

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

**WPA 29717 of 2024
DR. GOURANGA KUMAR GHATAK
VS
THE STATE OF WEST BENGAL AND ORS.**

For the Petitioner : Mr. Bikash Ranjan Bhattacharya,
Mr. Kamalesh Chandra Saha,
Ms. Payel Mitra,
Mr. Anurag Basu,
Ms. Piali Santra,

For the State : Mr. Jahar Lal De, A.G.P,
Mr. Shamim Ul Bari

For the WB Medical Council : Mr. Saibalendu Bhowmick,
Mr. Rajsekhar Basu,
Mr. Biplab Guha,
Mr. Subrata Bhattacharjee
Ms. Srilekha Chattopadhyay

Hearing concluded on : 24.02.2026

Judgment on : 19.03.2026

Sugato Majumdar, J :

The instant writ petition was filed, praying for issue of the writ of the nature of mandamus, certiorari and others.

The sum and substance of the writ petition is that the Petitioner was a medical practitioner who obtained M.B.B.S. degree from Rajsahi Medical College,

Bangladesh in the year 1974. After serving as lecturer in Rajsahi Medical College for a short period, he came to India in the year 1976. The Petitioner practiced as Gynecologist and Obstetrician.

One Moumita Sadhukhan, wife of the Respondent No. 4 (hereinafter mentioned as “the Patient”) had problem of infertility and she had been examined by the Petitioner in the year 2017. The Patient conceived sometime in early 2019 and was under treatment of the Petitioner during pregnancy. On 28/10/2019, the said Moumita Sadhukhan was advised to be admitted to Megacity Nursing Home for treatment. She had labour pain too. On consultation with the Respondent No. 4, caesarian section was done. Since the condition of the said Moumita Sadhukhan, the Patient, was stable, the Petitioner left the nursing home in the morning of 29/10/2019. In course of the day the Patient’s condition deteriorated and another doctor examined her. Gradually, the condition of the Patient deteriorated and was shifted to the intensive care unit. But the Patient ultimately expired.

The Respondent No. 4, being the husband of the Patient, lodged complaint with the West Bengal Medical Council, the Respondent No.2, alleging gross medical negligence. Explanation was sought for from the Petitioner by the Respondent No. 2 and disciplinary proceeding followed where the Petitioner and other witnesses were examined. Opinion of one expert doctor was also taken in course of the said disciplinary proceeding. After conclusion of the proceeding, the Petitioner was charged-sheeted on 15/01/2021. The charge-sheet dated 15/01/2021 was replied by the Petitioner in terms of his reply dated 05/02/2024.

On 15/05/2024, the Petitioner received a letter dated 13/05/2024, issued by the Registrar, West Bengal Medical Council, the Respondent No. 3 herein. From the said letter, it appeared that the West Bengal Medical Council, in its meeting held on

09/05/2024 had passed a decision to remove the name from the Register of the Registered Practitioners, the name of the Petitioner for two years under Section 25(a) (ii) of the Bengal Medical Act, 1914.

The Petitioner preferred an appeal on 22/05/2024 before the Principal Secretary, Department of Health & Family Welfare, Government of West Bengal, the Respondent No. 5 herein, in terms of Section 26 of the Bengal Medical Act, 1914. The said appeal was heard and dismissed on 06/09/2024, confirming the order dated 09/05/2024.

According to the Petitioner, the Order dated 09/05/2024 and the Order of the Appellate Authority dated 06/09/2024 is bad in law. Therefore, the Petitioner challenged the orders herein and prayed for issue of various writs effectually to set aside the orders.

Respondent Nos. 2 and 3, in affidavit-in-opposition, refuted the allegations made by the writ Petitioner. Apart from dealing with factual aspects, it was contended that the Bengal Medical Act, 1914 is a self-contained statute court having self-contained adjudicatory machinery with remedial measure of preferring appeal under Section 26 of the said Act. The Central Act of 2019 confers limited scope of further appeal. It was further contended that while conducting enquiry and passing orders, rules frame were scrupulously followed by the State Medical Council dealing with the complaint case. According to the answering Respondent Nos. 2 and 3, the writ Petitioner did not prefer statutory appeal before the National Commission under the Central Act of 2019. The extraordinary writ jurisdiction cannot be invoked as a substitute of appeal before the National Commission. In nutshell, it was contended that the writ petition should be dismissed.

Respondent No. 4, the private complainant being the husband of the Patient also filed affidavit-in-opposition. Apart from dealing with factual aspects of the matter and refuting allegations, it was contended that there was no unconstitutionality in the orders passed by the West Bengal Medical Council or the Appellate Authority.

Another affidavit-in-opposition was filed by the Respondent No. 5. Referring to Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and the provisions of Bengal Medical Act, 1914 the orders passed, were supported. The various factual aspects were also dealt with in details.

The Petitioner filed affidavit-in-reply, refuting the contentions of affidavit-in-opposition. Among others, it was contended that the writ petitioner preferred appeal against the order dated 13/05/2024. Hearing of the appeal was delayed. Finally, after passing of the order by the Appellate Authority, an application was preferred before the National Commission. It was contended that the Authority of the National Medical Council did not cooperate with the Petitioner though the matter was so urgent. According to the Petitioner, this is the cause for filing the instant writ application.

Mr. Bikash Ranjan Bhattacharya, the Learned Senior Counsel for the Appellant, submitted that the enquiry proceeding drawn up against the Petitioner was perfunctory and the findings of the Medical Council was not based on evidence adduced. Enough evidence was there to refute the allegations of negligence levelled against the writ Petitioner. This apart, the expert opinion which formed the basis of findings of the Bengal Medical Council was not objective and rational. In nutshell, it was argued by Mr. Bhattacharya that the impugned orders should be set aside.

The Learned Counsel appearing for the Respondent No. 4, which was adopted by the other Respondents, argued that while conducting enquiries at both initial stage and appellate stage, provisions of Bengal Medical Act, 1914 and Rules framed thereunder were meticulously followed. Section 30(3) and Section 30 (4) deals with the provisions of appeal for the aggrieved medical practitioners against the decision of the authorities under the said Act. It is trite law that there was no scope to interfere with the order passed by the Appellate Authority in exercise of extraordinary power of constitutional writ jurisdiction when avenue of further appeal is there. The writ court ought not to act as an appellate authority for re-appreciation of evidence for coming to different conclusion taken by statutory authorities. In fact, the principle limb of argument was the challenge to maintainability of the instant writ petition.

I have heard rival submissions.

The maintainability of the petition should be addressed first.

Section 25(a) (ii) provides for conducting enquiry into the infamous conduct in professional respect and consequent removal of the name of the practitioner from the register of Registered Practitioners. Section 26(i) provides for appeal against such order. The National Medical Commission Act, 2019 provides for remedial measure against the order passed by the State Medical Council or Ethics and Medical Registration Board. Admittedly, the Petitioner approached the Commission constituted under the Act. The order passed by the Bengal Medical Council is appealable and appeal was preferred by the writ Petitioner. Then the Petitioner was again aggrieved by the Order passed by the State Government and moved to the National Medical Commission. The Petitioner exhausted all the remedies and the matter became final decided. Now the Petitioner cannot reopen the matter invoking

extraordinary writ jurisdiction inviting this Court to embark on fact-finding and appreciating evidence where statutory remedies are available.

For reasons as aforesaid, this Court comes to the conclusion that the writ petition is not maintainable and stands dismissed without cost.

(Sugato Majumdar, J.)