

**CENTRAL ADMINISTRATIVE TRIBUNAL SRINAGAR BENCH,  
SRINAGAR  
O.A No. 646/2023**

Date of Order: DEC , 2023

**C O R A M**

**HON'BLE MR. M.S.LATIF– MEMBER (J)**

**HON'BLE MR. PRASANT KUMAR, MEMBER (A)**

1/ Dr. Junaid Khursheed,  
S/O Khursheed Ahmad Zargar,  
R/O Ahmad Nagar, Srinagar – 190011.

02/ Dr. Yawar Nisar,  
S/O Nisar Ahmad Gadda,  
R/O Habak, Naseembagh, Srinagar – 190006.

03/ Dr. Mushtaq Ahmad Bhat  
S/O Mohammad Hayat Bhat  
R/O Soibugh, Badgam – 191111.

..... Applicant/s

**By Advocate:** Mr. N.A.Beigh – Sr. Advocate with MR. Irfan Ahmad

**Versus**

1. U.T of J&K through Chief Secretary to Govt., Civil Secretariat Srinagar/Jammu 180001.
2. Principal Secretary to Govt. Health and Medical Education Department, Civil Sect. Srinagar/Jammu – 180001.
3. Director Health Services, Kashmir Srinagar – 190001.
4. Mission Director, National Health Mission, J&K – 190009.
5. Chief Executive Officer, AB-PMJAY & SEHAT, J&K – 190009.

.....Respondent/s.

**By Advocate :** Mr. Bikram Deep Singh – DAG.

**O R D E R**

**M.S.Latif, M(J) - Oral**

01/ The case projected by the applicants by medium of the instant O.A is that

vide order No. 758-JK (HME) of 2022 dated 27-10-2022, which has the effect of placing a ban on the private practice of the applicants, pending enquiry into the allegations regarding violation of Standard Treatment Guidelines (for short - STGs), issued by the National Health Authority (for short - NHA), a Committee was constituted to conduct an in-depth enquiry into the allegations regarding violation of STGs in terms of order No. 63- JK (HME) of 2023 dated 23-01-2023 and the enquiry report regarding the said allegations was to be submitted by the Committee within a period of 15 days positively. It was also mentioned in the said order that as and when any complaint regarding violation of STGs along with the report of J&K Health Agencies is received in the department, the same shall be placed before the enquiry committee through its Member Secretary for holding an in-depth enquiry with further direction in the said order that the committee would take note of Government order No. 612-JK(HME) of 2022 dated 12-08-2022, whereunder instructions have been issued to the doctors to refrain from private practice during office hours/duty hours in the health institutions and regarding other malpractices.

02/ The reliefs sought by the applicants in this O.A may be taken note of :

*“a) allow the instant application by directing the non-applicants to pass the appropriate orders postulated by the enquiry ;*

*b) grant the applicants non-practicing allowances for the period they have been deprived of private practice*

*c) allow the applicants to privately practice beyond their duty hours as is being allowed to other doctors similarly situated ; and*

*d) any other order or direction which the Hon’ble Tribunal may deem fit and proper in the attending circumstances of the case may also be passed in favour of applicants against the non-applicants/respondents.”*

03/ The matter coming up for consideration on 18-08-2023, Mr. Bikram Deep

Singh – DAG appeared for the respondents and sought and granted four weeks time to file reply but at the same time a direction was issued upon the respondents to submit as to whether any action has been taken by them on the report if any submitted by the enquiry committee. The matter came up for consideration again on 31-10-2023 and the learned DAG was directed to place a copy of the STGs of NHA for perusal of the court on or before the next date of hearing, besides further opportunity was also granted for filing reply. Matter was fixed for hearing on 21-12-2023. In the meantime, learned counsel for the applicants moved an M.A bearing No. (891/2023) seeking preponement of the date of listing of the case already fixed by the court and the same was allowed in view of averments made therein and the O.A was ordered to be listed for consideration on 04-12-2023 instead of 21-12-2023.

04/ When the matter came up for consideration on 04-12-2023, learned counsel for the applicants fairly submitted that this court has already dealt with an identical matter (O.A 642/2023) and the case of the applicants herein is similar, on facts as also on law, to the case projected in the said O.A, therefore, learned counsel sought grant of same relief as has been granted by the court to the applicant/s in OA. 642/2023 vide its order dated 31-12-2023.

05/ Learned counsel for the applicants further submitted that the respondents were under an obligation to conclude the enquiry as was initiated vide Govt. order No. 63-JK(HME) of 2023 dated 13-01-2023. He further submitted that it is more than ten months now that the applicants have been made to hang in lurch, which as contended, is disadvantageous and detrimental to their interests.

06/ Learned counsel for the respondents, when confronted as to what action was taken by the respondents on the recommendations of the committee made against the applicants vide order dated 27-10-2022 as also with regard to the fate of the enquiry report of the committee, he fairly submitted that he is unaware of the conclusions arrived at by the committee.

07/ Learned counsel for the applicants submitted that in view of the delay in either conducting the enquiry or submitting the report, the applicants cannot be made to suffer for an indefinite period. Undoubtedly, the allegations leveled against the applicants have far reaching consequences, badly affecting the society. *Doctors' profession is considered and perceived noble, which is mainly dedicated to serve the society, demanding professionalism and accountability. A doctor has a divine duty towards the society. Doctors' take oath to serve the humanity. They are governed by the principles of professional ethics. Health care is an important facet of article 21 of the Constitution of India and the doctors play a pivotal role in the society and they are guardians of health and well being of people, particularly, of poor and needy. Doctors are entrusted with the responsibility of preserving and restoring the health of individuals and communities. They help prevent diseases and they are more involved in humanitarian work for the society than those involved in other professions. A society expects a doctor to be a warrior in the war field, who is not supposed to discriminate between rich and the poor as his only concern has to be patient care irrespective of what class, creed or sex a patient belongs to.*

08/ It is true that the object sought to be achieved by issuance of order dated 27-10-2022 is to ensure to utilize the services of the doctors/applicants in the best interest of the patient care and for achieving the efficiency in the hospitals. Learned counsel for the applicants submitted that the respondents, by issuance of order dated 27-10-2022, have not followed the rules, which allow or restrict private practice of doctors. He further submitted that the respondents were bound to have concluded the enquiry and come up with a concrete recommendations vis-à-vis the allegations leveled against the applicants. It is further submitted that right to profession is a fundamental right guaranteed under the Constitution of India and any restriction has to be in accordance with law. True it is that the respondents have the power to impose reasonable restrictions on this right, particularly, when the allegations leveled are regarding violation of STGs as issued by the NHA. However, regard being had to the fact that *a doctor cannot forget his duty and ethics towards the society, particularly when, in addition to being a professional, he is a public servant as well, who is governed by rules and regulations and a code of conduct, which he is supposed to adhere to in letter and spirit.*

09/ Learned counsel for the applicants submitted that the applicants have filed representations before the competent authority/s wherein they have projected their grievances. He further submitted that the applicants have a right of hearing to clear the allegations leveled against them in terms of principles and rules of natural justice.

10/ It has been, repeatedly, observed and held by the courts that *the principles of natural justice are not mantras but foundational percepts concerned with fairness*

*of procedure and right of a person to respond to the allegations made.* In this view, we are fortified by the Division Bench judgement of the Hon'ble High Court of Delhi at New Delhi delivered in the case of Kiran Juneja *versus* Union of India and others dated 23-11-2023. According to the learned counsel for the applicants, till date the applicants have neither been informed about the conclusion of the enquiry nor have their representations been disposed of.

11/ **Heard** learned counsel for the parties.

12/ In the backdrop of what has been discussed above, this O.A is disposed with the direction to the respondent – competent authority to conclude the enquiry initiated against the applicants vide Government order No. 63-JK (HME) of 2023 dated 23-01-2023 within a period of two weeks to be reckoned from the date a certified copy of this order is served upon them. It is apt to mention here that the enquiry ought to have been concluded within the time frame as mentioned in order dated 23-01-2023 itself.

13/ The O.A 646/2023 is, accordingly **disposed** of accordingly along with connected M.As. However, before parting with, it has become expedient in the interest of patient care and public at large to provide as to whether the terms of reference of Government order No. 63-JK (HME) dated 23-01-2023, which read as ;

*i) As and when any complaint regarding violation of Standard Treatment Guidelines (STGs) along with the report of J&K State Health Agency is received in the Department, the same shall be placed before the aforesaid Enquiry Committee through its Member Secretary for holding in depth enquiry ; ii) On the receipt of*

complaint, the enquiry committee shall submit its enquiry report within (15) days positively to the Administrative Department ; iii) The Committee shall take note of Government Order No. 612 – JK (HME) of 2022 dated 12-08-2022, whereunder instructions have been issued to the doctors to refrain from private practice during official hours/duty hours in health institutions and other mal-practices,

are adhered to in letter and spirit. Respondents are further directed to prepare a data as to whether any such complaints have been received and their disposal as contained in the aforesaid Government order dated 23-01-2023 and the follow up action taken as the interest of patient care and public at large warrants efficiency both in health care and in the hospitals.

14/ Registry is directed to serve a copy of this judgement upon the Commissioner Secretary to Govt, Health & Medical Education Department, the Principal, Government Medical College, Srinagar, the Administrator, Associated Hospitals, the Director, Health Services, Kashmir, Srinagar and the Mission Director, National Health Mission, Kashmir. The report shall be submitted in the office of the Deputy Registrar of this Court within a period of two weeks from today.

**PRASANT KUMAR**  
Member (A)

**M.S.LATIF**  
Member (J)

Tariq Mota  
-12-2023