BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2025

PRONOUNCED ON : 03.07.2025

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.5568 of 2025
and
W.M.P.(MD).Nos.4062, 4064 and 5812 of 2025

Dr.M.G.Ethayarajan .. Petitioner

Vs.

1.The Director,
Directorate of Medical and Rural Health Services,
No.359, DNS Complex,
Annasalai,
Chennai – 6.

2.The Joint Director,
Medical and Rural Health Services,
Kanyakumari.

3.The District Collector,
Kanyakumari District. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 2nd respondent in Ref.No.550/E4/2025 dated 24.02.2025 and quash the same as illegal and consequently forbearing the respondents

from interfering in the practice of Medical Profession except under due process of law vide the petitioner's explanation dated 23.02.2025 given to the 2nd respondent in person.

For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel
for Mr.D.Saravanan

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

O R D E R

The present Writ Petition challenges the order passed by the second respondent in his proceedings in Ref.No.550/E4/2025 dated 24.02.2025 and for a further direction to the respondents not to interfere with the practice of medical profession by the petitioner, except in accordance with law.

Brief facts:

2.The petitioner is a medical doctor. He is running a clinical establishment under the name and style of “Irudhayams Hospital” at No.465/ABL Channel Bank Road, VN Puram, Nagercoil, Kanyakumari District. The affidavit and documents reveal that the petitioner completed his undergraduation in

Medicine from Madurai Medical College in 1986. He registered himself as a practitioner with the Tamil Nadu Medical Council in 1987. Thereafter, he has undergone the following training:

(i) Special training in General Medicine with the Government Headquarters Hospital at Nagercoil;

(ii) Special training in Pediatrics at the same institution;

(iii) Special training in Dermatology at the same institution;

(iv) Special training in Cardiovascular cartography at at the Center of Advanced Research and Development (CARD), Bangalore;

(v) Diploma in Non-invasive Cardiology from Tashkent Medical University;

(vi) Post Graduate Diploma in Health Sciences in Diabetology from Annamalai University;

(vii) Post Graduate in Clinical Cardiology from IMA AKN Sinha Institute of Continuing Medical and Health Education and Research, New Delhi;

(viii) Post Graduate Diploma in Health Sciences in Echo Cardiography from Annamalai University;

(ix) Master of Health Science (Preventive Cardiology) from Annamalai University;

(x) Master of Health Science (Diabetology) from Annamalai University; and

(xi) Special training in Enhanced External Counter Pulsation (EECP) technique from Clarity Medical Equipments.

3.The petitioner claims that he had gained experience in Cardiology by working under one, Dr.Arthanaree, M.D., D.M. (cardio) for nearly 10 years. The said Arthanaree is a Senior Interventional Cardiologist at Apollo Hospitals, Chennai with nearly 45 years of experience in the said field.

4.He claims that using cardiovascular cartography, a non-invasive method, he is able to detect coronary artery blocks. The

blocks that are detected are managed again by using non-invasive methods unlike Angiogram, Angioplasty or Bypass surgery, which require a expert Cardiologist or a Cardiovascular Surgeon. He claims to be trained in Enhanced External Counter Pulsation (EECP) techniques and Cartography and utilizing the said knowledge, he has been attending to patients with Nagercoil as his headquarters.

5.The cause of action for the present Writ Petition is a communication that he had received from the second respondent / Joint Director on 19.02.2025. On 19.02.2025, the second respondent issued a notice to the petitioner calling upon him to appear for an enquiry in the afternoon at about 4.00 PM, in order to verify the following details, which came to light at the time of inspection on the very same day by the second respondent in the forenoon:

(i) EECP (Enhanced External Counter Pulsation) equipment was being utilized in the clinical establishment of the petitioner;

(ii) Electro-cartogram equipments were being used in the clinical establishment; and

(iii) With only an MBBS qualification, the petitioner was treating persons, who required a Specialist in Cardio-medicine.

6.It is not in dispute that the petitioner appeared for enquiry on 19.02.2025 at 4.00 PM at the office of the second respondent at Nagercoil. On the very next day (20.02.2025), he was visited with Form-Y notice calling upon him to submit an explanation with respect to the complaints that had been received by the Joint Director. The notice reveals that the Joint Director had received an "oral complaint" from the District Collector, Kanyakumari District and that in pursuance thereof, an inspection was made the previous day and the following observations had been made:

(i) Without the opinion of the Cardiologist; EECP and Electro Cartogram are being used for the management of coronary artery patients by the doctor who is not qualified to treat cardiac patients;

(ii) Exorbitant charges are being collected for treating patients;

(iii) Running hospital using advertisement with unrecognised additional degrees and treating patients.

7.On 23.02.2025, the writ petitioner submitted his explanation.

(i) He stated that the first charge is erroneous because he takes the online consultation of Dr.Arthanaree, M.D., D.M.(Cardio) and consults Dr.N.B.Venkatraman, M.D., D.M.(Cardiology) at Nagercoil. He adds that as per National Medical Commission guidelines, Cartography and EECP treatment do not require a Cardiologist opinion.

(ii) Insofar as the second charge that is collecting exorbitant amounts from the patients, the writ petitioner denied the same and stated that he is charging as per NMC guidelines; that the laboratories, X-ray and pharmacy are outsourced and those operating the said facilities are only paying rent. He added that his hospital is

providing charitable treatment to poor patients.

(iii) On the third charge, i.e., running hospital using advertisement with unrecognised additional degrees, he pointed out that he has not made any personal advertisements and whatever advertisement has been given by the clinical establishment are strictly as per NMC guidelines.

8.He also relied upon the results thrown up by ChatGPT to assert that to administer EECP Therapy, a Physician should be an MBBS graduate and that a post-graduate degree in Cardiology or General Medicine would only be advantageous. In order to give EECP Therapy, the Physician administering the same should have undergone training programmes. He urged that for being a therapist, a Bachelor of Science in Nursing or Diploma in Nursing would be sufficient with some fundamental understanding of Cardiac Physiology and the completion of EECP training programmes.

9.After the receipt of the reply from the writ petitioner, the Tamil Nadu Clinical Establishments Act District Advisory

Committee of Kanyakumari District (TNCEA) met at the office of the second respondent. Of the several agendas of the day, the first agenda was "***to discuss and decide***" the action to be taken on the writ petitioner's hospital based on the inspection report of the appropriate authority. The Joint Director of Medical and Rural Health Services, Nagercoil is also the Chairman of the TNCEA Committee.

9.1.The Committee members decided that the letter head and the files of Irudhayams Hospital claims that it is "A Super Speciality Centre for Cardiology and Diabetology" and such claim is contrary to:-

(i) Section 3(3) of the Tamil Nadu Clinical Establishments Act and paragraphs 6.1.1, 6.1.2 and 7.13 of the then Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation of 2002, corresponding to the National Medical Commission Registered Medical Practitioner (Professional Conduct), Regulations, 2023, Chapter I Paragraph 3(B)(C)(D),

Professional Conduct of Registered Medical Practitioners (RMPs);

9.2.The claim of the petitioner that he is qualified in Diploma in Diabetology, M.D., Ph.D. (Cardio) is false. They are unrecognized and unregistered titles and as such, it is unethical attracting the provisions of the then Indian Medical Council (Professional Conduct, Etiquette and Ethics) paragraphs 6.1.1, 6.1.2 and 7.13, corresponding to National Medical Commission Registered Medical Practitioner (Professional Conduct), Regulations, 2023, Chapter I Paragraph 3(B)(C)(D), Professional Conduct of RMPs;

9.3.As Dr.Ethayarajan had not maintained records to show consultation with Specialist Cardiologists, while treating patients on cardiovascular cartography and EECP equipment, he had indulged in unethical practice which "*may*" cause harm to the patients treated by such methods.

10.On the basis of these discussions, the Committee

resolved to suspend the licence of the hospital until such period the hospital takes corrective action and reports about the same to the competent authority. On the basis of the inspection and the District Advisory Committee Resolution, the Competent Authority, namely, the second respondent suspended the licence of the hospital until corrective measures are taken and compliance report is submitted to him. Aggrieved by the same, the present Writ Petition.

11.I had entertained this Writ Petition on 28.02.2025 and granted an interim order.

12.Mr.S.Shaji Bino, learned Special Government Pleader took notice on behalf of the respondents and submitted that he will file a detailed reply and documents in support of the impugned order. I adjourned the matter to 10.03.2025, on which day, the papers were served on Mr.D.Saravanan. Since he sought time to go through the same, I adjourned the matter to enable him to do so.

13.I heard Mr.Sricharan Rangarajan, learned Senior Counsel for Mr.D.Saravanan for the petitioner and Mr.S.Shaji Bino, learned Special Government Pleader for the respondents.

Contentions of the Petitioner:

14.On the point of alternate remedy, Mr.Sricharan Rangarajan argues that there is a serious violation of principles of natural justice and since it interferes with the fundamental right of the petitioner to carry on his trade or profession, these two being well known exceptions to the doctrine of alternate remedy, he argues, he is entitled to maintain the Writ Petition.

15.He urged that the entire proceedings that have taken place, which culminated in the impugned order, suffers from patent violation of principles of natural justice. He pointed out that the inspection report of the second respondent dated 19.02.2025 was not served on the writ petitioner. This was further compounded by the fact that the report of the Enquiry

Committee, which met in the afternoon of 19.02.2025 at 4.00 PM, post the appearance of the petitioner, was also not served on him. In addition, he adds that the so called resolutions of the Advisory Committee dated 24.02.2025 were also not served on the petitioner. On the report of the Advisory Committee itself, which had been produced in the typed set of papers filed by the respondents, he points out that the agenda and the resolutions have the signature of the Chairman, Advisory Committee, Kanyakumari District alone and the signature of the other members are absent.

16.Leading me to the Tamil Nadu Private Clinical Establishments (Regulation) Act of 1997 (Act 4 of 1997), he points out that under Section 5, the competent authority is empowered to issue a show cause notice *suo motu,* or on receipt of the complaint calling upon the clinical establishment to show cause as to why licence may not be cancelled. After giving a reasonable opportunity of being heard, if the competent authority finds that there has been a breach of the provisions of the Act or the Rules

made thereunder or the conditions of registration, it can suspend the licence for such period as the competent authority deems fit or cancel the licence. He then points out from Section 6, if during the course of an inspection, the competent authority finds that there are some deficiencies, the competent authority should intimate the clinical establishment of such deficiencies and obtain its opinion with an advice on the action to be taken.

17.As per Section 6(3) of the Act, he states that the clinical establishment after taking the corrective action can inform the competent authority about the measures that have been addressed. If the explanation offered is unsatisfactory or if any corrective action has not been taken, the competent authority can pass such directions as he deems fit and the clinical establishment should comply with the same. The purpose of expounding Sections 5 and 6 by Mr.Sricharan Rangarajan is to point out that enquiry was commenced under Section 5 and halfway through, the competent authority shifted to Section 6 and finally passed a mixed bag order under Sections 5 and 6.

18.He states that such a procedure is not permissible either under the Act or the Rules made thereunder and hence, on this ground, the impugned order deserves to be set aside.

19.He urges that a licence of a clinical establishment can be suspended or cancelled, if it is a violation of any of the provisions of the Tamil Nadu Act 4 of 1997 or the Rules made thereunder or the conditions of registration. The competent authority cannot exercise the power of suspension on the ground that the petitioner's action violates the National Medical Commission Regulations. He states that it is the National Medical Commission, which has to take action for any violation of the regulations promulgated by it and the second respondent need not exceed his power and utilize those regulations to visit the petitioner with the consequences under Tamil Nadu Act 4 of 1997.

20.Apart from these legal submissions, he pointed out that the Tamil Nadu Legislative Assembly had amended Act 4 of 1997

by Tamil Nadu Act 19 of 2018, and had incorporated certain provisions in Act 4 of 1997. Under Section 2-F of the said Act, he states that the District Committee is empowered to "*aid and advise*" the competent authority in matters of registration of clinical establishments and perform such duties connected therewith. He urges that the District Committee in the present case had exceeded its jurisdiction by resolving to suspend the licence of the writ petitioner.

21.On merits, he invites me to the Tamil Nadu Clinical Establishments (Regulation) Rules of 2018 notified in exercise of its powers under Section 14(1) of the Act to point out that EECP and Cartography are not found in Annexure-I Part VIII, which deals with conditions for operation of clinical laboratories. He states that insofar as Cardiology is concerned, the Rules contemplate only Echo Cardiography (ECG) for which the qualification prescribed is any qualified Doctor, preferably a Cardiologist. The gist of this argument is that for running EECP and Electro Cartogram, there are no rules governing the same

and the demand by the second respondent that there should be a Cardiologist, who should perform this duty, goes beyond the prescription in the Rules and therefore, ultra vires.

22.Finally, he submitted that in case there is any violation of the National Medical Commission Regulations, the petitioner would comply with the same, but on his own, the writ petitioner had not indulged in any advertising claiming that he is a qualified Cardiologist. Even as per the enquiry reports and the impugned order, it is only in the letter pad and the files that Dr.Ethayarajan had printed his qualification as Ph.D., in Cardiology. This, according to Mr.Sricharan Rangarajan, would not amount to advertisement and therefore, even on that ground, the impugned order deserves to be interfered with.

Contentions of the Respondents:

23.Mr.S.Shaji Bino, learned Special Government Pleader, in response argues as follows:

(i)As preliminary point, Mr.Shaji Bino urges that against the order passed under Section 5 or 6 of the Tamil Nadu Private Clinical Establishments (Regulation) Act, 1997, an appeal is maintainable under Rule 14 of the Tamil Nadu Clinical Establishment (Regulation) Rules, 2018 (hereinafter referred to as 'TNCE Rules' for brevity), before the Director of Medical and Rural Health Services and without resorting to the same, this writ petition ought not to be entertained. He states that there is no violation of principles of natural justice and that the restrictions imposed through the TNCE Act complies with the requirements of Article 19(6) of the Constitution of India. Therefore, the petitioner cannot urge that it violates Article 19(1)(g) rights.

(ii)On an intimation given to the second respondent/ Joint Director of Medical and Rural Health Services, he decided to conduct a surprise inspection of the clinical establishment. Mr.Shaji Bino traces his power to Section 5 of Act 4 of 1997. He states that the inspection by the second respondent is not adversarial in nature and it is a mere preliminary fact finding

exercise. After noting the deficiencies in the clinical establishment, the Joint Director had formed a Committee consisting of himself, the Assistant Director and an expert in Cardiology, namely, Dr.Muralidharan, in order to arrive at a conclusive fact finding, on the basis of the interim finding arrived at by him, pursuant to the surprise inspection in the forenoon.

(iii)The Committee is also indulging only in a fact finding exercise. The petitioner was permitted to participate in the same. Questions were put to the petitioner and answers were elicited from him. It is on the basis of this conclusive fact finding report that the Form-Y notice was issued to the petitioner. Mr.Shaji Bino argues that till the stage of Form Y, the entire exercise is a mere fact finding exercise. As no adverse finding had been arrived at against the petitioner, there is no requirement to give copies of any of the reports to the petitioner. He relies upon the judgment of the Supreme Court in the case of ***Krishna Chandra Tandon Vs., The Union of India, (1974) 4 SCC 374***, to support this contention. In particular, he relies upon paragraph 16 of the said

judgment.

(iv)Proceeding further, Mr.Shaji Bino argues that the defence raised by the petitioner that two cardiologists are constantly available for consultation, is a false statement, as it is clear from the statement made by the petitioner himself to the Committee on 19.02.2025. He relies upon the answers given to question Nos.9 and 10 to urge that no records were maintained by the petitioner to show that Dr.Arthanaree and Dr.Venkatraman had been present in the hospital for the purpose of consultation being carried on by the patients. Hence, he states that the petitioner has been giving specialist treatment in cardiology, without cardiologists.

(v)He then draws my attention to Rule 2(o) of the Tamil Nadu Clinical Establishment (Regulation) Rules of 2018 to urge that an RMP should possess any of the Government Recognized medical qualification. He states, while it is not in dispute that the petitioner is an Undergraduate in Medicine, the degree that he

obtained with respect to Cardiology in Uzbekistan, is not a degree recognized by the National Medical Commission, nor has it been registered with the Tamil Nadu State Medical Council. This shows that the petitioner has been practising cardiology, when he is not entitled to do so, thereby, violating the aforesaid regulations.

(vi)He states that the National Medical Commission has statutorily issued Regulations in exercise of the powers under Section 27(1)(b), read with Sections 10(b)(f), 16(2), 57(2) (zd), (zi), (zl) and (zh) of the National Medical Commission Act of 2019. These Regulations are titled "National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations of 2023. The demand under 3(A) to 3(D) of the said Regulations is that a RMP should not claim to be a clinical specialist unless he/she possesses the said qualification in the specific branch of modern medicine and an NMC recognized training. He points out that the petitioner had projected himself to be a person possessing the following qualification, namely,

(I)M.B.B.S.,

(II)Diploma in Diabetology,

(III)M.D.,

(IV)Ph.D. (Cardio), and

(VS)Special Training in EECP.

(vii)He states this Ph.D., in Cardiology is not a recognized degree as it has been undergone in Uzbekistan, which is not one of the degrees recognized by the National Medical Commission. In other words, the argument of Mr.Shaji Bino is that in exercise of power under Section 5(2) of the TNCE Act, the second respondent is entitled to enforce the Ethics and Medical Registration Board (EMRB) Regulations notified under the National Medical Commission Act of 2019.

(viii)The next point urged by him is that the oral complaint given by the District Collector is recorded in the Form-Y issued by the second respondent. Even without an oral complaint under Section 5, the Joint Director is entitled to conduct a *suo motu*

enquiry into any clinical establishment and this does not in any way violate the Act or the Rules made thereunder.

(ix)On the point urged by Mr.Sricharan Rangarajan that only the Chairman of the District Advisory Committee had signed the committee report, Mr.Shaji Bino has produced the register of the TNCE Act, 1997, Committee Meetings. He states that a perusal of the Minutes would show that the total number of members is 8, of which, 5 members had attended and had passed the resolution. As sufficient quorum is available, the fact that the agenda, as well as the Minutes have been signed only by the second respondent does not make a difference to the case.

(x)The sheet anchor of his argument on the principles of natural justice is that, no prejudice had been caused to the petitioner on account of the non-furnishing of the preliminary enquiry report in the forenoon of 19.02.2025, conclusive fact finding report by the Committee on 19.02.2025 afternoon, and the discussion by the Committee on 24.02.2025. He relies upon

the judgment of the Supreme Court in the case of ***Union of India and ors Vs., Bishamber Das Dogra, AIR 2010 SC 3769***, in particular, paragraph No.11. He further points out that at no point of time, the petitioner claimed violation of principles of natural justice, nor disputed on the aspect that prejudice has been caused to him by virtue of non-furnishing of the two reports, dated 19.02.2025, or the discussion by the District Advisory Committee dated 24.02.2025.

(xi)He states the purpose of TNCE Act is to ensure that the practice of medicine is conducted in a proper manner. The aim of the Act is to prevent a person, who is not a specialist in a field, to claim that he is the practitioner in that field and therefore, all the actions that have been taken by the second respondent is in compliance with the legislation.

(xii)Lastly, he urges that the case sheet, files and letter pads maintained by the writ petitioner shows he had claimed to be a specialist in Cardiology, when he was not.

(xii) In the light of the above, he pleads that no relief ought to be granted to the petitioner and the Writ Petition deserves to be dismissed with costs.

Response of the Petitioner:

24.Mr.D.Saravanan, in response, states that the report dated 20.02.2025 had conclusively come to a conclusion that the petitioner had violated the provisions of TNCE Act and therefore, the report ought to have been furnished to him. He further adds that the submission of Mr.S.Shaji Bino that records were not sought for, is erroneous. This is because even as per the E-mail, dated 23.02.2025 sent from the petitioner to the second respondent, he had demanded the documents from the second respondent.

25.I have carefully considered the submissions of both sides. I have gone through the records.

26.Mr.S.Shaji Bino has raised a preliminary objection that the Writ Petition is not maintainable, since there exists an alternate remedy and an appeal under Section 7 of the TNCE Act. Hence, I have to address that argument first.

Analysis on alternate remedy:

27.Alternate remedy or "hands-off approach" is adopted by this Court when the matter can be better presented before the appellate forum. However, the very existence of the appellate remedy does not in any way interfere with, or circumscribe the jurisdiction of this Court under Article 226 of the Constitution of India. The High Court pushes a party to pursue an alternate remedy not on account of any rule, but on account of the fact that if the parties were sent to such a remedy, the disputes would get resolved expeditiously.

28.It is too well settled, yet, I have to point out that this issue has consistently been agitated right from the time we gave

ourselves the Constitution of India. As held by the Supreme Court in ***M/s.Radha Krishan Industries Vs. State of Himachal Pradesh and others, (2021) 6 SCC 771***, the rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. This Court can issue a Writ, despite the existence of an alternate remedy, under the following amongst other categories:

(i) When a Writ Petition has been filed for enforcement of fundamental rights protected under Part III of the Constitution of India or breach of fundamental principles of justice;

(ii) When there has been a violation of principles of natural justice;

(iii) When the constitutional validity of a legislation has been challenged;

(iv) When the proceeding is without jurisdiction or suffers from excess of jurisdiction; and

(v) Where the writ petitioner has lost his fault of

his own;

(vi) Where the alternative remedy is not as efficacious, convenient, or speedy as the remedy through writ petition.

Therefore, the fact that an appeal is entertainable does not mean this Court should throw out a Writ Petition.

29.The facts stated above show that there were two rounds of inspection and one meeting of the Advisory Committee constituted under the TNCE Rules. Mr.S.Shaji Bino urges that three reports, namely,

(i) that of the inspection done in the forenoon of 19.02.2025;

(ii) that of the enquiry committee in the afternoon of 19.02.2025;

(iii) the Advisory Committee report dated 24.02.2025,

were mere fact finding exercises and hence, the petitioner is not entitled for a copy of the same.

30.I am not in a position to agree with the said submission. Under the TNCE Act, the second respondent is certainly entitled to cause an inspection, including a surprise one and verify whether a clinical establishment is being carried on in accordance with the Act and the Rules made thereunder. During the course of such inspection, if he prepares a report and on that basis, takes further action, the person affected by such a report would certainly be entitled to a copy thereof. Even if I were to agree with Mr.Shaji Bino that the inspection conducted during the forenoon of 19.02.2025 is in the nature of a fact finding report, the same cannot be said about the Committee report that was prepared subsequently. On 19.02.2025, a Committee was formed by the second respondent consisting of his hierarchical subordinates, namely, the Assistant Director and a Professor at the Government Medical College. The typed set of papers filed by Mr.S.Shaji Bino shows that the petitioner was cross-examined by the Committee and the examination was taken down in writing. Thereafter, the Committee seems to have met and taken certain

decisions. The writ petitioner was not given a copy of the depositions, as well as the report prepared by the Committee.

31.In fact, the Committee had come to the following conclusions:

1. இருதயம்ஸ் மருத்துவமனை (P) Ltd., TNCEA பதிவில் குறிப்பிட்டபடி அல்லாமல் விதிமீறலாக Super Speciality Centre for Cardiology and Diabetology என்று விளம்பரம் செய்துள்ளது தெரிய வருகிறது.
2. திரு,M.G.இதயராஜன் மருத்துவ கவுன்சிலில் பதிவு செய்யப்பட்ட சிறப்பு தகுதிகள் இல்லாமல் இதய நோய்க்கான சிறப்பு சிகிச்சை நிபுணராக விளம்பரப்படுத்தியுள்ளது தெரிய வருகிறது.
3. தகுதி பெற்ற இருதய சிகிச்சை நிபுணர்கள் இல்லாமல் இம்மருத்துவமனையில் EECP, Cartography போன்ற உபகரணங்களை விதிகள் மீறி பயன்படுத்தப்பட்டுள்ளது தெரிய வருகிறது.

32.Though Mr.Shaji Bino urges that the Form-Y notice was issued on the basis of this Committee report, a perusal of the same shows otherwise.

33.The notice shows that "*an oral complaint*" had been lodged by the District Collector, Kanyakumari District, which was followed up with an inspection. Form-Y notice was issued a day after the Committee had met. Form-Y notice does not refer to this committee report at all. Instead, it refers to the observations that had been made by the Joint Director at the time of the inspection in the forenoon. This shows that the second respondent had relied upon the reports that he had prepared on 19.02.2025 for the purpose of visiting the petitioner with the notice under Form-Y.

34. The main grounds on which the petitioner was called upon to reply are as follows:

(i) Without the opinion of the Cardiologist, EECP and Electro Cartogram are being used for the management of coronary artery patients by the doctor who is not qualified to treat cardiac patients.

(ii) Exorbitant charges are being collected for treating patients.

(iii) Running hospital using advertisement with unrecognised additional degrees and treating patients.

35.The petitioner, in his response on 23.02.2025, had sought for the copies of the documents. Yet, the same were not furnished to him. During the meeting held on 24.02.2025 of the TNCEA District Advisory Committee, the very conclusions that had been arrived at by the Committee on 20.02.2025 had been a subject matter of discussion. This shows, not only the earlier reports had been circulated among the committee members, but they had also been relied upon by them to resolve that the licence of the petitioner's hospital be suspended. This implies that the documents on the basis of which proceedings were initiated against the writ petitioner were not furnished to him. One of the fundamental principles of natural justice is that the authority has to share the documents, unless and until they are privileged, with the person who has to answer the accusation and thereafter, hear him and only then, pass orders. Since this fundamental principle of natural justice has been violated in this case, I am constrained

to reject the argument that I have to non-suit the writ petitioner as there is an alternate remedy available to him.

Oral complaint:

36.It is not unknown that a superior officer informs a subordinate orally to initiate action. In this case, I would not hold the District Collector, Kanyakumari District as a superior authority to the second respondent. However, the entire exercise seems to have been triggered off by an oral complaint allegedly lodged by the District Collector, Kanyakumari District.

37.The Supreme Court in ***T.S.R.Subramanian and others Vs. Union of India and others, (2013) 15 SCC 732***, dealt with a similar situation. The Supreme Court was called upon to decide whether there can be a direction that every civil servant formally record all instructions/directions, orders, suggestions, not only from the administrative superiors, but also from other quarters in the file. Before concluding on this issue, the Supreme Court referred to the All India Service (Conduct) Rules of 1968. Under

Rule 3(3)(iii) of the said Rules, a direction has been given to every member of the All India Service that in performance of official duties or in exercise of the powers conferred on them, they have to record the oral directions, and the same should be reduced in writing as early as possible and that it is the duty of the superior to confirm the same.

38.Similar rules have not been made in the State of Tamil Nadu, nor was I able to trace any such direction in the District Officers Manual. Hence, in this situation, the observations made by the Supreme Court becomes relevant. The same is extracted hereunder:

> *"**37.** We have extensively referred to the recommendations of the Hota Committee, 2004 and Santhanam Committee Report and those Reports have highlighted the necessity of recording instructions and directions by public servants. We notice that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in authority. Santhanam Committee on Prevention of Corruption, 1962*

has recommended that there should be a system of keeping some sort of records in such situations. Rule 3(3) (iii) of the All India Service Rules specifically requires that all orders from superior officers shall ordinarily be in writing. Where in exceptional circumstances, action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing. The civil servant, in turn, who has received such information, is required to seek confirmation of the directions in writing as early as possible and it is the duty of the officer superior to confirm the direction in writing.

38. *We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility*

and ensure accountability in the functioning of civil servants and to uphold institutional integrity.

RTI Act and Civil Servants

39. *Democracy requires an informed citizenry and transparency of information. The Right to Information Act, 2005 ("the RTI Act") recognises the right of the citizen to secure access to information under the control of public authority, in order to promote transparency and accountability in the working of every public authority. Section 3 of the Act confers right to information to all citizens and a corresponding obligation under Section 4 on every public authority to maintain the records so that the information sought for can be provided. Oral and verbal instructions, if not recorded, could not be provided. By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive, etc. would defeat the object and purpose of the RTI Act and would give room for favouritism and corruption."*

39.I searched the files in vain as to whether the Joint Director had recorded the contents of the oral complaint given by

the District Collector. The Joint Director has not recorded the contents of the oral complaint in the file. I should remember that the District Collector, being a member of the Indian Administrative Service, should have scrupulously followed All India Service (Conduct) Rules, which applies to the said authority. The oral complaint ought to have been followed up by a written complaint. That too, is not found in the files. It is only from the Form-Y notice that one gets to know that such an oral complaint had been lodged. As to what are the circumstances, which made the District Collector to make an oral complaint, what are the contents of the oral complaint, and as to why it was not recorded in the files, throw a huge and a dark cloud around the initiation of the proceeding.

Violation of Principles of Natural Justice:

40.There are three reports in this case. The first is the forenoon inspection report dated 19.02.2025. This was a report prepared by the Joint Director. Based on an inspection in the forenoon, a Committee was formed and this Committee had met

on the afternoon of 19.02.2025. The enquiry proceedings, which contained the questions and answers by the petitioner, were not served on him. The Committee, which met in the afternoon of 19.02.2025, prepared a report on 20.02.2025. This report too was not served on the writ petitioner. Finally, the proceedings of the District Advisory Committee under the Tamil Nadu Act 4 of 1997 was also not served on the petitioner. What was served on the petitioner is only the impugned order dated 24.02.2025.

41.When this Court queried Mr.S.Shaji Bino as to why these reports were not served, his answer was that all these were reports of fact finding bodies and it is not necessary to serve the same on the petitioner. Further, he added that since they are fact finding bodies, no prejudice would be caused to the petitioner and that the petitioner did not seek for these documents and hence, the petitioner cannot plead violation of principles of natural justice.

42.Mr.Shaji Bino placed heavy reliance upon the judgment in ***Krishna Chandra Tandon Vs. The Union of India, (1974) 4 SCC 374***, to urge that inter-departmental communication need not be furnished to a delinquent. A casual perusal of the said judgment could be in support of Mr.Shaji Bino's contention. However, a detailed perusal of the judgment reveals the position as otherwise. That was a case which arose in a situation where there was a relationship of an employer and employee between the petitioner and the respondents. The Commissioner of Income Tax had received reports from his departmental subordinates and he chargesheeted the writ petitioner. It was argued that the reports given by the subordinates had not been furnished to the petitioner. The Supreme Court rejected this argument holding that an authority in order to constitute a disciplinary enquiry requires *prima facie* materials and therefore, he can call upon his subordinates to investigate the matter and report to him. Hence, the Court concluded that these documents are of no real importance to the petitioner therein. It is pertinent to point out that in paragraph 16 of the said judgment, the Supreme Court

pointed out that if the Enquiry Officer relies upon the said documents for the purpose of arriving at a conclusion, then, the copies should be given to the delinquent.

43.In the present case, I have already pointed out that the Joint Director of Health Services had relied upon the inspection reports dated 19.02.2025 while issuing the Form-Y notice. Yet, he did not deem it fit to serve those reports on the writ petitioner. Hence, applying the judgment in ***Krishna Chandra Tandon*'s** case, I have to conclude that there has been a violation of principles of natural justice, as the reports relied upon by the second respondent, had been kept away from the writ petitioner.

44.Principles of natural justice is not a strait jacket formula. If the aforesaid documents were merely fact finding reports and they had not been relied upon by the respondents, prior to passing of the order, I might have been persuaded to accept the argument of Mr.Shaji Bino. The reports are not mere inter-departmental communications between the second respondent

and an officer subordinate to him. The reason for constitution of the Committee on the afternoon of 19.02.2025, was the spot inspection report conducted in the forenoon. It was the report prepared by the expert committee on 20.02.2025, which triggered the meeting of the Advisory Committee on 24.02.2025. Even in the Form-Y notice issued on 20.02.2025, it is clear that the second respondent relied upon an inspection report dated 19.02.2025 and observations made therein. Hence, it shows not only an inspection was conducted and report prepared, but the same was relied upon by the second respondent in order to visit the petitioner with the Form-Y notice and the impugned order.

45.With respect to the plea that the petitioner did not demand for the same, I have to hold that the submission of Mr.S.Shaji Bino is far from reality. Mr.Shaji Bino has produced the E-mail sent by the writ petitioner on 23.02.2025 at 18.03 hours. This E-mail was in response to the Form – Y notice dated 20.02.2025. In that e-mail, the petitioner had specifically stated as follows:

"If you want any further clarifications, I am ready to clarify it on receipt of proper letter with copies of documents from your end."

This shows that the petitioner had not only demanded a proper letter from the second respondent and had also sought the copies of the documents. Yet, they were not furnished to the petitioner.

46.Insofar as the plea of prejudice is concerned, I am unable to appreciate the submission of the respondents. The petitioner has been running a hospital since 2019. By virtue of the impugned order, his right to practice the profession has been adversely affected. To state that when a person's right to run a hospital has been suspended and it does not cause prejudice, is to mock at the constitutional right granted under Article 19(1)(g) of the Constitution of India.

Examination of Dr.Muralidharan and Non-examination of Dr.Arthanaree and Dr.N.B.Venkatraman:

47.It is the specific case of the petitioner that whenever a patient required specialist consultation, he used to get in touch with Dr.Arthanaree, M.D., D.M (Cardiology), Senior Interventional Cardiologist of Apollo Hospital, Chennai and with Dr.N.B.Venkatraman, M.D., D.M (Cardiology), Nagercoil. The Committee, which was constituted in the afternoon of 19.02.2025, did not take the effort to contact either of these two cardiologists before concluding that the petitioner is indulging in a specialised field of medicine without the assistance of those possessing the requisite and eligible qualifications. When the petitioner has been accused of having been treated patients without an expert advice and when the petitioner states that he has been taking online consultations with the aforesaid persons, the least that the Committee should have done is to enquire into the factual scenario prior to concluding the same.

48.The records produced by Mr.Shaji Bino show that the second respondent did not even make an attempt to consult an

independent cardiologist to arrive at a conclusion. He received an opinion from Dr.Muralidharan, who was a part of the Committee, which enquired the petitioner on 19.02.2025 to conclude that Cartography and EECP treatment require the expertise of a cardiologist. Even a fig leaf, to cover the confirmation bias, has not been adopted by the second respondent.

49.Dr.Muralidharan, being a part of the Committee, which was called upon to submit a report, ought not to have actively participated and submitted a report affirming the opinion that was to be arrived at by the second respondent is correct. Being a part of the Committee, he could not have been a witness in the said proceedings. If the second respondent felt that Dr.Muralidharan is an expert in the field, he should have constituted a Committee excluding Dr.Muralidharan and should have summoned him as an expert. A person cannot be a member of the Committee and at the same time, be a witness before the same. This aspect looms large because the petitioner's specific stand in his response to the Form-Y notice is that, as per

National Medical Commission Guidelines, Cartography and EECP treatment does not require a cardiologist's opinion. He had further pointed out that he is not giving any interventional treatment, but is only advising a change in lifestyle on the basis of the report that is submitted to him.

50.I rely upon the judgment of the Constitution Bench of the Supreme Court in ***State of Uttar Pradesh Vs. Mohammad Nooh, [1958 SCR 595]***. In that case, an enquiry was commenced against the respondent. One of the issues involved in the enquiry was whether a particular typist was in a close and friendly relationship with the delinquent. During the process of enquiry, the enquiry officer gave a statement that the delinquent had admitted that such a relationship existed between the typist and himself in his presence. This statement of the enquiry officer was denied by the delinquent. In those circumstances, it became necessary for the contradictory statement to be recorded. The presiding officer / enquiry officer, namely, one Shri.B.N.Bhalla had his testimony recorded by the Deputy Superintendent of

Police. The respondent raised a grievance before the Supreme Court that Shri.B.N.Bhalla, who had tendered evidence in the case contradicting his statement, acted as a witness. Hence, he ought not to have continued as the presiding / enquiry officer in the matter.

51.Taking note of the circumstances, the Supreme Court held that an enquiry / presiding officer cannot play two roles, namely that as a witness and that as an enquiry officer. It concluded that the act of the presiding officer, in having his own testimony recorded in the case, indubitably evidences his state of mind which clearly discloses considerable bias against the respondent. Justice S.R.Das after recording the aforesaid facts held:

> "*If it shocks our notions of judicial propriety and fair-play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the Unreality and futility of the proceedings Conducted in this fashion.*"

52.It is not in dispute that Dr.Muralidharan was a part of the committee. It is also not in dispute that Dr.Muralidharan had recorded a statement prejudicial to the interest of the writ petitioner. This expert view, had been relied upon by the committee which met on the afternoon on 19.02.2025, while submitting its report. It is clear from point No.2 of the final report. It is here that I have to recollect the view of ***Lord Atkinson in Frome United Breweries Vs. Bath Justices, [1926 AC 586]***. His Lordship held as follows:

> *"It could not possibly have been intended by this statute to authorize a practice which would, I think, be inconsistent with the proper administration of justice — namely, that a licensing justice, one of the members of the compensation authority, should, on a given occasion, descend from the Bench, give his evidence on oath, and then return to his place upon the Bench to give a decision possibly based on his own evidence."*

53.In this case, it is not a case of possibility as stated by Lord Atkinson, but an eventuality. Dr.Muralidharan's expert opinion had been relied upon by the enquiry committee which submitted its report on 20.02.2025. This seriously vitiates the entire proceedings. The act of relying upon the report of Dr.Muralidharan violates atleast three well known maxims which deal with bias or interest. They are:

(i)No man shall be a judge in his own cause;

(ii)Judges like Caesar's wife should be above suspicion; and,

(iii)Justice should not only be done but should manifestly and undoubtedly be seen to be done.

54.The 2nd respondent knowing pretty well that Dr.Muralidharan was part of a committee, ought not to have called him to tender evidence as a subject expert.

55.I should not forget here to point out that Dr.Muralidharan, D.M.(Cardiology) is an Assistant Professor in the Kanyakumari Government Medical College and Hospital. The

person, who was conducting the enquiry, was no less than the Joint Director of Health Sciences, Kanyakumari District at Nagercoil.

Excess of jurisdiction:

56.The Tamil Nadu Private Clinical Establishments (Regulation) Rules of 2018 specifies the minimum facilities that should be available in a clinical establishment. The power to specify such minimum facilities is found under Rule 6 of the said Rules. The details thereof are set forth with pain staking detail in Annexure-I. The application made by the petitioner, which has been produced by Mr.Shaji Bino, shows that the clinical establishment applied as a hospital indulging in “general practice services”. The requirements for hospital are found under Chapter IV of Annexure-I. It does not deal with cartography or EECP equipment. Under Clause 2 of Sub-chapter IX of Annexure-I, which deals with Radiograph Centres, certain qualifications are fixed for ECG, EEG and other equipments. EECP and Cartography are not found therein.

57.Even if I were to treat the hospital as a Radiograph Centre, an ECG can be operated by a technician, whereas for an echo-cardiograph, the qualification prescribed is a qualified doctor, **preferably** a Cardiologist. This shows that an echo cardiograph or an echo cartogram can be performed by a person possessing the qualification of MBBS alone. Nowhere under Annexure-I, does it specify that Cartography and EECP require a cardiologist.

58.When the statutory rules, which have been framed in exercise of the powers under Section 14(1) of Act 4 of 1997, does not prescribe any qualifications, the second respondent erred in receiving a report from a co-member of the Committee to conclude that these two equipments require a Cardiologist. However eminent Dr.Muralidharan may be in this field, his opinion is not entitled to be given the same status as the statutory rules. When the Rules do not prescribe any standards, to visit the petitioner with an order of suspension on the basis of

a non-existing rule is in excess of jurisdiction conferred on the authority.

Interpretation of Section 5 of Act 4 of 1997:

59.The power to suspend or cancel registration is vested with the competent authority under the aforesaid Act. Under Rule 5(2), after giving a reasonable opportunity of being heard, the competent authority, if he reaches a conclusion that there has been a breach of any of the provisions of the Act or the Rules made thereunder, he may suspend the registration for such period as he thinks fit, or cancel the registration.

60.Rule 5(2) requires,

(i) an opportunity of being heard,

(ii) the existence of breach of any of the provisions of the Act or breach of any provisions of the Rules made thereunder,

prior to reaching the conclusion.

61.The impugned order has been passed on the basis of the

District Advisory Committee's report. The findings given in the impugned order are:-

(i) Without the opinion of a Cardiologist, EECP and Electro Cartogram are being used by a Doctor.

I have already pointed that these two equipments are not covered under the statute or the 2018 Rules and therefore, it cannot be treated as breach of the statute and the Rules.

(ii) Insofar as the second ground that exorbitant charges are being collected for treating patients is concerned, I have called for the files and have gone through the same. There is absolutely no evidence to show that the petitioner has been charging exorbitant fees. In addition, the Tamil Nadu Clinical Establishments Act and Rules do not fix the rate that can be charged by a Doctor. Therefore, this too is not covered by the Act and Rules.

(iii) The third ground is that the petitioner has been advertising unrecognised additional degrees and treating

patients. Apart from the prescription slip, no other evidence is before the authorities to show that there has been an advertisement.

62.As to what is an advertisement, is not defined under the Act or the Rules. Hence, I am referring to the Oxford Advance Learners Dictionary to find out the meaning of the word "advertisement". It is defined in the Oxford Dictionary as follows:

> "*(i) A notice, picture or film telling people about a product or service;*
>
> *(ii) An example of something showing it has good qualities; and*
>
> *(iii) An act of advertising something and making it public.*"

63.I am also referring to Black's Law Dictionary 10th Edition in order to find out if law has defined as to what 'advertisement' means. According to Black's Law Dictionary, 'advertisement' means,

> "*a commercial solicitation, an item published or transmitted material made with the intention of attracting clients or customers.*"

64.By the very nature of things, a prescription is given in private by the Doctor to her / his patients. Law has developed a concept of privacy when it comes to matters relating to medical treatment. A Doctor is not supposed to disclose as to what is prescribed to one patient, to another. This right has been raised to such an extent in certain countries, including ours, that unless and until the patient concedes to the disclosure of the information, the Doctor should not do so, even to close or blood relatives.

65.A prescription issued cannot be treated as a commercial solicitation. The petitioner is a medical graduate, and a post graduate from The Annamalai University. The records produced by the petitioner points out that he has undergone training in Clinical Cardiology under the guidance of the Indian Medical Association, AKN Sinha Institute. He has also acquired post graduation and diploma qualification in Diabetology. The diploma that he has obtained from Tashkent Medical University shows that he is specialised in Non-invasive Cardiology.

66.Mr.Shaji Bino is right that the petitioner is not entitled to use his foreign qualifications without the same being certified by the National Medical Commission. However, it is one thing to say that he is not entitled to use the qualification, and yet another to state that he has advertised these qualifications. There is no record before the competent authority to show that the petitioner had indulged in commercial solicitation to attract patients holding out that he is an expert in Diabetology or Cardiology. Law does not prevent one from puffing up one's abilities, as long as such puffing up does not affect the right of any person. As the ground of advertisement too fails, and is not covered by Act 4 of 1997, I have to conclude that it is a case of exercise of a power not vested with the second respondent.

67.When this was pointed out to Mr.Shaji Bino, he invited my attention to the succeeding sentence in Section 5(2),

> *"....without prejudice to any other action that it may take against such private clinical establishment."*

Hence, he pleads that the second respondent possesses the jurisdiction.

68.I am not able to agree with the said submission. This is for the simple reason that Section 5 is a complete code when it comes to suspension or cancellation. There may be instances, where in addition to suspension or cancellation, the authority would contemplate on same further course of action. It is that situation, which is covered under Section 5(2). In order to invoke Section 5(2), the competent authority should be satisfied that there is breach of provisions of the Act or the Rules. If there are no breach of provisions of the Act or the Rules, he is not entitled to invoke Section 5(2). Consequently, the plea of Mr.Shaji Bino deserves rejection and it is accordingly rejected.

Violation of the NMC Act and the Rules made thereunder:

69.During the course of arguments, Mr.S.Shaji Bino urged that the District Advisory Committee and the second respondent

are entitled to refer to the National Medical Commission Act of 2019 and the Tamil Nadu Medical Council (Professional Conduct, Etiquette and Ethics) Regulations of 2003, while dealing with the case under Act 4 of 1997.

70.This argument need not detain me for long. The Tamil Nadu Medical Council Regulations of 2003 have been framed pursuant to the Tamil Nadu Medical Registration Act of 1914. Under Chapter 8 of the Regulations, the power to punish is vested only with the Tamil Nadu Medical Council. An appeal is provided before Professional Ethics Body created under the National Medical Commission Act.

71.The purpose of the Advisory Committee and the competent authority under Act 4 of 1997 is only to enforce that Act and rules. There are separate bodies like the Tamil Nadu Medical Council and the National Medical Commission, which have been empowered to deal with any infringement of the Tamil Nadu Medical Registration Act and Rules made thereunder, and

the National Medical Commission Act and Regulations made thereunder.

72.The jurisdiction and role of the authorities under Tamil Nadu Act 4 of 1997 cannot be expanded to include enforcement of two different legislations. In case, a Doctor indulges in professional negligence, perhaps, the competent authority under Act 4 of 1997, can write to the Professional Ethics Body to take action against the Doctor. He is not entitled to exercise the power, either under the Tamil Nadu Medical Council or that of the National Medical Commission. The power of the second respondent is traceable only to Act 4 of 1997 and it cannot be expanded to other Acts. Therefore, the second respondent is legally incompetent to deal with any infraction of the aforesaid legislations and regulations made thereunder. This conclusion should not be understood to state that the second respondent is not entitled to lodge a complaint or bring it to the notice of the appropriate authorities about the infringement of those legislations. He is certainly entitled to do so as an informant, but

he cannot exercise the power vested with the bodies created under those legislations.

73.Normally, when the Court comes to the conclusion that there is a violation of principles of natural justice, the Court would set aside the order and remand the matter for the authority to take a fresh call. Both the counsels in the present case also argued on the point of jurisdiction. When the authority has no jurisdiction, I cannot remit the matter to the said authority for the purpose of re-consideration. In the aforesaid paragraphs, I have concluded that not only there is a violation of principles of natural justice, but also there is a lack of jurisdiction in the second respondent to deal with the matter as there are no violations of the Tamil Nadu Clinical Establishments Act or the Rules made thereunder. Hence, I am not remanding the matter to the second respondent.

74.In the light of the above discussion, the impugned order is quashed not only on the ground of principles of natural justice,

but also on the ground of lack of jurisdiction. Accordingly, the Writ Petition is allowed. The petitioner will be entitled to costs in this Writ Petition. The petitioner shall file a cost memo within a period of one (1) week from the date of this order. Consequently, connected miscellaneous petitions are closed.

03.07.2025

NCC : Yes / No
Index : Yes / No
Internet: Yes / No

Lm / krk

To

1.The Director,
Directorate of Medical and Rural Health Services,
No.359, DNS Complex,
Annasalai, Chennai – 6.

2.The Joint Director,
Medical and Rural Health Services,
Kanyakumari.

3.The District Collector,
Kanyakumari District.

V.LAKSHMINARAYANAN,J.

Lm / krk

W.P.(MD).No.5568 of 2025

03.07.2025