

(1996) 05 CAL CK 0016
In the Calcutta High Court
Case No : Civil Order No. 21176 (W) of 1995

Dr. Subodh Ranjan Saha

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Bengal Medical Act, 1914 — Section 17, 21, 25, 26(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1997 Cal 55

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya and Mrs. Santi Das, Dilip Kumar De, for the Appellant; Subhash K. Banerjee, Saibalendu Bhaumik and Mrs. Manisha Bhaumik, for the Respondent

Judgement

1. The writ petitioner is a doctor having passed the M.B.B.S. Examination from Bankura Sammilini Medical College in 1976. The petitioner, thereafter, also acquired M.S. Degree in General Surgery from the Calcutta University in 1982 while he was a member of the West Bengal Health Service. At the relevant time, the petitioner was posted as Medical Officer (Surgeon) at Maharaja Jitendra Narayan Hospital in Cooch Behar.

2. It is the petitioner's case that in 1984, he came across an advertisement in all the leading newspapers in Calcutta published on behalf of an organisation named "The Management Professional Association" and the "International Coaching Centre" of 15, Rama Nathan Street, T. Nagar, Madras-600017, inviting application from candidate wishing to acquire better qualifications from various Universities of India and abroad through correspondence courses. Attracted by such proposal, the petitioner claims to have got himself enrolled for such correspondence course and also started answering papers from the month of April, 1989.

3. According to the petitioner, in due course the abovementioned organisation

awarded the petitioner with the following degrees :--

- a) Ph.D. of the University of California;
- b) M.D. of the University of California;
- c) F.R.C.S. of the Royal College of Surgeons, Edinburgh.

4. It is the further case of the petitioner that he had no occasion whatsoever to doubt the genuineness of the organisation and on being awarded the aforesaid qualifications he began to use the same in describing his medical qualifications.

5. It appears that in July, 1992, the petitioner received a letter from the West Bengal Medical Council informing him that a complaint had been received from the Secretary, Association of Health Services of Doctors (W.B.), Cooch Behar Branch, that he had been using certain qualifications which he did not possess, on his letterhead. According to the petitioner, he immediately provided the Council with all the information asked for in connection with his medical qualifications.

6. It is the petitioner's definite case that he had no doubts in his mind regarding the genuineness of the correspondence course being run by the organisations referred to above, but on receiving the letter from the West Bengal Medical Council, he began to make enquiries and wrote to the Royal College of Surgeons, Edinburgh, which wrote back to inform him that the college had never heard of the Management Professionals Association or the International Coaching Centre and the said organisations had no authority to issue Certificates of Fellowship on behalf of the College. The petitioner was also informed that the Diploma of Fellowship issued in his name was clearly not genuine and that he had been made a victim of the dishonest activity of the said organisations.

7. The petitioner claims to have discontinued use of the medical qualifications in question on being informed that they were not genuine.

8. Thereafter, by a letter dated 22nd September, 1993, the Medical Council asked the petitioner to appear before the Penal and Ethical Cases Committee of the Council on 1st October, 1993, for clarifying the allegations in the complaint. The petitioner apparently appeared before the aforesaid Committee and sought to explain the manner in which he had acquired the qualifications under consideration. The petitioner also appears to have lodged a complaint with the Inspector General of Police (Crime) Madras-41, complaining of the manner in which he had been cheated and deceived by the above-mentioned organisations.

9. In the meantime, the petitioner was informed by the Association of Health Services Doctors (W.B.), Cooch Behar Branch, the complainant before the West Bengal Medical Council, that on being satisfied on enquiry that the petitioner had become the victim of deception, the Association had intimated the Council that the complaint be treated as withdrawn.

10. Despite the above, the Medical Council decided to continue with the

proceeding under S. 17 read with S. 25 of the Bengal Medical Act, 1914, and ultimately on 31st August, 1995, the Council decided that the petitioner's name be removed from the Register of Registered Medical Practitioners for a period of 9 months from the afternoon of the closure of the meeting.

11. The petitioner challenged the aforesaid decision of the Council by way of a writ petition. While the said writ petition was pending, the Medical Council caused a Gazette Notification to be published on 4th September, 1995, indicating the punishment imposed on the petitioner.

12. The writ petition was taken up for hearing on 8th September, 1995, but the learned Judge who heard the matter, declined to interfere on account of the fact that there was a provision for appeal against the order of the Council to the Local Government under S. 26(1) of the Bengal Medical Act, 1914.

13. The petitioner, thereafter, preferred an appeal to the State Government in terms of the said provision, but the same was dismissed on 27th October, 1995, by the Principal Secretary, Department of Health and Family Welfare.

14. The said decision of the Appellate Authority is the subject matter of challenge in the present writ petition.

15. Appearing in support of the writ petition, Mr. Bikash Ranjan Bhattacharya submitted that the petitioner had already undergone a major part of the punishment, though he did not deserve such punishment, having become an innocent victim of the deception practised by the Managing Professionals Association.

16. Mr. Bhattacharya urged that as soon as he became aware of the actual state of affairs pursuant of the enquiries made by him, the petitioner lodged a complaint with the police authorities in Madras and he also informed the Institutions which were porported to have awarded the Ph. D.M.D. and F.R.C.S. degrees to him.

17. Mr. Bhattacharya urged that the petitioner was not aware till after he had been awarded the qualifications in dispute of the deception practised by the said Association as a result whereof he deposited the requisite fees and answered the questions sent to him, as part of the postal course, in good faith.

18. Mr. Bhattacharya submitted that the conduct of the petition after he came to learn of the deception practised on him, clearly established his bona fides and even the complainant before the Council, on becoming aware of such deception, requested the Council not to proceed any further on the basis of such complaint.

19. Mr. Bhattacharya urged that the since the petitioner had clearly been made a victim of deception and fraud, the punishment meted out by him by the Council was unwarranted and was liable to be quashed, together with the decision of the Appellate Authority which failed to appreciate the actual state of affairs.

20. Appearing on behalf of the West Bengal Medical Council, Mr. Subhash

Banerjee, learned Advocate, denied that the petitioner had been treated unjustly or that he had unwittingly become a victim of fraud and deception, as claimed by him.

21. Mr. Banerjee submitted that from the records of the Council, it would be clear that the petitioner not only had knowledge of the activities of the Association, but was also made a Fellow Member thereof for life and was also authorised to function as Chapter Coordinator of the International Coaching Centre for its various courses in West Bengal.

22. Mr. Banerjee urged that, as had been held by this Court, as also Hon^{ble} Supreme Court, cases of the instant nature should not ordinarily be interfered with in writ proceedings, since the Courts while exercising jurisdiction under Art. 226 of the Constitution does not sit or act as an Appellate Authority over the orders of subordinate authorities.

23. In this connection, Mr. Banerjee referred to the decision of the Supreme Court in Chandigarh Administration and another Vs. Manpreet Singh and others, where the same sentiments have been expressed.

24. Mr. Banerjee also referred to a Bench decision of this Court in the case of Bibhuti Bhusan Nayak v. The Executive Magistrate reported in (1994) 1 Cal HN 320.

25. Mr. Banerjee then referred to Section 17(b) of the Bengal Medical Act, 1914 which provides that every person who possesses the qualifications referred to in the Schedule, shall on payment of the prescribed fees, be entitled to have his name entered in the Registrar of registered practitioners, provided that such registration could be refused if the Council after due enquiry found the applicant guilty, by a majority of two thirds of the members present and voting at the meeting, of infamous conduct in any professional respect.

26. Mr. Banerjee also referred to Section 25 of the aforesaid Act, of which the portion relevant for on purpose, reads as follows:--

"25. The Council may direct-

(a) that the name of any registered practitioner

(i) who or

(ii) when the Council, after due inquiry in the same manner as provided in clause (b) of Section 17, have found guilty by a majority of two thirds of the members present and voting at the meeting, of infamous conduct in any professional respect.

be removed from the register of registered practitioners or that the practitioner be warned and

(b) that any name so removed the afterwards re-entered in the register."

27. Mr. Banerjee also referred to the Code of Medical Ethics adopted by the West Bengal Medical Council, paragraph 4 of the guidance whereof indicates that the use of Indian and Foreign Medical qualifications, which are not recognised by the Council may mislead the lay public.

28. In this connection Mr. Banerjee also referred to S. 21 of the Act which provides for registration of additional qualifications included in the schedule.

29. Mr. Banerjee urged that in the facts of the case and the decisions referred to above, no interference was called for by the Court, either in respect of the punishment awarded to the petitioner, or the decision of the Appellate Authority which found no reason to interfere with the order of the Council.

30. Appearing for the State, Mr. Dilip De adopted the submissions made on behalf of the West Bengal Medical Council and added that the Council and the State Government, as the Appellate Authority, had acted fairly and without bias, in the matter, and in a writ proceeding the Court should not act as an Appellate Authority over the decision of the Appellate Authority prescribed under the statute.

31. Replying to the submissions made on behalf of the Medical Council and the State, Mr. Bhattacharya reiterated his earlier submission that the conduct of the petitioner after he became aware of the fraud and deception practised upon him established his bona fides in the matter beyond all doubt.

32. Furthermore, according to Mr. Bhattacharya, degrees not included in the Schedule were not required to be registered with the Council, in terms of S. 21 of the Bengal Medical Act, 1914.

33. On a careful consideration of the facts of the case, the submissions of the respective parties and the records produced on behalf of the Medical Council, I am not inclined to interfere with the decision of the Appellate Authority confirming the decision of the Council to impose penalty on the petitioner by having his name removed from the Register of registered practitioners for a period of nine months.

34. The records of the Council belie the aura of innocence with which the petitioner has approached the Court. It is significant that the petitioner was admitted as a Fellow Member of The Management Professionals Association for life on 9th October, 1989, and he was also authorised by the International Coaching Centre on the same date to function as Chapter Co-ordinator for its various courses in West Bengal. The medical qualifications in question were awarded to the petitioner such thereafter, after certain concession were allegedly made for him.

35. It would not be proper for this Court, sitting in writ jurisdiction, to probe into the petitioner's connection with the above-mentioned organisations leading to his being admitted as a life Fellow Member and Chapter Co-ordinator thereof for West Bengal. I am not, therefore, inclined to embark on such an exercise.

Moreover, except for the submission that the petitioner had been duped, no other ground has been canvassed which warrants interference with the order of the Appellate Authority and the reasoning on which such order was passed.

36. It is difficult to accept that a senior and qualified medical officer could be deceived in the manner pleaded in the writ petition.

37. However, it was not for the Appellate Authority to give any fresh liberty to the Appointing Authority to take disciplinary action against the petitioner. Such direction amounts to possible enhancement of the punishment imposed on the petitioner.

38. In my view, the Appellate Authority over-stepped its jurisdiction in making such observations. Having dismissed the appeal, there was no occasion for the Appellate Authority to make such observations.

39. The said observations made by the Appellate Authority regarding the right of the Appointing Authority to take disciplinary option against the petitioner, are accordingly, quashed.

40. The writ petition is disposed of accordingly.

41. There will be no order as to costs.

42. Let plain copies of the operative portion of the judgment be made available to the learned Advocates for the respective parties for communication and compliance, subject to the usual undertaking.

43. Order accordingly.