
(1997) 03 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1410 of 1996

Dr. B. Ramachandraiah

APPELLANT

Vs

L.C. Obulesu and Others

RESPONDENT

Date of Decision : 28-03-1997

Acts Referred:

Andhra Pradesh Medical Practitioners Registration Act, 1968 — Section 15, 17

Citation : AIR 1998 AP 26 : (1997) 6 ALT 758

Hon'ble Judges : P.S. Mishra, C.J.;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, for the Appellant; C. Srinivasa Baba, (No. 1) and M. Chandrasekhara Rao, Standing Counsel (for No. 2), for the Respondent

Judgement

V. Rajagopala Reddy, J.—The appellant is not a party to the writ petition, but has been permitted to file the instant appeal under Clause 15 of Letters Patent against the order in W.P. No. 9725 of 1995. The 1st respondent, who is an Asst. Professor in the Government General Hospital, Kurnool, has filed the above writ petition questioning the legality and validity of an order passed by the 2nd respondent-Andhra Pradesh Medical Council, directing removal of the name of the 1st respondent from Medical Register, for a period of three months, holding him guilty of infamous conduct, in issuing an improper and false post-mortem certificate, on account of which the appellant had been implicated as an accused in a criminal case. Learned single Judge, having noticed the provisions of A.P. Medical Practitioners Registration Act, 1968, as amended by A.P. Medical Practitioners Registration (Amendment) Act, 1986 (for short, "the Act") and the Rules made thereunder, held that there was violation of statutory provisions and principles of natural justice and the enquiry by the A.P. Medical Council against the petitioner-1st respondent, was vitiated. The writ petition was therefore allowed and the impugned order in the writ petition was quashed. The appellant, having obtained leave for appeal from this Court, filed the instant writ appeal.

2. Facts, in brief, leading to the filing of the writ petition, are as follows ; In 1993

one Amrutaraj was murdered in Cuddapah town. The post-mortem examination was conducted by the appellant herein, who was then working as Civil Assistant Surgeon at District Headquarters Hospital, Cuddapah, In the said post-mortem examination the appellant found only two injuries on the abdomen and opined that the deceased died of shock and haemorrhage due to the said two injuries. In the inquest report four injuries on the body of the deceased were noticed i.e., two injuries on the abdomen, one injury on the head and another injury on the right eye-brow. In view of the discrepancy between the inquest report and the post-mortem report, at the request of the Investigation Officer, the body of the deceased was exhumed and another post-mortem examination was conducted by the 1st respondent-petitioner. The 1st respondent, thereafter, issued the post-mortem certificate stating that there were three injuries on the body of the deceased i.e., two injuries on the abdomen and 3rd injury on the head. On the strength of the second post-mortem certificate, a charge-sheet was filed against A. 1 to A.6 in the case and also against the appellant, u/s 201, I.P.C., as A.7, alleging that he issued a false post-mortem certificate without disclosing the head injury. The appellant was however, subsequently discharged as no sanction was obtained from the Government. Subsequently, the case ended in acquittal as against A.1 to A.6 also. The appellant, thereafter, made a complaint to the A.P. Medical Council stating that the police, in collusion with the other doctor-petitioner, managed to get a second postmortem certificate, which was false, which resulted in implicating the appellant as accused in the criminal case. Acting on the said complaint, the A.P. Medical Council conducted an enquiry against the petitioner-1st respondent and after considering the case in the light of the report submitted by the Expert Committee and the Ethical Committee, passed the impugned order holding the 1st respondent guilty of "infamous conduct".

3. The only serious objection raised by the learned Counsel for the appellant is that the alleged violations of rules, complained of by the 1st respondent did not cause serious prejudice in defending his case and hence the learned single Judge ought not to have quashed the impugned order and in any event the learned single Judge ought to have remitted the case to the 2nd respondent for a fresh enquiry. Learned Counsel for the 1st respondent, however, refutes the said contention submitting that the enquiry, being vitiated by violation of statutory provisions and principles of natural justice, the entire enquiry is null and void. Therefore, there is no question of making any further enquiry against the 1st respondent.

4. There is force in the contention raised by the learned Counsel for the appellant (respondent)., The grievance of the petitioner-1st respondent; was that Ss. 15 and 17 of the Act and Rules, 6, 10 and 11 (4) of the Rules framed thereunder and the principles of natural justice were violated, inasmuch as reasonable opportunity was not afforded to the 1st respondent to defend his case in the enquiry. His request for engaging a counsel to put forth his case properly was not granted. Fifteen days' notice before enquiry was not given as per Rule 6 of the Rules. His further request for postponement of the enquiry on genuine grounds

for a few days was also not granted. He was not allowed to cross-examine the complainant and material witnesses have not been examined. For consideration of the above objections, the learned single Judge, having exhaustively extracted the provisions of the Act, held that the Act is a self-contained code and an elaborate procedure is prescribed for conduct of an enquiry for taking action under Sections 15 and 17 of the Act. The Rules also envisage that the Council on receipt of a complaint may either appoint a Committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted under Sections 15 and 17 of the Act or direct that a regular enquiry be held by the Council or a Committee thereof appointed u/s 26 of the Act and the Rules thus envisage two types of enquiry i.e., a preliminary enquiry and a regular enquiry. The learned single Judge further observed that as the petitioner's reputation was at stake and the repercussion of the enquiry was grave in nature, the 1st respondent was entitled to be represented by a counsel in the enquiry. Learned single Judge found that the witnesses have not been permitted to be cross-examined and material witnesses were not examined. In view of this fact, the learned single Judge opined that grave prejudice was caused to the petitioner on account of the procedural violation in conducting the enquiry and therefore, the enquiry was vitiated and in the result the impugned order was liable to be quashed.

5. The Apex Court in *State Bank of Patiala and others Vs. S.K. Sharma*, , held that an order passed imposing punishment on an employee consequent upon disciplinary/Departmental enquiry in violation of the statutory provisions should not be set aside automatically. The Tribunal should enquire whether the provision violated is of substantive nature or of procedural in character. A substantive provision should normally be complied with, whereas in a case of procedural provision, a violation of such provision the enquiry can be set aside only where such violation occasioned prejudice to the employee. Where the enquiry is not governed by any rules, regulations or statutory provisions, the only obligation is to observe principles of natural justice. However, the Tribunal should make a distinction between total violation of principles of natural justice (Rule of *Audi Alteram Partem*) and violation of the facet of the said rules. In other words, a distinction must be made in between "no opportunity" and "no adequate opportunity", i.e., between "no notice/no hearing" and "no fair hearing". In the case of former, the order passed should be wholly invalid or void. In such cases, the management or the employer will be given the right to take proceedings afresh according to the law. But in the latter case, the effect of violation has to be examined from the stand point of prejudice; in other words, what the Tribunal has to see is whether in totality of the circumstances, the employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.

6. In *The Managing Director, Non-Conventional Energy Development Corporation of A.P. Ltd. and Another Vs. G. Tirupathi Rao*, , one of us (P. S. Mishra, C.J.) has noticed the discussion of the Apex Court in the *State Bank of Patiala and others*

Vs. S.K. Sharma, about the question whether a decision arrived at in violation of any and every facet of principles of natural justice is void and following the ratio of the case held that as a consequence of the setting aside the order of termination on the ground that adequate opportunity has not been given to the petitioner-respondent (in that case), though reinstatement should be followed, but the management should be given the freedom to proceed against the petitioner-respondent from the stage of the service of memo of charges and written statement having been received. The backwages were directed to be paid only when the employer had no reason to hold that the employee was unauthorisedly absent.

7. Following the principles laid down in the above cases and in view of the learned single Judge finding in the instant case that the enquiry was vitiated for the non-examination of the witnesses, 1st respondent not being afforded proper opportunity for his defence and also not being permitted to engage a counsel to argue his case, it has to be held that though there was an enquiry, it was no enquiry in the eye of law and that the same is null and void. A fresh enquiry is the only consequence. The Medical Council has therefore to conduct a fresh enquiry from the stage of service of memo of charges and issue of show cause notice dt. 7-2-95 and 1st respondent having given his explanation dt. 14-2-95 denying the charges levelled against him.

8. The A. P. Medical Council, 2nd respondent herein, is accordingly directed to conduct a fresh enquiry against the 1st respondent on the complaint given by the appellant, from the stage of service of memo of charges and issue of show cause notice dt. 7-2-1995 and 1st respondent having given his explanation dt. 14-2-95 denying the charges levelled against him. The enquiry shall be completed within two months from the date of receipt of a copy of this order and the parties shall cooperate in the expeditious conduct of the enquiry.

9. The order of the learned single Judge is modified and the appeal is accordingly disposed of. In the circumstances, no costs.