

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 18TH DAY OF JUNE, 2019

BEFORE

THE HON'BLE MR.JUSTICE B. VEERAPPA

WRIT PETITION NO.35640/2012 (GM-RES)

BETWEEN:

1. The Medical Superintendent
Kasturba Hospital
Madhav Nagar
Manipal-576 104
Udupi District.
2. Ms. Sangeetha Shetty
D/o late Babu Shetty
Aged about 25 years
Working as Nurse
Kasturba Hospital
Manipal-576 104
Udupi District.
3. Mrs. Sumalatha
D/o Aravind Shettigar
Aged 27 years
Working as Nurse
Kasturba Hospital
Manipal-576 104
Udupi District.

...Petitioners

(By Sri N. Ravindranath Kamath, Advocate)

AND:

1. Smt. Fathima Bi
W/o M. Mohammed Haneef
C/o Anandappa
Eswar Rao Compound
Vidya Nagar, 8th Mile,
T.Dasarahalli,
Bengaluru-560 057.
2. The Karnataka Medical Council
A Statutory body established
Under the Act 34/1961 having its
Office at 70, II Floor,
Vaidyakiya Bhavana, K.R.Road,
Near Basavanagudi P.O.
Basavanagudi,
Bengaluru-560 004.
3. State of Karnataka
By Health & Family Welfare Department
Ananda Rao Circle
Bengaluru-560 009
By its Director.

...Respondents

(By Sri R.Nagendra Naik, Advocate for R1;
Sri Vinay D. Hosmath, Advocate for R2;
Sri Y.D.Harsha, AGA for R3)

This Writ Petition is filed under Article 226 of the Constitution of India praying to quash the order dated 02.08.2012 in Enq.31/2011 on the file of Respondent No.2 Karnataka Medical Council, Bengaluru vide Annexure-A, consequently the said complaint of Respondent No.1 may ordered to be dismissed and etc.

This Writ Petition coming on for Preliminary Hearing 'B' Group this day, the Court made the following:

ORDER

1st petitioner Medical Superintendent, Kasturba Hospital, 2nd and 3rd petitioners nurses of the said hospital are before this Court praying to issue writ of certiorari to quash the order dated 2.8.2012 on the file of the second respondent Karnataka Medical Council, Bengaluru, as per Annexure-A, consequently, the complaint of the first respondent Smt.Fathima Bi may ordered to be rejected.

2. It is the case of the petitioners that 1st petitioner is the Kasturba Hospital, which is a famous hospital in India, petitioners 2 and 3 are nurses working in the said hospital. 1st respondent's child Mohammed Rafi died in the said hospital on 9.10.2010. 1st respondent has alleged that the petitioners are the cause for the death of the said child on account of negligence on the part of the petitioners and lodged the complaint before 2nd respondent - the Karnataka Medical Council. The 2nd respondent issued notice to the

present petitioners and conducted enquiry and passed the impugned order dated 2.8.2012 holding that the complainant has failed to prove negligence on the part of the doctors. The nurses - respondents No.4 and 5, (petitioners No.2 and 3 herein) were negligent. Therefore, directed 1st respondent (1st petitioner herein) to take action against respondents No.4 and 5 (petitioners No.2 and 3 herein) for their negligence. Hence, the present writ petition is filed.

3. I have heard the learned counsel for the parties to the lis.

4. Sri Ravindranath Kamath, learned counsel for the petitioners contended that the impugned order passed by the 2nd respondent Karnataka Medical Council - the Statutory Body is erroneous, contrary to material on record. He would further contend that petitioners No.2 and 3 are not medical practitioners as contemplated under the provisions of the Karnataka Medical Registration Act,

1961. Therefore, the 2nd respondent has no jurisdiction to direct the 1st petitioner to take action against petitioners 2 and 3. He would further contend that in fact the complainant already approached the District Consumer Forum and there was a settlement between the petitioners 2 and 3 and the complainant and the complaint came to be closed by a compromise dated 8.9.2015 between the parties. Therefore, he submits that the impugned order passed by 2nd respondent directing the 1st petitioner to take action against petitioners 2 and 3 is without jurisdiction. Therefore, he has sought to allow the writ petition.

5. *Per contra*, Sri Vinay D.Hosmath, learned counsel for respondent No.2 sought to justify the impugned action and contended that because of the negligence on the part of the petitioners, the complainant lost her child. Therefore, the Karnataka Medical Council taking into consideration the professional ethics, issued directions to 1st petitioner to take action against petitioners 2 and 3, as

the Karnataka Medical Council has no power to take action against nurses.

6. Shri Y.D. Harsha, the learned Government Advocate for respondent No.3 and Sri.Nagendra Naik, learned counsel appearing for respondent No.1 also sought to justify the impugned action and contended that the petitioners who are in the medical field have to ensure the safety and the life of every individual who approach the particular hospital with all devotion and faith and because of the negligent act of the petitioners 2 and 3, the faith is vanished. Therefore, they submit that it is for the 1st petitioner Medical Superintendent to set right the Hospital and its Staff to avoid future incidents.

7. Having heard the learned counsel for the parties, it is undisputed fact that 1st respondent complainant's baby Mohammed Rafi died in the 1st petitioner hospital on 9.10.2010. Therefore, 1st respondent lodged a complaint before the 2nd respondent against the present petitioners.

The 2nd respondent after considering the objections and after conducting the enquiry, by the impugned order has held that the complainant has failed to prove the negligence on the part of the doctors and observed that there is negligence on the part of the petitioners 2 and 3 nurses and directed the 1st petitioner to take action in accordance with law.

8. According to the petitioners, 1st petitioner in support of petitioners No.2 and 3 held that there is no negligence on the part of petitioners 2 and 3, the death occurred naturally in the hospital. It is also not in dispute that the 1st respondent already approached the District Forum for negligence against the petitioners No.2 and 3 and the dispute is settled between the parties by a compromise dated 8.9.2015 and 1st petitioner Hospital already paid Rs.7,00,000/- as compensation on behalf of the petitioners Nos.2 and 3.

9. A careful reading of the object of the Karnataka Medical Registration Act, 1961 which clearly indicates that:

An Act to consolidate the laws for the registration of medical practitioners of modern scientific system of medicine in the State of Karnataka.

Whereas it is expedient to consolidate the laws for the registration of medical practitioners of modern scientific system of medicine, surgery and obstetrics, other than veterinary medicine and surgery, in the State of Karnataka.

10. As per definition of sub-section(c) of Section 2 'Registered Practitioner' means any person registered under the provisions of this Act. Admittedly, petitioners 2 and 3 are working as nurses in the 1st petitioner hospital have not registered under the provisions of the Act.

11. Section 13 deals with Registration of Medical Practitioners which reads as under:

(1) Every person who holds any of the medical qualifications included in the schedules to the Indian Medical Council Act, 1956, may apply to the Registrar giving a correct description of his qualifications, with the dates on which they were granted, and present his degree, diploma or licence along with a fee of fifteen rupees for being registered under this Act. The Registrar shall if satisfied that the applicant is entitled to be registered, enter his name in the register:

Provided that the Registrar shall on application and on payment of a fee of two rupees enter the names of medical practitioners registered under any of the enactments repealed by Section 34 and included in the registers maintained in accordance with the provisions of the said repealed enactments as adapted by the Mysore Adaptation of Laws Order, 1956.

(2) The Medical Council may refuse to permit the registration of any person who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898, or any other law for the time being in force, or who after due enquiry has been held guilty by the Karnataka Medical Council or by the Medical Council of any other State in India of infamous conduct in any professional respect.

12. A careful reading of the said provision makes it clear that persons who intend to practice medicine in the State who got themselves registered by applying to the Registrar giving a correct description of the qualification, the dates on which they were granted, and present his degree etc., Failure to do so disentitle them to practice in the State in terms of Section 15(2) of the Central Act. Admittedly, petitioners 2 and 3 nurses are not themselves registered by applying to the Registrar giving description of the qualification. Therefore, they are not the medical

practitioners and 2nd respondent has no jurisdiction to initiate any proceedings, question of issuing direction to the 1st petitioner would not arise. It is for the 1st petitioner to take appropriate action to control all the nurses, to provide good medical service to the patients, who come to the hospital with great expectation and to maintain the medical profession as divine profession.

13. The provisions of Section 15 of Karnataka Medical Registration Act, 1961 empowers the medical council to remove a medical practitioner's name from the register which reads as under:

15. Removal of Medical Practitioner's name from register

for misconduct: (1) If a medical practitioner has been, after due inquiry by the Medical Council, found guilty of any misconduct, the Medical council may,-

(a) issue a letter of warning addressed to such medical practitioner, or

(b) direct the name of such medical practitioner,-

(i) to be removed from the register for such period as may be specified in the direction or

(ii) to be removed from the register without specifying the period of such removal.

Explanation:- For the purposes of this section “misconduct” shall mean,-

(a) the conviction of the medical practitioner by a criminal court for an offence which involves moral turpitude and which is cognizable as defined in the Code of Criminal Procedure, 1898 (Central Act V of 1898), or any other law for the time being in force;

(b) any conduct which, in the opinion of the Medical Council is infamous in relation to the medical profession.

(2) The Medical Council may, at any subsequent date, if it thinks

fit, and shall on a decision to that effect of the Central Government under sub-section (2) of section 24 of the Indian Medical Council Act, 1956, direct that any name so removed shall be re-entered.”

14. The plain reading of the said provision, it is clear that after due enquiry by the Medical Council, if a medical practitioner found guilty of any misconduct including moral turpitude it can issue warning letter, to be removed from the register for such period as may be specified, to be removed without specifying the period and the medical council may at any subsequent date, if it thinks fit, on a decision under sub-section(2) of Section 24 the Indian Medical Council Act, 1956 by the Central Government direct that any name so removed shall be re-entered.

15. The definition of “State Medical Council” defined under sub-clause (j) of Section 2 of Indian Medical Council Act clearly indicates that medical council constituted under

any law for the time being in force in any State regulating the registration of practitioners of medicine.

16. The provisions of Clause (k) of Section 2 of the Indian Medical Council Act defines the State Medical Register as follows:

“2(k) **“State Medical Register”** means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine”.

17. The provisions of Section 15(1) of the Central Act provides that subject to the other provisions contained in the Act, the medical qualifications included in the schedules shall be sufficient qualifications for enrollment on any State Medical Register. Therefore, the medical qualifications which included in the schedule to the Act are the qualifications for the enrollment on any State Medical Register. Therefore, unless and until the person possesses

the medical qualification as per the schedule he cannot be enrolled on a State Medical Register.

18. The sub-section (2) of Section 15 which was inserted by Act No.24 of 1964 with effect from 16.6.1964 provides for any person other than the medical practitioners enrolled on a State Medical Register to practice medicine in any State. Therefore, it is mandatory for a medical practitioner to enroll himself on a State Medical Register. If he does not enroll himself on a State Medical Register, he cannot practice medicine in the State.

19. The provisions of Section 21(1) of the Indian Medical Council's Act, 1956 states that Council shall cause to be maintain in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register which shall contain the names of all the persons who are for any time being enrolled on any State Medical Register and who possess any of the recognized medical qualifications.

20. By careful reading of the provisions of Sections 21, 22, and 23 of the Central Act exemplifies the provisions of Section 15 of the Act. When Section 15 provides for enrollment on State Medical Register, without such enrollment no person shall practice medicine in any State. Therefore, until and unless all the stages are crossed at the State Medical Council, no registration whatsoever can take place by the Indian Medical Council.

21. In view of the aforesaid provisions, the nurses cannot be categorized as medical practitioners practicing medicine and the Karnataka Medical Council has no jurisdiction to take action against the nurses. If that is so, the impugned direction issued by the 2nd respondent directing 1st petitioner to take action is totally without jurisdiction.

22. In view of the above, the writ petition is allowed. The impugned order passed by the 2nd respondent-Karnataka Medical Council only insofar as directing the 1st

petitioner to take action against petitioners 2 and 3 are hereby quashed.

However, if there is any deficiency in the hospital, it is needless to observe it is for the concerned authorities to take appropriate action in accordance with law.

Sd/-
JUDGE

AP/-