learned counsel appearing for the respondent-WBMC places reliance on Rule 9 of the Rules under Clause (d)(I) of Sub Section (2) of Section 33 of the Bengal Medical Act, 1914 (in short "1914 Act").
11. The said Rule provides that the enquiry shall be instituted by the issue of a notice in writing on behalf of the Council, by the Registrar, addressed to the Practitioner. Such notice shall specify the nature and particulars of the charge, shall inform the practitioner of the day on which the Council intends to deal with the case, and shall call upon him to answer the

charge in writing and to attend before the Council on that day.

12. Learned counsel submits that the impugned notice of 2021 and the subsequent notice of 2024 in furtherance of the same strictly complied with the said provision. It is argued that the particulars of the charges framed against the petitioner by the WBMC were only set out in the notice and not any final opinion on the same by the Council.

13. It is next contended that the WBMC has the power even to temporarily suspend the practice of the practitioner under the extant provisions of law and Regulations.

14. However, in the instant case, the same has not done as yet, which also indicates the *bona fides* of the Council.

15. Learned counsel next argues that there arises no question of the petitioner having been absolved of the charges, since the report given by the AIIMS is not conclusive evidence of the petitioner's innocence. Moreover, the proceeding before the NCDRC is still pending and has not yet reached finality.

16. The petitioner controverts the contentions of the WBMC that it has power to suspend the petitioner's practice at this juncture.

17. A bare perusal of the impugned notice dated August 31, 2021 shows that the charges against the petitioner framed on the complaint lodged against him have merely been set out clearly in the said notice.

18. The charges, in order to have clarity, have to clearly mention the exact allegations against the petitioner to enable the petitioner to answer such charges.

19. Such formulation cannot be said to be a pre-conceived perception which is conclusive in nature.

20. The charges are only on a preliminary premise indicating the allegations against the petitioner. As such, the first argument of the petitioner that the WBMC has proceeded on a pre-conceived notion against the petitioner cannot be accepted on the basis of the contents of the notice.

21. Insofar as the direction in the said notice for the petitioner to bring his certificate of registration in original, learned counsel for the WBMC has sought to explain away the same by arguing that it is merely for the purpose of identification of the petitioner.

22. However, the said contention defies logic. The identification of the petitioner need not be confined to the original certificate of

registration for medical practice. In fact, the direction to bring the said certificate at the outset, as a precondition for even giving a right of hearing to the petitioner, is *de hors* the Rules which have been relied on by both the parties.

23. For the purpose of identification of the petitioner, as any other citizen, the petitioner may definitely be permitted to produce his passport or any other commonly recognized identification document.

24. For such purpose, production the original certificate of registration is not mandatory. In fact, the insistence of the WBMC for the petitioner to submit the original certificate of registration before the commencement of the hearing raises an apprehension which is not entirely unjust that the same may be seized by the Council at the first hearing, in the event the Council is of the opinion, rightly or wrongly, that the petitioner's practice should be suspended for the time being.

25. Such a procedure cannot be encouraged and would merely vitiate the fairness of the procedure, which must be implicit in the acts of a responsible body such as the WBMC.

26. Thus, the said mandate of production of original certificate of registration of the petitioner cannot be sustained.

27. Insofar as the pendency of the proceeding before the NCDRC is concerned, the same will take its own course in accordance with law. Apart from the fact that the said proceeding has not yet culminated in a final decision, the powers of the said Commission and those of the WBMC emanate from different statutes altogether, having different and unique scopes, although there are some points of overlap with each other. As such, it cannot be said that mere pendency of a proceeding before the NCDRC is a deterrent for the WBMC to take up the enquiry-in-question under the 1914 Act read with the extant Rules and Regulations.

28. Whereas the NCDRC determines whether there was any deficiency of service, which has an ingredient of preponderance of probability akin to a civil proceeding, the determinants in a proceeding before the WBMC is more of a criminal nature, requiring proof beyond reasonable doubt in normal circumstances.

29. Hence, the parallel proceedings before the said two forums cannot deter each other from taking their respective due courses.

30. Insofar as the reliance of the petitioner on the Discharge Summary of Sri Gangaram Hospital and more importantly on the report filed by the Medical Board constituted at the AIIMS, despite the strong apparent evidentiary value of such documents, those cannot be said to be conclusive for the present purpose. At best, those reports and discharge summary and other documents submitted by the petitioner may have strong evidentiary value. However, ultimately those documents are mere pieces of evidence, the evidentiary weight and the probative value of which shall be a determinant in the final analysis by the WBMC upon hearing the petitioner and all others concerned.

31. Hence, the probative and evidentiary value of the said documents cannot be prejudged at this stage either by this Court or even the WBMC.

32. Also, it cannot be said that just because the petitioner was previously heard and evidence taken by the Penal and Ethics Committee, the WBMC itself is precluded from hearing the petitioner at the final stage of the proceeding to determine the veracity of the allegations made against the petitioner.

33. Hence, I do not find any impediment in law in the WBMC proceeding with its enquiry upon hearing the petitioner for which purpose the impugned notices have been issued to the petitioner.

34. However, insofar as the directive in the impugned notice dated August 31, 2021 that the petitioner has to bring his original certificate of registration as a pre-condition for being given a hearing, the said portion of the notice is hereby quashed and set aside.

35. The petitioner shall be entitled to furnish any commonly recognized document of identification, be it his passport, voters' identity card and or any other equivalent document for the purpose of establishing his identity before the Council at the time of hearing.

36. The Council, upon such documents being produced, shall permit the petitioner to be heard irrespective of whether the petitioner brings his original certificate of registration or not.

37. In view of the above discussions, WPA No. 17708 of 2021 is disposed of by quashing the impugned notice dated August 31, 2021 to the limited extent that it insists upon production of

the petitioner's original certificate of registration as a precondition of hearing.

38. The petitioner shall be permitted to produce his passport, voters' identity card or any other equivalent document for the purpose of being identified in the hearing.

39. However, the rest of the impugned notices are not interfered with.

40. It is made clear that the respective merits of the allegations made against the petitioner or the defence of the petitioner have not been gone into at all and it will be open to the WBMC to decide on the same in accordance with law, adhering to principles of fairness and natural justice.

41. It is expected that the hearing of the petitioner will be concluded by the WBMC as expeditiously as possible, and a decision taken thereon in accordance with law, preferably within four months from date.

42. There will be no order as to costs.

43. 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.)