
(2016) 01 CAL CK 0051
In the Calcutta High Court
Case No : W.P. No. 15515 (W) of 2014

Kunal Saha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Citizenship Act, 1955 — Section 2(ee), Section 7-A, Section 7-A(1), Section 7-B
Constitution of India, 1950 — Article 124, Article 144, Article 16, Article 162, Article
166, Article 18, Article 20, Article 21, Article 217, Article 226, Article

Citation : (2016) 01 CAL CK 0051

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Samrat Sen, Sr. Advocate and Amitava Mitra, Advocate, for the
Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J.—1. The petitioner has assailed the decision of the State of West Bengal to confer "Bangabibhusan" award on the respondent No. 2.

2. The petitioner appears in person. The petition is being heard on remand pursuant to a judgment and order dated September 10, 2015 passed by the Hon'ble Division Bench in M.A.T. No. 916 of 2015 with CAN 6025 of 2015 (Dr. Kunal Saha v. State of West Bengal & Ors.). The petitioner was initially held not to have locus. On appeal the Hon'ble Division Bench has set aside such finding and has remanded the writ petition after holding that the petitioner has locus.

Contentions of the petitioner

3. According to the petitioner the decision of the respondent No. 1 to confer an award on the respondent No. 2 violates Article 144 of the Constitution of India. The petitioner relies upon and refers to the judgment and order of the Hon'ble Supreme Court reported in , 2009 Volume 9 Supreme Court Cases page 221 (Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & Ors.) as well as , 2014

Volume 1 Supreme Court Cases page 384 (Balaram Prasad v. Kunal Saha & Ors.) and submits that, the Hon"ble Supreme Court has found the respondent No. 2 to be guilty of professional misconduct. It has found the conduct of the respondent No. 2 to be unbecoming of a doctor. It has imposed a penalty on the respondent No. 2. In such circumstances, the respondent No. 1 ought not to have taken the decision to confer the award. He refers to , 2010 Volume 13 Supreme Court Cases page 586 (In re: Mehar Singh Saini, Chairman, HPSC & Ors.) in this regard. The decision to confer such award on the respondent No. 2 in view of the pronouncement of the Hon"ble Supreme Court of India against the respondent No. 2 as noted in the aforesaid two decisions violates Article 144 of the Constitution of India. The State authorities are to act in aid of the decision rendered by the Supreme Court of India so far as the respondent No. 2 is concerned. Conferment of award to the respondent No. 2 despite the observations of the Supreme Court against the respondent No. 2 is not acting in aid of the decisions rendered by the Supreme Court of India. It would also send a wrong signal to the persons concerned with the efforts to claim compensation for victims of medical negligence and have punishment awarded against persons of the medical profession guilty of medical negligence.

4. In support of his contention that, the State authorities are obliged to act in aid of the Supreme Court reliance has been placed by the petitioner on , All India Reporter 2003 Supreme Court page 739(Ex-Capt. Harish Uppal v. Union of India & Anr.) and , 1995 Volume 1 Supreme Court Cases page 259 (M/s. Spencer & Company Ltd. & Anr. v. M/s. Vishwadarshan Distributors Pvt. Ltd. & Ors.).

5. The petitioner next refers to the judgment and order dated September 10, 2015 passed by the Hon"ble Division Bench particularly to the various observations made by the Hon"ble Division Bench in respect of the respondents. He submits that, in view of such observations made by the Hon"ble Division Bench the decision of the State to confer the award should be quashed. The petitioner refers to the affidavit filed on behalf of the State. Referring to the minutes of the meeting for the conferment of the award and the various paragraphs of such affidavit he submits that, the State has disclosed in the affidavit that the State had decided to confer the award on May 17, 2014 in a meeting of a committee empowered for such purpose. The decision of the State to confer the award to the person appearing in such minutes had been widely published in the media on May 16, 2014. He refers to a newspaper cutting in support of his contention that the media knew about the conferment of the award before May 17, 2014. Therefore, the State had taken the decision much earlier than May 17, 2014. The petitioner submits that, the State has brought into existence the minutes dated May 17, 2014 fraudulently. The State is guilty of perjury.

6. He relies upon , 2004 Volume 4 Supreme Court Cases page 666 (Vijay Shekhar & Anr. v. Union of India & Ors.) and 2005 Volume 8 Supreme Court Cases page 283 (Lillykutty v. Scrutiny Committee, SC & ST and Ors.) in support

of his contention that fraud vitiates every action.

Contentions of the Respondent No. 2

7. Mr. Anindya Mitra, learned Senior Advocate for the respondent No. 2 submits that, the Hon''ble Division Bench in their Lordships'' judgment and order dated September 10, 2015 has clarified that, the views expressed in such judgment and order were for the purpose of disposal of appeal and that, such observations would not preclude the Trial Court to arrive at its own conclusion based on the evidence which may be adduced by the parties. He submits that, since the writ petition was disposed of on the point that the petitioner before Court did not have locus standi to file the writ petition, the Hon''ble Division Bench on appeal had found that, the writ petitioner has requisite locus standi to file the writ petition and had, therefore, remanded the writ petition to the Trial Judge for consideration on merits. The judgment and order dated September 10, 2015 does not preclude the Trial Judge from arriving at its own findings on the basis of the evidence adduced before the Trial Court and in accordance with law.

8. Referring to Malay Kumar Ganguly (supra) and Balaram Prasad (supra) he submits that, the Hon''ble Supreme Court was in seisin of one act of negligence complained of against few professionals. While considering such act of negligence the Hon''ble Supreme Court had made observations as recorded therein. Such observations are in relation to the incidents complained of in the proceedings before their Lordships. The respondent No. 2 is a professional person. In his entire professional career one incident has led to the observations being made against him as recorded in Malay Kumar Ganguly (supra). The petitioner before this Court has not given any other instance of so-called professional misconduct against the respondent No. 2 apart from the findings of the Hon''ble Supreme Court in respect of one incident.

9. The Hon''ble Supreme Court in Malay Kumar Ganguly (supra) has found the respondent No. 2 to have acted in a manner so as to warrant quantification of compensation to be payable to the petitioner. The Hon''ble Supreme Court had directed the National Commission to quantify such compensation. The quantification of such compensation had received consideration by the Hon''ble Supreme Court in Balaram Prasad (supra). Their Lordships have reduced the amount of compensation payable by the respondent No. 2 to the petitioner as quantified by the National Commission in Balaram Prasad (supra). The respondent No. 2 has complied with the directions contained in Balaram Prasad (supra). The Hon''ble Supreme Court has awarded compensation to the petitioner in lieu of negligence of the respondent No. 2. Their Lordships have not stated either in Malay Kumar Ganguly (supra) or Balaram Prasad (supra) that, all acts of the respondent No. 2 are unbecoming of a doctor. The observations made in Malay Kumar Ganguly (supra) and Balaram Prasad (supra) are in the context of the incidents before their Lordships. Malay Kumar Ganguly (supra) and Balaram Prasad (supra) should not be construed to mean that, a professional person as that of the respondent No. 2 would be debarred from being considered as an

awardee in respect of any award to be granted by any authority for all times to come.

10. The respondent No. 2 did not approach to the State Government for the purpose of any award. The State Government in their wisdom has decided to confer the award. The State Government has taken note of the two decisions of the Hon''ble Supreme Court against the respondent No. 2. Such consideration is recorded in the minutes dated May 17, 2014. The stand taken by the State as recorded in such minutes is a plausible one. Such stand being plausible a Writ Court ought not to interfere with the decision of the State Government. In support of such contention he relies upon , 1990 Volume 2 Supreme Court Cases page 488 (M/s. G.J. Fernandez v. State of Karnataka & Ors.). He contends that, in effect the petitioner is asking a Writ Court to sit in appeal over the decision of the State Government as recorded in the minutes dated May 17, 2014. According to him, the same ought not to be undertaken by the Writ Court in the facts of this case.

11. Mr. Mitra refers to the status of the petitioner before the Court. He submits that, the petitioner has claimed himself of an overseas citizen of India. The petitioner in any event has not demonstrated any legal right of the petitioner to have been violated by the act of the State complained of in the present petition. He points out that, the present petition has not been treated as a public interest litigation by the petitioner. According to him, it is essential for the petitioner to establish violation of a legal right prior to the Writ Court issuing a writ of mandamus. In support of such contention he relies on , 1977 Volume 1 Supreme Court Cases page 486 (Mani Subrat Jain & Ors. v. State of Haryana & Ors.).

Contentions of the Respondent No. 1

12. Mr. Samrat Sen, learned Senior Advocate for the State submits that, the incidents receiving consideration by the Hon''ble Supreme Court in Malay Kumar Ganguly (supra) are incidents relating to the treatment and the unfortunate death of the wife of the petitioner. The wife of the petitioner had expired on May 28, 1998. The petitioner had filed three proceedings in respect of such death. One of such proceedings was a criminal proceedings, inter alia, under section 300A of the Indian Penal Code. The petitioner had also applied to the Consumer Forum in respect of the negligence of the doctors and the institution involved. The petitioner had also filed a complaint before the West Bengal Medical Council in respect of the doctors involved. He points out, by referring to various paragraphs in Malay Kumar Ganguly (supra) that, the respondent No. 2 has been found to be negligent and his act to be unbecoming of a doctor in respect of the incidents leading up to the death of the wife of the petitioner on May 28, 1998. The Hon''ble Supreme Court of India had remitted the quantification of compensation to be payable by the respondents in the consumer complaint to the National Commission. The National Commission had quantified the compensation payable by the respondents before it. Such quantification came up for consideration by the Hon''ble Supreme Court in Balaram Prasad (supra). Their

Lordships had quantified the compensation payable in lieu of the negligence of the respondents in the consumer complaint. Subsequent thereto the respondents in the consumer complaint have complied with the directions contained in Balaram Prasad (supra). It would be improper for any authority far less the State authority to continue to punish the respondents purely on the basis of the decision rendered by the Hon''ble Supreme Court in Malay Kumar Ganguly (supra) and Balaram Prasad (supra). The State has not come across any other act of negligence against the respondent No. 2.

13. The State had constituted a committee for the purpose of conferment of award by a notification dated March 28, 2013. The petitioner does not have any grievance as to the constitution of the committee. The committee constituted by the notification dated March 28, 2013 had met on May 17, 2014 to consider grants of various awards in favour of various persons. The minutes of such meeting were prepared. The minutes and its addendum thereto have been placed on record by way of an affidavit. The Committee has taken into consideration various issues that had cropped up as against the various persons being considered for conferment of the award. The committee has noted the two judgments of the Hon''ble Supreme Court in respect of the respondent No. 2. The committee has found that, the Hon''ble Supreme Court had imposed a liability to pay compensation against the respondent No. 2. The committee is of the view that, the judgment of the Hon''ble Supreme Court does not prevent the committee from considering conferment of the award on the respondent No. 2. The respondent No. 2 is otherwise well renowned and entitled to be conferred the award. The committee has noted that, he had, from time to time, been conferred awards by various authorities and various institutions both domestic as well as international. The committee was of the view that, in the event the respondent No. 2 is not considered for conferment of the award the same will tantamount to the respondent No. 2 suffering double jeopardy for one incident. After such deliberations the committee has decided to confer the award. Its decision is in writing. It has given reasons for arriving at its decision. There is no infirmity in such decision.

14. Mr. Sen contends that, the Supreme Court in Balaram Prasad (supra) has awarded compensation in lieu of negligence. He submits that, the Courts are known to award one relief in lieu of something else. He points out that, damages are awarded in lieu of the relief for specific performance of contract. Compensation is awarded in lieu of reinstatement for illegal termination of employment in labour disputes. Compensation is also awarded in lieu of gratuity receivable by an employee. He submits that, once a relief is granted in lieu of any other relief capable of being granted, the grant of the first relief wipes away the entitlement of the person to receive the other relief. In the present case the petitioner has received reliefs in respect of the medical negligence committed by the respondent No. 2 by way of compensation awarded by the Supreme Court of India in Balaram Prasad (supra). The petitioner, therefore, cannot rely upon the observations of the Hon''ble Supreme Court for the purpose of stating that, the

respondent No. 2 is not a fit and proper person to be considered for the award. One solitary act of the respondent No. 2 cannot wipe away his life time achievement, more so when compensation has been awarded in lieu of such medical negligence of the respondent No. 2. Any other reading of Malay Kumar Ganguly (supra) and Balaram Prasad (supra) would tantamount to inflicting double jeopardy to the respondent No. 2. It is not the intention of either Malay Kumar Ganguly (supra) or Balaram Prasad (supra) that, the respondent No. 2 be not considered for conferment of any award for any activity as a doctor or otherwise. So far as the minutes of the meeting of the committee dated May 17, 2014 is concerned he submits that, the summary of the deliberations and the decisions taken in such committee meeting has been reduced in writing. Such writing has been produced before Court by way of an annexure to the affidavit filed on behalf of the State Government. There is no question for any fraud being committed by the State. The State has no knowledge as to how the media had reported the names of the persons who would be conferred the award prior to the meeting dated May 17, 2014. The State does not stand to gain in any manner by antedating or giving any other date to the minutes than the date when the meeting had actually taken place.

15. Mr. Sen refers to the status of the writ petitioner as an overseas citizen. He submits that, in view of Sections 7-A and 7-B of the Citizenship Act, 1955 the petitioner does not have a legal right to canvass. The legal rights of an overseas citizen are laid down in Sections 7-A and 7-B of the Citizenship Act, 1955. He has come across only four notifications issued in Section 7-A(1) of the Act of 1955 namely, the notifications dated April 11, 2005, January 5, 2007, January 5, 2009 and March 23, 2012.

16. Mr. Sen refers to the constitutional restrictions with regard to the grant of awards. He refers to Articles 18 of the Constitution of India in this regard. Referring to Articles 162 and 166 of the Constitution of India he submits that, the State is entitled to confer an award on the persons it chooses. On the scope and ambit of Article 144 Mr. Sen relies upon 2005 Volume 13 Supreme Court Cases page 113 (Deepak Malik & Ors. v. State of Punjab & Ors.), , 1999 Volume 5 Supreme Court Cases page 622 (Bharat Builder Pvt. Ltd. & Ors. v. Parijat Flat Owners Coop. Housing Society Ltd.), , 1999 Volume 2 Supreme Court Cases page 131 (Paramjit Kaur v. State of Punjab & Ors.) and 1985 Volume 1 Supreme Court Cases page 260 (Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop Indian Ltd. & Ors.). He points out that, the petitioner has not challenged the power of the State to confer the award. The validity of the committee constituted for the purpose of considering the conferment of the award has not been challenged. The petitioner has not alleged discrimination in the consideration of the awardees and the conferment of the award. The petitioner has not established any conflict interest. He refers to , 2004 Volume 4 Supreme Court Cases page 714 (State of U.P. & Anr. v. Johri Mal) in this regard. Mr. Sen relies upon a written notes on argument.

Rejoinder of the petitioner

17. In rejoinder, the petitioner relies upon a written notes on argument. He submits that, the State should not confer an award which violates a decision of the Hon"ble Supreme Court. He contends that, the State is guilty of fraud and perjury. He relies upon , 2004 Volume 4 Supreme Court Cases page 666 (Vijay Shekhar & Anr. v. Union of India & Ors.) and 2005 Volume 8 Supreme Court Cases page 283 (Lillykutty v. Scrutiny Committee, SC & ST and Ors.) on the point of fraud. On his legal rights, he refers to a Supreme Court order dated December 13, 2007 passed in a petition for Special Leave to Appeal (Civil) No. 22999 of 2007 passed on a writ petition filed in respect of Right to Information Act, 2005. He also refers to, All India Reporter 2000 Supreme Court page 988 (Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors.) on the legal right of an overseas citizen.

Issues

18. The contentions of the parties give rise to five issues in the present writ petition. They are:--

"1. Has the State Government acted in breach of Article 144 in deciding to confer an award on the respondent No. 2 in view of the observations made by the Supreme Court in Malay Kumar Ganguly (supra) and Balaram Prasad (supra) ?

2. Is the State Government guilty of fraud and perjury in relation to the minutes dated April 17, 2014 ?

3. Does an overseas citizen have any legal right to canvass before a Court in India ?

4. Has any right of the petitioner been infringed by the decision of the State to confer an award on the respondent No. 2 ?

5. Is the petitioner entitled to the relief as prayed for or to any relief?"

Issue No. 1

19. The wife of the petitioner while on a vacation in India in April 1998 developed medical complications for which she was initially admitted to a medical facility in Kolkata and, thereafter, in Mumbai. She breathed her last on May 28, 1995 at a medical facility in Mumbai. In respect of the incidents leading upto the death of his wife, the petitioner filed three proceedings. One of them a criminal complaint against three doctors one of whom being the respondent No. 2 herein. The second being a consumer complaint before the National Consumer Disputes Redressal Commission, New Delhi. The respondent No. 2 herein was a party respondent therein. The third was a complaint, inter alia, against the respondent No. 2 before the West Bengal Medial Council.

20. The appeals relating to criminal proceedings and the consumer complaint reached the Hon"ble Supreme Court. Such appeals were considered and decided

in Malay Kumar Ganguly (supra).

21. In Malay Kumar Ganguly (supra) the respondent No. 2 was found to be negligent giving rise to civil liability. The quantum of compensation was left to be decided by the National Consumer Redressal Forum. He was absolved from the charge of criminal negligence in absence of mens rea. The observations made in Malay Kumar Ganguly (supra) with regard to the respondent No. 2 are not set out as quotes from the same as they are set out in Balaram Prasad (supra) which is quoted hereinbelow.

22. The compensation awarded by the National Consumer Redressal Forum came up for consideration in Balaram Prasad (supra). Some of the observations made therein in respect of the respondent No. 2 are as follows:--

"142. The paragraphs relied upon by Dr. Mukherjee as have been mentioned above are in relation to the culpability of the doctors for causing the death of the patient under Section 304-A IPC. It is imperative to mention here that the quantum of compensation to be paid by the appellant doctors and AMRI Hospital is not premised on their culpability under Section 304-A IPC but on the basis of their act of negligence as doctors in treating the deceased wife of the claimant. We are therefore inclined to reiterate the findings of this Court regarding the liability of Dr. Mukherjee in Malay Kumar Ganguly case which read as under: (SCC pp. 280, paras 159-60)

"159. When Dr Mukherjee examined Anuradha, she had rashes all over her body and this being the case of dermatology, he should have referred her to a dermatologist. Instead, he prescribed "Depomedrol" for the next 3 days on his assumption that it was a case of "vasculitis". The dosage of 120 mg Depomedrol per day is certainly a higher dose in case of a TEN patient or for that matter any patient suffering from any other bypass or skin disease and the maximum recommended usage by the drug manufacturer has also been exceeded by Dr Mukherjee. On 11-5-1998, the further prescription of Depomedrol without diagnosing the nature of the disease is a wrongful act on his part.

160. According to general practice, long-acting steroids are not advisable in any clinical condition, as noticed hereinbefore. However, instead of prescribing a quick-acting steroid, the prescription of a long-acting steroid without foreseeing its implications is certainly an act of negligence on Dr. Mukherjee's part without exercising any care or caution. As it has been already stated by the experts who were cross-examined and the authorities that have been submitted that the usage of 80-120 mg is not permissible in TEN. Furthermore, after prescribing a steroid, the effect of immunosuppression caused due to it, ought to have been foreseen. The effect of immunosuppression caused due to the use of steroids has affected the immunity of the patient and Dr Mukherjee has failed to take note of the said consequences."

143. It is also important to highlight in this judgment that the manner in which Dr Mukherjee attempted to shirk from his individual responsibility both in the

criminal and civil cases made against him on the death of the claimant's wife is very much unbecoming of a doctor as renowned and revered as he is. The finding of this Court on this aspect recorded in Malay Kumar Ganguly case reads as under: (SCC pp. 284-85, para 182)

"182. It is also of some great significance that both in the criminal as also the civil cases, the doctors concerned took recourse to the blame game. Some of them tried to shirk their individual responsibilities. We may in this behalf notice the following:

(i) In response to the notice of Dr Kunal, Dr Mukherjee says that Depomedrol had not been administered at all. When confronted with his prescription, he suggested that the reply was not prepared on his instructions, but on the instruction of AMRI.

(ii) Dr Mukherjee, thus, sought to disown his prescription at the first instance. So far as his prescription dated 11-5-1998 is concerned, according to him, because he left Calcutta for attending an international conference, the prescription issued by him became non-operative and, thus, he sought to shift the blame on Dr Haldar.

(iii) Dr Mukherjee and Dr Haldar have shifted the blame to Dr Prasad and other doctors. Whereas Dr Prasad countercharged the senior doctors including Respondent 2 stating:

"Prof. B.N. Haldar (Respondent 2) was so much attached with the day-to-day treatment of patient Anuradha that he never found any deficiency in the overall management at AMRI so much so that he had himself given a certificate that her condition was very much fit enough to travel to Mumbai...."

144. Therefore, the negligence of Dr Sukumar Mukherjee in treating the claimant's wife had been already established by this Court in Malay Kumar Ganguly case. Since he is a senior doctor who was in charge of the treatment of the deceased, we are inclined to mention here that Dr Mukherjee has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors. We, therefore, in the light of the facts and circumstances, direct him to pay a compensation of Rs. 10 lakhs to the claimant in lieu of his negligence and we sincerely hope that he upholds his integrity as a doctor in the future and not be casual about his patients' lives."

23. The date of the judgment of Malay Kumar Ganguly (supra) is August 7, 2009 and Balaram Prasad (supra) is October 24, 2013. Did the State act in breach of Article 144 in deciding to confer an award on the respondent No. 2 on May 17, 2014 in view of the observations made therein ?

24. Article 144 of the Constitution require, all authorities, civil and judicial, to act in aid of the Supreme Court. In Harish Uppal (supra) the Supreme Court was concerned with the question whether lawyers have a right to strike and/or give a

call for boycotts of Courts. It had referred to its earlier decision reported at , 1998 Volume 4 Supreme Court Cases page 409 (Supreme Court Bar Association v. Union of India & Anr.) where it had held that, when a lawyer is found guilty of contempt Court he may also be guilty of professional misconduct. In such circumstances, it was the duty of the Bar Council of the State or the Bar Council of India to punish him, when the lawyer concerned was found to have acted in a manner to be unbecoming of a lawyer. The quantum of punishment to be awarded was left to the Bar Council. It may be debarment or suspension of licence to practice depending on the facts of the case.

25. Applying such ratio in the present case, it is for the relevant Medical Council to consider punishing the respondent No. 2. The Medical Council is yet to take a decision enforceable in law to punish the respondent No. 2 on the basis of such observations or otherwise. The complaint of professional misconduct made by the petitioner against the respondent No. 2 is yet to materialize into any punishment being awarded by the West Bengal Medical Council. The decision of the Medical Council of India to suspend the licence of the respondent No. 2 is no longer enforceable.

26. In *M/s. Spencer & Company Ltd.* (supra) the Supreme Court in the context of its earlier request for an expeditious disposal of a matter not being taken in the right earnest has held that, under Article 144 of the Constitution a High Court is obliged to come to the aid of the Supreme Court. Similar view has been expressed in *Bharat Builder Pvt. Ltd.* (supra).

27. In the context of Courts granting interim orders without considering the ratio of various decisions pronounced by the Supreme Court laying down guidelines for the grant of interim order, in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal* (supra) the Supreme Court has observed that, under Article 144 all authorities, civil and judicial, should act in the aid of Supreme Court.

28. *Paramjit Kaur* (supra) deals with a situation where the Supreme Court had in exercise of powers under Article 32, entrusted the National Human Rights Commission to deal with certain matters. It has held that, all authorities in the country are bound by the directions of the Supreme Court, including the National Human Rights Commission.

29. The observations made by the Supreme Court in *Malay Kumar Ganguly* (supra) and *Balaram Prasad* (supra) in respect of the respondent No. 2 are with regard to his activities as a doctor in dealings with a patient namely, the wife (since deceased) of the petitioner. The dealings of the respondent No. 2 as regards his other patients did not come up for consideration by the Supreme Court. In context of the charge of negligence relating one patient, the Supreme Court has found that the actions of the respondent No. 2 are unbecoming of a doctor. He has been warned to be careful in his subsequent dealings with his patients. His licence to practise is yet to be suspended or revoked. That the respondent No. 2 is a doctor of eminence is well established. He has disclosed in

his affidavit various awards and accolades received by him from various institutions and authorities both national and international. It appears from the materials disclosed in this proceedings that, the respondent No. 2 is highly regarded in his field. The State Government in deciding to confer the award is seeking to give recognition to this pre-eminence of the respondent No. 2 as a doctor. In doing so, in my view, the State Government is not acting in violation of Article 144. There cannot be any iota of doubt that, the State Government is obliged to act in aid of the Supreme Court under Article 144. In the present case, the Supreme Court has made its observations against the respondent No. 2 in the context of the incidents placed before their Lordships for consideration. The observations of the Supreme Court made against the respondent No. 2 are in respect of the incidents considered by their Lordships. All and every discharge of professional duties of the respondent No. 2 have not been found by the Supreme Court to be unbecoming of a doctor, or the respondent No. 2 to be negligent with regard therewith. The complaint of negligence in respect of incidents of May 1998 relating to a patient made against the respondent No. 2 along with others reached its conclusion on August 7, 2009 in *Malay Kumar Ganguly (supra)*. The quantum of liability for such negligence stood fixed on October 24, 2013 in *Balaram Prasad (supra)*. The respondent No. 2 has complied with the directions contained therein. There is no interdict of the Supreme Court express or otherwise against any authority, far less the State Government, from considering the respondent No. 2 for an award. In the facts of this case, in my view, the State Government has not acted in breach of Article 144 in deciding to confer the award on the respondent No. 2.

30. The first issue is, therefore, answered in the negative and against the petitioner.

Issue No. 2

31. The State Government has relied upon an affidavit affirmed by the Director of Information, Ex-officio Joint Secretary of the Department of Information and Culture in the present writ petition. Such affidavit states that, in exercise of executive powers, the State Government has decided to confer Bangabhusan and Bangabibhusan awards. A committee for such purpose was formed. Such committee had been reconstituted from time to time. By a circular dated March 28, 2013 the reconstitution of the committee was notified. The reconstituted committee consisted of the Chief Minister as the Chairperson, with the Finance Minister, Chief Secretary, Additional Chief Secretary, Department of House, and the Principal Secretary, Department of Information and Culture as its members. The reconstituted committee had met on May 17, 2014. The minutes of such meeting together with an addendum thereto also dated May 17, 2014 have been produced with the affidavit. The addendum shows that, the committee has taken into consideration the two Supreme Court decisions in respect of the respondent No. 2. The committee has decided to confer the award on the respondent No. 2 on the premise that, the respondent No. 2 is a renowned and an eminent doctor,

as well as, a teacher. He has had an illustrious career in both the fields having received various awards for the same. The committee is of the view that, denial of the award to him would tantamount to making the respondent No. 2 suffer double jeopardy for one incident.

32. The petitioner has relied upon a newspaper report in a Bengali Newspaper published on May 16, 2014 to contend that, the State is guilty of committing perjury and fraud. According to the petitioner the minutes and the addendum are fabricated documents, manufactured as an afterthought to supply the rationale which was not there when the decision to confer the award was taken.

33. The newspaper report relied upon by the petitioner speaks of an alleged declaration made by the Principal Secretary, Department of Information and Culture at Nabannya to the effect that, the State Government has already decided to confer awards to various individuals. The respondent No. 2 is named as one of the persons who would receive an award in such report. The petitioner did not take any steps to have the contents of the newspaper report substantiated in accordance with law. The reporter and the newspaper editor have not been called by the petitioner to establish the truth of the contents of the report, particularly the fact that the Principal Secretary had made the declaration on a specified date and time. A statement in the news report that the Principal Secretary is the source of information for the contents of the news report would not suffice. This claim of the newspaper that the Principal Secretary had actually made the declaration on the date and in the manner specified are required to be established in a manner known to law. The same has not been done in the present case. Courts are extremely slow to react on the basis of newspaper reports and that too unsubstantiated in an adversarial litigation. The present writ petition has not been treated as a public interest litigation by the parties. The unsubstantiated newspaper report on its own would be a perilous piece of evidence to find the State Government to be guilty of fraud and perjury.

34. Fraud unravels everything is the view expressed in *Vijay Shekhar & Anr. (supra)* and *Lillykutty (supra)*. In *Lillykutty (supra)* it has been held that, the Court is careful not to find fraud unless it is distinctly pleaded and proved. However, once it is proved, it vitiates judgments, contract, and all transactions whatsoever.

35. In the facts of the present case, I am unable to find that the State Government has acted fraudulently. The petitioner has not pleaded fraud in the petition. However, he has, after the affidavit filed by the State Government prayed for necessary relief in his affidavit in reply.

36. There is no material available on record to hold that, the State had decided on a date prior to May 17, 2014 to confer the awards. Therefore, there is nothing to find that the deponent of the affidavit affirmed on behalf of the State Government is guilty of perjury.

37. The second issue is, therefore, answered in the negative and against the

petitioner.

Issue No. 3

38. An overseas citizen of India is defined in Section 2(ee) of the Citizenship Act, 1955 to mean a person registered as an overseas citizen of India by the Central Government under Section 7-A of the Act of 1955. Section 7-B of the Act of 1955 confers various rights to the overseas citizens of India. It provides as follows:--

"7-B. Conferment of rights on overseas citizens of India. -

(1) Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India-

(a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;

(b) under article 58 of the Constitution for election as President;

(c) under article 66 of the Constitution for election as Vice-President;

(d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;

(e) under article 217 of the Constitution for appointment as a Judge of the High Court;

(f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;

(g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of People or of the Council of States, as the case may be"

(h) under sections 5, 5-A and 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament."

39. India is a signatory to International Covenant of 1996 on Civil and Political rights. The international covenant recognizes various civil and political rights of a

person. India is also a signatory to Universal Declaration of Human Rights. The Courts in India have recognized that foreign nationals entering into India have rights commensurate to enjoy an ordinary private life. The Courts however have distinguished between a foreign national entering into India legally and one entering India illegally. Fundamental rights guaranteed by the Constitution of India under Articles 20 and 21 have been held to be available to a foreign national also (2010 Volume 7 Supreme Court Cases page 263). A foreign national entering into India legally has been held to have a right to life, liberty and security of person, freedom from arbitrary arrest and detention, right of fair trial by an independent and impartial Tribunal, right to be presumed innocent until proved guilty. Such foreign national would have the right to point out that the executive has acted arbitrarily or capriciously or fraudulently in respect of a matter. A foreign national cannot be dealt with arbitrarily by the executive as any arbitrary act of the executive would be against the rule of law. A fraud vitiates everything. An overseas citizen as defined in Section 2(ee) of the Citizenship Act, 1955 apparently can enjoy other rights than those recognized in India to be enjoyed by a foreign national entering into India legally. Section 7-B of the Act of 1955 allows the Central Government to notify such rights.

40. Four notifications of the Central Government issued under exercise of powers under Section 7-B of the Act of 1955 has been placed. The notification dated April 11, 2005 allows an overseas citizen the following rights:--

- "(a) grant of multiple entry lifelong visa for visiting India for any purpose;
- (b) exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and
- (c) parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties."

41. The notification dated January 5, 2007 allows an overseas citizen the following rights:--

- "1. Registered Overseas Citizens of India shall be treated at par with Non-Resident Indians in the matter of inter-country adoption of Indian children.
- 2. Registered Overseas Citizens of India shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.
- 3. Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India."

42. The Notification dated January 5, 2009 specifies the following rights:--

- "(a) parity with non-resident Indian in respect of, -
- (i) entry fees to be charged for visiting the national monuments, historical sites and museums in India;

(ii) pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:--

(i) doctors, dentists, nurses and pharmacists;

(ii) advocates;

(iii) architects;

(iv) chartered accountants;

(b) to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts."

43. The notification dated March 23, 2012 specifies the following rights:--

"State Government should ensure that the OCI registration booklets of OCIs are treated as their identification for any services rendered to them. In case proof of residence is required, Overseas Citizens of India may give an affidavit attested by a notary public stating that a particular/specific address may be treated as their place of residence in India, and may also in their affidavit give their overseas residential address as well as e-mail address, if any."

44. A foreign national is entitled to invoke Article 226 of the Constitution of India for redressal of breach of the rights available to him. The same would, therefore, be available to an overseas citizen of India as defined in Section 2(ee) of the Act of 1955 for redressal of infringement of the rights available to him. An overseas citizen therefore would have a right to approach the Court under Article 226 of the Constitution if any of the rights noted above are infringed.

45. The third issue is answered by holding that an overseas citizen can approach a Court under Article 226 of the Constitution of India for redressal of infringement of rights recognized to be available to him.

Issue No. 4

46. The decision to confer the award on the respondent No. 2 by the State Government has not infringed any personal right of the petitioner. However, mere lack of infringement of a personal right has been held not to be an impediment to such person approaching the Court under Article 226 of the Constitution of India for redressal of his grievances. In the present case, the petitioner has been held to have locus standi to maintain the writ petition.

47. In *Mani Subrat Jain & Ors. (supra)* the Supreme Court has held as follows:--

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a

legal duty to do something or to abstain from doing something."

48. In *Johri Mal* (supra) the Supreme Court has held as follows:--

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(c) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies."

"30. It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker's opinion on facts is final. But while examining and scrutinising the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational

without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the court with special reference to a given case. This position is well settled in the Indian administrative law. Therefore, to a limited extent of scrutinising the decision-making process, it is always open to the court to review the evaluation of facts by the decision-maker."

49. None of the rights available to an overseas citizen are shown to have been infringed by the impugned decision of the State. The petitioner is not a competitor of the respondent No. 2 for the award. He does not claim that he ought to have been considered by the committee of the State for the award or that although entitled to the award, he has been wrongly denied the same. He has not set up any claim for himself adverse to that of the respondent No. 2.

50. Mrs. Chandrima Das & Ors. (supra) does not help the petitioner. It was a case of public interest litigation where an Advocate has been found to have locus standi to file a public interest litigation to enforce a public duty. The Division Bench in this case has held that, the petitioner has locus standi to maintain writ petition.

51. The Order dated December 13, 2007 passed by the Supreme Court in Special Leave to Appeal (Civil) No(s). 22999 of 2007 does not assist the petitioner in establishing any other right as an overseas citizen than already recognized in India. His special leave petition was not entertained by the Supreme Court as he had received the information sought for under the Right to Information Act, 2005. The Supreme Court has clarified in the said order that their Lordships did not pronounce on the status of the petitioner.

52. In such circumstances, the fourth issue is answered in the negative and against the petitioner.

Issue No. 5

53. Notwithstanding the petitioner failing to establish any right of his being infringed by the impugned decision of the State he would have succeeded in receiving his reliefs had the impugned decision of the State been in violation of Article 144 of the Constitution or been vitiated by fraud. The same is not the case. Nonetheless, he may succeed if the impugned decision is arbitrary.

54. In , 1979 Volume 3 Supreme Court Cases page 489 (Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.) the Supreme Court has held that,

"10.It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it processes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

55. In *M/s. G.J. Fernandez (supra)* the Supreme Court has held that, if a party has consistently and bona fide interpreted the standards prescribed in a particular way, the Court should not interfere though it might be inclined to interpret it another way.

56. In , 1996 Volume 1 Supreme Court Cases page 361 (*Balaji Raghavan v. Union of India*) the Supreme Court has held that, the then existing procedure for selection of candidates for Bharat Ratna and Padma awards was wholly vague and was open to abuse at the whims and fancies of the persons in authority. Noting Article 51-A(j) of the Constitution the Supreme Court has held that, it is "necessary that there should be a system of awards and decorations to recognize excellence in the performance" of the fundamental duties enshrined in Article 51-A(j). The Supreme Court requested a committee of high-level functionaries to formulate appropriate guidelines governing grant of Padma awards. The awards granted by the Government were not directed to be recalled.

57. In the present case, the State has not produced any guidelines governing the consideration of the grant of the two awards, namely Bangabhusan and Bangabibhusan. In absence of such guidelines, it would be open to the persons in authority to confer the same whimsically or arbitrarily. More importantly, the awardees would be looked upon with suspicion rather than with respect as noted in *Balaji Raghavan (supra)*.

58. Referring to *Mehar Singh Saini (supra)* the petitioner submits that, by reason of the observations of the Supreme Court against the respondent No. 2 made in *Malay Kumar Ganguly (supra)* and *Balaram Prasad (supra)* the respondent No. 2 has rendered himself unfit to be considered by the State for conferment of any award.

59. *Mehar Singh Saini (supra)* relates to the removal of Chairman and Members of the Public Service Commission under Article 317 of the Constitution of India. The yardstick applied for removal of functionaries under Article 317 of the Constitution would hardly apply in the present case.

60. Although the State has acted without framing guidelines governing the awards in question, the State has disclosed the reasons for conferring the award on the respondent No. 2. Such reasons cannot be said to be inadequate. The impugned action of the State cannot be said to be arbitrary or whimsical. The decision dated May 17, 2014 concerns 13 awardees for Bangabibhusan and 18 awardees for Bangabhusan. Striking down the decision dated May 17, 2014 on the sole ground of lack of prior guidelines would be extremely harsh and inequitable. Such a finding would affect all the awardees of all the years apart from the year in question. All such awardees are not parties to the present petition.

61. However, it is desirable that the State Government considers framing suitable guidelines governing the consideration of the grant of awards. This would instill greater transparency in the process.

62. The fifth issue is consequently answered in the negative and against the petitioner.

63. I clarify that none of the observations made herein would prejudice any of the parties in any proceedings pending in respect of the complaint to the Medical Council of India or West Bengal Medical Council.

64. W.P. No. 15515(W) of 2014 is dismissed, however, without any order as to costs. The interim order is vacated.

65. Urgent photostat certified copy of this order be made available to the parties expeditiously.