

(2014) 03 BOM CK 0055
In the Bombay High Court
Case No : W.P. No. 320 of 2014

Sadanand Madhukar Ingle

APPELLANT

Vs

Maharashtra Medical Council

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Maharashtra Medical Council Act, 1965 — Section 10, 22
Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 —
Section 23, 23(2), 24, 26, 29

Citation : (2014) 4 ABR 751 : (2014) 4 MhLj 360

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : M.I. Dhattrak, Sunil Manohar, Senior Advocate assisted by A.A. Naik,
Advocate for the Appellant; V.P. Panpalia, Advocate for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties. The challenge in this petition is to the order dated 26-12-2013 passed by the Maharashtra Medical Council, Mumbai (for short, "the said Council"), in exercise of its power conferred by section 22 of the Maharashtra Medical Council Act, 1965 (for short, "the said Act"), suspending the registration of the petitioner as a medical practitioner. The order suspending the registration, is reproduced below:

To,

Dr. Sadanand Madhukar Ingle, Ingle Hospital Nandura Road, Sant Tukaram Nagar, Khamgaon-444303.

Sub.: Suspension of Registration No. 56463

Ref. No. RCC Case No. 119/2011 and 02/2012 under PCPNDT Act.

On behalf of the Maharashtra Medical Council, the Registrar, upon receiving the copy of the Criminal Complaints No. 119/2011 and 02/2012 filed by the Appropriate Authority under PCPNDT Act before Hon"ble JMFC, Khamgaon, for violating various provisions of PCPNDT Act as amended up to date.

Upon perusal by the Executive Committee of the Maharashtra Medical Council on 4-12-2013, it is noted that the Criminal complaint No. 119/2011 and 02/2012 filed against you by the Appropriate Authority under PCPNDT Act, before the Hon"ble JMFC, Khamgaon for gross violation of various provisions of PCPNDT Act. Therefore you have been show caused by Council on 13-12-2012, 27-12-2012 and considering your reply dt. 26-12-2012 and 8-1-2013 and moreover considering your submission made before the Council on 4-12-2013, the Council unanimously decided and resolved that, there are sufficient materials/allegations against you to suspend your Registration pending the inquiry u/s 22 of MMC Act, thereby you are hold on suspension from the practice on considering public interest and by allowing you in medical practice lead to further violation of PCPNDT Act, as amended up to date till the inquiry is completed by the Council.

Thus your Registration No. 56463 with the Maharashtra Medical Council is hereby suspended with immediate effect as holding order pending inquiry before the Council. Therefore you are refrained from Medical practice and/or profession of any nature during the period of suspension. If you do any kind of medical practice during the suspension period further suitable action will be taken against you as per law. The charges follows.

The necessary endorsement as to the above has been made to the record of the Register of the Registration of the medical professionals, which please be noted.

Registrar Maharashtra Medical Council.

Bare reading of the order shows that the said Council has received Criminal Complaints Nos. 119 of 2011 and 02 of 2012 filed by the Appropriate Authority under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "the PCPNDT Act") against the petitioner before the Judicial Magistrate First Class, Khamgaon, for violating various provisions contained therein, as amended from time to time. The show cause notices were issued to the petitioner on 13-12-2012 and 27-12-2012. After considering the replies dated 26-12-2012 and 8-1-2013 given by the petitioner, it has been unanimously decided by the said Council to suspend the registration of practice pending enquiry u/s 22 of the Maharashtra Medical Council Act, on considering public interest and forming an opinion that the continuation of medical practice by the petitioner would lead to further violation of the PCPNDT Act, as amended from time to time, pending enquiry contemplated by the Council. The petitioner is refrained from medical practice and/or profession of any nature during the period of suspension, else further suitable action will be taken against him as per the law. From the order itself, it is apparent that no charges have been framed against the petitioner for any act of misconduct.

2. The question, which falls for consideration is, whether there is a power to suspend the registration of a medical practitioner, pending criminal prosecution or an enquiry into the acts of misconduct? The provision of section 22 of the Maharashtra Medical Council Act fell for consideration of the Division Bench of this Court in the case of Dr. Ramineni Venugopal Somaiah and Dr. Prabhudas Solanki Vs. Maharashtra Medical Council, Shri. Sanjaykumar Dattatraya Funde Medical Officer and Medical Officer, Appropriate Authority, It was a case where an order passed by the Maharashtra Medical Council suspending registrations of the medical practitioners for a period of five years till the final decision of a criminal case on charges framed against them for contravention of the provisions of PCPNDT Act and the Rules framed thereunder, was sought to be set aside. The Division of this Court considered the provision of section 23(2) of PCPNDT Act, which runs as under:

23. Offences and penalties.--

....

(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

The Division Bench has held that the consequences of suspension of registration of a medical practitioner are expressly drastic and section 23(2) does not exclude the principles of natural justice either expressly or by necessary intendment. It has been held that section 23(2) does not require the State Medical Council to suspend the registration of a medical practitioner, but only to take necessary action for suspension, otherwise the Legislature would have provided for such action to be taken forthwith by the State Medical Council. It has been held that the said provision merely enables the Authority to initiate the process for considering the suspension and not to suspend the registration without anything more. The Court has further taken a note of the fact that there is no guarantee as to when the pending cases will be disposed of, and to continue the suspension pending such cases from the date of framing of the charges would visit with the drastic consequences, which the Legislature never intended.

3. Paragraphs 32 and 34 of the said judgment being relevant, is reproduced below:

32. There is a distinction between suspensions which are made as holding operations and suspensions by way of punishment. Although the said Act does not expressly provide for interim suspension, the State Medical Council would always have the power in appropriate cases or grave urgency to suspend the registration as holding action and afford the registered medical practitioner a post-decisional hearing. Such an order pending the enquiry would not be a

penalty or punishment. It would be open thereafter for the Council, after the enquiry is conducted, to suspend the registration for such period of time as may be warranted by the facts of a particular case. The period of suspension naturally would depend upon the nature of the alleged offence. Such an order, after hearing the medical officer finally, would be by way of penalty.

34. Thus, if in a case of grave urgency and if the Medical Council forms an opinion for instance that the continuation of a medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of the provisions of the said Act, it can always issue an order of suspension as a holding order and then follow it by an enquiry to consider whether or not to continue suspension. The exercise of such power would only be in cases where the matter cannot be delayed at all.

The Division Bench of this Court has made a distinction between "suspensions which are made as holding operations" and "suspensions by way of punishment". The Division Bench has held that though the said Act does not expressly provide for interim suspension, the State Medical Council would always have the power- (i) in appropriate cases, or (ii) in cases of grave urgency a power to suspend the registration as holding action and afford the registered medical practitioner a post-decisional hearing. It has been held that such an order pending enquiry would not be a penalty or punishment and it would be open for the Council, after the enquiry is conducted, to suspend the registration for such period of time as may be warranted by the facts of particular case. It has also been held that the power of suspension naturally would depend upon the nature of the alleged offence. Such an order, after hearing the medical officer finally, would be by way of penalty.

4. Section 10 of the Maharashtra Medical Council Act deals with the powers, duties and functions of the Council, and it is reproduced below:

10. Subject to such conditions as may be prescribed by or under the provisions of this Act, the powers, duties and Junctions of the Council shall be-

(a) to maintain the register, and to provide for the registration of medical practitioners;

(b) to hear and decide appeals from any decision of the Register;

(c) to prescribe a code of ethics for regulating the professional conduct of practitioners;

(d) to reprimand a practitioner, or to suspend or remove him from the register, or to take such other disciplinary action against him as may, in the opinion of the Council, be necessary or expedient;

(e) to exercise such other powers, perform such other duties and discharge such other Junctions, as are laid down in this Act, or as may be prescribed.

Clause (d) u/s 10 cannot be construed in a restricted manner and it includes as

well, the power to suspend registration of a medical practitioner, pending criminal prosecution or an enquiry in respect of any act of misconduct on the part of such medical practitioner. Thus, the power to suspend is referable to section 10 of the said Act.

5. The suspension of registration of a medical practitioner pending enquiry or prosecution is a drastic action and takes away the fundamental right to practise the profession, as guaranteed under Article 19(1)(g) of the Constitution of India. Such an action can be taken only to enforce reasonable restrictions imposed by making a law in the general public interest in terms of Clause (6) of Article 19(1) (g) of the Constitution of India. The exercise of power u/s 10 or 22 of the said Act is guided by the circumstances pointed out by the judgment of the Division Bench in the case of Ramineni, cited supra. The action can be taken in cases of grave urgency and in appropriate cases, even without affording an opportunity of being heard in the matter and the validity of action can be judged in a post-decisional hearing. The cases of grave urgency would be those where the continuation of a medical practitioner on the register for any length of time is considered to be dangerous or detrimental to public interest, health and welfare, and the danger or detriment found to be imminent, is required to be averted by taking such action of suspending the registration, as the said Council deems fit and proper.

6. The petitioner and his wife both are practising Gynecologists and they are running a sonography centre in their hospital. Bare perusal of the order impugned shows that Criminal Complaints Nos. 119 of 2011 and 02 of 2012 are pending against the petitioner under the provisions of PCPNDT Act in the Court of Judicial Magistrate First Class, Khamgaon, for gross violation of various provisions therein. In the reply filed by the respondents, the stand is taken that a decoy was sent to the petitioner to test his credentials. The petitioner conducted a sonography of the said decoy and it is alleged that he is found guilty of sex determination practice. The Appropriate Authority, therefore, filed Criminal Case No. 7 of 2013 against the petitioner, which is pending in the Court of Judicial Magistrate First Class, Khamgaon. It is the further stand taken by the respondents that in the meeting held on 17-12-2013, it was resolved as under:

As per the Records available forwarded by the Nodal Agency, Government of Maharashtra, there is prima facie multiple cases of breach of ethics, and is dangerous to public perception. Therefore it will be prudent to hold in suspension the licence/Registration with the Council of Dr. Sadanand Madhukar Ingle till the inquiry is complete, preferably within six months. The action is purely in public interest. The Registrar is directed to comply as above and frame the charges accordingly.

7. My attention is also invited to Clause 7.6. of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which is reproduced below:

Sex Determination Tests.--On no account sex determination test shall be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971. Any act of termination of pregnancy of normal female foetus amounting to female foeticide shall be regarded as professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings as per the provisions of this Act.

It is urged that the enquiry is being conducted against the petitioner for the breach of the aforesaid clause.

8. The action was taken by the Competent Authority to seal the sonography machine installed in the hospital of the petitioner. That has been set aside by the Division Bench (M/s B.P. Dharmadhikari and S.B. Shukre, JJ.) of this Court on 21-6-2013 in Writ Petition No. 683 of 2013. Criminal Complaints Nos. 119 of 2011 and 02 of 2012 were filed against the petitioner by one Dr. Suresh Kashiram Sirsat under sections 23, 24, 26 and 29 of PCPNDT Act, and those have been stayed by an order dated 18-7-2013 passed by the learned Single Judge (Shri P.D. Kode, J.) of this Court. The show cause notices were issued to the petitioner on 13-12-2012 and 27-12-2012 in respect of the acts of misconduct alleged against him, to which the petitioner had filed his replies on 26-12-2012 and 8-1-2013. The impugned action has been taken on 26-12-2013. The learned counsel for the respondents submits that an enquiry in respect of the misconduct alleged against the petitioner shall be completed within one month. In view of this, it was not a case where the respondents could not wait even for a month or two.

9. Merely quoting the words of "public interest" is not enough, but the formation of opinion has to be based upon the objective assessment of the material relevant to the action taken. It is not the charge against the petitioner that the sex determination test was undertaken by the petitioner with an intent to terminate the life of a female foetus developing in the mother's womb or has actually terminated the pregnancy. It is not the opinion formed as per the resolution reproduced above, that to permit the petitioner to practice a medical profession as Gynaecologist is in any manner considered to be dangerous or detrimental to public health, safety and welfare and it is to avert such danger or detriment that an action impugned has been taken. The fundamental rights cannot be taken away merely because it is prudent to do so. It is also not the case that the continuation of medical practice by the petitioner is likely to hamper the investigation in progress. In view of this, the action impugned cannot be sustained.

10. In the result, the petition is allowed. The order dated 26-12-2013 passed by the respondents, is hereby quashed and set aside. The respondents are at liberty to continue and complete the enquiry as early as possible. Rule is made absolute in above terms. No order as to costs.