

(2013) 08 CHH CK 0037

In the Chhattisgarh High Court

Case No : Writ Petition (C) No's. 848 and 882 of 2013

Dr. Nalini Madhariya

APPELLANT

Vs

State of Chhattisgarh and Another
 Dr. Prajwal Soni Vs
State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Indian Medical Council Act, 1956 — Section 21
Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1987 — Section 15, 16, 16(2), 18, 29(1)

Citation : AIR 2013 Chh 185 : (2013) 3 BLJ 202 : (2014) 1 CGLJ 161

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : P. Sam Koshy, Mr. Saurabh Dangi, Ms. Fouzia Mirza, Mr. Chandresh Shrivastava and Mr. P.R. Patankar, for the Appellant; M.P.S. Bhatia, Deputy Government Advocate for the State, Shri Vaibhav Goverdhan, Advocate, Chhattisgarh Medical Council and None for the respondent-Dr. Kamalpreet Singh, President, Chhattisgarh Medical Council, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Since common facts and issue are involved in these petitions viz. W.P. (C) No. 848, 882, 897, 993, 1066, 972 and 1049 of 2013, thus, they are being disposed of by this common order. Challenge in these petitions is to the order dated 22.06.2013 passed by the Chhattisgarh Medical Council, Raipur, whereby the President, Chhattisgarh Medical Council (for short "the Council"), exercising his power u/s 29(1) of the Madhya Pradesh/ Chhattisgarh Ayurvedigyan Parishad Adhiniyam, 1987 (for short "the Act, 1987") and Regulations 8.1 & 8.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (for short "the Regulations, 2002"), has suspended the registration of the petitioners for a period of one year and the petitioners were further debarred from performing any activity as a medical practitioner. The petitioners were also directed to submit their original

registration certificate in the office of the respondent/Council.

2. Shri P. Sam Koshy, Shri Saurabh Dangi, Ms. Fouzia Mirza, Shri Chandresh Shrivastava, learned counsel appearing for the respective petitioners submit that the impugned order dated 22.06.2013 was passed by the respondent/Council without complying with the provisions of the Regulations, 2002 and without following the procedure as laid down for punishment and disciplinary action against the medical practitioners under Chapter 8 of the Regulations, 2002. They further submit that there is no provision for suspending the name of the medical practitioners from the register of the medical practitioners, on account of alleged misconduct without affording opportunity of hearing. The basic principle of audi alteram partem has also not been followed in these cases. Thus, the impugned orders deserve to be quashed.

3. On the other hand, Shri Bhatia, learned Dy. Government Advocate appearing for the State submits that the issue involved in these matters has already been looked into and reported by a Committee of experts. Shri Bhatia further submits that the impugned order has been passed after affording proper opportunity of hearing. The petitioners have responded to the notices issued by the respondent/Council. Shri Bhatia next contends that the petitioners have an efficacious remedy of appeal u/s 18 of the Act, 1987.

4. In addition to the above, Shri Goverdhan, learned counsel appearing for the respondent/Council submits that against the impugned order dated 22.06.2013, there is a provision of an appeal before the Medical Council of India, under Regulation 8.8 of the Regulations, 2002. The petitioners have approached this Court without availing the alternative statutory remedy, thus, these petitions may be dismissed on this count alone. The impugned orders were passed on the basis of the report of the enquiry committee comprising of the experts in the field, therefore, it cannot be faulted with.

5. Despite service of notice to the respondent, Dr. Kamalpreet Singh, President of Chhattisgarh Medical Council, has chosen not to appear in the matter.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. Regulation 8.2 of Chapter 8 of the Regulations, 2002, which deals with punishment and disciplinary action against the registered medical practitioners, provides that upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give an opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner.

8. Further, Section 15 of the Act, 1987 deals with the power of the Council to

prohibit entry or to direct removal from State Medical Register. Section 16 provides for alteration of State Medical Register by Council. Section 16(2) of the Act, 1987 provides that the Council may direct the removal altogether or for a specified period from the State Medical Register of the name of any registered practitioner for the same reasons for which registration may be prohibited by the Council u/s 15 of the Act, 1987.

9. The provisions of the Act, 1987 deals with the registered practitioners who are enrolled on the State Medical Register. Section 15 provides that the Council may prohibit entry in, or order the removal from, the State Medical Register of the name of any person either in case of the medical practitioner has been sentenced by a criminal Court and in the opinion of the Council such a defect in character as would render the enrolment or continuance of his name in the State Medical Register undesirable; or whom the Council after enquiry at which opportunity has been given to him to be heard in person and which may at the discretion of Council be held in camera, finds guilty of two-third of the members of the Council present and vesting at the meeting but such member shall not be less than five. Thus, the provisions of Section 15 of the Act, 1987 also contemplates affording opportunity of hearing after holding an enquiry, in the like manner as provided under Regulation 8.2 of the Regulations, 2002.

10. All the medical practitioners who are registered in any State Medical Register will be registered medical practitioner in the Indian Medical Register also under the provisions of Section 21 of the Indian Medical Council Act, 1956 (for short "the Act, 1956"). Thus, for removal of the name of the medical practitioner even for a temporary period shall be governed under the provisions of the Act, 1987 read with the Regulations, 2002.

11. In the instant cases, admittedly, no show cause notice or opportunity of hearing was afforded to the petitioners before passing the impugned order, which was based solely on the enquiry report.

12. In case of W.P. (C) Nos. 972/2013 and 882/2013, the petitioners i.e. Dr. Pankaj Jaiswal and Dr. Prajwal Soni, respectively, had filed writ petitions being W.P. (C) Nos. 1277/2012 and 1276/2012, respectively challenging the validity and legality of the impugned order dated 22.6.2012. The said writ petitions were considered and disposed of by this Court by order dated 13.7.2012 granting liberty to the petitioners to make a representation to the respondent/Council.

13. The Supreme Court, in J and K Housing Board and Another Vs. Kunwar Sanjay Krishan Kaul and Others, , observed as under:

32. It is well settled that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefore in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the

manner provided therein.

14. Thus, without going into the merits of the case as to whether sufficient materials were available or not for passing the impugned order dated 22.06.2013, on account of the fact that the provisions of Section 15 of the Act, 1987 read with Regulation 8.2 of the Regulations, 2002 was not complied with, the impugned order dated 22.06.2013 (in all the writ petitions) are set aside. However, on the request of learned counsel appearing for the respondent/Council, liberty is reserved to initiate fresh proceedings, if so advised, in accordance with the provisions as prescribed in Section 15 of the Act, 1987 read with Regulation 8.2 of the Regulations, 2002. Resultantly, all these petitions are allowed. No order as to costs.