

Reserved on : 18.04.2024
Pronounced on : 04.06.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.4617 OF 2024 (GM-RES)

BETWEEN:

DR. X

... PETITIONER

(BY SRI. GOPI KARUNAKARAN, ADVOCATE)

AND:

1 . KARNATAKA MEDICAL COUNCIL
NO.16/6, MILLERS ROAD
KAVERAPPA LAYOUT
VASANTH NAGAR
BENGALURU – 560 052.

2 . DR. Y

... RESPONDENTS

(BY SMT. RATNA N.SHIVAYOGIMATH, ADVOCATE FOR R1;
SRI. AJAY KADKOL, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO i) TO QUASH
THE FIRST RESPONDENTS ORDER DATED 06/01/2024 IN

KMC/ENQ/NO. 37/2023 ON THE APPLICATION MADE UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 AND SECTION 479 OF THE CRIMINAL PROCEDURE CODE, 1973 AND APPLICATION UNDER ORDER XXVI RULE 10 READ WITH SECTIONS 151 AND 94(e) OF THE CODE OF CIVIL PROCEDURE, 1908 HERE IN ANNEXED AS ANNEXURE-A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.04.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is knocking at the doors of this Court in the subject petition calling in question certain orders passed by the Karnataka Medical Council ('the Council' for short) rejecting the applications filed by the petitioner.

2. Heard Sri Gopi Karunakaran, learned counsel appearing for the petitioner, Smt. Ratna N. Shivayogimath, learned counsel appearing for respondent No.1 and Sri Ajay Kadkol, learned counsel appearing for respondent No.2.

3. The facts, in brief, germane are as follows:-

The petitioner is the wife of the 2nd respondent. The two get married on 18-06-1998. It is the case of the petitioner that the 2nd respondent/her husband was diagnosed as suffering from porencephalic cyst (missing brain) on 22-06-2004. Long thereafter the relationship between the petitioner and the 2nd respondent flounders. The floundering of the relationship appears to have driven the parties to Family Court where a petition for divorce is pending. During the pendency of those proceedings, a complaint is registered by the petitioner against the 2nd respondent before the 1st respondent/Council. On 21-05-2022 the Council rejects the application of the petitioner. This leads the petitioner to this Court in Writ Petition No.14983 of 2022. This Court disposed of the writ petition setting aside the order of the Council rejecting the application of the petitioner and remits the matter back to the hands of the Council. Before the Council the petitioner files three applications – (i) to appoint an Expert Committee to examine the husband; (ii) for recusal of the Assessor who participates in the proceedings and (iii) to change the Advocate on record. All the three applications are rejected by the Council. The rejection of which has driven the petitioner to this Court in the subject petition.

4. The learned counsel for the petitioner contends that examination of the 2nd respondent by a Committee of Experts is imperative, as none of them in the Council are experts to decide on the complex problem of the 2nd respondent. Therefore, the application was filed for reference or seeking the help of an Expert Committee. The rejection of the application, is on the face of it, erroneous. The submission of the learned counsel to the other application is seeking recusal of the Assessor. The learned counsel would submit that the Assessor cannot participate in the proceedings as Rules do not empower him to do so. Therefore, he should be recused from the proceedings as he is a retired District Judge who cannot adjudicate the conflict. The 3rd application was to change the Advocate on record owing to certain conflict. The learned counsel for the petitioner gives up before this Court the submission and the said application as not pressed. Therefore, the consideration before this Court, at this juncture, is only *qua* two applications –filed before the Council.

5. Per contra, the learned counsel appearing for the Council would vehemently refute the allegations made in the petition

against the Members of the Council. It is here submission that in terms of law what is necessary is a quorum for conducting proceedings which is followed. Every other allegation, according to the learned counsel, is a figment of imagination of the petitioner is the submission of the learned counsel. She would seek dismissal of the petition.

6. Sri Ajay Kadkol, learned counsel representing the 2nd respondent/husband would contend that the petitioner is wanting to project a marital dispute before the Council. It is the entire case of the petitioner that the husband was diagnosed with the aforesaid problem in the year 2004. She does not complain till 2016, the year in which the marital discard between the petitioner and the 2nd respondent emerges. It is his submission that the 2nd respondent is a reputed Nephrologists and sees about 100 patients in a day and none of the patients till today have complained of any problem before any *fora*. Therefore, it is a pure marital discard that is projected by dragging the Council into the problem. He would submit that the action of the petitioner is a gross abuse of the process of law. He would also seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. Insofar as preliminary submission that the Council could not have entertained the applications with regard to family dispute giving a colour of professional incapacity is concerned, the same cannot be considered at this juncture, as a co-ordinate Bench in a petition filed between the parties in Writ Petition No.14983 of 2022 has held as follows:

"...."

4. Having heard the learned counsel for the parties and having perused the Petition Papers, this court is inclined to grant a limited indulgence in the matter inasmuch as the pendency of private disputes between the parties is no ground for declining interference in the complaint, especially when there is some allegation as to the incapacity of the 2nd Respondent to practise medicine as before; it is the specific case of the Petitioner that this incapacity or the professional inefficiency is on account of ageing & cerebral disease. Some X-ray photographs & opinions in this regard are pressed into service; however, this court cannot undertake their examination. Suffice it to say that the matter needs a fresh consideration at the hands of the Karnataka Medical Council, which is a statutory expert body.

5. Learned Sr. Advocate appearing for the Petitioner is more than justified in arguing that the private disputes between the parties is irrelevant when apparently an issue relating to professional efficiency crops up and that the Karnataka Medical Council as of necessity has to cause examination of the same at the hands of experts, lest in an otherwise situation, the members of the public may be put to a great hardship. Rejecting the complaint as being misconceived, in the fact situation, is unsustainable.

6. The vehement contention of learned counsel appearing for the 2nd Respondent that his client has earned a professional reputation by his long & spotless service to the public, may be true. However, when the declining age & disease of cerebrum is alleged, the absence of specific complaint from quarters that be, loses significance. A long serving driver of a vehicle undergoes a periodic examination as to his occupational efficiency before getting renewal of his driving license. For decades, he had not caused one single vehicular accident, is a poor justification for summary dismissal of the complaint; of course, a spotless track record can also be a factor for consideration in matters like this, cannot be discounted. A long & spotless track record per se is not a guarantee against deterioration of faculties. There is no much discussion as to the medical report of Dr.K.Ranganath, a Consultant Radiologist of Raghavs Diagnostics, Jayanagar, Bangalore. This report is accompanied by a number of X-ray photographs. Such expert material need to be examined & discussed before discounted. This has not been duly done.

In the above circumstances, this Writ Petition is allowed in part; Writ or Certiorari issues quashing the impugned order No.KMC/ENQ.NO76Exp/doct/2019 dated 21.5.2022 issued by the 1st Respondent at Annexure-E; the matter is remitted to the portals of the 1st respondent-Karnataka Medical Council for consideration afresh, in accordance with law; time for disposal of remand is three months. It hardly needs to be stated that the remand shall be decided discreetly qua the public at large.

Nothing herein above said shall be construed as casting aspersion on the 2nd Respondent even in the least.

The Registry shall mask the name of Petitioner and the 2nd Respondent in the original order. However, whilst issuing the certified copy, Petitioner shall be shown as 'X' and the 2nd Respondent shall be shown as 'Y'. None of the parties, nor any one else shall publicize or circulate this order or its contents, nor shall any newspaper, news letter, journal or the like shall say anything about this order, without the permission of the court.

The violator of the above injunction may be hauled up for contempt of the court, suo moto or on application and it shall not prejudice the aggrieved party to institute proceedings for defamation, civil or criminal, if grounds do exist therefor."

(Emphasis supplied)

The co-ordinate Bench observes that the learned counsel for the petitioner/wife therein is more than justified in arguing that private disputes between the parties is irrelevant when apparently the issue relating to professional efficiency crops up. In the light of this observation becoming final, this Court would not venture into consideration of the case of the husband that it is abuse of the process of law.

9. What is projected before this Court, is only rejection of three applications, one of which is given up by the petitioner. The first application is filed under Section 151 of the Code of Civil Procedure and Section 479 of the CrPC. The application is for the

purpose of directing recusal of one retired Judge Mr. Basavaraj Sappannavar on the score that he had adjudicated the dispute on a previous occasion. The contention of the learned counsel for the Council is that the retired Judge is one of the Panel Advocates of the Council and he is donning the role of an Assessor in terms of Section 18 of the Karnataka Medical Registration Act, 1961 ('the Act' for short) and therefore, he has no authority even to interfere with the inquiry proceedings, but only provides legal assistance for conducting of an inquiry in a manner known to law. The reason for rejection of the application is what is argued by the learned counsel for the Council. An Assessor is appointed under Section 18 of the Act. Section 18 of the Act reads as follows:-

*"18. **Assessor to Medical Council.**—(1) For the purpose of advising the Medical Council on questions of law arising in inquiries before it, the Medical Council may in such inquiries take the assistance of an assessor who has been for not less than ten years an advocate of a High Court.*

(2) Where an assessor advises the Medical Council on any question of law, he shall do so in the presence of every party, or person representing a party to the inquiry who appears thereat, or if the advice is tendered after the Medical Council has begun to deliberate as to their findings, every such party or person as aforesaid shall be informed what advice the assessor has tendered. Such party or person shall also be informed, if in any case the

Medical Council does not accept the advice of the assessor on any such question as aforesaid.

(3) Any assessor under this section may be appointed either generally or for any particular inquiry or class of inquiries and shall be paid such remuneration as the Medical Council with the approval of the State Government may determine."

(Emphasis supplied)

The Advocate appointed is only as an Assessor and not an adjudicating authority in terms of Section 18. Therefore, there can be no question of his recusal in the proceedings. No fault can be found with the reason rendered by the Council to reject the application.

10. The second application is reference of the problem of the husband to a Committee comprising of Neurologists or Neurosurgeons like NIMHANS or AIMS. The application is preferred on the score that the present inquiry being conducted by the Committee is not proceeding in the right direction. The proceedings are still on. The petitioner has now finished examination-in-chief and is being cross-examined. It is the case of the petitioner that the alleged problem has cropped up yesterday. The CT scan that

the learned counsel for the petitioner seeks to place reliance upon is of the year 2004. When 20 years have passed by with the alleged problem of the husband, at least one complaint should have emerged from any patient whom the husband/2nd respondent has treated. It is an admitted fact by the learned counsel for the petitioner that there is no complaint by any patient for the last 26 years of the husband's practice. Therefore, at this juncture reference of the case of the husband to a Committee of neurosurgeons for the asking of the petitioner would not arise. However, the issue could be kept open to be urged at a later point in time, if need arises. I do not find any warrant to interfere with the findings rendered on second application by the Council.

11. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petition stands rejected.
- (ii) Interim order of any kind stands dissolved.
- (iii) The observations made in the course of the order, is only for the purpose of consideration of the issue

brought before the Court, which shall not bind or influence any pending proceeding.

**Sd/-
JUDGE**

bkp
CT:SS