



W.P.No.2117 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.2117 of 2022

and

WMP.No.2285 of 2022

Dr.K.B.Vidhyasankar

...Petitioner

Vs.

1. The Registrar,
Tamilnadu Medical Council,
New No.914, Old No.569,
Poonamalle High Road,
Arumbakkam, Chennai-600 106.

2. The Chief Medical Officer,
Government Hospital,
Omalur, Salem District.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order, in Reference No.TNMC/DC120/2020 dated 15.12.2021, passed by the 1st respondent and quash the same as illegal and direct the 1st respondent to restore the practice of the petitioner.



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For Petitioner : Mr.P.Tamilavel

For Respondents : Mr. Jayamalan,
for Mr.G.Sankaran for R1

: Mr.E.Sundaram
Government Advocate for R2

ORDER

This writ petition is filed by the petitioner seeking to quash the impugned order passed by the first respondent vide Reference No.TNMC/DC120/2020 dated 15.12.2021 and also seeking direction the first respondent to restore the practice of the petitioner.

2. The learned counsel appearing for the petitioner submits that the the petitioner is a practicing Doctor. He has completed M.B.B.S., M.D and R.D and he was registered as Medical Practitioner and Radiologist practicing for the past 20 years in Rajam Hospital, Salem and also visiting as Radiologist in so many hospitals in and around Salem City.



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3. The learned counsel further submits that after completion of M.B.B.S , his first preference was to practice in rural area to give better medical treatment to the poor and poorest people. During his entire practice tenure, he had a good relationship with all hospitals because of his clarity in report and the petitioner was not suppressing anything in the report. The petitioner is very familiar among the rural people, due to which, other persons who are having practice nearby the petitioner's hospital have animosity with the petitioner and have given false complaint against the petitioner to the second respondent. On the basis of the anonymous information, the second respondent came to the petitioner's hospital and upon search could not find out any activities against Pre-Consumption and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, (Hereinafter called as “ PNDT Act”) Though the second respondent has not taken any adverse record against the petitioner and hospital, the second respondent has given false complaint against the petitioner to the Inspector of Police, Sooramangalam, Salem, as if the petitioner has not maintained scan record as per 23(1) of PNDT Act. The Inspector of Police,



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Sooramangalam does not have any locus standi to register FIR against the petitioner, since the PNDT Act provides that anybody who commits wrong under the Act, the second respondent has to file private complaint under Section 28 of the Act. However, the Inspector of Police, Sooramangalam has registered criminal case in Cr.No.1087 of 2018. Subsequently, final report has also been filed and assigned C.C.No.873 of 2019 on the file of the learned Judicial Magistrate-II, Salem.

4. The learned counsel for the petitioner further submits that filing FIR against the petitioner is in violation of provision of the above said Act. Hence, the petitioner filed CrI.OP.No.25384 of 2021 for quashing the charge sheet before this Court, in which, notice has been ordered to the respondent returnable by 20.01.2022. In the meanwhile, the first respondent has issued show cause notice dated 11.10.2021 seeking explanation regarding FIR registered by police and why he should not suspend his practice, for which, he has given a detailed reply on 22.10.2021. Despite the explanation dated 22.10.2021, the first respondent/The Registrar, Tamilnadu Medical Council, vide impugned order dated 15.10.2021, has suspended the petitioner from



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his medical practice till the disposal of C.C.No.873 of 2019 by the learned Judicial Magistrate Court-II, Salem. Challenging the same, the present writ petition is filed.

5. The learned counsel for the petitioner submits that the present impugned order has been passed based on C.C.No.873 of 2019 on the file of the learned Judicial Magistrate-II, Salem, however, the very same C.C.No.873 of 2019 was quashed by this Court vide order dated 07.02.2022 in CrI.OP.No.25384 of 2021. Once the criminal complaint itself stood quashed. The impugned order which is a consequence thereof cannot be maintained . Hence, he prays to allow the writ petition.

6. The learned counsel for the first respondent filed a counter, where it is submitted that the Regulation 1.9 of Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003 stipulates that, a physician should observe the provisions of Acts such as PCPNDT Act, 1994 etc., and such other Acts, Rules, Regulations made by the Central/State Governments or local



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Administrative bodies, relating to the protection and promotion of public health. Therefore, for the violations of provisions of PCPNDT Act on the part of the petitioner which constitutes professional misconduct as per regulation 7.1 of Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003 of Tamil Nadu Medical Council, renders him liable for disciplinary action.

7. It is further submitted that pursuant to the show cause notice explanation of the petitioner was found not satisfactory. Further, Regulation 8.1 of Code of Medical Ethics (Professional, Conduct, Etiquette and Ethics) Regulations, 2003 of Tamil Nadu Medical Council stipulates that every care should be taken that the code is not violated in letter and spirit and in such instances the State Medical Council have to consider and decide upon the facts brought before the State Medical Council. Hence, the disciplinary action has been initiated against the petitioner Dr.K.B.Vidhyasankar, for the violations of the Provisions of PCPNDT Act.

8. It is further submitted that Section 23(2) of PCPNDT Act, 1994



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stipulates that the name of the registered Medical Practitioner shall be reported by the appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration, if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent house. As per Section 23(2) of PCPNDT Act, 1994, the petitioner can be suspended if charge sheet has been filed against him. Hence, the action of the 1st respondent is correct as per law as charge sheet has been filed and cognizance has been taken. The Supreme Court of India observed that prenatal sex determination is a grave offence with serious consequences for the society as a whole and a strict approach has to be adopted. Hence he prays for dismissal of the writ petition.

9. The learned Government Pleader appearing for the second respondent filed a counter, wherein it is stated that a PCPNDT Vigilance Committee Meeting was held on 14.11.2018 at Omalur Government Hospital, Salem District against scan centres. Minutes of the Committee



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Members states that the Rajam Hospital Scan Centre relating to the petitioner Dr.K.B.Vidhyasankar has continued with illegal medical practice stated above and violated PCPNDT Act revealing the sex of foetus and hence, the Rajam Hospital Scan Centre Reg.No.PNA-3320/2005 -New No.005604 has been cancelled permanently with immediate effect vide the official proceedings of the Sub District Appropriate Authority/ Chief Medical Officer (under PCPNDT Act-1994) Government Hospital, Omalur, Salem District vide proceedings No.706/E/2014 dated 14.11.2008. It is further submitted that in case of any breach of Medical Practice caused by any Medical Practitioner, then the first respondent -Tamil Nadu Medical Council, is the competent authority, fully responsible for taking disciplinary action. Further, the writ petitioner has already taken an Oath before the first respondent Medical Council, Chennai while registering himself as a Medical Practitioner that he will not indulge in any illegal or criminal activities during the course of his above medical practice. But in the present case, the petitioner has violated the above undertaking given by him before the first respondent . Hence, the petitioner does not deserve any consideration and prays for dismissal of the writ petition.



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10. The whole case of the petitioner is that pursuant to the anonymous complaint, the petitioner's hospital was searched by the 2nd respondent in which no incriminating documents were seized and, therefore, no adverse order came to be passed. However, curiously, without passing any order, the 2nd respondent has made a false complaint against the petitioner, leading to the registration of the FIR culminating in C.C. No.873/2019. The show cause notice was the off-shoot of the FIR registered by the police authorities and the practice of the petitioner was suspended vide the impugned order dated 15.10.2021, by pointing out that the proceedings would be dependent on the outcome of the criminal case.

11. It is further placed on record before this Court that C.C. No.873/2019 had come to be quashed vide order dated 7.2.2022 by this Court in CrI. O.P. No.25384/2021. When the genesis of the criminal case itself has been quashed by this Court, the show cause notice and consequent suspension cannot be allowed to continue. Though elaborate contentions have been raised in the counter, however, all those points would fade into



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insignificance once the criminal case had been quashed by this Court, as the practice of the petitioner stood suspended only awaiting the outcome of the criminal case. Once the criminal case has been quashed, necessarily, the suspension imposed on the petitioner has to be revoked.

12. It is further to be pointed out that no appeal has been filed against the quashment of C.C. No.873/2019 by this Court. Such being the case, the said order of this Court in Crl. O.P. No.25384/2021 having attained finality, necessarily, the show cause notice, which is the off-shoot of C.C. No.873/2019 also cannot be allowed to continue and the suspension of the petitioner, which is predicated upon the show cause notice also cannot survive.

13. In such view of the matter, considering the entire materials available on record, the criminal complaint against the petitioner having already been quashed by this Court, the impugned order of suspension passed by the 1st respondent vide Ref. No.TNMC/DC120/2020 dated 15.12.2021 cannot be allowed to continue and, accordingly the order



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impugned herein is quashed.

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14. Accordingly, writ petition is allowed with direction to the first respondent to restore the practice of the petitioner. No order as to costs.. Consequently, the connected miscellaneous petition is closed.

07.08.2024

Vv

To

1. The Registrar,
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