

(1996) 08 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9725 of 1995

L.C. Obulesu, Asst. Professor, Forensic Medicine, Govt.
General Hospital

APPELLANT

Vs

Andhra Pradesh Medical Council and Another

RESPONDENT

Date of Decision : 26-08-1996

Acts Referred:

Andhra Pradesh Medical Practitioners Registration Act, 1968 — Section 15(4), 17(2), 25
Andhra Pradesh Medical Practitioners Registration Rules — Rule 10, 11, 14, 4(1), 6
Constitution of India, 1950 — Article 226

Citation : (1996) 4 ALT 281

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Surendra Rao and C. Srinivasa Baba, for the Appellant; M. Chandrasekhara Rao, S.C., for the Respondent

Final Decision : Allowed

Judgement

C.V.N. Sastri, J.—Dr. L.C. Obulesu, who is an M.D. in Forensic Medicine and working as Assistant Professor in the Government General Hospital at Kurnool, has filed this writ petition questioning the legality and validity of the order dated 4-5-1995 passed by the Andhra Pradesh Medical Council, first respondent herein, directing removal of the name of the petitioner from the Medical Register for a period of three months from the date of serving notice by the Registrar in this behalf u/s 17(2) read with Section 15(4) of the Andhra Pradesh Medical Practitioners Registration (Amendment) Act, 1986 (hereinafter referred to as "the Act"). The facts leading to the writ petition may be stated briefly:

On 26-10-1993 one Amrutharaj was murdered in Cuddapah town in a stabbing incident and a crime was registered by the police in that behalf and inquest was held on 27-10-1993 at the Government Head-Quarters Hospital, Cuddapah, in the presence of mediators. In the inquest report four injuries on the body of the deceased were noted i.e., two injuries on the abdomen, one injury on the head

and another injury on the right eye-brow. Later on the same day, Post-Mortem examination was conducted by Dr. B. Ramachandraiah, Civil Assistant Surgeon, District Hospital, Cuddapah. In the Post-Mortem examination certificate issued by him, Dr. B. Ramachandraiah stated that he found only two injuries on the abdomen and opined that the deceased died of shock and haemorrhage due to the said two injuries. In view of the discrepancy between the inquest report and the post-mortem certificate, the investigating officer requested the Mandal Revenue Officer, Cuddapah (Executive Magistrate) to have the body of the deceased exhumed and second Post-Mortem examination conducted. Thereupon the Mandal Revenue Officer addressed two letters dated 1-11-1993. One was addressed to the Resident Medical Officer, Government Head-Quarters Hospital, Cuddapah, requesting him to send a team of doctors to conduct exhumation of the dead body of Amrutharaj in his (M.R.O's) presence and to issue Post-Mortem certificate on the injuries that were caused on the dead body of the deceased prior to his burial. The other letter was addressed to the Assistant Director of Forensic Laboratory, Kurnool, to depute Assistant Professor of the Medical College, Kurnool, to conduct Re-Post Mortem examination of the dead body of Amrutharaj which was buried on 28-10-1993 stating that Dr. Ramachandraiah, who conducted the Post-Mortem examination on 27-10-1993 noted only two injuries in the Post-Mortem Report instead of four injuries. The Assistant Director of Forensic Laboratory, Kurnool, on receipt of the said letter addressed by the Mandal Revenue Officer made an endorsement thereon instructing the petitioner herein, who is the Assistant Professor of Forensic Medicine, to attend to the said work of exhumation and Re-Post-Mortem examination. As per the said instructions, the petitioner carried out the exhumation of the body and conducted Re-Post Mortem examination on 4-11-1993. After conducting the Re-Post Mortem examination, the petitioner issued a Post-Mortem certificate stating that there are three injuries on the body of the deceased i.e., two injuries on the abdomen and a third injury on the head. He, however, confirmed that the death is due to the stab injury on the abdomen. On the basis of the second Post-Mortem certificate issued by the petitioner, the police filed a charge-sheet not only against A-1 to A-6 whose names were disclosed during the investigation but also against Dr. B. Ramachandraiah as the 7th accused alleging that he issued a false Post-Mortem certificate without disclosing the head injury and thereby committed an offence punishable u/s 201 I.P.C. After he was implicated as an accused in the case, Dr. B. Ramachandraiah was arrested. He was, however, subsequently discharged as no sanction was obtained from the Government u/s 197 Cr.P.C. The case was committed to Sessions Court against A-1 to A-6 which ended in acquittal of all the accused. After he was discharged from the case, Dr. B. Ramachandraiah sent a complaint dated 7-3-1994 to the Andhra Pradesh Medical Council stating that after he issued the Post-Mortem certificate dated 27-10-1993, two of his colleagues, namely Dr. D. Israel Raju, Civil Surgeon (Specialist) and Dr. S. Feroz Begum, Medical Superintendent, pressurised him to issue a revised Post-Mortem certificate at the instance of the police, but he refused to oblige them and that the police, acting in collusion with the said two

doctors, ultimately managed to have a second Post-Mortem examination conducted by the petitioner herein who gave a false Post-Mortem certificate adding one more injury which resulted in implicating him (Dr. Ramachandraiah) as an accused leading to his arrest and thereby he was humiliated and his reputation was damaged. He, therefore, prayed for action to be taken against the petitioner herein and the two other doctors named in the complaint. Acting on the said complaint received from Dr. B. Ramachandraiah, the Andhra Pradesh Medical Council issued notices dated 20-5-1994 to the petitioner herein as well as to the two other doctors calling upon them to offer their remarks and objections to the complaint. The petitioner submitted his remarks and objections on 30-5-1994 denying that he issued any false Post-Mortem certificate and asserting that he, in fact, found three injuries on the body i.e., two on the abdomen and one on the head. The petitioner also found fault with Dr. B. Ramachandraiah in not referring to the discrepancy between the inquest report and his own (Dr. Kamachandraiah's) findings with regard to the injuries on the body in the Post-Mortem certificate issued by him (Dr. Ramachandraiah).

2. After going through the complaint and the remarks and objections submitted by the petitioner, the Medical Council felt that there was a prima facie case for holding enquiry into the matter and accordingly it issued a notice dated 7-2-1995 to the petitioner framing a charge that he has given a false Post-Mortem certificate on 7-11-1993 by adding another injury and that he has also given replies to the questionnaire given by the Circle Inspector of Police, East Circle, Cuddapah which are contrary to his P.M. Certificate, against the principles of natural justice and medical ethics, and thereby he is guilty of infamous conduct in a professional respect and he was called upon to appear before the special committee appointed by the Council on 15-2-1995 to consider the above mentioned charges against the petitioner and decide whether or not to direct the petitioner's name to be removed from the register of Registered Medical Practitioners pursuant to Sections 15 and 17 of the Act. The petitioner was also called upon by the said notice to submit his defence to the charges along with all the relevant documents and any other information which he may desire to furnish to the special committee. The petitioner, once again, submitted an explanation on 14-2-1995 denying the charges and reiterating that he noticed one more injury on the head which was not mentioned by the complainant. In his explanation the petitioner further submitted that since the matter is sub judice and the murder case is still pending, the enquiry cannot be held against him as it is likely to result in grave injustice and prejudice to him. The special committee of experts consisting of three members, namely, Dr. G.R. Bhaskar, Professor & Head of the Department of Forensic Medicine, Deccan College of Medical Science, Hyderabad (Chairman), Dr. K.S. Narayana Reddy, retired Principal and Professor (Forensic Medicine-OMC) (Member) and Dr. C. Ramamohan, Joint Director of Medical Education (Convenor and Member), after recording the statements of the complainant and the petitioner on 15-2-1995 and after considering the material on record, submitted its report on 17-2-1995 pointing out certain errors

committed by the petitioner as well as the complainant (Dr. Ramachandraiah) in the Post-Mortem certificates issued by them respectively. It also pointed out some inconsistencies between the Post-Mortem certificate issued by the petitioner and his evidence before the committee. The Experts Committee did not, however, express any opinion as to whether the petitioner was guilty of charges levelled against him or not. It did not also recommend any action against the petitioner. The report of the Experts Committee was considered by the Ethical Committee at its meeting held on 19-3-1995 which was presided over by the Chairman Dr. N. Venkat Rao and attended by three other members including Dr. C. Ramamohan who figured as one of the members of the Experts Committee also. The Ethical Committee, concurring with the findings of the Experts Committee, came to the conclusion that the petitioner deserves penal punishment from A.P. Medical Council as the charge of issuing improper false certificate has been prima facie established and accordingly recommended three months)" temporary erasure of registration of the petitioner to prevent such irregularities in future. The Ethical Committee, however, held that the allegations made by the complainant Dr. Ramachandraiah against Dr. Israel Raju and Dr. Begum are not established and hence recommended that they may be discharged of the charges. The Ethical Committee further recommended that action should be taken against the concerned M.R.O. and the police officers for their actions which resulted in humiliation and mental agony to the complainant and suggested that the A.P. Medical Council may address the Government for taking action against the concerned officials.

3. At its 4th annual meeting and 7th session held on 20-3-1995, the A.P. Medical Council, after considering the case in the light of the reports submitted by the Experts Committee and the Ethical Committee, resolved that the petitioner is guilty of infamous conduct as he issued an improper and false Post-Mortem certificate on account of which Dr. B. Ramachandraiah has been made an accused and had to face a lot of mental agony and the Medical Council decided to remove the name of the petitioner from the Medical Register for a period of three months from the date of serving notice by the Registrar in this behalf. The said decision taken by the Medical Council was communicated to the petitioner by the Registrar of the Medical Council on 4-5-1995. Questioning the same, the petitioner has filed the present writ petition.

4. Mr. Surendra Rao, the learned Counsel for the petitioner, has argued that the impugned order is passed in violation of the Andhra Pradesh Medical Practitioners Registration Act, 1968, as amended by the Andhra Pradesh Medical Practitioners Registration (Amendment) Act, 1986 (for short "the Act") and the rules framed thereunder regulating the procedure to be followed at an enquiry held under Sections 15 and 17 of the Act and particularly in violation of Rules 6, 10 and 11(4) of the said Rules and also in violation of the principles of natural justice, that the finding that the petitioner issued a false and improper Post Mortem certificate and that he is guilty of infamous conduct in a professional respect is not based on any legal evidence, that the impugned order is based merely on

surmises and conjectures, that according to the F.I.R. and also the charge-sheet in the murder case, it was clearly stated that A-5 dealt a blow with a dagger on the head of the deceased, that the inquest report also disclosed a head injury, that in view of the discrepancy between the inquest report and the first Post Mortem certificate issued by Dr. B. Ramachandraiah a requisition was sent by the Mandal Revenue Officer-cum-Executive Magistrate, requesting for exhumation of the body and for Re-Post Mortem examination, that as per the written instructions of his superior i.e., the Assistant Director, Forensic Laboratory, Kurnool, the petitioner carried out the exhumation and Re-Post Mortem examination in the presence of the Executive Magistrate, the police and several other people including press people who took photographs of the body, that the photographs of the body taken at the time of Re-Post Mortem examination clearly establish the existence of a head injury, that the conclusion of the Medical Council that the petitioner colluded with the police and the M.R.O. and conducted exhumation and P.M. without proper authorisation and without following the procedure is totally baseless and is belied by the communication dated 4-11-1993 addressed by the Mandal Revenue Officer, Cuddapah, to the Circle Inspector of Police, East Circle, Cuddapah, which clearly establishes that the exhumation and Re-Post Mortem examination were duly conducted as per the requisition dated 1-11-1993 and after proper identification of the place of burial and body by the parents of the deceased, that the errors and inconsistencies in the Post Mortem certificate issued by the petitioner and in his evidence regarding the description of the head injury i.e., whether it is an incised wound or a laceration and whether it is ante-mortem or post-mortem, cannot lead to the conclusion that the P.M. certificate issued by the petitioner is false or that the petitioner is guilty of infamous conduct as held by the Council, it is at best an opinion and even if it is wrong, it may be a bona fide error, that the petitioner is entitled to the benefit of doubt, that the Council did not apply the high standard of proof which is required to establish the guilt of the petitioner and that the Council grossly erred in condemning the petitioner merely on the balance of probabilities and surmises and conjectures. Regarding the standard of proof which has to be applied to a case like this the learned counsel for the petitioner has cited the decision of the Privy Council in *Bhandari v. Advocates Committee* 1956(3)All .E.R. 742.

5. On the other hand, Sri M. Chandrasekhara Rao, the learned Counsel appearing for the A.P. Medical Council, has contended that the writ petition is not maintainable as there is an alternative remedy of appeal to the Government provided u/s 25 of the Act which has not been exhausted by the petitioner, that the writ petition involves several disputed questions of fact which cannot be properly adjudicated in a writ petition, that the High Court cannot sit in appeal over the unanimous decision of the Experts Committee, Ethical Committee and the Medical Council, which are composed of eminent experts, that there is no substance whatsoever in the contention of the petitioner that the impugned order is passed in violation of the statutory rules and principles of natural justice, that

Rule 6 which requires 15 days , notice before the enquiry is directory but not mandatory, that from the date of the first notice dated 20-5-1994, the petitioner had nearly 9 months of time, so he had ample opportunity, that he did not make any request either for adjournment or for permission to engage a lawyer to defend him, that no prejudice what so ever was caused to him, that ample opportunity was given to him to make his representation, that the material on record clearly establishes his guilt beyond a shadow of doubt and that there are absolutely no valid grounds whatsoever to interfere with the concurrent findings recorded by the Experts Committee, Ethical Committee and the Medical Council in exercise of the power of judicial review under Article 226 of the Constitution. In support of his contentions, the learned counsel has placed reliance on the judgments of the Supreme Court in *The State of Madras Vs. G. Sundaram*, ; *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, ; *K.L. Tripathi Vs. State Bank of India and Others*, and the decision of a Division Bench of this Court in *The Depot Manager, APSRTC Bus Depot Vs. D.S. Rao and Another*, .

6. Before dealing with the rival contentions, it is useful to refer to the relevant provisions of the Act and the Rules. The Act No. 23 of 1968, which has been amended by the Amendment Act of 1986, is an Act to consolidate and amend the law relating to the registration of medical practitioners of modern scientific medicine in the State of Andhra Pradesh and to provide for matters connected therewith. The Act extends to the whole of State of Andhra Pradesh. Section 2 deals with definitions. According to clause (h), "register" means the register maintained u/s 15. According to clause (i) "registered practitioner" means a practitioner of modern scientific medicine whose name is for the time being borne on the register. The expression "infamous conduct in a professional respect" is not defined either in the Act or the Rules. Chapter II comprising Sections 3 to 10 deals with constitution and composition of the Andhra Pradesh Medical Council. Chapter III, which comprises only one Section i.e., Section 11, deals with Executive Committee of the Council and its powers. Section 12 of Chapter IV which is relevant for our purpose deals with special committees and their functions. According to sub-section (1) of Section 12, "The Council may, from time to time appoint one or more special committees, each consisting of:". According to sub-section (4) of Section 12, the Council may, refer to any such committee for enquiry and report any matter relating to any of the purposes of this Act, or, delegate to it any of its functions by resolution, subject to such conditions as it deems fit to impose and may cancel any such delegation. Sections 15 to 17 in Chapter VI deal with registration of medical practitioners and for the issue of a certificate of registration in the prescribed form. Sub-section (4) of Section 15 provides that the Council may refuse to permit the registration of any person, who was convicted of an offence involving a moral turpitude with imprisonment for a period of not less than six months or with fine of not less than rupees five hundred and a period of five years has not elapsed from the date of such conviction, or who after due inquiry by the Council or a

Committee thereof was found guilty by the Council of infamous conduct in any respect. Section 17 deals with cancellation or alteration of entry made in the register. Sub-section (2) of Section 17, which is material for our purpose, states that that the Council may direct the removal, permanently or for a specified period, from the register the name of any registered practitioner for the same reasons for which registration may be refused by the Council under sub-section (4) of Section 15 and the provisions thereof shall apply to any inquiry under this Section. Sub-section (3) provides that nothing in sub- section (2) shall relieve a registered practitioner of any obligation or code of ethics which may be imposed on registered practitioner's generally by the Council. Sub-section (5) provides that a person whose name has been removed or deleted from the register under this section shall forthwith surrender his certificate of registration to the Registrar, and the name so removed or deleted shall be published in the Andhra Pradesh Gazette. Section 20 which appears in Chapter VII deals with the privileges of registered practitioners and it reads as follows;

"20. Notwithstanding anything to the contrary in any other law for the time being in force:

(i) no person other than a registered practitioner shall, without the previous sanction of the Government be competent to hold any appointment as physician, surgeon or other medical officer in any approved institution which is supported wholly or partly out of the funds of the State or the fund of a local authority.

(ii) no person other than a registered practitioner shall, with effect from such date as may be specified by the Government by notification in this behalf, practice the modern scientific medicine or hold himself out whether directly or by implication as practising or as being prepared to so practise;

(iii) No certificate required by law to be given by a medical practitioner shall be valid unless signed by a registered practitioner"

7. Chapter VIII deals with penalties for the contravention of the provisions of Section 20. Section 25 provides that an appeal shall lie to the Government from a decision of the Council u/s 15 or Section 17 and that such appeal shall be preferred within three months from the date of the decision of the Council. Section 26 deals with the procedure to be followed in inquiries and appeals. Sub-section (1) of Section 26 provides that an inquiry u/s or Section 17 may be held by the Council or by Committee which may be appointed by the Council as provided in sub-section (1) of Section 12. It further provides that the Council or the Committee, as the case may be, may at its discretion hold such inquiry in camera and where the inquiry is held by the Committee, it shall make a report to the Council which shall pass such orders as it deems fit. Sub section (2) of Section 26 provides that in holding inquiries under this Act the Council or its Committee shall have the same powers as are vested in the Civil Courts under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) issuing of commissions for the examination of witnesses.

Chapter 10 deals with miscellaneous matters like control by Government, bar of jurisdiction, protection of acts done in good faith, etc. Section 31 confers power on the Government to make rules for carrying out all or any of the purposes of the Act and Section 32 empowers the Council to make regulations with the previous approval of the Government for all or any of the matters specified therein.

8. in exercise of the power conferred by Section 31 of the Act, the State Government framed RULES REGULATING THE PROCEDURE AT AN ENQUIRY HELD UNDER Sections 15 & 17 OF THE ACT, Rules 1 to 4 lay down the preliminary procedure to be followed. Rule 1 provides that whenever information is received that a Medical Practitioner, who is an applicant for registration, or whose name has already been registered, has been guilty of conduct which prima facie constitutes infamous conduct, in his professional respect, the Registrar shall make an abstract of such information. Rule 2 provides that where the information in question is in the nature of a complaint by a person or body charging a Medical Practitioner with infamous conduct in his professional respect, such complaint shall be made in writing addressed to the Registrar, setting forth the grounds of complaint and accompanied by one or more declarations as to the facts of the case. Rule 3 prescribes the mode of making declarations referred in Rule 2. Rule 4, which is material, reads as follows:

"4. (1) The abstract and, where a complaint has been lodged, the complaint, and all other documents bearing on the case, shall be submitted by the Registrar to the Chairman who may, thinks fit, instruct the Registrar to furnish the Medical Practitioner concerned with a copy of the complaint and other documents, and invite him by means of a registered letter to submit any explanation he may have to offer. The documents, including any explanation submitted by the Practitioner to the Registrar, shall then be placed before the Council, The Council may then;

- (a) Order that all further proceedings be stopped, or
- (b) appoint a Committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted u/s 15 or 17 of the Act, or
- (c) direct that a regular enquiry be held by Council or a Committee thereof appointed u/s 26 of the Act.

The Committee appointed to make a preliminary enquiry shall have power to cause investigation to be made and take further evidence and also any legal advice or procure any legal assistance as it may think necessary.

- (2) if the Council consider, that the case is one in which an enquiry under

Sections 15 to 17 of the Act ought to be held, the Chairman shall direct the Registrar to take steps for the institution of any enquiry and for having the case heard and determined by the Council."

Rule 5 provides that the Council or Committee thereof appointed u/s 26 of the Act shall observe the procedure laid down in the following rules. Rule 6 reads as follows:

"6. When the charge is brought by a complainant, they shall require complaint to be reduced to writing and verified by oath or solemn affirmation of the complainant. The articles of charge and a list of documents and witnesses, by which each charge is to be sustained shall then be prepared and the Registrar shall then issue a notice in writing on behalf of the Council addressed to the Medical Practitioner concerned.

Such notice shall be accompanied by a copy of the articles of charge and list of witnesses and documents referred to above and shall inform the Medical Practitioner concerned the day on which and the hour at which the Council or Committee intend to deal with the case and call upon him to attend in person or by Counsel before the Council or committee on that day and hour. The notice shall be in the form appended to these rules, with such variation as may require. It shall be served on the Medical Practitioner fifteen clear days before the beginning of the enquiry, and shall be accompanied by a copy of the provisions contained in Sections 15, 17 and, 26, of the Act and ...of ..the. rules regulating the procedure for conducting any inquiry. Service of the notice may be made either by delivery to the Medical Practitioner in person or by registration letter addressed to his usual residence."

9. Rule 7 provides that the complainant (if any) and the Medical Practitioner concerned, shall, upon request in writing signed by the party or his counsel, be entitled to be supplied by the Registrar with a copy of any declaration, explanation, answer or other document given or sent to the Council by or on behalf of the other party, which such other party will be entitled on proper proof to use at the hearing as evidence in support of, or in answer to, the charge specified in the notice of inquiry. Rule 10 lays down that at the hearing of the case by the Council or Committee the complainant and also the Medical Practitioner concerned may, if they so desire, be represented or assisted by Counsel. Rule 11 details the elaborate order of procedure which has to be followed for recording the evidence of the complainant as well as the medical practitioner concerned and it reads as follows:

"11. When the complainant appears personally or by Counsel, the order of procedure shall be as follows:-

(1) The Complainant shall, exhibit the articles of charge to the Council or Committee, which shall be openly read.

(2) The Medical Practitioner concerned shall then be called upon to plead "guilty"

or "not guilty" to each of the charge, which plea shall forth- with be recorded with the articles of charge. If the Medical Practitioner refuses or .without reasonable cause neglects to appear to answer the charge either personally or by Counsel, he shall be taken to have admitted the truth of the articles of charges.

(3) The complainant may then address the Council or Committee in explanation of the articles of charge and of the evidence by which they are proved.

(4) The oral and documentary evidence shall then be exhibited. The witnesses shall be examined by or on behalf of the complainant and may be cross-examined by or on behalf of the Medical Practitioner concerned, The complainant shall then be entitled to re-examine the witnesses on any point on which they have been cross-examined. No question should be asked in re-examination on any new matter without leave of the Council. The Council or Committee may put such questions as they think fit.

(5)

(6) When the case for the complainant is closed the Medical Practitioner concerned shall be required to make his defence, orally or in writing, as he shall prefer, if made in writing, it shall be openly read and a copy shall be given at the same time to the complainant.

(7) The evidence for the defence shall then be exhibited, on oath witnesses examined, who shall be liable for cross-examination and re- examination and to examination by the Council or Committee in the same manner as the witnesses for the complainant.

(8) The Council or Committee or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary explain to him in the language in which it was given, and shall be recorded with the proceedings.

(9)

(10) When the Council or Committee shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the Council or Committee may/ in their discretion, require the same to be amended, and may thereupon on the appliances (sic. application) of the complainant or the Medical Practitioner concerned, adjourn the enquiry for such time as they may consider reasonable. The Council or Committee may also, if they think fit, adjourn the inquiry from time to time, on the application of either the complainant or the Medical Practitioner concerned, on the ground of sickness or unavoidable absence of any witness or such other cause as they may consider reasonable. When such application is made and refused, the Council or Committee shall record the application and their reasons for refusing to comply with it.

(11)

(12)

(13)

(14) (1) Upon the conclusion of the case, the Council or Committee will deliberate thereon in private and at the conclusion of the deliberations the Council or the Committee shall vote on the question whether the articles of charge are proved or not and whether they show that the medical Practitioner concerned has been guilty of infamous conduct in a professional respect or not.

(2) If the Council or Committee by a majority find the Medical Practitioner guilty of infamous conduct in a professional respect, the Chairman shall direct the Registrar not to register his name if he be an applicant for registration, or to erase his name altogether or for a specified period from the register of Medical Practitioner if he is already a registered practitioner, except in cases where the Council or Committee consider that in view of extenuating circumstances, the Practitioner may be let off with a warning.

(15)"

10. The examination of the above provisions reveals that the Act is a self-contained code and an elaborate procedure is prescribed for the conduct of an enquiry for taking action under Sections 15 and 17 of the Act and the Council or its committee is invested with the powers of a Civil Court for enforcing the attendance of witnesses and compelling the production of documents. The Rules also envisage that the Council, on receipt of a complaint, may either appoint a committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted under Sections 15 and 17 of the Act or direct that a regular enquiry be held by the Council or a committee thereof appointed u/s 26 of the Act. The Act and the Rules thus envisage two types of enquiry i.e., a preliminary enquiry and a regular enquiry.

11. The legality of the impugned order has to be judged in the light of the above statutory provisions. The principles regarding the scope and extent of judicial review under Article 226 of the Constitution are well established. In exercise of the said power the Court does not act like a Court of appeal and re-appreciate the evidence on record or substitute its own opinion for that of the quasi-judicial authority or tribunal. Judicial review is concerned, not with the decision but with the decision making process. The High Court cannot interfere with the findings of fact unless they are not based on any evidence whatsoever or they are perverse in the sense that no reasonable man would have come to such a conclusion. Adequacy or sufficiency of the evidence is not a ground for interference. The Court will examine whether the enquiry has been duly and fairly conducted in accordance with the statutory provisions and principles of natural justice, whether the individual concerned received fair treatment, whether the decision is vitiated by taking into account irrelevant matters or neglecting to take into account relevant factors or so manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made

such a decision.

12. In the instant case, on receipt of a complaint from Dr. Ramachandraiah, the Medical Council sent notices dated 20-5-1994 to the petitioner and to the other two doctors, against whom Dr. Ramachandraiah complained, calling upon them to offer their comments and objections to the complaint. The petitioner submitted his objections on 30-5-1994. After going through the complaint and the remarks/objections submitted by the petitioner, Medical Council felt that there was a prima facie case for enquiring into the matter. So it issued a notice dated 7-2-1995 to the petitioner framing a charge that he gave a false second post-mortem certificate and gave replies to the Circle Inspector of Police contrary to the post-mortem certificate issued by him and thereby he is guilty of infamous conduct in professional respect and called upon the petitioner to appear before the special committee appointed for enquiry on 15-2-1995 to decide whether or not to direct removal of his name from the register of Medical Practitioners under Sections 15 and 17 of the Act. The petitioner was also informed that if he fails to attend the enquiry, the matter would be decided in his absence. The said notice was received by the petitioner on 10-2-1995. In reply to the said notice, the petitioner sent a representation dated 14-2-1995 denying the charges levelled against him and stating that the matter under enquiry is sub-judice and that these enquiry proceedings would come in the way of the Court proceedings and may deny justice to him and requesting the committee to consider his representation before proceeding with the enquiry by passing appropriate orders. The Experts Committee met on 35-2-1995 and the complainant as well as the petitioner appeared before the committee on that date. According to the petitioner, he made a request for postponement of the enquiry as he was served with the notice only on 10-2-1995 and as he was busy in connection with the State Conference on 13th and 14th February and as per Rule 6 he is entitled to at least 15 days' time for enquiry. He also asserts that he requested the committee that he may be given an opportunity to engage an advocate to present his case. But both the requests were summarily rejected by the committee and he was threatened that if he did not answer the questions put to him and submit an explanation, the matter would be decided unilaterally. The petitioner also complains that he was not allowed to cross-examine the complainant and thereby he was put to grave prejudice. These allegations made by the petitioner are denied in the counter-affidavit wherein it is stated that the petitioner did not make any such request either for grant of further time or for permission to engage an advocate to represent his case. It is stated that reasonable opportunity was given to the petitioner for submitting his explanation and for participating in the enquiry and for adducing evidence. The petitioner, however, contends that when he pleaded for postponement and objected to the enquiry, the committee allayed his apprehensions by stating that it is only a preliminary fact-finding enquiry and that no prejudice will be caused to him. It is pertinent to notice in this context the following observations made by the Experts Committee in its report:

"The committee again met on 15-2-1995 at 1.00 P.M. Apart from the members of the committee, the Registrar Dr. L. Bhaskar Reddy was also present during the enquiry. Dr. L.C. Obulesu presented a memorandum to the Registrar. To clear the points raised by Dr. L.C. Obulesu in his letter objecting to the enquiry dt.14-2-95 the Registrar explained to Dr. Obulesu that the enquiry to be conducted will bear no influence on the criminal case pending in the Court and hence not to be considered as sub judice and also assured him that the information gathered in the enquiry will be kept strictly confidential. Dr. Obulesu was satisfied with the clarification and agreed for the enquiry. It was also impressed on Dr. Obulesu that the committee was only a fact-finding committee about the medico-legal aspects of the case"

The Experts Committee recorded the statements of the complainant and the petitioner and closed the matter. No other witness was examined. The statements recorded show that questions were put only by the committee and there was no cross-examination. The two other doctors, namely, Dr. Israel Raju and Dr. Feroz Begum, against whom also Dr. Ramachandraiah made a complaint and to whom notices were issued by the Medical Council, did not appear before the committee at the time of the enquiry and they were not examined. While conducting the enquiry the elaborate procedure prescribed in Rules 6 to 10 and Rule 14 of the Rules was not adhered to or followed. In the first place, the complaint was not got verified by oath or solemn affirmation of the complainant as required by Rule 6. So also the notice of enquiry was not served on the petitioner 15 clear days before the beginning of the enquiry as required by the said Rule. Though Rule 10 confers a right on the complainant as well as the medical practitioner concerned to be represented or assisted by counsel, if they so desire, no such opportunity was given to them at any rate, to the petitioner, who claims to have made such a request. The order of procedure indicated in Rule 11 was also not observed. The oral and documentary evidence was not exhibited and there was no cross-examination of the witnesses as provided in the said Rule. All this goes to show that the enquiry was treated only as a preliminary enquiry as envisaged under Rule 4(I)(b) but not a regular enquiry falling under Rule 4(1)(c) of the Rules.

13. After completing the enquiry in a summary fashion, the Experts Committee submitted its report on. 17 -2-1995. There has thus been a violation of the statutory rules in conducting the enquiry. The question for consideration is whether the enquiry is vitiated thereby and whether the order of punishment is liable to be set aside. The learned Counsel for the petitioner contends that having regard to the consequences flowing from such an enquiry which vitally affect the rights of the petitioner, the above procedural safeguards must be treated as mandatory requirements. Failure to observe the same renders the enquiry wholly illegal and consequently the impugned order is liable to be quashed. On the other hand, the Seamed counsel for the respondents contends that the said rules of procedure are only directory but not mandatory and that in any case, no prejudice whatsoever was caused to the petitioner as he was granted ample

opportunity and as he participated in the enquiry without raising any objection. This somewhat difficult question has come up for detailed examination in a recent judgment of the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma, (D.N.)* After an exhaustive survey of the earlier judgments, the apex Court summarised the principles emerging from the various authorities on this subject in para 32 of the judgment. The apex Court explained the position as follows:

(1) Regulations, which are of a substantive nature have to be complied with and, in case of such provisions, the theory of substantial compliance would not be available.

(2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available.

(3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaints/objections on this score have to be judged on the touchstone of prejudice. In other words, the test is: all things taken together, whether the delinquent-officer/employee had or did not have a fair hearing. Which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

14. The apex Court has further pointed out in the said judgment that the object of principles of natural justice is to ensure that justice is done and that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. At the same time, the apex Court observed that: even a mandatory procedural requirement, which is intended for the benefit of the delinquent, may be waived by him provided it is not conceived in public interest.

15. In the light of the above principles enunciated by the apex Court, it has to be seen whether the petitioner got a fair hearing or whether any prejudice was caused to him on account of the procedural violations noticed above. It has also to be seen whether there has been any waiver on the part of the petitioner. It is true that there is nothing on record to show that the petitioner made any request for postponement of the enquiry on the ground that sufficient time was not allowed to him as per Rule 6 of the Rules or for permission to engage a counsel to represent his case. It is also not clear whether he made any specific request for permitting him to cross-examine the complainant or to allow him to adduce any further evidence in his defence. But from this it is difficult to infer that there is any waiver on his part. Waiver implies a conscious and deliberate act of giving up a known right. It is the case of the petitioner that he was given the impression by the committee and led to believe that it was only a preliminary fact-finding enquiry but not a regular enquiry as envisaged by the Act and the Rules and he was thereby made to participate in the enquiry at short notice

without adequate opportunity to put forward his case. "The observations of the committee in its report extracted above, lend some support to this contention of the petitioner. The further fact that the committee conducted the enquiry in a summary fashion without observing all the formalities prescribed by the Rules and closed the same after recording the statements of only of complainant and the petitioner without examining any other witness also goes to show that even the committee treated the same as a preliminary enquiry. There is no material on record to show that the petitioner, on being given an opportunity to engage the counsel and also to cross-examine the complainant, failed to avail such opportunity. I do not, therefore, think that there was any waiver on his part.

16. Even if it be assumed that the requirement of giving 15 days' clear notice of enquiry is purely procedural and not mandatory, the right conferred by the Rules to be represented by counsel and the right to cross-examine the witnesses of the complainant and also the right to adduce evidence in defence are substantive provisions and they have to be strictly complied with. Even where the rules are silent about it, it is generally recognised that when a man's reputation or livelihood is at stake, he is entitled for the assistance of counsel to defend him. In the leading English case in *Pelt v. Greyhound Racing Association Ltd.* (1968) 7. All E.R. 545 Lord Denning, M.R. observed:

"It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day. A Magistrate says to a man: "You can ask any questions you like" whereupon the man immediately starts to make a speech. If justice is to be done, he ought to have the help of someone to speak for him; and who better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor."

Undoubtedly in the instant case, the petitioner's reputation as well as livelihood are both at stake and the repercussions of the enquiry are grave in nature as his employment and his very right to practise his profession are in jeopardy. As such the petitioner was entitled to be represented by counsel in the enquiry.

17. In its report the Experts Committee observed that it fails to understand the necessity of two requisitions addressed to the two different authorities issued on the same day by the M.R.O. for re-post-mortem examination of the dead body. From this circumstance, the Medical Council came to the conclusion that the petitioner colluded with the M.R.O. and the police to victimise the complainant. The said conclusion is merely based on suspicion and surmises and conjectures without any proof. In *Bhandari v. Advocates Committee* (1 supra), the Privy Council held that in every allegation of professional misconduct involving an element of deceit or moral turpitude, it is the duty of the professional domestic tribunal investigating the allegations to apply a high standard of proof and not to

condemn on mere balance of probabilities. But in the instant case, no attempt was made by the enquiring authority to get a clarification from the M.R.O. or the police by examining them. It is quite possible that the M.R.O. and the police felt that it would be proper and safer to get the re-post-mortem examination conducted by an outsider rather than by a local doctor belonging to Cuddapah since the first post-mortem-examination, which led to the controversy, was conducted by a doctor from Cuddapah (Dr. Ramachandraiah). After all, the petitioner carried out the re-post-mortem examination on the directions of his superior as per the requisition sent by the M.R.O. The re-post-mortem examination was conducted in the presence of the M.R.O., the police and several other persons including the press people and the photographers. If a detailed enquiry had been held properly as per the Rules, the petitioner, at least, could have examined the M.R.O. and the police on his side to prove his innocence. Right to adduce evidence in his defence is a valuable right which could not be denied to the petitioner. Without examining any of the material witnesses, the Experts Committee as well as the Ethical Committee and the Medical Council concluded that the petitioner colluded with the M.R.O. and the police without any basis. On these facts, I am satisfied that grave prejudice was caused to the petitioner on account of the procedural violations in conducting the enquiry and the enquiry is thereby vitiated. I am, therefore, of the view that, under the circumstances, the impugned order is liable to be quashed on the ground of violation of statutory provisions and principles of natural justice. In this view of the matter, it is not necessary to go into the question whether the alleged injury is ante-mortem or whether it is a post-mortem artefact which could have been caused at the time of the first post-mortem, and whether it is an incised wound or a laceration etc., as debated by the Experts Committee.

18. It is, no doubt, true that the petitioner has an alternative remedy of appeal to the Government as provided u/s 25 of the Act which he did not exhaust. In *State of Uttar Pradesh v. Mohd. Nooh* AIR 1958 SC 86 S.R. Das, C.J., speaking for the Constitution Bench, had this to say:

"If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court; or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned."

19. As I have already found that the enquiry in the instant case is vitiated by the non-observance of the statutory rules and the principles of natural justice, existence of an alternative remedy is not a bar for the maintainability of the writ petition. Hence I reject the contention advanced by the learned Counsel for the

respondents in this behalf.

20. For the foregoing reasons, the writ petition succeed sand it is accordingly allowed and the impugned order is quashed. But under the circumstances, there will be no order as to costs.