

**(2003) 04 CAL CK 0040**

**In the Calcutta High Court**

**Case No :** A.P.O. No. 176 of 2002, A.P.O.T. No. 145 of 2002 and W.P. No. 1297 of 2001

Kunal Saha

APPELLANT

Vs

West Bengal Medical Council and Others

RESPONDENT

**Date of Decision :** 30-04-2003

**Acts Referred:**

Army Act, 1950 — Section 130  
Bengal Medical Act, 1914 — Section 12(1), 17, 25  
Constitution of India, 1950 — Article 226, 32  
West Bengal Medical Council Regulations — Regulation 5

**Citation :** (2005) 2 CHN 101

**Hon'ble Judges :** Hrishikesh Banerji, J;Asok Kumar Ganguly, J

**Bench :** Division Bench

**Advocate :** P.K. Dutta and N.K. Nandi, for the Appellant;P.K. Mullick and S. Bhowmick and M.C. Bhattacharjee and A. Roy for the respondent No. 5, for the Respondent

## **Judgement**

Asok Kumar Ganguly, J.—This appeal is directed against an order dated 22.02.2002 passed by a learned Judge of the Writ Court on the writ petition being W. P. No. 1297 of 2001. The said writ petition is still pending.

2. The writ petitioner Dr. Kunal Saha is also the appellant before us. The writ petitioner/appellant lodged a complaint before the West Bengal Medical Council (hereinafter called the "Council"), the 1st respondent, and the said complaint was lodged against one Dr. Sukumar Mukherjee, the 5th respondent. The substance of the complaint was that the wife of the appellant died on 28.05.1998 as a result of rash and negligent treatment of the 5th respondent followed by the treatment of other doctors. As the 5th respondent, a medical practitioner, is registered with the Council, appellant sent several representations to the Council inviting it to initiate disciplinary action against the 5th respondent. But as the Council and/or its officers were not taking any step, the appellant, being aggrieved, filed a writ petition (W. P. No. 2599 of 1999). The said writ petition

was taken up by a learned Judge of this Court and after hearing the parties, the learned Judge, by an order dated 13.03.2000 finally disposed of that writ petition. In doing so the learned Judge directed the Council to dispose of the case of appellant, after giving him an opportunity of hearing, as expeditiously as possible and preferably within a period of 12 weeks from the date of communication of the order of the learned Judge and it was further directed that the Council should pass a speaking order. Pursuant to the said order, a notice was served upon the appellant to appear before the Council on 12.05.2000. It may be noted that in the said hearing before the Council the appellant wanted 3 leading experts in the world of Dermatology to give evidence for him. But, as those experts were heaving a busy schedule, it was not possible for them to appear in person before the committee of the Council at Calcutta. As such, the appellant requested his learned Advocate-on-Record to obtain the permission of the Council for a tele-conference. But, the same was declined by the authority of the Council. Against such order, the appellant filed another writ petition but the prayer of the appellant was also turned down by the Writ Court and the matter was ultimately settled by the order of the Hon"ble Supreme Court by the following order, which is set out:

""SLP (C) No. 15292 of 2000. Heard learned Counsel for the parties. The SLP is dismissed. However, it is directed that prior to fixing the date for video conference, respondent No. 1 would send expert's opinion and his own deposition to the West Bengal Medical Council within 15 days from today. Thereafter within 15 days video conference will take place on the date fixed by the petitioner Medical Council. The petitioner shall also communicate the date for such conference in advance to respondent No. 1.

SLP (C) 16261/2000. Learned Counsel for the petitioner does not press this petition at this stage in view of the order passed in SLP (C) No. 15292/2000, The SLP is dismissed as not pressed. However, at subsequent stage it would be open to the petitioner to approach the High Court for the same relief.

3. The case of the appellant is that the authorities of the Council on 01.03.2001 held a hearing on the complaint lodged by him against the 5th respondent. The appellant appeared before them and his oral testimony was recorded and the adjudication was complete on 01.03.2001. But, as the Council was sitting tight over the matter and no communication was made by the Council about its outcome, the instant writ petition was moved by the appellant with the following prayers :

""(a) A writ in the nature of Mandamus be issued directing the respondent authorities to pass a reasoned order of the hearing/adjudication/trial held on 1st March, 2001 of the complaint lodged by your petitioner before the respondent No. 1 against the respondent N. 5 and to communicate the same to your petitioner forthwith;

(b) A writ in the nature of Mandamus be issued directing the respondent

authorities to adhere to the direction given in the order of this Hon''ble Court dated 13th March, 2000 and in the light the Apex Court order dated September 28, 2000 by passing a reasoned order of the hearing/adjudication/trial dated 1st March, 2001 and to communicate the same to your petitioner forthwith;

(c) A writ in the nature of Certiorari be issued directing the respondent authorities to transmit all records in connection with the petitioner''s case to this Hon''ble Court and after certifying and on perusal of the records conscionable justice may be administered by directing the respondent authorities to pass a reasoned order of the hearing/ adjudication/trial dated 1st March, 2001 and to communicate the same to your petitioner forthwith;

(d) A writ in the nature of Prohibition prohibiting the respondent authorities not to sit tight over the case of your petitioner and to pass a reasoned order of the hearing/adjudication/trial dated 1st March, 2001 and to communicate the same to your petitioner forthwith;

(e) Rule NISI in terms of prayers (a), (b), (c), (d) above;

(f) An order be passed directing the respondent authorities to pass a reasoned order of the hearing/adjudication/trial dated 1st March, 2001 of the complaint lodged by your petitioner before the respondent No. 1 against the respondent No. 5 and to communicate the said order to your petitioner forthwith;

(g) Ad interim order in terms of prayer (f) above;

(h) Such other or further order or orders as to Your Lordships may deem fit and proper."

4. On such writ petition being moved, a learned Judge of the Writ Court passed an order dated 08.10.2001. In the said order dated 08.10.2001, the learned Judge decided to mould the relief and held that there are two stages for completion of the enquiry, which was undertaken by the Council. The first stage is the preliminary investigation and/or enquiry conducted under Rule 8 by the Penal & Ethical Case Committee (hereinafter called PEC) to find out whether there is any prima facie case to proceed against the delinquent medical practitioner. The learned Judge found that the PEC opined that there is a prima facie case for the Council to hold an enquiry the relevant rules.

5. In the said order, the learned Judge, after recording the sequence of various proceedings and orders passed by several Courts including the Apex Court, came to a finding that the Council has taken reasonable time and acted with reasonable despatch, in completing the enquiry by PEC. Thereafter, the learned Judge, after hearing the submissions advanced by the learned Counsel for the parties, gave the following directions :

""Having heard the respective contention of the learned Senior Advocates I am of the view that this proceeding has to be completed within a particular time frame since for some reason or other time scheduled in terms of earlier order

could not be maintained. Having regard to procedure provided in the rule and nature of allegations, I direct the Council to take step to issue notice as contemplated under Rule 9 within a period of fortnight from 15th October, 2001 upon Mr. Roy's client. This time shall be computed after excluding 22nd October, 2001 and 31st October, 2001 (both days inclusive).

His client will be at liberty to give proper reply within three weeks from the date of receipt of said notice. The hearing of this proceeding shall be undertaken as far as practicable on day-to-day basis and this shall be completed tentatively within a period of four months from the date of receipt of the reply from Mr. Roy's client. However, this time limit shall not exceed six months from the date of receipt of the reply of Mr. Roy's client. The hearing of all other proceeding shall be followed in accordance with Rules 9 to 17 of the relevant rules being Annexure-R 12 to the affidavit-in-opposition."

6. By Dr. Roy's client, the learned Judge meant the 5th respondent. Thereafter, the Council fixed the date of hearing in respect of the said complaint on 18.12.2001. But on 24.11.1991, a letter was written by the 5th respondent to Mr. D. K. Ghosh, the Registrar of the Council, praying for adjournment of hearing by 10 weeks on the ground that he wants experts staying in different parts of the country to adduce evidence on his behalf. Thereafter the date of hearing was adjourned and fixed on 5.3.2002.

7. Against such adjournment of hearing, the appellant filed an application (G.A. 636 of 2001) in the pending writ petition. After hearing the parties, the learned Judge of the Writ Court passed certain orders directing the Council to hear the matter on 18.12.2001. The learned Judge passed the following directions :

""Therefore, I direct that hearing must take place today as it was fixed. Mr. Das, however, submits that it is an impossible task to get all the members assembled today within the shortest time. I am told that there is provision for formation of quorum, which needs only nine members. It is for the Council to take steps for formation of the Board or formation of the quorum and it shall be done with all possible and practicable means. It is for the Council to do so. Therefore, I cannot say on this score how it has to be done and in which manner.

8. The hearing shall take place and Mr. Roy has assured that his client will co-operate. He says at least five days" time should be given to get his client ready for cross-examination. In that view of the matter, it would be open for the petitioner to produce his witnesses and evidences today at the hearing or any other date which might be fixed by the Council, however, any decision for hearing shall be taken after considering both parties" view. Cross-examination of Mr. Roy's client shall not be started before Monday next.

9. The hearing did not actually take place on that date, i.e. on 18.12.2001 even though the appellant along with his learned Advocate went to the office of the Council on 18.12.2001. On the contrary, it is alleged by the appellant that the 4th respondent Dr. Ashok Chowdhury, allegedly misbehaved with the appellant

and his learned Counsel and expressed his bias towards the appellant. In this connection, two affidavits were filed in the pending writ petition. One was filed by one Sri Avik Dutta, the learned Counsel for the appellant, and the other one was filed by the appellant himself. Such affidavits are part of the paper book before this Court and were filed before the Writ Court. The Court found that since specific allegations were made against the 4th respondent and also against one Sri D. K. Ghosh, who is the Registrar of the Council, those affidavits should be served on them and those two persons should be given liberty to file their affidavits and the learned Judge adjourned the writ petition for 3 weeks after the vacation. The learned Judge also observed in His Lordship's order that the next date of hearing should be fixed by the Council keeping the guidelines in the order of the Court dated 18.12.2001. Thereafter, affidavits were filed by Dr. Ashok Chowdhury, the 4th respondent, explaining therein the difficulties of holding the hearing on 18.12.2001. It was stated that he came to know of the order of the Court over phone at 1.00 p.m. and he immediately called an emergent meeting at 2.00 p.m. and instructed the Registrar to communicate the same to other members of the Council. But, it was stated, that despite all efforts, the hearing of the complaint case had to be adjourned, as there was no quorum in the meeting of the Council. The other allegations of bias made against the 4th respondent by the appellant and his learned Advocate were specifically denied.

10. Thereafter, on 31.01.2002, the matter appeared before the learned Judge and on that date, the learned Judge noted that the date of hearing before the Council was fixed on 12.02.2002 at 3.00 p.m. This time a prayer was made on behalf of the appellant to postpone the date of hearing. But, the learned Judge refused to accept the prayer of the appellant and the learned Judge gave certain directions for filing of affidavits. Thereafter, on 14.01.2002, the learned Judge of the Writ Court further passed an order holding, inter alia, that the Council did not commit any error by not adjourning the hearing on the request of the appellant. The appellant made this prayer on the ground that he has made certain allegations of bias against the 4th respondent and since the question of bias is pending before the Hon'ble Court, the hearing of the complaint before the Council of which Dr, Ashok Chowdhury is the President should be adjourned. But, the Council refused to adjourn the same and the learned Judge of the Writ Court was of the view that there was no error on the part of the Council in refusing to adjourn the hearing since the hearing was fixed pursuant to the Court's order and since the appellant was all the time insisting on an early hearing.

11. Thereafter, the learned Judge, by an order dated 22.02.2002, held that despite allegation against Dr. Ashok Chowdhury, the appellant did not ask for removal of Dr. Ashok Chowdhury from the Council on the other hand the appellant prayed for a speedy disposal of his complaint. The learned Judge was of the opinion that unless proper application with specific prayer is made for removal of Dr. Ashok Chowdhury, who was the President of the Council, such prayer cannot be entertained.

12. In the order under appeal dated 22.02.2000, the learned Judge noted the basic grievance of the appellant. The basic grievance was that the date of hearing which was fixed initially on 18.12.2001 was postponed till March, 2002 and the complaint is that such change was made unilaterally and at the request of the 5th respondent and such unilateral change of date has affected the appellant who has come from U.S.A. The learned Judge also noted that pursuant to his previous order, hearing was fixed on 18.12.2001 by the Council. But, the hearing could not take place, as there was no quorum for the meeting in which hearing was to take place. The learned Judge then noted that a letter was annexed to the supplementary affidavit dated 03.9.2001 which was affirmed by one Sri Malay Kumar Ganguly who wrote on behalf of the appellant and expressed the bias of the appellant against the 4th respondent and asked the Council not to treat the 4th respondent as a member of the Committee. The learned Judge also noted that the bias of the 4th respondent, against the appellant was reflected his oral testimony in a criminal trial where he deposed in favour of the 5th respondent. The learned Judge, however, did not allow the production of record of the said deposition of the 4th respondent as the same was not a part of the proceedings. The learned Judge also noted the rival contentions of the learned Counsel appearing for the parties. After considering the rival contentions, the learned Judge held that the allegation of bias against the 4th respondent of not holding a hearing on 18.12.2001 in view of lack of quorum is not sustainable. The learned Judge further noted that mere inaction on the part of the 4th respondent in not holding the meeting on 18.12.2001 is not sufficient to enable the Court to come to a conclusion that the 4th respondent was biased. The learned Judge also held that for derogatory remarks against the Court allegedly made by the 4th respondent, a contempt proceeding may lie, but that does not make out a case of bias of the 4th respondent against the appellant. The learned Judge also considered Rule 17(2) of the relevant rules and held that in the decision making process, the decision of the entire Committee will prevail and such Committee must consist of at least 9 members and final decision is taken by voting and in such voting, the opinion of a majority of 2/3rd members is required. The Judge, therefore, held that even if the 4th respondent is having any bias against the appellant, his opinion cannot influence the other members of the Council coming from various sections of the society. The learned Judge also noted from the affidavit filed before him that attempts were made to form a quorum to hold a meeting on 18.12.2001. The learned Judge made it clear in the concluding portion of his order that if in the course of hearing, it is found that any member of the Council has shown any prejudice and taken any undue interest in favour of the charged medical practitioner (5th respondent), then the appellant will be at liberty to apply to the Council for exclusion of the member and the Council shall take a decision of such exclusion. The relevant portion of the order of the learned Single Judge, on this aspect, is set out hereinbelow :

""I make it clear that in the event any material is found to establish, at least

prima facie, that any member of the Council who is hearing this cause has prejudged any issue or has taken any undue interest or demonstrated naked favouritism in favour of charged medical practitioner then the petitioner will be at liberty to apply to Council for exclusion of the member or members concerned. In that case Council shall take decision as early as possible before next hearing on the question of exclusion of the member or members concern. In this decision making process or meeting the member or members against whom allegation will be made shall not sit."

13. The learned Judge also noted that despite the supplementary affidavit being affirmed on 03.9.2001 alleging bias against Dr. Chowdhury, the appellant did not ask for removal of Dr. Chowdhury, but the only prayer was for speedy disposal of his complaint. Since there is no application for removal of Dr. Chowdhury, the learned Judge did not grant the prayer for removal of Dr. Chowdhury.

14. In my judgment, the order passed by the learned Judge of the Writ Court is a well-considered one and the allegation of bias as made by the appellant against the 4th respondent was properly dealt with. In the considered opinion, the allegation of bias is not one of substance.

15. Looking at the sequence of events and the materials on record, this Court finds that the allegation of bias was not seriously made in this case. The same was made more by way of desperation rather than as a serious allegation. The allegation of bias first surfaced in a supplementary affidavit dated 03.09.2001 filed in connection with the writ petition. The said supplementary affidavit discloses a statement of fact contained in a letter which was enclosed with the said supplementary affidavit and forwarded to the Council and it was urged that the same may be treated as a part of the writ petition. The letter, which was enclosed in the said affidavit, does not contain any date. The letter was written by one Sri Malay Kumar Ganguly who described the appellant as his client. The said letter contains some allegations against Dr. Chowdhury and the said letter also contains the prayer for removal of Dr. Chowdhury from the Committee. In that letter some references were made to the newspaper reporting and a T. V. Programme in order to prove the bias of Dr. Chowdhury against the appellant. The said letter discloses that Dr. Chowdhury was a member of the Committee, which held a hearing on 01.03.2001, and the same was attended by the appellant and it was urged in that letter that Dr. Chowdhury should be removed from the said Committee.

16. The result of the P.E.C. deliberations went actually in favour of the appellant. The P.E.C. held that there is prima facie material for issuing a notice to the 5th respondent in respect of the charges raised by the appellant in his complaint before the Council.

17. From the aforesaid sequence of events, it is clear that the allegation of bias raised by the appellant against the 4th respondent, who is the Chairman of the Council and thereby ex officio President of the meeting of P.E.C., is without any

substance. In this connection, reference may be made to the regulations framed by the Council u/s 12(1) of the West Bengal Medical Council Act. Under Regulation 5, the President shall be the Chairman of every meeting at which he is present.

18. Apart from that, the manner in which a serious allegation like the one of bias has been raised against the Chairman of the Council does not inspire any confidence in the mind of the Court. The said allegation comes in the form of an undated letter purported to be written by one Sri Moloy Kumar Ganguly, who chose to describe himself as the "Constituted Attorney" of the appellant. In the said letter, Sri Ganguly described the appellant, Dr. Kunal Saha, as his client, but the letter of Sri Ganguly does not show whether he is an Advocate or a legal practitioner of any kind. The said Sri Ganguly, while affirming the affidavit to the present writ petition, described his "profession" as service. This Court fails to understand how can a registered medical practitioner like the appellant be the client of Sri Ganguly, whose occupation is "service", particulars of which have not been disclosed in affidavit.

19. The aforesaid factual background at least makes one thing clear that the allegation was made in a casual manner. Apart from that, the aforesaid letter being undated as noted above also raises another controversy. The Council, in its affidavit, affirmed by its Registrar, to the writ petition filed by the appellant, has categorically raised in paragraph 35, a complaint that the undated letter allegedly written by Sri Moloy Kr. Ganguly was never served on the Council. The said complaint of the Council was dealt with by Sri Ganguly, in his affidavit-in-reply in paragraph 9 at page 23 of the A/R. The following averments have been made which do not dispute with the complaint of non-service of that undated letter. The relevant portions from the affidavit-in-reply are excerpted below :

""I say that the deponent cannot deal with the supplementary affidavit of the writ petitioner, which was affirmed on 3rd September, 2001 in the said affidavit. He can deal with the same in a separate affidavit. Without prejudice to the aforesaid and fully relying on the same, I deny the allegation that the said supplementary affidavit has no relevance with the instant writ petition, as alleged or at all."

20. Thus, the very receipt of the undated letter allegedly containing allegations of bias against the 4th respondent is not free from doubt. Rather its receipt is very doubtful. Therefore, no reliance can be placed on such materials.

21. The next allegation of bias came after the Council adjourned the hearing of the complaint in view of the request of the 5th respondent that he wants some time in order to collect evidence in his favour. On these aspects of the matter, as noted hereinabove, the learned Judge ultimately did not find that the Council was acting in a biased manner and the learned Judge directed the holding of the meeting of the Council initially on 18.12.2001, but then finding that it was difficult to hold the meeting on that date, in view of absence of quorum,



permitted the Council to hold this meeting on 12.2.02. Those orders dated 18.12.2001, 12.2.2002 and 14.2.2000 passed by the learned Judge were accepted by the appellant and no appeal was filed against those orders. At this stage, the appellant started backtracking and wanted the Council meeting to be adjourned. Thus, the Writ Court did not permit, and the Court wanted him to participate in the meeting and we think the Writ Court was right in doing so. But the appellant chose not to do so, and the Council, under the order of the Court had to proceed in the absence of the appellant.

22. In the backdrop of the aforesaid fact, it is difficult to fathom the real grievance of the appellant, Initially, the appellant felt very much aggrieved by the order of adjournment, but, subsequently, when the Court wanted the Council to expedite the process, the appellant was praying for adjournment. This inconsistency in the stance taken by the appellant shows that he was not serious with his allegation of bias.

23. The next allegation of bias stems from the fact that the 4th respondent in a criminal case gave evidence for the defence and in support of the 5th respondent. The learned Judge of the 1st Court while passing the order under appeal of course did not consider the nature of the evidence given by the 4th respondent in favour of the 5th respondent. But since those materials have been brought on record by filing the paper book, this Court proposes to consider the same.

24. From the evidence of the 4th respondent given in the said criminal case it is clear that he was summoned by Court to give evidence. But before giving his evidence, the 4th respondent filed a petition in the Court of the Chief Judicial Magistrate at Alipore. In the said petition, the 4th respondent made it clear that he was summoned as a witness on behalf of the prosecution. In the said application, the 4th respondent disclosed that he is the President of Council and in such application the 4th respondent disclosed that a complaint filed by the appellant is pending with the Council. In the said application, the 4th respondent made it clear that at this juncture he should not open his mouth either on behalf of the prosecution or on behalf of the defence as that may prejudice the case of the parties. The 4th respondent also stated that as he is the President of the Council, he should not have been summoned by the prosecution and he prayed to be excluded by the Court. Despite the said letter being written by the 4th respondent, he was asked to depose in the said case. This Court has gone through the entire evidence given by 4th respondent in Court. In the said evidence the 4th respondent expressed some doubts about recording of his conversation in a cassette, which might have been tampered. The 4th respondent deposed that he knew the accused persons for a long time and 5th respondent is one of the accused persons. Nothing has been said by the 4th respondent to show his bias. It may be also noted that the 4th respondent also stated that he came to know that the appellant was his student. When specific questions were made to the 4th respondent about the names of the doctors who

were associated with the treatment of Smt. Anuradha Saha, since deceased, the 4th respondent refused to give any answer as the matter is under consideration in the Council.

25. It may be noted that the learned Counsel for the appellant did not at all place the evidence of the 4th respondent in that criminal case before this Court at the time of argument. But the Court has perused it since it is on record.

26. So considering the evidence of the 4th respondent in the criminal case and considering the fact that he was a witness for the prosecution and the letter, which was written by him to the Court on 24.1.2002, this Court is of the opinion in the said evidence does not show any bias of the 4th respondent against the appellant and in favour of the 5th respondent.

27. These are the factual allegation of bias. When this appeal was filed against the order dated 22nd February, 2002, and which we are hearing now finally, an interim order was passed by the Division Bench on 6.3.02. The Appeal Court while disposing of the interim application gave the certain interim direction, relevant portions of which are excerpted :

""We have already disposed of another appeal and/or the application being APOT No. 129 of 2002 and G. A. No. 813 of 2002 by an order dated 21st February, 2002 in which we have already directed the parties to proceed before the Committee where the complaint filed by Dr. Saha is now being taken care of. That being the position only order that can be passed on the application for stay is to say that whatever decision that would be taken by the Committee in which Dr. Chowdhury is the President will abide by the result of this appeal."

28. From the aforesaid order also it is clear that the prayer for stay of hearing by the Council was also made before the Appeal Court and the Appeal Court rejected the same. This Court finds that the Council upon hearing the matter ultimately gave a reasoned order a final decision on 18.6.02. From a perusal of the said decision it appears that the same was taken in the concluding meeting dated 20th May, 2002 where all the members present expressed their views and the 4th respondent, even though was present in the meeting, did not take part in the deliberation nor did he express his views. The majority members of the Council present accepted the explanation of the 5th respondent and exonerated him from the charges. This Court has been informed that the correctness of the said decision of the Council has been challenged in another writ petition, which is pending. Therefore, nothing said in this judgment shall be construed as an expression of opinion by this Court on the correctness or otherwise of the said decision of the Council.

29. Learned Counsel for the appellant in support of his submission relied on a few decisions, which are now considered by this Court. The learned Counsel relied on the decision of the Supreme Court in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, of the said judgment the learned Judge was considering the question whether for an inartistic framing of

prayers of writ petition can be thrown out. The learned Judge in paragraph 45 considered the prayers made in that proceeding and after considering the prayers held that Article 32 of the Constitution gives wide discretion to the Court in the matter of moulding the prayers. It may be stated here that in the instant proceeding the writ petition out of which this appeal arises is obviously not a proceeding of under Article 32 but is one under Article 226. Both the learned Counsel for the 5th respondent and the learned Counsel for the Council urged that the prayers which were made in the writ petition have been satisfied. As such, the writ petition has become infructuous. The learned Counsel pointed out that prayer was for obtaining the reasoned order of the said Council on the complaint of the appellant. The said reasoned order has been passed. Therefore, in the background of such prayer in this writ petition, the case of bias against the 4th respondent who is the President of a Council cannot be entertained. In support of this contention the learned Counsel appearing for the Council referred to certain judgments. This Court does not feel inclined to discuss those judgments as this Court is of the view that in a writ petition, the Court should not be technical about prayers. The Court should look more at substance than at mere form. It is well-settled if the Court is satisfied from the case that a party is entitled to relief, inartistically framed prayers normally are not a bar, unless they cause any prejudice to the other side. In this case, the Writ Court, after considering the case of the parties rightly moulded the relief in entertaining the grievance of the appellant about his bias against the 4th respondent.

30. The learned Counsel for the appellant relied on the judgment in the case of *Manak Lal Vs. Dr. Prem Chand*, . The learned Counsel relied on the said judgment in order to point out that a case for bias the test is not whether in fact a bias has affected the judgment of the Tribunal. The test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. The learned Counsel submitted that in the instant case the bias alleged by him against the President of the Council has operated against him and this has vitiated the ultimate finding of the said Council and the Court may set aside the same.

31. The learned Council also relied on a judgment of the Supreme Court in the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . The learned Counsel relied on paragraph 15 of the said judgment in order to point out the real test is not whether the person concerned is biased as it is difficult to prove the state of mind of a person. Therefore, what has to be seen is whether there is a reasonable ground for believing that the person concerned was likely to have been biased. In deciding such question Court has to take into consideration the human probabilities and ordinary course of human conduct. The learned Counsel also relied on another judgment of the Supreme Court in the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, . The learned Counsel relied on paragraphs 6 and 7 of the said judgment. In those paragraphs the learned Judge pointed out that the test in a case of bias is whether there is a

real likelihood of bias and in coming to the said decision the Court does not look at the mind of the Justice himself or at the mind of the Chairman of Tribunal who proceeds in a judicial capacity. The Court has to look at the impressions which have been formed by ordinary people, and if a right-minded person thinks that in the circumstances there is a real likelihood of bias then the person concerned should not sit. The learned Counsel also relied on Garner's Administrative Law, 6th Edition (London, Butterworths, 1985). In order to substantiate his contention of bias in this case and the learned Counsel drew the attention of this Court to the following passage at page 138 in Garner :

""The natural justice "bias" rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision-maker then that decision can be challenged."

32. But the aforesaid decisions do not apply to the facts of this case.

33. In *Manak Lal*, the Apex Court held that in a case involving allegation of bias, there is distinction between pecuniary bias and any other prejudice attributable to a member of a quasi-judicial Tribunal. If it is not a case of pecuniary bias, as in the instant case no pecuniary bias has been alleged, then it would be a question of fact to be decided in each case (Para 4).

34. In *Manak Lal*, the facts were that against *Manak Lal*, there were allegations of professional misconduct and those allegations were to be enquired into by a Tribunal of three members of which Mr. Chhangani was the Chairman. But Mr. Chhangani appeared for Dr. Prem Chand who lodged the complaint against *Manak Lal* and Dr. Chhangani argued the case for Dr. Prem Chand and *Manak Lal* acted as a pleader in that proceeding opposing Mr. Chhangani.

35. Under those circumstances, the Apex Court held that there is a reasonable likelihood of bias against the Tribunal of which Dr. Chhangani was the Chairman. But here the facts are totally different.

36. Similarly in *A.K. Kraipak* (supra), the fact situation was totally different. In *Kraipak*, one Naquishbund participated in a selection proceeding where the names of Basu, Baig and Kaul, rivals of Naquishbund, were considered. The Court held, on those facts, that there was conflict between the interest of Naquishbund and his duty. So going by "human probabilities and ordinary course of human conduct" the Court held that Naquishbund was biased. The facts in *A.K. Kraipak* do not have the faintest resemblance to the facts in this case.

37. In *Ranjit Thakur* (supra) facts were that *Ranjit*, at the material time, was serving a sentence of 28 days "rigorous imprisonment for violating the norms of presenting representation of higher officers". That representation was sent by *Ranjit* to higher officers complaining of ill-treatment received by him from respondent No. 4.

38. While serving that sentence *Ranjit* was served with another sentence by a

Summary Court Martial of which respondent No. 4 was a participating member. As a result of such punishment of 1 year's rigorous imprisonment, Ranjit lost his job.

39. The Court on those facts held that participation of respondent No. 4 in the Court Martial proceeding has vitiated the same. In coming to the said finding the Court also found that u/s 130 of Indian Army Act, the accused person has a right to object to any officer being a member of the Court by which he is to be tried. The Apex Court found that benefit of Section 130 was admittedly not extended to Ranjit as he was not allowed the right to object before respondent No. 4 was made a member of the Court. The Court found that the peculiar facts of the case coupled with the non-compliance of the statutory provision of Section 130 has vitiated the Court Martial proceedings. Facts in the present case are totally different.

40. In this case, there is no whisper of any denial of statutory safeguard by the appellant. In the instant case, the appellant did not participate in the final hearing before the Council even though the Court asked him to do so. So, the Council after hearing the parties appearing before it decided the matter by following the provisions of Section 25(a)(ii) of the Bengal Medical Act. Section 25(a)(ii) of the Bengal Medical Act, 1914 is set out below :

""Section 25. The Council may direct--

(a) that the name of any registered practitioner,

(ii) whom the Council, after due inquiry in the same manner as provided in Clause (b) of Section 17, have found guilty by 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."

41. In this case, the aforesaid provisions have been followed and the 4th respondent did not participate in the deliberations and rescued himself from participating in the proceeding in any manner. The member of the Council are responsible persons drawn from different walks of life and it does not stand to reason that the majority of them will be influenced by the 4th respondent. No such case has been made out.

42. So, this Court is of the view that the case of allegation of bias of the appellant against the 4th respondent is not sustainable. The appeal is dismissed. The order dated 22.2.02 passed by the learned Judge of the Writ Court is affirmed.

43. But, this Court makes it clear that it has not adjudicated on the merits of the order of the Council dated 18.6.02, since the legality of that order has been questioned in another writ petition and which is pending. Nothing said by us in this judgment would affect that writ petition.

44. There will be no order as to costs.

45. Since the appeal is disposed of, the records, which were called for by the Court during the hearing of the appeal, be sent back to the Counsel.

46. Urgent xerox certified copies of the judgment and order be made available to the appearing parties, if applied for.

Hrishikesh Banerji, J.

47. I agree.