

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 12303 of 2021

and

WMP. No. 13086 of 2021

Dr. P. Basumani

.. Petitioner

Versus

The Tamilnadu Medical Council
represented by its Registrar
New No.914, Old No.569
Poonamallee High Road
Arumbakkam
Chennai - 600 106

.. Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order in Reference No. TNMC/DC 136 of 2018 dated 04.05.2021 issued by the respondent in so far as it relates to the petitioner and quash the same.

For Petitioner : Ms. P. Bhuvaneswari
For Respondent : Mr. G. Sankaran

ORDER

This writ petition is filed praying to issue a Writ of Certiorari to quash the order dated 04.05.2021 passed by the respondent insofar as it relates to the petitioner.

2. The petitioner is a practising Doctor with specialisation in Gastroenterology. According to him, he has 35 years of practice and is presently working as Consultant Gastroenterologist at Sri Ramachandra Institute of Higher Education and Research, Porur, Chennai.

3. It is stated in the writ petition that during the year 2015, when the petitioner was working as a Primary Consultant at Fortis Malar Hospital, Chennai, he along with other specialists, examined a patient by name N.Pitchaimani, aged 66 years, on 27.09.2015, who was suffering from the symptoms of disorientation, generalized weakness, giddiness and turbid urine and was admitted in the hospital on the same day. The petitioner also stated that the condition of the patient improved initially and he was shifted to the general ward from Intensive Care Unit (ICU) on 04.10.2015. However, his condition suddenly deteriorated on 07.10.2015 and he was again shifted to ICU. As the condition of the patient deteriorated further, he was advised intubation and ventilation on 09.10.2015, but despite the best treatment afforded, the patient breathed his last on 11.10.2015 at 11.25 pm.

4. The petitioner further stated that on 12.04.2021, he received a summons from the respondent / Tamil Nadu Medical Council, directing him to

appear before a committee on 22.04.2021 and give evidence with regard to the enquiry initiated against one Dr.Radhakrishnan of Combatore, on the basis of the complaint given by Sri Subhitha of Chennai, alleging that the said Dr.Radhakrishnan has issued a false fitness certificate to her father, based on which, various properties worth about Rs.50 crores have been registered in the name of Sakthi Kumar, who is son-in-law of the said Dr.Radhakrishnan. In response to the summons issued by the respondent, the petitioner appeared before the committee on 22.04.2021 and gave his statement. Thereafter, the respondent passed an order on 04.05.2021, imposing the punishment of removal of his name from the Medical Register of Tamil Nadu Medical Council for a period of six months. Aggrieved by the same, the petitioner is before this Court with this writ petition.

5.1 Upon notice, the respondent filed a detailed counter affidavit, wherein, it is *inter alia* stated that on receipt of the complaint from the Medical Council of India, the case was referred to the disciplinary committee, which issued summons to Dr.Radhakrishnan and accordingly, he appeared before the committee and gave his deposition. During the course of personal hearing, Dr.Radhakrishnan submitted a letter addressed to the police authorities by Fortis Malar Hospital, stating that the patient was conscious on

08.10.2015, whereas the entries in the case records were contrary to the condition of the patient stated in the said letter. Therefore, the disciplinary committee called upon the former Primary Consultant as well as the present Medical Superintendent of the said Hospital. Though Dr.Praveen B.Nilgar and Dr.Anand Mohan Pai, were unable to appear before the committee on 23.09.2019, but they appeared on 12.11.2019 and gave statement that at the time of incident, they were not employed in the said hospital and all their statements were made based on the available medical records. In such circumstances, the disciplinary committee sent summons to the petitioner, who treated the patient at that time. On receipt of the summons, he appeared before the committee on 22.04.2021 and gave his deposition.

5.2 The counter affidavit further proceeds to state that a letter dated 27.03.2017 was addressed to the Medical Superintendent, Fortis Malar Hospital, by the Inspector of Police, Central Crime Branch, EDF II, Team IX-A, Vepery, Chennai seeking answers to certain queries about the health condition of the patient N.Pitchamani, in connection with the investigation in CCB Crime No.374 of 2016 registered for the offences under sections 465, 467, 468, 474, 420 and 120(b) IPC and the same was replied by Dr.Praveen B. Nilgar, Medical Superintendent of the hospital, on 29.03.2017, after discussing with the petitioner, to the effect that the patient was conscious on 08.10.2015,

which is contrary to the actual condition of the patient as revealed in the case sheets. On the other hand, the petitioner during enquiry, has stated that the patient was not conscious on 08.10.2015 and not oriented to understand the legal documents and that, he discussed the status of the patient with the said Dr.Praveen B.Nilgar, former Medical Superintendent. Therefore, the disciplinary committee was of the opinion that the petitioner being the treating doctor, failed to ensure that correct reply was sent indicating the exact conditions of the patient; such failure has crippled the investigation and facilitated the accused to escape from the clutches of law; and thereby, he fell short of the integrity and conduct expected out of medical practitioner, besides violating the trust the public placed in the medical profession. Having opined so, they imposed punishment of removal of the petitioner's name from the Medical Register for a period of 6 months, by the order impugned herein. Stating so, this respondent sought to dismiss this writ petition.

6. Assailing the order of punishment passed by the respondent, the learned counsel for the petitioner made the following submissions:

(i) There was no allegation of medical negligence / professional misconduct or complaint received against the petitioner; and no charges were framed against him, based on the complaint received by Sri Subhitha,

D/o.N.Pitchaimani.

(ii)As the petitioner being a primary consultant of the patient N.Pichaimani, he was summoned before the disciplinary committee for enquiry only to give evidence in connection with the case in Cr.No.374 of 2016 registered on the basis of the complaint lodged by the said Sri Subhitha of Chennai, against Dr.Radhakrishnan of Coimbatore, who issued a false medical certificate dated 08.10.2015 about the physical condition of the said Pitchaimani, based on which, fraudulent home registration of the properties worth about Rs.50 crores had been taken place, in the name of Sakthi Kumar, who is none else than the son-in-law of Dr.Radhakrishnan.

(iii)The letter of the police authorities dated 27.03.2017 was addressed only to the Medical Superintendent of the hospital; due to non-availability of the Medical superintendent at that time, the petitioner received the said letter and later handed over the same to Dr.Praveen B.Nilgar; and the reply dated 29.03.2017 to the said letter was given by the Medical Superintendent, based on the medical records. Without considering the said facts, the committee has over-stretched the powers vested under the Regulation and concluded that the petitioner failed to ensure the correct reply sent by the Medical Superintendent and thereby he violated Regulation 7.7 of the Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003, (in short, 'the Regulations, 2003').

(iv) Before passing the order of removal of his name from the Medical Register for a period of six months, by the respondent, the petitioner was not issued with any show cause notice nor provided any opportunity of cross examination as contemplated under Regulation 8.2 of the Regulations, 2003.

Thus, according to the learned counsel, the order impugned in this writ petition is arbitrary, illegal and in violation of the principles of natural justice and hence, the same is liable to be set aside.

7. Per contra, the learned counsel for the respondent, by placing reliance on the counter affidavit, submitted that the respondent followed the Tamil Nadu Medical Council Code of Medical Ethics (Professional Conduct, Etiquette and Ethics) Regulations, 2003, which prescribes an inclusive definition of professional misconduct; the different acts of misconduct given in the said Regulation are only extensive and not exhaustive; and the violation of any provision of the Regulation is a ground for action under professional misconduct, according to which, if a medical practitioner is found guilty of professional misconduct, he may be awarded punishment which includes removal of name from the register of medical practitioner permanently or for a specified period. The learned counsel also submitted that the petitioner being a treating doctor is responsible for giving true picture about the conditions of his

patient, whereas he failed to ensure the reply given by the Medical Superintendent of the hospital about the actual status of the father of the complainant, to the police authorities. Adding further, the learned counsel submitted that there are lapses on the part of the petitioner to ensure that a correct reply was sent by the Medical Superintendent of the hospital to the investigating authority with respect to the health condition of the patient, as the reply was contrary to the case sheet / medical records of the patient as well as the statement of the petitioner before the committee. Therefore, the petitioner, as a Doctor who treated the patient at the relevant point of time, is also vicariously responsible for the act done by the Medical Superintendent in issuing the reply. This liability is based upon the maxims "*qui facit per alium facit per se*" that he who acts through another does the act himself. It is also submitted that during the personal hearing, the petitioner was given opportunity to defend himself and hence, there is no violation of the principles of natural justice, as alleged by the petitioner; and that the disciplinary committee being a quasi judicial authority can examine the circumstances of the particular case upon their own judicial prudence, even if there is no complaint against any one, and take cognizance of the offence. Therefore, the learned counsel submitted that the order passed by the respondent, which is impugned herein, is perfectly correct and the same does not warrant any

interference at the hands of this court.

8. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondent and also perused the material records placed before this Court.

9. In this writ petition, the petitioner calls in question the order of punishment inflicted on him. The facts remain undisputed are that the petitioner is a practising doctor specialised in the branch of Gastroenterology. He was a primary consultant of the patient N.Pitchaimani, who was admitted in the Fortis Malar Hospital, on 27.09.2015, having the complications of disorientation, generalized weakness, giddiness and turbid urine and died on 11.10.2015, despite best treatment given. Thereafter, the daughter of the said N.Pitchaimani, viz., Sri Subhitha, gave a complaint to the Medical Council of India alleging that Dr.Radhakrishnan of Coimbatore has issued a false medical certificate dated 08.10.2015 without the knowledge of the hospital doctors, based on which home registration of various properties worth about Rs.50 crores had been taken place in the name of Sakthi Kumar, who is son-in-law of the said Dr.Radhakrishnan. In this regard, FIR in Cr.No.374 of 2016 was registered and during the course of investigation, the Inspector of

Police, Central Crime Branch, EDF II, Team IX-A, Vepery, Chennai, sent a letter dated 27.03.2017 to the Medical Superintendent of the hospital, seeking answers to certain queries, about the health condition of the patient N.Pitchaimani and the said letter was received by the petitioner. The Medical superintendent Dr.Praveen B.Nilgar, sent a reply dated 29.03.2017 to the police authorities, stating that the patient was conscious on 08.10.2015, which according to the respondent, is contrary to the actual conditions of the patient as revealed from the case sheet / medical records, which proceeds to state as follows:

“Pt. Sensorial – altered, disoriented. GLS: E4 M6 V4 (As per Glasgow Coma Scale) confused or disoriented.”

Further, the petitioner during the course of enquiry, asserted that the patient was not conscious on 08.10.2015 and not oriented to understand the legal documents. Thus, he failed to ensure that the correct reply was sent by the Medical superintendent to the police authorities and thereby, he committed the professional misconduct in violation of Regulation 7.7 of the Regulations, 2003, for which, he was imposed with the punishment of removal of his name from the medical register for a period of six months, by the order impugned herein.

10.1 Before proceeding further, it would be appropriate to have a look at the enactment of laws covered in this field. The Indian Medical Council Act, 1956 is the legislation dealing with medical education as well as medical profession. The said Act was repealed by the National Medical Commission Act, 2019 (NMC Act) and in the place of the Medical Council of India, the Ethics and Medical Registration Board has been established.

10.2 Under Section 27 of the NMC Act, the Ethics and Medical Registration Board has been conferred with the power to regulate professional conduct and promote medical ethics in accordance with the regulations under the Act, provided that the Ethics and Medical Registration Board shall ensure compliance of the code of professional and ethical conduct through the state medical council in a case where such state medical council has been conferred power to take disciplinary actions in respect of professional ethical misconduct by medical practitioners under respective state Acts.

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10.3 Section 30 of the NMC Act further provides that the State Government shall, within three years of the commencement of this Act, take necessary steps to establish a State Medical Council, if no such council exists. Such State Medical Council is the body empowered to initiate disciplinary

action in respect of any professional or ethical misconduct by registered medical practitioner or professional in accordance with the regulations and guidelines framed under this Act. The Act also provides an appeal remedy to the aggrieved medical practitioner or professional against the action taken by the State Medical Council by filing an appeal to the Ethics and Medical Registration Board. A further appeal remedy is provided against the decision of the Ethics and Medical Registration Board before the Commission.

10.4 Section 57 of the NMC Act empowers the Commission to make regulations, clause (zh) of sub-section (2) of which, has given power to the Commission to make regulations in the manner of taking disciplinary action by a State Medical Council for professional or ethical misconduct of registered medical practitioner or professional, the procedure for receiving complaints and ethics and grievances by ethics and medical registration board under sub-section (2) of Section 30.

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10.5 As per Section 61 (2) of the NMC Act, until new Rules and Regulations are framed under this Act, the Rules and Regulations made under the Indian Medical Council Act, 1956 shall continue to remain in force and operate.

10.6 Thus, till new Regulations are framed under the NMC Act, the disciplinary action / proceedings for professional misconduct of medical practitioners, is governed by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which is also known as the Code of Medical Ethics, 2002 (hereinafter referred to as the Code) issued under the Indian Medical Council Act, 1956.

10.7 The State of Tamil Nadu has also adopted the very same Regulations to govern and regulate the professional conduct and ethics of the registered medical practitioners, at present viz., the Tamil Nadu Medical Council Code of Medical Ethics (Professional conduct, Etiquette and Ethics) Regulations, 2003. The Standard Operating Procedures (SOP) are issued by the Tamil Nadu Medical Council for complaint handling process, in respect of the registered medical practitioners, with an aim to repose faith and trust among the patients towards the treating doctors. For this purpose, the medical practitioners have a duty to maintain good standard of practice and care and to show respect for human life.

10.8 Chapter 8 of the Code deals with punishment in disciplinary action in case any complaint is received against a registered medical

practitioner. Regulation 8.2 is the only regulation that briefly mentions about the procedure to be adopted in such cases of disciplinary action. The said Regulation states that in case of any complaint is received against the medical practitioner, the State Medical Council/Medical Council of India, as the case may be, shall give an opportunity to be heard in person or through a pleader and thereafter take appropriate action against the medical practitioner. Further, Regulation 8.3 provides the kinds of punishment that may be imposed against a medical practitioner, if he/she is found guilty of misconduct.

10.9 It is seen that the Revised Dentists (Code of Ethics) Regulations, 2014 issued under the Dentists Act, 1948 is *mutatis mutandis* replica of the Code of Medical Ethics. Similarly, the Veterinary Council of India (Standard of Professional Misconduct, Etiquette and Code of Ethics for Veterinary Practitioners) Regulations, 1992 is also sketchy and bereft of particulars.

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10.10 That apart, a perusal of the provisions of the Code would reveal that the procedure to be adopted in disciplinary action for professional misconduct against medical practitioners is completely absent. The Code is bereft of the stages to be followed from the initiation till end, in case of

complaints are received against the medical practitioners. This requires a complete overhaul of the Code of Medical Ethics in the new Regulations to be framed under the NMC Act, 2019. Further, a reading of the provisions dealing with responsibilities and duties of the medical practitioners and the misconduct i.e. Chapter 7 are overlapping in many ways. Therefore, this court deems it fit and appropriate to suggest certain guidelines to be included in the new Regulations that are to be framed under the NMC Act, 2019, in order to establish a fair and reasonable disciplinary procedure in the interests of the medical professionals as well as the public in general.

11. Coming to the case at hand, admittedly, there was no complaint against the petitioner for the alleged professional misconduct and he was summoned to appear before the disciplinary committee on 22.04.2021 only to give material evidence in the case registered against Dr.Radhakrishnan of Coimbatore, based on the complaint lodged by the complainant Sri Subhitha D/o.N.Pitchaimani. Except the petitioner being a primary consultant and treating doctor of the patient N.Pitchaimani, he was in no way connected with the medical certificate dated 08.10.2015 issued by Dr.Radhakrishnan. In fact, in the complaint, there was no allegation against the petitioner and it was specifically averred therein that the medical certificate dated 08.10.2015 was

issued by Dr.Radhakrishnan, without the knowledge of the doctors in Malar Hospital, which was also categorically admitted by the respondent in paragraph 17 of the order impugned herein. Hence, there is absolutely no ground for taking disciplinary action against the petitioner.

12. The next point to be considered is the main delinquency on which the petitioner was inflicted with the punishment of removal of his name from the medical register for a period of six months, in terms of Regulation 7.7 of the Regulations, 2003, that he failed to ensure that a correct reply was given by the Medical Superintendent of the hospital to the police authorities about the physical conditions of the patient N.Pitchaimani. At this juncture, it is apropos to refer to the said Regulation, which reads as follows:

“7.7 Signing professional certificates, reports and other documents:

Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix-4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or

document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register.”

The aforesaid Regulation can be invoked, only if a medical practitioner has signed or given under his name and authority any certificate, notification, report or document of a similar character, which is untrue, misleading or improper. Whereas, in this case, it is manifest from the records that the letter dated 27.03.2017 sent by the police authorities seeking answers for certain queries about the conditions of the patient N.Pitchaimani, was addressed only to the Medical Superintendent of the Fortis Malar Hospital and the reply dated 29.03.2017 was sent by Dr.Praveen B.Nilgar, Medical Superintendent of the hospital, to the effect that the patient was conscious on 08.10.2015, only based on his understanding of the medical records. The said reply was not signed by the petitioner and it is also nobody's case that the same was issued on his behalf or under his authority. It is also to be noted that in the said reply, only in respect of question no.2 that 'If one Dr.S.Radhakrishnan, MBBS, FRCS No.TN38590 visited the above patient during his treatment at your hospital on 08.10.2015', the Medical Superintendent gave his response that 'yes, as per the primary consultant's information'. The said query is only with respect to visitation of Dr.Radhakrishnan in the hospital and there is a reference about his visitation and hence, the petitioner said 'yes', when the Medical superintendent asked about the same. It is also to be pointed out at this

juncture that in the complaint filed by Sri Subhitha, there is no dispute raised about the visitation of the said Dr.Radhakrishnan. Thus, there is absolutely no piece of evidence made available even to allege that the petitioner gave an incorrect / misleading information to the police authorities contrary to the case sheet / medical records of the patient. Even he has deposed before the disciplinary committee that the patient was not conscious on 08.10.2015 and not oriented to understand the legal documents and that he has discussed about the status of the patient with Dr.Praveen B.Nilgar, then Medical Superintendent. Therefore, in the absence of any direct communication between the petitioner and the police authorities and he was in no way connected with the reply sent by the Medical Superintendent to the police authorities coupled with the fact that he has not signed or given any medical certificate, report or other documents pertaining to his patient N.Pitchaimani, to any one, it cannot be inferred that the petitioner is also responsible for the reply given by the medical superintendent of the hospital to the police authorities and he committed the professional misconduct, thereby violating Regulation 7.7 of the Regulations, 2003.

13. In this context, it is to be pointed out that in the larger interest of the society, the highest degree of care, caution, propriety and rectitude be expected from and followed by the medical practitioners, who discharge a

noble profession. On the other hand, in the same breadth, it is important to acknowledge the services of medical practitioners. Regard must be had to the fact that they work under tremendous pressure - physically, mentally, morally and also professionally. They cannot be expected to perform their best, if the swords of damocles are kept hanging on their head constantly. Enough protection needs to be given to the medical practitioners in order that they may not be penalised, targeted or punished, unjustly. This principle finds support in the decision of the Apex Court in **Jacob Mathew v. State of Punjab and another** [2005 (6) SCC 1] wherein it was observed as follows:-

"51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence, there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against."

In **A.S.V. Narayanan Rao v. Ratnamala and another** [2013 (10) SCC 741]

the Supreme Court, reiterated with approval, the judgment in **Jacob Mathew** referred to above and held that though the doctors are not immune from legal clutches/proceedings in the event of their negligence in discharge of their professional duties, however, it is necessary to protect them from frivolous and

unjust prosecution. The Supreme Court in **Vinod Dua v. Union of India [2021 SCC Online SC 414 decided on 03.06.2021]** once again reiterated on the above lines. Applying the said legal proposition to the facts of the present case, this court is of the opinion that the order of punishment inflicted on the petitioner, cannot be allowed to be sustained.

14. Yet another ground raised in this writ petition is that before passing the order of punishment, the petitioner was not issued with any show cause notice to put forth his defence nor provided any opportunity to cross examine the witnesses to justify the reply sent by the Medical Superintendent of the hospital and to prove his innocence. Regulation 8.2 of the Regulations, 2003, explicitly provides that any complaint with regard to professional misconduct can be brought before the Tamil Nadu Medical Council for disciplinary action, the Tamil Nadu Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. On the contrary, the petitioner was summoned only for giving evidence in the case registered against Dr.Radhakrishnan on 22.04.2021 and accordingly, he appeared and gave his statement before the disciplinary committee and immediately thereafter, he was issued with the order of punishment of removal of his name from the medical register for a period of six months, which would disclose that no opportunity was provided

to the petitioner to defend the allegation of professional misconduct levelled against him and the same is totally in violation of the principles of natural justice. In this regard, it is aptly quoted the observation of the supreme court in **Canara Bank v. V.K.Awasthy [(2005) 6 SCC 321 : 2005 SCC (L&S) 833]**, which reads as follows:

“7. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, “useless formality theory” can be pressed into service.

8. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions “natural justice” and “legal justice” do

not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic

<https://www.mhc.tn.gov.in/judis/document> was made at Runnymede in 1215, the first statutory

recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, (1863) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam' says God, 'where art thou? has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

12. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in Ray v. Local Government Board, (1914) 1 KB 160: 83 LJKB 86) (KB at p. 199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman, (1943) AC 627: [1943] 2 All ER 337, Lord Wright observed that it was not desirable to attempt 'to force it into any procrustean bed' and mentioned that

essential requirement was that the Tribunal should be

impartial and have no personal interest in the controversy, and further that it should give `a full and fair opportunity', to every party of being heard.

13. Lord Wright referred to the leading cases on the subject. The most important of them is the *Board of Education v. Rice*, (1911) AC 179:80 LJKB 796), where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. ... It will, I suppose, usually be of an administrative kind; but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think that they are bound to treat such a question as though it were a trial." The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination, either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for

correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, L.C in Arthur John Spackman v. Plumstead District Board of Works, (1985) 10 AC 229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice".

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be

performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

From the above extract, it is lucid that the principles of natural justice is not an empty formality. In the absence of observance to the said principle, the element of 'fairness' in the action is removed and "arbitrariness" creeps in.

The principle derives its recognition in legal jurisprudence from the maxim "Audi Alteram Partem" that means 'no man shall be condemned without being heard'. The natural justice requires that any person, who is likely to be punished for any act or omission, is entitled to know the charge against him and sufficient and reasonable opportunity must be given to him to defend himself. The principle of natural justice is encompassed in fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. Any action taken contrary to the same would have to be declared as arbitrary and in

violation of the fundamental rights.

15. In the present case, the petitioner has taken a clear stand that he was caught unaware of the action taken against him behind his back. The copy of the report was not furnished to him. As stated earlier, the enquiry was not against the petitioner and he was summoned only to give material evidence. The alleged statement of the other witness namely the medical superintendent was not furnished to the petitioner. The petitioner was also not afforded any opportunity to cross examine the witness, whose statement or document was used against him and put forth his defence before the committee as to whether he was aware of the contents of the letter addressed to the Medical Superintendent and for that matter, he was not aware of the reply given by the Medical Superintendent. This Court also, from the records, is unable to find even any probability of joint decision or instruction from the petitioner to the Medical Superintendent for him to issue such a letter contrary to the medical records of the patient to the police authorities. Thus, the violation of the principles of natural justice has caused serious prejudice to him. As a matter of fact, during the course of hearing, such procedural lapses have also been agreed upon on the side of the respondent. Therefore, this court is of the opinion that without any complaint, the act of the disciplinary committee being quasi judicial authority, to recommend for imposition of punishment on the

petitioner, that too, without providing any opportunity to him, is wholly unjustified and the same is liable to be set aside.

16. In the ultimate analysis, the order dated 04.05.2021 passed by the respondent is set aside insofar as the petitioner is concerned and accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17. Before parting, this Court wishes to observe that it is the responsibility of the Medical Council to proceed against the medical practitioners, if there is any breach or violation of the Standard Operating Procedures (SOP) or instructions given from time to time. At the same time, the Medical Council also owes a duty to protect the medical practitioners, who are rendering yeomen service for the betterment of the general public, from the onslaught of frivolous complaints or to proceed against them in a hasty manner. The Medical Council is expected to act in such a manner that every area connected with the complaints can be meted out, which will pave way for reasonable as well as legally based decision to be arrived at. Therefore, as discussed in the preceding paragraphs 10.1 to 10.10, this Court suggests the following guidelines to be included in the new Regulations that are to be framed under the NMC Act, 2019 and to be made as an SOP for the purpose of effective complaint-handling mechanism, so as to avoid unnecessary

allegations against the Medical Board:

(a) The Code/Regulations should enunciate in general the duties bestowed by law on a registered medical practitioner. These duties and responsibilities are standards to be met by all medical practitioners in general.

(b) After enumerating the general duties and responsibilities expected from a registered medical practitioner, certain specific duties and responsibilities, the violation of which would entail disciplinary action, would be construed as 'professional misconduct' to be enumerated in a list of instances that are illustrative. A further guidance is to be issued in the Regulations itself as to which other further instances of misconduct may be treated by the disciplinary board or the superior Courts as qualifying under the term 'professional misconduct' that would entail disciplinary action against medical practitioners.

(c) Thereafter, a complete stage-wise guidelines/mechanism is to be envisaged under the Code/Regulations from the time of filing of the complaint by an aggrieved person to the registration of such a complaint with the concerned medical council and the procedure to be followed thereafter.

(d) Once a complaint is received from an aggrieved person, the State Medical Council/Ethics and Medical Registration Board, as the case may be, may issue a show cause notice to the delinquent medical practitioner, annexing a copy of the complaint received and calling upon an explanation in detail from the medical practitioner, within a time frame to be fixed by the Council. The <https://www.mhc.tn.gov.in/judis/medical> practitioner may submit his explanation within the time

frame granted and the State Medical Council/Ethics and Medical Registration Board may, after considering the explanation given by the medical practitioner, constitute an enquiry committee consisting of experts in the field with specific reference to the field of medicine with which the medical practitioner is associated.

(e) After constitution of committee, notice is to be issued to the medical practitioner as well as the complainant and both parties shall be heard in person and relevant oral as well as documentary evidence shall be recorded by giving enough opportunity to both parties in the presence of each other. The principles of natural justice, as required in quasi-judicial proceeding, will have to necessarily be followed as the proceedings may end in punishments which would entail civil consequences to either party.

(f) After completing enquiry, the Enquiry Committee has to submit its detailed report encompassing all the evidence recorded before it by both parties and come to an informed decision on its recommendation to the disciplinary board of the State Medical Council / Ethics and Medical Registration Board. The Enquiry committee will have to indicate its finding on the veracity or otherwise of the complaint as well as its finding on whether the medical practitioner is guilty of 'professional misconduct' under the Regulations/Code.

(g) In order to make the disciplinary proceedings free from any loopholes and to avoid multiplicity of proceedings, the report of the enquiry committee is to be made final and binding on

the disciplinary board of the State Medical Council/Ethics and Medical Registration Board. On receipt of the report of the enquiry committee, the Disciplinary Board of the State Medical Council/Ethics and Medical Registration Board, as the case may be, if the medical practitioner is found guilty, may decide on a proposed punishment and issue a show cause notice to the medical practitioner on the only ground of the proposed punishment, call for his remarks thereon and thereafter pass orders imposing punishment on the medical practitioner.

(h) The disciplinary board of the State Medical Council/Ethics and Medical Registration Board will have to a permanent tenure, fixed three-member body (constituted by election by the Commission from amongst its members) that will function as the disciplinary authority for the purpose of professional misconduct by registered medical practitioners under the Code/Regulation.

(i) The enquiry committee will have to be appointed by the unanimous consent of the members of the Disciplinary Board of the State Medical Council/Ethics and Medical Registration Board as the case may be.

(j) The appointment of the members of the enquiry committee, however, will differ from case to case depending on the field of medicine that the delinquent officer is associated with. The enquiry committee shall be a three-member committee with one member from the field of general/internal medicine and two other members from the concerned fields as required on a case to case basis.

(k) Any complaint made to the State Medical Council/Ethics and Medical Registration Board shall be disposed of within a period of six months in total from the time of filing of the complaint to the time of either closing of the complaint or imposing punishment on the delinquent medical officer.

(l) For the purpose of giving enough and extensive powers to the enquiry committee, inspiration may be drawn from Section 42 of the Advocates Act, 1961 where the disciplinary committee of the Bar Council is given extensive powers with respect to conducting enquiry, recording of evidence et cetera.

(m) The code of ethics which presently mentions under Regulation 1.3 that medical documents and records to be preserved for a period of three years can be extended for a period of 10 years as the entire records can be digitalised and the same may be required for dealing with complaints.

(n) A period of limitation for filing a complaint against a medical practitioner can be loosely fixed by the Council while giving liberty to the disciplinary board to relax the same, if the case so deserves.

26.10.2021

Index : Yes/No
Internet : Yes/No

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To

The Registrar,
Tamil Nadu Medical Council

<https://www.mhc.tn.gov.in/judis/>

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R. MAHADEVAN, J

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