

21.04.2025
Item No.10
gd/ssd

FMA/548/2025
DR GOURANGA KUMAR GHATAK
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2025

Mr. Bikash Ranjan Bhattacharya, ld. Sr. Adv.
Mr. Kamalesh Ch. Saha,
Ms. Payel Mitra,
Mr. S. Saha,
Mr. Arka Mukherjee,
Mr. Mishuk Saha
..for the Appellant.

Mr. Jahar Lal De,
Mr. Shamim ul Bari
..for the State.

Mr. Mr. Saibalendu Bhowmik,
Mr. Biplab Guha,
Mr. Rajsekhar Basu,
Ms. Srilekha Chattopadhyay
..for WBMC.

Mr. S.R. Saha
..for the Respondent No.4.

1. This intra court appeal at the instance of the writ petitioner is directed against the order dated 10th February, 2025 in WPA 29717 of 2024 by which the learned Single Bench declined to grant any interim order and directed affidavits to be exchanged.

2. Aggrieved by such order, the appellant has preferred the present appeal.

3. We have elaborately heard the learned senior advocate appearing for the appellant and the learned advocates appearing for the West Bengal

Medical Council and the private respondent who is the complainant.

4. The order impugned in the writ petition is an order of punishment passed by which the name of the appellant was removed from the register of Registered Medical Practitioners maintained by the West Bengal Medical Council for a period of two years from the date of communication of the said order. The said order has been notified in the Government Gazette on 13th May, 2024 and the order has been given effect to.

5. The appellant filed a statutory appeal before the Principal Secretary of Health, Government of West Bengal which was dismissed by a speaking order dated 6.9.2024.

6. Challenging this order, the writ petition has been filed. The question to be considered by this court is whether the appellant is entitled for grant of any interim order till the writ petition is heard and decided.

7. Elaborate submissions were made by the learned senior advocate for the appellant contending that the complaint was belated after a period of one month after the death of the patient and it is motivated.

8. Apart from that, there are several other procedural lacunae committed by the West Bengal

Medical Council and the entire decision making process is flawed.

9. Furthermore, it is contended that there has been violation of principles of natural justice and several other grounds which are in support of the appellant and the appellant having made out a prima facie case for entertaining the writ petition ought to have been granted an interim order.

10. We have heard the learned advocates for the respondents on the above submission.

11. It is always not a uniform principle of law that an interim order has to be granted whenever a challenge is entertained to an order passed by a statutory authority. There are situations where the court will exercise discretion when it is prima facie satisfied that there is an error of the decision making process and not granting an interim order was rendered challenging to the proceedings before a court of law as infructuous.

12. However, a universal rule cannot be laid down in this aspect and the matter has to be examined on a case to case basis.

13. In the instant case admittedly the order removing the name of the appellant from the register of Registered Medical Practitioners maintained by the West Bengal Medical Council was given effect to on 13.5.2024 and during the pendency of the statutory

appeal before the State Government the appellant did not have the benefit of any interim order.

14. Therefore, the order of removal from the register of Registered Medical Practitioners had taken effect on and from 13.5.2024.

15. Therefore, at this distance of time the question of granting an interim order would not arise as it would tantamount to setting aside the order of punishment passed by the West Bengal Medical Council which would have an effect of allowing the writ petition at an interim stage which is impermissible in law.

16. In this regard, we agree with the submission made by the learned advocate appearing for the West Bengal Medical Council.

17. We have also heard the learned advocates for the parties with regard to the procedural aspects.

18. However, though we had formed a prima facie opinion, we refrain from recording any such opinion in this order as it may prejudice the rights of the parties when the writ petition is being heard. The order of removal of the name of the appellant from the register of Registered Medical Practitioners has been passed by the West Bengal Medical Council and the appellate authority while dealing with the correctness of the decision has referred to the procedure adopted by the West Bengal Medical Council.

19. Therefore, the respondent/West Bengal Medical Council as well as the State should file their affidavits clearly explaining the procedure adopted by them which led to the ultimate decision of removal of the name of the appellant from the register of Registered Medical Practitioners for a period of two years.

20. Therefore, we are of the view that the learned Single Bench was justified in not granting the interim order till the disposal of the writ petition but directing affidavits to be filed so that the matter can be heard and decided on merits and in accordance with law.

21. For the above reasons, we find no grounds have been made out to interfere with the impugned order.

22. Accordingly, the appeal fails and the same is dismissed.

23. The private respondent/complainant has already filed the affidavit-in-opposition.

24. The West Bengal Medical Council and the State shall file their affidavit-in-opposition within two weeks from date; reply, if any, by the appellant be filed within two weeks thereafter.

25. Liberty to mention before the learned Single Bench for inclusion the matter for hearing after the expiry of the aforementioned time.

26. Inadvertent typographical error had crept into the order dated 16.4.2025.

27. In the order dated 16.4.2025, the case number 'MAT 548 of 2025' be read as 'FMA 548 of 2025'.

28. Other portions of the order dated 16.4.2025 shall remain the same.

29. Department is directed to incorporate necessary correction in the order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)