
(1965) 11 MAD CK 0018

In the Madras High Court

Case No : Writ Appeal No's. 388 and 389 of 1963

Nesamoney Daniel

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 12-11-1965

Acts Referred:

Public Servants (Inquiries) Act, 1850 — Section 18, 20, 5, 8

Tamil Nadu Medical Registration Act, 1914 — Section 10, 16, 18

Citation : AIR 1967 Mad 281 : (1967) ILR (Mad) 295 : (1966) 79 LW 642

Hon'ble Judges : Sadasivam, J; Ramakrishnan, J

Bench : Division Bench

Judgement

Ramakrishnan, J.

(1) These appeals are directed against the order of Srinivasan J. in W.P. 123 and 124 of 1961 in which the prayers were for the issue of a writ of

certiorari and consequent writ of mandamus respectively. The prior facts required for a consideration of these two appeals are briefly the following:

The appellant Mrs. Nesamoney Daniel was employed as a teacher in the Government aided Primary School, Pannimade estate, Annamalais.

Under the rules issued by the Deputy Inspector of Schools, the appellant in her capacity as a teacher of a primary school, was obliged to take an

insurance policy on her life. As instructed by the Life Insurance Corporation, she presented herself for medical examination, to one Dr. K.V.

Mathai, M.B.B.S. the third respondent in the two writ petitions, who was at that time employed by the estate, in which the teacher was also

employed. Sometime later, she received a communication from the Life Insurance Corporation stating that the report of the third respondent

showed that 20 years previously she had been operated upon for hysterectomy

(removal of the uterus). She was asked to give a history of the operation including the details. The appellant felt surprised, as she had never undergone such an operation, and contacted the third respondent, who assured her that he would take up the necessary correspondence with the Life Insurance Corporation. The appellant did not take any further interest in the matter. Subsequently, in connection with some other proceedings, she learnt that the third respondent had written to the Insurance Corporation, in answer to their communication, to the effect that the appellant had undergone an operation for hysterotomy, in the hospital, as she had a prolonged and difficult labour ending in the rupture of the uterus.

It is common ground, that the Corporation accepted the proposal according to the normal schedule of rates, that is for a healthy person. She became aware of the communication of the third respondent, to the Life Insurance Corporation about the operation, which she had never undergone, in or about April 1959, and thereafter she got herself examined by the company's Chief Medical Officer, Dr. Kuruvilla John, M.B.B.S. who, after a careful examination, certified that she had never undergone an operation for hysterotomy, that her uterus was intact and that there was no scar on the abdomen indicating an operation. Thereupon, the appellant filed a complaint to the Registrar, Madras Medical Council, against the third respondent, asking that suitable action should be taken against him, for his sending a false report about her, to the Life Insurance Corporation.

The Medical Council then called for an explanation from the third respondent which he submitted, and that explanation was accepted by the Medical Council. They decided not to take any further action against the third respondent, but without giving any opportunity to the appellant, to substantiate her allegation against the third respondent and giving her a hearing.

The appeal which the appellant filed against the order of the Medical Council, to the Government of Madras, under S. 10 of the Madras Medical Registration Act (hereinafter referred to as the Act), was rejected by the first respondent, the Government of Madras, represented by the Secretary to the Government, Education and Public Health Department, by an order stating that no appeal lay to the Government on the facts of this case. On the above allegations the appellant filed the two writ petitions for the issue of a writ of certiorari quashing the order of the first

respondent Government, because the Government did have jurisdiction to grant relief in her appeal, but without any proper reasons, it declined to exercise that jurisdiction. The order of the Medical Council accepting the explanation of third respondent, was also sought to be quashed by writ of certiorari, because that body had violated the principles of natural justice and the provisions of law, in its perfunctory disposal of the appellant's complaint. W.P. 124 of 1961 was filed for the issue of a writ of mandamus directing the first and second respondents to dispose of the complaint and the appeal in accordance with law.

(2) The principal counter affidavit was filed by the third respondent, Dr. K.V. Mathia before the learned Judge, He averred therein that he submitted the medical report to the Life Insurance Corporation relying upon the data supplied by the appellant herself, about her operation, and that this was done because the appellant wanted to obtain more favourable rates of premium under the impression, that a female who was not subject to the risks of pregnancy, would be considered to be a safer life, than a female exposed to such risks. In fact, his bona fides would be apparent by the fact that he had recommended the appellant's life to the Life Insurance Corporation, as a first class life. Subsequently, on account of enmity between the third respondent and the appellant's husband, both of whom were under the employ of the same estate, the appellant came forward with the complaint to the second respondent. It was also urged that the Medical Council acted within its jurisdiction, in accepting his explanation, and dropping further proceedings, and also that the Government was right in their view, about the non-maintainability of an appeal against such an order. Affidavits more or less to a similar purport, were filed by the first and second respondents, the first respondent's affidavit being filed by one Sri Philip Devprasad, Deputy Secretary to Govt. in the concerned department. In this affidavit of the Govt., there was also a reference to the fact, that at the time the appellant approached the third respondent for a medical report, she had supplied a hospital discharge slip to support her oral statement but this slip was taken back and retained by her. The counter affidavit of the Government also alleged that the appellant could not be considered as an aggrieved party against the order of the Medical Council accepting the explanation of the doctor, and that

Section 18 of the Act must be deemed as providing for a right of appeal only where the Medical Council had passed an order adverse to the medical practitioner. Hence, there is no question of the Government failing to exercise their jurisdiction u/s 18 of the Act. The counter affidavit also proceeded to allege that the appellant might have felt aggrieved in her being allowed only the normal rates of premium, whereas she had hoped to get a lesser rate, and this might have prompted her to file a false complaint to the Medical Council.

(3) The learned Judge dismissed the two writ petitions. One of the rules framed by the Government u/s 24(1)(iii) of the Act, namely, rule 4(1)(a) gave power to the Medical Council, after obtaining the explanation of the Doctor, against whom a complaint had been preferred, to stop all further proceedings, after accepting the explanation. The second respondent, the Medical Council, asserted that it had acted under this rule, in this case.

Learned counsel appearing for the appellant, Sri G. Vasantha Pai, urged a strenuous argument before the learned Judge that this rule was ultra vires the Act. This was repelled by the learned Judge, and he held that rule 4(1)(a) was intra vires and that the Council acted properly in the exercise of its discretion in accepting the doctor's explanation, and in dropping further proceedings. Secondly, the learned Judge, held that even apart from that rule, the Medical Council, in its general jurisdiction to deal with complaints against medical practitioners, had power to pass an order like the one now impugned. The learned Judge also held that since there was no enquiry conducted by the Medical Council, in this case, as provided u/s 13 or Section 16 of the Act, the Government were in order in declining to entertain the appeal of the appellant, made to them u/s 18 of the Act. Aggrieved with this order, the appellant has filed these two appeals.

(4) We will now briefly consider the relevant provisions of the Act and the Rules. The preamble to the Act states that it is intended for the registration of medical practitioners in the Presidency of Madras. It provides for the constitution of Medical Council. Section 11 of the Act provides that the Registrar of the Medical Council shall maintain a register of medical practitioners and from time to time to revise the register.

Section 13 provides for the qualification of the medical practitioners, entitled to registration. The second proviso to Section 13 provides that the

Council may refuse to permit the registration of any person who has been convicted of any such offence as implied in the opinion of the Council a defect of character or who, after an enquiry at which opportunity has been given to the candidate to be heard in person or by pleader, has been held by the Council to have been guilty of infamous conduct in any professional respect. Section 16(1) provides for the removal of names from the register, and Section 16(2) in particular states that the Council may direct the removal altogether or for a specified period from the register of the name of any registered practitioner, for the same reasons for which registration may be refused by the Council under S. 13, and the second proviso of Section 13 shall apply to any enquiry under this section. This clause would mean that a medical practitioner's name in the list may be removed on an allegation and proof of infamous conduct in any professional respect provided that in an enquiry held an opportunity has been given to him to be heard in person or by a pleader, Section 17 states that an enquiry u/s 13 or Section 16 may be held by a committee consisting of three members of the Council elected for the purpose by the Council, Section 17(2) further states that the Council or Committee in holding such an enquiry shall be deemed to be a court within the meaning of the Indian Evidence Act, and shall exercise the powers of a Commissioner appointed under the Public Servants (Inquiries) Act 1850; and such enquiries and appeals shall be conducted as far may be, in accordance with the provisions of Section 5 and Section 8 to 20 of the said Public Servants (Inquiries) Act 1850. Section 18 provides for an appeal to the Governor in Council against every decision of the Council u/s 13 or Section 16, three months time being given for filing the appeal from the date of the Council's decision.

(5) We next come to the rules, which are framed by the Governor in Council in accordance with S. 24 of the Act, which gives him power, after previous publication to make rules for the purpose of carrying out the provisions of this Act. Section 24 states that subject to the above general provision, the Governor in Council may make rules (i).....(ii).....(iii) to regulate the procedure at an enquiry held u/s 13 or Section 16; (iv) for the institution, hearing and disposal of appeals u/s 15 or Section 18.

(6) There is a detailed set of rules framed to regulate the procedure at an

enquiry held u/s 13 or Section 1 is headed ""Preliminary procedure"". The gist of the preliminary procedure is that whenever information is received against a medical practitioner, the Registrar shall make an abstract of such information. Where the information in question is in the nature of a complainant by a person or body charging a medical practitioner, with infamous conduct in a professional respect, such complaint shall be made in writing stating the grounds of the complaint and accompanied by one or more declarations as to the facts of the case. But these declarations need not be attested by a Magistrate, and apparently are not in the nature of sworn affidavits. The Registrar then places the complaint and connected documents before the President of the Council, who is given the discretion to direct the Registrar to furnish the Medical practitioner with a copy of the complaint and the documents and invite him by means of a registered letter to submit any explanation he may have to offer. This Explanation with the documents and the complaint are placed before the Medical Council and the Council can resort to one of the three following courses: (a) order that all further proceedings be stopped, (b) appoint a Committee to consider the matter and submit a report to the Council as to whether proceedings should be instituted u/s 13 or Section 16 of the Act, or (c) direct that a regular enquiry be held by the Council or a committee thereof appointed u/s 17(1) of the Act.

(7) Section 11 then proceeds to give directions for the guidance of the council or committee in the actual holding of an enquiry u/s 13 or Section 16. One of the important provisions in this section, is that in the case of a charge brought by a complainant, the complainant has to reduce the particulars of the complaint to writing and verify either by oath or solemn affirmation. Thereafter, a notice is given to the medical practitioner. The further provisions of Section 11 are very detailed. They provide for the complainant and the medical practitioner to be represented by pleaders. The medical practitioner shall be called upon to plead guilty or not guilty. The procedure is closely analogous to the proceeding for the trial of a criminal case. Finally, under rule 14, if the Council or Committee by a majority find the medical practitioner guilty of infamous conduct in a professional respect, the president 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 practitioners, if he is already a registered practitioner, except in cases where the

Council or Committee consider that in a view of extenuating circumstances, the practitioner may be let off with a warning.

(8) One other important point to be considered at the outset is that the term "infamous conduct in a professional respect" has come to acquire a

particular meaning in the context of professional people like a medical practitioner, an advocate, or a chartered accountant. The word "infamous

according to its ordinary usage, as given in the Oxford Concise Dictionary, has the meaning "illfame, notoriously vile, abominable etc". But, in the

context of the Medical Registration Act, it is not this dictionary meaning that has to be given to the word. It has a special meaning which is linked

up with the profession of the person. For explaining the term, we have been referred to an English decision which has become classical, and

is followed in all subsequent decisions. In *Allinson v. General Council of Medical Education and Registration*, 1894 1 Q. B. 750, the learned Judge

held :

If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as

disgraceful and dishonourable by his professional brethren of good repute and competency, it is open to the Council to find that he has been "guilty

of infamous conduct in a professional respect".

This definition was also applied to professional misconduct on the part of a Solicitor in *A. Solicitor, in re. Law Society, Ex parte*, 1912 1 KB 302.

Scrutton, LJ in *Rex. v. General Medical Council* 1930 1 KB. 562 observed:

As in the case to the Bar, so in the medical profession advertising is serious misconduct in a professional respect and that is all that is meant by the

phrase "infamous conduct" it means no more than serious misconduct judged according to the rules written or unwritten governing the profession".

We may also refer to a warning notice published in the form of information by the Madras Medical Council for the guidance of all practitioners

registered under the Madras Medical Registration Act. This warning notice is the re-issue of a similar warning notice issued by the Medical Council

in England and it gives instances of professional misconduct which may be punished by erasure from the Medical register, but they were not

intended to form a complete list. Among the items mentioned in the list is the giving of a certificate in connection with sick benefit, insurance and

friendly societies, and there is appended a warning that a registered practitioner, who shall be shown to have signed or given under his name and

authority, any such certificate which is nature, misleading or improper, is liable to have his name erased from the Medical register.

(9) It will be seen from the foregoing summary of the penal provisions of the Act, and the Rules framed thereunder, that on an allegation of

infamous conduct in a professional respect, the Medical Council has the following courses open to it. At the preliminary stage, after taking the

explanation of the medical practitioner concerned, it can decide and order that all further proceedings be dropped under rule 4(1)(a) of the Rules.

On the other hand, if it finds at the stage just now mentioned, that there are grounds for proceeding further with the enquiry, in other words, if there

is a prima facie case against the medical practitioner, which if, proved, would justify the removal of his name from the register, the Council can

order a formal enquiry to be conducted either by itself or by a Committee observing the provisions of the Indian Evidence Act and the Public

Servants (Inquiries) Act. At the conclusion of the enquiry, if it finds the allegations not proved, it can strike off the name of the medical practitioner

from the Register altogether or for a specified period, or if there are extenuating circumstances, it can let off the medical practitioner with a warning.

(10) The Medical Council in this case has purported to adopt the first course mentioned above, relying upon rule 4(1)(a). The contention of the

learned counsel for the appellant Sri Vasantha Pai before us, is that rule 4(1)(a) is ultra vires, and the Government which issued that rule, went

beyond the rulemaking power granted to it under S. 24 of the Act. If rule 4(1)(a) is intra vires, the order of the Medical Council will be certainly

valid, and not open to attack in these writ proceedings, and Sri Pai concedes this position. So, we will briefly consider the arguments urged for

supporting the plea of ultra vires.

(11) Learned counsel referred to two analogous enactments, the Indian Bar Councils Act 1926 (Act 38 of 1926) and the Chartered Accountant

Act 1949 (Act 38 of 1949). Under S. 10(2) of the former Act, the High Court, which was punishing authority in the case of a member of the Bar,

had power to reject a complaint against an advocate summarily, instead of referring the case for enquiry either to the Bar Council, or to a District

Judge. In S. 21(1) of the latter Act, there is a provision that if the Council is prima facie of opinion that a member of the Institute of Chartered

Accountants has been guilty of any professional or other misconduct, the council shall refer the case to the Disciplinary Committee. According to

the learned counsel, the statute itself in the two enactments mentioned above gives power to the controlling authority to determine in the initial

stage, whether there is a prima facie case or not, and drop the proceedings, if it finds that there is no prima facie case, whereas the Medical

Registration Act contains no such provision. He urges, therefore, that rule 4(1) (a) which incorporates such a provision, is ultra vires the Act. We

are unable to agree with this reasoning. The punishments provided by the Act on proof of professional misconduct are quite severe, and we have

already referred to them. They are of a highly penal nature and a very high decree of formality is provided in the Act, as well as in the rules for

holding the enquiry, almost on the analogy of a trial for a criminal offence. Probably the removal of the name of a Medical Practitioner, from the

register, though serious may not entail as much penal consequences as for example the removal of a member of the Bar under the Bar Councils

Act, or a Chartered Accountant under the Chartered Accountants Act. But at the same time, an inquiry of the kind contemplated in the Act, will

involve the reputation as well as the career of a responsible person occupying often a very important position in professional as well as in public

life.

(12) A person in the position of the complainant, cannot claim to have more interest in the privacy of the register, than the Medical Council, as his

rights are in no way protected by the provisions of the Act. It is also possible that imputations are made in complaints against prominent medical

men, by disgruntled or persons otherwise aggrieved, without any basis whatsoever. It cannot be the intention of the Act, that even when there is a

frivolous complaint or a complaint made out of mala fide motives, the Medical Council had no discretion of screening the complaint before, the

elaborate and detailed procedure of a formal inquiry, as provided in the Act, is ordered. The formal inquiry requires the constitution of a

Committee comprising of three members of the Council, if the council does not conduct it, itself. Advocates have to be engaged and documents

have to be marked. It will be too much to believe that the Council has automatically to direct such a formal inquiry however frivolous the complaint

may be. Sri Vasantha Pai's argument is that the difficulties mentioned above may be real, but that will not justify the framing of a rule, for

preliminary screening of the complaints, if the Act itself contains a lacuna in that respect.

(13) In our opinion, S. 24(1) of the Act, which gives the power to the Governor-in-Council, to make rules for the purpose of carrying out the

provisions of the Act, will include the power of utilising all the provisions of the Act of punishing erring professional men, in the most effective way.

The purpose of the penal provisions of the Act will be served most effectively by a direction which confines the applications of the rigid procedure

for the enquiry under the Act to cases where allegations which are prima facie substantial in nature, are made against a medical practitioner and by

excluding at the same time frivolous allegations, which will only waste the time of the Medical Council, besides putting an oppressive burden on the

medical practitioner complained against, and make him a prey to wanton attacks by scurrilous or irresponsible persons. Sri Pai refers to S. 5 of the

Public Servant (Inquiries) Act which imposes the penalty for perjury by a complaint who makes a false accusation, and he submits that this

provisions will also apply to the inquiry under the Medical Registration Act. But, the penalty to which mala fide complainant will be liable, will be

no answer to the circumstances of the hardship, which will be imposed upon a medical man, who has been made to face a futile inquiry, or the

enormous time and trouble which the Council will have to expend if it is obliged to initiate a formal enquiry in each and every case of a complaint.

Therefore, the discretion to subject the complaint to a preliminary verification and scrutiny the light of the explanation of the medical officer, before

resort to a formal enquiry, will be to further the objects of the Act, and, will fall within the rule making power under S. 24.

(14) Learned counsel for the second respondent Sri Dholia referred to the decision of the Bombay High Court reported in Amichand Valanji and

Others Vs. G.B. Kotak and Others, , where the court had to consider the validity of the Gold Control Rules in the context of the rule-making

power conferred on the Central Government under S. 3(1) of the Defence of India Act 1962. It was observed in that judgment, that when validity of an Act, Rule, Regulation or Order made by an executive authority to which the power has been delegated by the legislation, is challenged, then it is open to the court to see whether the Act done by the delegated authority has any connection with securing or realisation of the purposes for which the power has been conferred on the delegated authority. The purpose of the penal provisions of the Medical Registration Act, is to keep the conduct of the members of the profession free from taint, and ensure that they act in accordance with highest traditions of the profession, and punish cases of professional misconduct, no doubt, giving to the practitioner concerned every reasonable opportunity to defend himself. The exercise of that power does not mean that the rigorous procedure for holding a full-fledged enquiry should be adopted for dealing with every case of complaint. The controlling authority, namely, the Council, will have certainly a discretion to eschew frivolous complaints and proceed only where a prima facie case is made out. It has to exercise a discretion in the matter of shifting the former group from the latter, so that its energies may be concentrated to deal only with complaints where a prima facie case is made out. This is a general principle which is implicit in every law providing for the disciplinary control and punishment and rule 4(1)(a) only carries it. Later enactments like the Bar Councils Act, and the Chartered Accountants Act made the application of this principle, explicit in the Act itself. But the lack of explicit reference to this general principle in the Medical Registration Act will not lead to the inference that a provision for that purpose introduced in the rules is ultra vires. The general power to frame rules to carry out the provisions of the Act will, in our opinion, include the power to frame rule 4(1)(a).

(15) We will briefly refer to the decisions cited at the Bar. They fall under two categories, cases under the Bar Councils Act, and English case

where power is granted to a local body to control building of land by private persons. In the first category are the decisions in *Abinash Chandra*

Sadhu Khan Vs. Hemanta Kumar Roy, . *Bhataraju Nageshwara Rao Vs. The Hon"ble Judges of The Madras High Court and Others*, and *Ali*

Mohd. Kashmiri Vs. An Advocate, . These are cases where, after a preliminary inquiry by the Bar Council or a District Judge under Sec. 10, the

report comes before the High Court for being dealt with under S. 12(3). Sec. 12(3) of the Bar Council Act states that the High Court has to fix a

date of hearing at which the advocate concerned the Bar Council and the Advocate General shall be given an opportunity of being heard before

orders are passed in the case. In the decisions cited above, it is stated that at the above mentioned inquiry, a notice has also to be given to the

complainant, and he will be a proper party for that hearing before orders are passed in regard to the advocate.

There is a decision which holds a contrary view, viz, In Re: S.R.M., , which states that the original complaint does not have a right to be heard at

the stage of the S. 12(3) hearing before the High Court, Sri Pai's argument is that rule 4(1)(a), which contains no provision for hearing the

complaint before the Council decides to drop further proceedings, violates and natural justice rule and also the principle laid down in the decision

cited above. These decisions can be distinguished from the present case, on the ground that they refer to the presence of the complaint at the final

state of the enquiry before the High Court, where final orders are passed against the member of the Bar. It corresponds to the second stage

provided for in S. 11 of the rules passed under S. 24 of the bar Councils Act, where also the presence of the complainant is provided for. The

principle of these decisions has no application where the Medical Council decides to drop further proceedings at the preliminary stage mentioned in

S. 1 of the rules. The learned counsel next urged that by dropping the further proceedings without giving the complainant an opportunity for being

heard, there is a risk of the complainant being proceeded against for making a false accusation by way of perjury under Sec. 5 of the Public Servants

(Inquiries) Act, which is made applicable to the enquires under the Medical Registration Act.

(16) On the facts and circumstances of this case, it is not necessary for us to go into the broad question whether rule 4(1)(a) is ultra vires, because

it does not provide for an opportunity to the complainant for being heard before proceedings are dropped. In the present case, no reflections are

made against complaint-appellant in the order of the Medical Council and she cannot therefore consider herself aggrieved by that order. The next

point is that before the Medical Council the third respondent admitted that he gave a certificate of the hysterotomy operation of out performing a

per vaginal examination of the appellant, for satisfying himself as to whether her uterus had been removed. He was satisfied with her statement

regarding the fact that she underwent such an operation. The Insurance Corporation seems to have taken a serious view of the conduct of the

doctor in submitting a report without making a per vaginal examination and issued a warning letter to him. But the Medical Council did not take

such a serious view of the doctor's conduct in issuing a certificate about the performance of hysterotomy operation without making a P. V.

examination. No doubt, it has not given its reasons why it did not take a serious view. It appears to have accepted the doctor's explanation that he

acted bona fide in sending the report after accepting the statement of the proposer but without making a P. V. examination.

We were supplied with a copy of the explanation of the doctor submitted by him to the Medical Council in reply to the complaint of the appellant

which was communicated to him. This forms part of the record of the Medical Council which was brought before the court for being quashed in

the writ of certiorari proceedings. A copy of this explanation was also given to the learned counsel for the appellant. The third respondent in that

explanation stated that like so many other male doctors stated that like so many other male doctors he hesitated to make a per vaginal examination

to the lady proposer, and had complete faith in her personal statement as well as in a hospital discharge slip, which was shown to him. He pleaded

that but for this circumstance, he would have directed her to go to a lady doctor for P. V. examination. The latter went on to say that he had also

reported to the Life Insurance Corporation that the proposer's life was a first class one and that therefore, he had no motive to do any harm to the

proposer. As against this, the appellant had not attributed any motive or mala fide to the doctor, for making such a report about her operation.

There is a bare allegation in the appellant's affidavit in the Writ petitions that he did so with a view to injure her, and to get her proposal accepted

at higher rates. In regard to the former, there are no data, as to what kind of injury was contemplated, and as regards the latter allegation, there is

the uncontroverted fact that in the record that the doctor recommended her as a first class life. Likewise in her complaint to the Medical Council

she had attributed a malicious intention to the doctor in a general way, but it has never been clarified as to what the malicious intentions consisted

of. The Medical Council has justification in accepting the explanation of the doctor, in the absence of any mala fide on his part, in making the report. We are, therefore, unable to accede to the argument of the appellant that the complainant had a right to be heard before the Council passed its order under rule 4(1)(a).

(17) The learned counsel, Sri Pai, for the appellant, commented on the fact that in the counter affidavit filed in this case, by the first and second

respondents, a further allegation was made that the appellant wanted to get a reduction in the normal rates by virtue of being free from the risk of

child birth, whereas such a claim was not put forward by the doctor in his explanation to the Medical Council. Sri Pai urged that by making such a

statement in the affidavit, these respondents has gone even a step further than the third respondent himself when he gave the original explanation in

his defence to the Medical Council. But it appears to us that a consideration of this imputation is irrelevant for this case. It is sufficient to observe

that the Medical Council has a discretion under Rule 4(1)(a) in accepting the explanation of the doctor. The doctor had admitted in his explanation

that he did not make a per vaginal examination, and to that extent, his certificate was improperly given. The doctor had clearly admitted his default.

It was for the Council to decide whether the doctor's default was a venial one to be excused in the circumstances stated by him, or take a serious

view of his lapse and punish him. The Council had a discretion to decide between these two alternatives. An enquiry under S. 16 with an

opportunity for the complaint to be heard would arise only if they had chosen the latter alternative of ordering a formal enquiry before punishing

the doctor. Since they decide to choose the former alternative of accepting the explanation of the doctor and dropping further proceedings, there is

no question of the complainant being heard and the principle of natural justice being violated in view of the failure to hear her.

(18) We are not referring to the cases cited at the Bar under the Buildings enactments in England, viz., *Rex. v. Housing Appeal Tribunal* 1920 3

KB 334, and *Stafford v. Minister of Health*, 1946 1 KB 621, because strictly speaking they have no relevancy to the present case. In the former

decision, just referred to above, the local body turned down the application of a party for permission to build on a site and the aggrieved party had

a right of appeal. It was held that though the regulations did not provide for a specific hearing of the appellant, the appellant must be given an opportunity of being heard before an order prejudicial to the appellant was passed by the appellate authority. Those were cases where the appellant had a stake in the issue of the decision of the appellate authority. But, there is no averment that the appellant in this case has any stake in the issue of a decision on the misconduct of the doctor. Learned counsel for the appellant urges that the Medical Council is a trustee and the guardian of the dignity and privileges of professions, and the rights and duties of the members, and it is to the interest of the profession that when a charge is made against an advocate it should either be cleared or brought home to him. The charge should not be dropped either due to the default of the complaint or for a similar cause or by reason of his withdrawing the complaint.

A decision of the Calcutta High Court in *In Re: The Bar Councils Act*, , in the context of a member of the Bar was referred to. The answer to this argument is that in the present case there is no question of dismissal of the complaint either due to the absence of the complainant or by the withdrawal by the complainant. But it is a case where the Medical practitioner in substance admitted the charge against him, and the Council considered that his explanation should be accepted in the circumstances stated by him. The Medical Council might have certainly taken into account the plea of the doctor that he was not actuated by any mala fides in his failure to make a P. V. examination and that the utmost that could be imputed against him was carelessness or too hasty reliance upon the statement of the party, in view of the party being a lady of a respectable status. We uphold the decision of the learned Judge that rule 4(1)(a) is intra vires and the order of the Council dropping further proceedings against the doctor in accordance with the rule cannot be impugned in the writ proceedings. We would also like to point out that no mala fides or basis in attributed to the council in dealing with the third respondent.

(19) The further question is whether the Government failed to exercise their justification in dismissing the appeal under S. 18 of the Act. It is clear from S. 18 of the Act that an appeal lies to the Government, when there is a decision of the Council under S. 13 or S. 16. Sec. 16 refers to a

formal enquiry conducted against the medical practitioner in accordance with the provisions of Sec. 13. We have already referred to the two

stages in which the rules framed under the Act, have prescribed the procedure for holding inquiries. State I deals with the procedure that is anterior

to the holding of the formal enquiry under Sec. 13 or Sec. 16. Stage II deals with the procedure for the actual inquiry under Sec. 13 or Sec. 16.

The present order dropping further proceedings against the third respondent was passed at state I, before embarking on an enquiry under Sec. 13

or Sec 16. The council has not given a decision after an enquiry under Sec. 16 in the case. It has decided that there is no scope for holding an

enquiry under Sec. 16. Therefore, the conclusion of the Government that no appeal lies to it under Sec. 18 appears to us to be correct. In this

view, we are not going into the question whether the complainant can be deemed to be an aggrieved party, with a right of appeal to the

Government under Sec. 18. There is one other provision namely Sec. 22 of the Act which gives power of a revisional character, in a case where

the Governor in Council comes to the conclusion that the Medical Council has neglected to exercise or exceeded or abused any power conferred

upon it or has neglected to perform any duty imposed upon it by this Act. A decision of this High Court in Dr. V. Ramakamath and Others Vs.

The Surgeon General with the Government of Madras, , has explained the wide scope of the power of the Governor in Council under S. 22 of the

Act. There is no question in this case of the Governor in Council being moved to take action under Sec. 22 of the Act. Hence the above decision

will not apply to the fact of the present case.

(20) The appeals are dismissed. No order as to costs.