

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11429 OF 2012 (A.S.)

Dr.Shalik Bhaurao Ade

Petitioner

versus

1. Medical Council of India,
2. The Maharashtra Medical Council,
3. The Dean/Principal,
Melmaruvathur Adiparasakthi Insitute
of Medical Sciences and Research,
Melamaruvathur-603 319 (Tamil Nadu)

Respondents

WITH

WRIT PETITION NO.11431 OF 2012 (A.S.)

Dr.Bapat Vishnu Prasad Madhusudhan

Petitioner

versus

1. Medical Council of India,
2. The Maharashtra Medical Council

Respondents

WITH

WRIT PETITION NO.11432 OF 2012 (A.S.)

Dr.Asmita Deshmukh

Petitioner

versus

1. Medical Council of India,
2. The Maharashtra Medical Council,
3. The Dean/Principal,
Melmaruvathur Adiparasakthi Insitute
of Medical Sciences and Research,
Melamaruvathur-603 319 (Tamil Nadu)

Respondents

WITH
WRIT PETITION NO.562 OF 2013 (O.S.)

Dr.Shashikant C. Patel

Petitioner

versus

1. Medical Council of India,
2. The Maharashtra Medical Council

Respondents

Mr.Vikram Chavan with Mr.Pavan Patil and Mr.Balaji Barge for Petitioners in WP Nos.11429, 11431 and 11432 of 2012.

Mr.M.M.Vashi, Sr.Advocate with Ms.Aparna Deokar, Mr.Makarand Kale, PDesai, S.M.Sharma i/by M.P.Vashi & Associates for Petitioner in WP No.562 of 2013.

Mr.Ganesh Gole for Respondent no.1 Medical Council of India.

Mr.Rahul Nerlekar for Respondent no.2 Maharashtra Medical Council.

**CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.**

DATE OF RESERVING THE JUDGMENT : 27 August 2015

DATE OF PRONOUNCING THE JUDGMENT : 14 October 2015

JUDGMENT - (Per : S.C.Dharmadhikari, J.) :-

In all these petitions, common questions of fact and law are raised and, therefore, they can be disposed of by a common judgment.

2. Rule. Rule made returnable forthwith. Respondents waive service.

3. These petitions under Article 226 of the Constitution of India involve a challenge to the orders of Medical Council of India ('MCI') and Maharashtra Medical Council ('MMC') against Petitioners/Doctors for breach of professional code of ethics.

4. We would take the facts in two petitions so that the principal arguments of the learned counsel appearing for the Petitioners and the Respondents can be appreciated.

Facts in Writ Petition No.562 of 2014 (O.S.):

5. In Writ Petition No.562 of 2014, the Petitioner-Dr.Shashikant Patel is a citizen of India. He is registered as a medical practitioner with Respondent no.2 MMC bearing registration no.47177. The Petitioner was appointed as a Professor of Anatomy by the medical college namely Melmaruvathur Adiparasakthi Institute of Medical Sciences located at Melamaruvathur in the State of Tamil Nadu ('said Medical College' for the sake of brevity).

6. On or about 1 February 2010, the Petitioner took charge as Dean of the said Medical College. An inspection team

of MCI carried out an inspection of the said Medical College on 29 March 2010. During this inspection, the inspection team claims to have found 32 declaration forms in respect of 32 faculty members, who were appointed by one Dr.T.Ramesh. It is further claimed by the Respondent no.1 that all the 32 faculty members were practicing Doctors and, therefore, they could not have been shown as full time faculty members. On the inspection report of this team, a complaint was filed with Central Bureau of Investigation ('CBI') at Chennai. The Petitioner in this petition is shown as accused no.7 in the said complaint. The case of the Petitioner is that he had no role absolutely in making appointments of any of these 32 medical practitioners/doctors. Therefore, he gave a statement and recorded by the CBI, that the Petitioner was appointed as an ad-hoc Dean on 22 January 2010 and took charge on 1 February 2010. The appointment of these 32 doctors was made much prior to the Petitioner's appointment as Dean of the said Medical College.

7. It is in these circumstances that the Petitioner in WP No.562 of 2014 was surprised to be served with an order dated 21 January 2013 passed by MCI-the first Respondent in that petition, directing the MMC to remove the name of the Petitioner from the State Medical Register for five years. Annexure-A to the petition is a copy of this order.

Facts in Writ Petition No.11429 of 2012 (A.S.) :

8. The Petitioner in Writ Petition No.11429 of 2012 filed on the Appellate Side of this Court states that he completed successfully his MBBS course from Grant Medical College, Mumbai in the year 1995. On 26 February 1997, he was registered as a medical practitioner with Respondent no.2 to this petition namely Maharashtra Medical Council. His registration number is MMC-82206. In the year 2000, the Petitioner completed his post graduation in Radio Diagnosis from Grant Medical College itself. He had an excellent academic record and has fared well in all the examinations. During 2001 and 2009, this Petitioner worked as Lecturer/ Associate Professor in various colleges. As there were vacancies to be filled, in the said Medical College in the State of Tamil Nadu, the Petitioner in this petition, approached the said Medical College. It is his claim that pursuant to the application made, he was interviewed by a duly constituted selection committee. He fared well in the interview and bearing in mind his academic record, the Petitioner was appointed as an Assistant Professor in the Department of Radiology at the said Medical College on 1 October 2009. Annexure-B to this petition is a copy of the appointment order.

9. The Petitioner then states that he joined the services at the said Medical College and was also allotted quarter for his

residence. The Petitioner claims that his appointment was regular and that he was to abide by the teaching schedule prepared by the head of department. The Petitioner states that he conducted regular classes at the said college. In the petition at page 5, the Petitioner refers to a controversy erupted after the allegations of involvement of Dr.Ketan Desai, Ex-President of MCI, in corruption cases, particularly about the grant of recognition to medical colleges. On 22 February 2010, Dr.Desai, Ex-President of MCI, was arrested by CBI for allegedly accepting a bribe of Rs.2 crores for the grant of recognition to the medical colleges in State of Punjab. He refers to the further action then taken. The Petitioner narrates as to how after this incident, MCI decided to carry out an inspection of several colleges and that is how the inspection team reached the said Medical College in State of Tamil Nadu. The Petitioner states that he was one of the witnesses and cited as such in the complaint made to the CBI post investigation of the said college. The statement of the Petitioner was recorded and at no stage the Petitioner apprehended any disciplinary or other action against him. However, on the basis of his statement to CBI on 12 July 2012, a show cause notice was issued to the Petitioner alleging that the Petitioner has committed professional misconduct by providing false information in the declaration form submitted to MCI during the assessment of the said Medical College. This show cause notice is vague and does not specify as to what was the role of the Petitioner and allegedly during a wrongful and illegal

act. The Petitioner was, therefore, surprised when he was called upon to appear before the Ethics Committee of MCI. The Petitioner was questioned about his statement to the CBI but he denied having made a statement and as projected before the said Ethics Committee. The Ethics Committee conducted proceedings in-camera. The allegations against the Petitioner are of violation of the provisions of Indian Medical Council Act, 1956 and Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Petitioner was also asked to sign a statement already prepared by Respondent no.1. At the same time, the petition proceeds to state that the Petitioner submitted his written statement.

10. Thereafter, the Petitioner came across a news item stating that MCI has removed 25 doctors from its roll. This news item was published on 15 October 2012. Thereafter, the Petitioner took search on the MCI website. The Petitioner states that no report of the Ethics Committee was issued much less served on the Petitioner. The Respondent no.1 has taken unilateral and hasty action without affording proper opportunity to the Petitioner and similarly situate candidates. On downloading of the proceedings of MCI from the website, the Petitioner got information that pursuant to the appearance before the Ethics Committee on 21 August 2012, some minutes had been prepared of that meeting, on the basis of which 25 doctors including the Petitioner have been punished for

violating Clauses 1.1.1, 1.1.1.1.2 and 8.1 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. That is how there was a recommendation for punishment by way of disciplinary action. The minutes of Ethics Committee were confirmed in a further meeting held on 22 September 2012. The Petitioners then submit that these documents were placed before the Board of Governors and that Board approved the removal of names of 25 doctors from the register of State Council for a period of five years as per the decision dated 27 September 2012.

11. The order removing the name of the Petitioner in Writ Petition No.11429 of 2012 from the register was neither communicated to him nor was he informed through any source about the same. That is how the Petitioner challenges this action as improper, unjust, illegal and arbitrary. It is submitted that the impugned action has violated the Petitioner's fundamental right to carry on his profession as a medical practitioner/doctor, which is guaranteed by Article 19(1)(g) of the Constitution of India. Annexure-D to this writ petition is a copy of the public notice.

12. Since all petitions in this group involve similar controversy that in the first paragraph of this judgment we have observed that common questions of law and fact are raised in these petitions. We, therefore, do not deem it necessary to refer

to the facts in other petitions. More so, when the learned counsel appearing in other petitions have adopted the arguments of the Petitioner in Writ Petition No.11429 of 2012.

13. Mr.Chavan, learned Advocate appearing for the Petitioner in Writ Petition No.11429 of 2012 submits that there is a fundamental and basic difference in the scheme of Indian Medical Council Act, 1956 and Maharashtra Medical Council Act, 1965. He would submit that if a Doctor or a medical practitioner is on the roll of the State Medical Council, then it is the State Medical Council alone which has disciplinary jurisdiction over him. Our attention is invited to Section 20A of the Indian Medical Council Act, 1956 as also Sections 21 and 24 thereof. Our attention is then invited to the Maharashtra Medical Council Act, 1965 to submit that as far as said Medical Council is concerned, it has power to enroll the doctors and medical practitioners. Once it has power to so enroll them, logically it is that State Council which must take action. Our attention is invited to Section 24 of Indian Medical Council Act, 1956 to submit that as far as that section is concerned, it sets out that where the name of any person is removed from the State Medical Register on the ground of professional misconduct or any other ground except that he is not possessed of requisite medical qualifications, that he can appeal in the prescribed manner to the Central Government and the Central Government

after consulting the MCI, communicate its decision. Such a decision is binding on the State Medical Council. Thus, what is envisaged in this provision is consultative or supervisory role of MCI. It has no power, therefore, even in terms of MCI Rules, 1957 and the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 to take action.

14. Mr.Chavan submits that pertinently, no enquiry was held under Section 21 of the Maharashtra Medical Council Act, 1965. Now, a situation has arisen where the Maharashtra Medical Council Act, 1965 has been given a complete go-bye. It has been rendered totally nugatory. In any event and without prejudice to the above submissions, Mr.Chavan would urge that a detailed enquiry was never held. There is no compliance with the principles of natural justice, inasmuch as no opportunity was given to the Petitioner to cross-examine any witnesses. The Petitioner has been deprived of a meaningful and fair chance to defend himself. Now, his fate is decided and save and except present petition, there is no remedy available in law for him.

15. In support of his submissions, Mr.Chavan has relied upon Indian Medical Council Act, 1956, the Maharashtra Medical Council Act, 1965, the Maharashtra Medical Council Rules, 1967. Reliance is also placed upon certain documents to show that there was a compliance by the Petitioner of the legal requirements when the appointment order was issued to him.

Meaning thereby, there is nothing irregular much less illegal about Petitioner's appointment.

16. Mr.Chavan also placed heavy reliance on an order dated 21 July 2015 passed in two Writ Petitions by the Nagpur Bench of this Court being Writ Petition Nos.4905 of 2014 (Dr. (Ms.)Anuja D/o. Awadh Pandey Vs. The Maharashtra Medical Council, Chinchpokli and another) and 4922 of 2014 (Dr.Sachin Bhaurao Gathe Vs. The Maharashtra Medical Council, Chinchpokli and another).

17. As far as original side Writ Petition No.562 of 2013 is concerned, that was argued by Mr.M.M.Vashi. However, prior thereto, in other three writ petitions on the appellate side, Mr.Patil adopted the arguments of Mr.Chavan for petitioners.

18. As far as Dr.Shashikant Patel's petition is concerned (W.P. 562 of 2013 - OS petition), Mr.Vashi, learned Senior Advocate appearing for him, submitted that the entire action is illegal, erroneous and contrary to the principles of natural justice. Mr.Vashi submits that the basic principle of "one who hears must decide" has not been adhered to. Mr.Vashi has taken us through the scheme of Indian Medical Council Act, 1956 to submit that the area and field covered by this Act and Maharashtra Medical Council Act, 1965, as far as registration and enrollment of medical practitioners and disciplinary action

against them are concerned, is distinct and separate. The Petitioner Dr.Patel is not on the register of MCI. There is no power conferred in the MCI to take action against him. Mr.Vashi invited our attention to Regulation 8.8 to submit that removal from the State Register cannot be directed by MCI. Mr.Vashi submits that the sequence as set out in the dates and events would denote that the Petitioner took charge as an ad-hoc Dean on 1 February 2010. The inspection by MCI is dated 29 March 2010. The appointments made by the said Medical College were found to be illegal. The appointments had to be approved but it was stated that the same were never approved. As far as the Petitioner is concerned, he had not counter-signed the appointment orders. At best, his signature can be found on the declaration form inasmuch as that could be said to be counter-signed. This was a very vital distinction and if the show cause notice dated 13 July 2012 had been perused carefully, it would be possible for the Petitioner to point out all this and in great details. However, the impugned order dated 21 January 2013 was passed, that too without hearing the Petitioner. The adverse material was never disclosed to the Petitioner. Mr.Vashi has highlighted the fact that it is the Ethics Committee before whom the Petitioner appeared. The Board of Governors has never heard the Petitioner. The action, however, has been taken by the Board of Governors and on the basis of the report of the Ethics Committee. The principles of natural justice and fairness demand that a copy of the report of the Ethics Committee

should have been furnished to the Petitioner. Even the Board was required to hear the Petitioner. Thus, firstly when the Ethics committee heard the Petitioner, it ought to have passed the decision or order and the Board could not have passed the impugned order. If the Board was the disciplinary or the decision making authority, then that authority or Board should have heard the Petitioner and it was equally obliged to comply with the principles of natural justice. Mr.Vashi has also pointed out that there is no compliance with the legal requirement that a punishment, if any, must be inflicted within six months, but in this case, that has not been done. For all these reasons, he would submit that the impugned order deserves to be quashed and set aside.

19. Mr.Vashi has submitted that the grounds of the writ petition of Dr.Patel and particularly ground nos.7(c), 7(d), 7(e), 7(f), 7(g) and 7(j) relate to violation of principles of natural justice. In support of his contentions, Mr.Vashi has relied upon the judgments of Hon'ble Supreme Court of India in **Pradyat Kumar Bose Vs. The Hon'ble the Chief Justice of Calcutta High Court**¹ and in **Institute of Chartered Accountants of India Vs. L.K.Ratna and others**².

20. Meeting all these contentions on behalf of Respondent no.1 MCI, Mr.Gole, learned counsel, firstly relied

1 AIR-1956-SC-285

2 AIR-1987-SC-71

upon the detailed affidavit-in-reply. He next contended that there is no substance in this batch of petitions. The Petitioners are projecting themselves to be innocent and blemishless. However, the position is otherwise. Each of these Petitioners are directly involved in the fraud perpetrated on the public in making bogus appointments. The Petitioners are beneficiaries of such a fraud. It is not open to them to proclaim innocence. Mr.Gole has urged that nothing has been done suddenly and as complained. On the other hand, MCI has pointed out that it is a supreme body. It has both original and appellate jurisdiction. There is absolutely no prejudice caused as it is the MCI which has set up the Ethics Committee. Pertinently, none of the Petitioners questioned the authority, power and jurisdiction of MCI to refer the allegations against the Petitioners to the Ethics Committee. The Ethics Committee issued a notice to appear. These Petitioners received the notice. The Roznama would indicate as to how the Petitioners appeared before the Ethics Committee and participated in the proceedings. The minutes record as to how the Ethics Committee called upon the Petitioners to submit their explanation on the complaint of CBI and received by MCI. They also questioned the Petitioners regarding their statements recorded by CBI and the stand as reflected therein. Apart from all this, MCI's Governing Board took the impugned decision. Mr.Gole has submitted that in the affidavit filed in both the petitions, MCI's role and it's position and status has been duly pointed out.

21. Mr.Gole while opposing Writ Petition No.11429 of 2012 submitted that the Petitioner therein submitted a declaration form dated 4 March 2010. That was forwarded to MCI by the college authorities stating that the Petitioner has been working as an Assistant Professor in the Department of Radiology. The declaration form furnished by this Petitioner was verified by the Dean of the said college and counter-signed by the Managing Director. They have verified the contents of the declaration form. MCI received a self contained note dated 27 February 2012 from CBI, ACB-Chennai providing the details of 32 doctors/teaching faculty of the said college who gave false and misleading information as to their full time appointment as faculty in the college. This letter/note of CBI was placed before the Ethics Committee of MCI. The Ethics Committee is comprised of eminent doctors. The Ethics committee examined this letter/note of CBI in its meeting held on 19 July 2012 and after examining the contents, decided to issue show cause notice to all 32 doctors and the Dean of the said college. The Ethics Committee requested the CBI to furnish the documents relied upon by them in the self contained note.

22. In response to the letter of MCI, CBI forwarded the details of the statements of all the 32 doctors by e-mail which revealed that the faculty members were not full timers. They had come only for MCI inspection. They represented

themselves as full time faculty of the medical college before MCI inspection team and submitted false declaration forms. A copy of the letter dated 7 August 2012 of CBI to MCI with statement of Petitioner in Writ Petition No.11429 of 2012 is relied upon by Mr.Gole.

23. Mr.Gole submits that the show cause notice dated 12 July 2012 was thus issued calling upon these doctors to appear before the Ethics committee on 21 August 2012. The doctors appeared before the Ethics committee on 21 August 2012. Their statements were recorded and none of the factual details came to be denied by them. It is on all this admitted factual material that the Ethics Committee, after due deliberation and discussion, submitted its findings to the Board of Governors. Thus, the said medical college and these doctors had appeared before MCI inspection team and that is how they obtained a recommendation in their favour so that permission given to the college could be renewed for the academic year 2010-11. The active participation of these doctors and the Dean led the Ethics Committee to confirm its minutes of the meeting held on 21 August 2012 in the subsequent meeting. The Board of Governors acted on these approved minutes of the meeting of the Ethics Committee and accepted the recommendations. That is how the impugned action has been taken.

24. Mr.Gole submits that MCI is an expert body which recognizes medical colleges. It approves the educational courses. It is thus an apex and parent body for medical education in the country. Its role is highlighted in the Indian Medical Council Act, 1956. If the standards of medical education and practice are prescribed by MCI and it is empowered to do so in law, then equally for its breach and its violation, MCI can take disciplinary measures and actions. If it finds that for petty financial gains some doctors became part of a systemic breach and violation of Indian Medical council Act, 1956, its Code of Ethics and Regulations, then MCI cannot remain a silent spectator. The standards of medical education and the integrity of the noble profession of doctors and teachers have to be upheld and protected at all costs. That is how the MCI acted and Mr.Gole places heavy reliance upon the decision of High Court of Judicature at Madras in **Dr.K.Nedumaran Vs. The Chairman, Ethics Committee, MCI and others**³ dated 8 March 2013. He submitted that similar challenges were negatived. Even the medical college was proceeded against and it was debarred from medical admissions for two academic years viz. 2013-14 and 2014-15. The college has undergone one year of penalty already and for the remaining one year, its proceedings are pending before the Hon'ble Supreme Court of India.

³ Writ Petition No.29090 of 2013 and group

25. Mr.Gole, therefore, submits that in power of judicial review, this Court may not interfere with such an action of MCI.

26. For properly appreciating the rival contentions, a reference will have to be made to the Indian Medical Council Act, 1956. This Act is enacted to provide for the reconstitution of the Medical Council of India (` hereinafter referred to as "the Council') and maintenance of a Medical Register for India and for matters connected therewith. The Act applies to the whole of India and the definitions are to be found in Section 2. The definition of the terms ` Council' in clause (b) of Section 2, ` Indian Medical Register' in clause (d) of Section 2, ` Medical Institution' in clause (e) of Section 2 and the term ` Medicine' in clause (f) of Section 2 are relevant. There are three more definitions, firstly of the term ` Regulation' which appears in clause (i) of Section 2, to mean a regulation made under Section 33 of the Indian Medical Council Act, 1956 (hereinafter referred to as 'IMC Act'), ` State Medical Council' is defined in clause (j) of Section 2 and the term "State Medical Register' appearing in clause (k) of Section 2. Both these terms are also relevant for our purpose. Both the definitions are reproduced hereinbelow :

"Section.2(j) - ` State Medical Council' means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine.

Section 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."

27. Section 3 of IMC Act deals with the constitution and composition of the Council. Section 3A of IMC Act deals with the power of Central Government to supersede the Council & to constitute a Board of Governors. This provision is introduced by amendments to IMC Act vide Act 32 of 2010 and Act 13 of 2011. These provisions will denote as to how there is a power in the Central Government to constitute a medical council. That consists of the members as mentioned in Section 3(1), clauses (a) to (e) of the IMC Act. Since there is a power of Central Government to supersede the council and constitute a Board of Governors, which at the relevant time was functional in these cases, then, we do not have any hesitation in rejecting the submission of the learned Senior Advocate appearing for Dr. Patel and other Advocates appearing in the other petitions. They were vehemently urging that the power is conferred in the Council and that no Ethics Committee or Board of Governors will be able to take an effective, complete and proper decision. We do not see how once the council is superseded by the Central Government and it has appointed a Board of Governors and entrusted it the same functions as the Council carries on, then, it is effectively the Council itself which is exercising the powers conferred by the IMC Act. In this regard, Section 3A(3) and the sub sections following the same, would indicate that there is conferment of the same power and the entrustment of the same functions in the Board of

Governors, as are to be performed by the Council. Section 3B of IMC Act reads as under :

"S.3B - Certain modifications of the Act.-

During the period when the Council stands superseded,-

(a) *the provisions of this Act shall be construed as if for the word "Council", the words "Board of Governors" were substituted;*

(b) *the Board of Governors shall -*

(i) *exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;*

(ii) *grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under section 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same; and*

(iii) *dispose of the matters pending with the Central Government under section 10A upon receipt of the same from it.*

28. There is a power conferred in the Central Government to give directions to the Board of Governors or to the Council. By Sections 4 and 5 of IMC Act, the mode of election of the members of the Indian Medical Council by persons enrolled on any of the State Medical Registers and

restrictions on nomination and membership are set out. Section 6 of IMC Act provides for the incorporation of the Council. The term 'Incorporation of the Council' is defined to mean that the Council so constituted shall be a body corporate by the name Medical Council of India, having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued. Sections 7 to 9 of IMC Act set out provisions about term of office of President, Vice-President and Members, Meetings of the Council and Officers, Committees and Servants of the Council respectively. By sub-section (1) of Section 9 of IMC Act, the Council is empowered to constitute from amongst its members an Executive Committee and such other Committees for general or special purposes, as the Council deems necessary, to carry out the purposes of this Act. Therefore, there is no substance in another contention urged by learned counsel for the Petitioners namely the power to take disciplinary proceedings or action has to be exercised by the Council itself and assumption of such power by the Ethics Committee or delegation of said powers to the Ethics Committee, is not permissible in the scheme of IMC Act. The composition of Executive Committee of the Council is set out in Section 10 of IMC Act and by Section 10A, what is mandated is permission for establishment of new medical college, new course of study. These composite powers conferred in the Council would denote as to how in the field of medical

education, the Council is supreme in prescribing courses of study or training. The Council's powers are absolute. The Council has been conferred wide powers and, therefore, following this provision, Sections 10B and 10C would indicate that recognition of medical qualifications and granting permission for establishment and continuation of new medical colleges, are matters within the exclusive domain of the Council.

29. The recognition of medical qualifications granted by the Universities or Medical Institutions in India is an aspect covered by Sections 11 to 13 of IMC Act. Thereafter, by Section 14 of IMC Act, special provisions in certain cases of recognition of medical qualifications granted by medical institutions in countries with which there is no scheme of reciprocity, are dealt with. By Section 15, right of persons possessing qualifications in the schedules to be enrolled is dealt with. Sections 15, 16 and 17 of IMC Act read as under :

"S.15. Right of persons possessing qualifications in the Schedules to be enrolled :

(1) *Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrollment on any State Medical Register.*

(2) *Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register -*

(a) *shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;*

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1871 (1 of 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2), shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.)

S.16 Power to require information as to courses of study and examinations. -

Every University or medical institution in India which grants a recognised medical qualification, shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

S.17 Inspection of examinations.-

(1) The Committee shall appoint such number of medical inspectors as it may deem requisite to inspect any medical institution, college, hospital or other institution where medical education is given, or to attend any examination held by any University or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination, but shall report to the Committee on the adequacy of the standards of medical education including staff, equipment, accommodation, training

and other facilities prescribed for giving medical education or on the sufficiency of every examination which they attend.

(3) The Committee shall forward a copy of any such report to the University or medical institution concerned, and shall also forward a copy with the remarks of the University or institution thereon, to the Central Government."

30. By Section 18 of IMC Act, the Council may appoint visitors at examinations in respect of any medical institution, college or hospital where medical education is imparted. The role of visitors is to report to the President of the Council on the adequacy of the standards of medical education including staff, equipments, accommodation, training and other facilities prescribed for giving medical education or on the sufficiency of every examination which they attend. By Section 19, mode of withdrawal of recognition is prescribed. Such broad and wide powers are conferred so that the Council can take requisite steps to ensure that quality medical education is imparted; the courses as recognised by the Council and study in medical education is undertaken in terms of the policy and other directives of the Council; that recognition and non-recognition of such courses and institutions subserves the legislative intent of conferment of powers on the Council and the IMC Act as a whole. These powers of the Council are coupled with a duty. The functions have to be performed so that the medical education does not go below minimum standards and that under graduate and post graduate medical education is on par with global standards. The Council is both a guardian and watchdog.

31. After taking care of these matters, the IMC Act then moves on to empower the Council to prescribe the standards of professional conduct and etiquette and code of ethics for medical practitioners. In that regard, Section 20A reads as under :

"S.20A Professional Conduct.-

(1) The Council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners.

(2) Regulations made by the Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force."

A perusal of the same would indicate as to how it is the discretion of the Council to prescribe the standards of professional conduct and etiquette and a code of ethics for medical practitioners. Thus, the Act moves on from imparting medical education, recognizing it and thereafter award and confer degrees through the Universities in prescribed medical courses. From all this to actual medical practice, the standards of professional conduct and etiquette and the code of ethics to be followed, are equally matters within the exclusive jurisdiction and authority of the Council. Once it can frame regulations under sub-section (1) of Section 20A, then such regulations can specify that the violations thereof would

constitute infamous conduct. These regulations and the specific matters covered thereunder regarding infamous conduct and professional misconduct would override and shall be effective notwithstanding anything contained in any law for the time being in force. Pertinently, neither the position, status, power of the Council in prescribing the standards of medical education and conduct of medical practice is questioned nor the Regulations involved are challenged or impugned in these petitions. Thus, the legality and validity of the Act or the subject Regulations is not challenged by the Petitioners.

32. In the backdrop of such exclusive and wide regulatory, controlling and supervisory powers conferred in the Council, we do not see as to how Mr.Vashi can contend that the regulations and which are invoked and applied to the Petitioners in these cases, will not empower the Council to take note of the complaints and allegations against medical practitioners or medical teachers. The Council's overriding power so as to prescribe standards of professional conduct and etiquette and code of ethics will enable it to ensure that they are not violated. These regulations are serving a laudable purpose. If the standards can be prescribed by the Council, regulations can be framed for that purpose and which regulations may incorporate appropriate clauses and provisions so as to deal with the cases of professional misconduct or infamous conduct, then, notwithstanding anything contained in any law for the

time being in force, the Council can act in terms of Section 20A of the IMC Act so as to deal with the specific instances and particular cases. Pertinently, the application of the Regulations is not questioned but the ambit and scope of its clauses. To our mind, a harmonious reading of these clauses or paras would demonstrate that the Council can as a supreme or apex body proceed against every doctor, medical practitioner and teacher if his/her conduct is infamous or he/she has committed a professional misconduct. The profession of medicine encompasses its practice, teaching and administration. The performance and conduct of a professional must be such as would not only prove his/her skills and competence but must show that he is truly worthy of the respect of students, patients and general public. He must earn it by his exemplary qualities and nobility. Hence, in all capacities the professional is accountable to his peers and the society.

33. Mr.Vashi and Mr.Chavan laid emphasis on Section 21 of IMC Act but that section dealing with the Indian Medical Register would indicate as to how the Council shall cause to maintain in the prescribed manner the register to be known as the Indian Medical Register and which shall contain names of all the persons who are, for the time being, enrolled in any State Medical Register and who possess any recognized medical qualifications. It is the duty of the Registrar of the Council to keep its register and maintain it in accordance with law, revise it

from time to time and such register is deemed to be a public document. Hence, maintaining such a register is not merely a formality. Even the the copies of State Medical Registers are required to be supplied by the concerned Registrars to the Council. Equally, any additions and/or amendments to the State Medical Registers have also to be informed to the Council. Therefore, Council's medical register and entries therein are public documents enabling the Council to even act against such registered medical practitioners operating and functional at the State level and registered in the State Medical Registers. The registration in the Indian Medical Register is a matter dealt with by Section 23 of IMC Act and the Registrar of the Council may, on receipt of the report of the registration of a person in a State Medical Register or on an application made in the prescribed manner by any such person, enter such name in the Indian Medical Register. So long as such person possesses a recognized medical qualification, such registration can be obtained by him.

34. Then comes Section 24 of IMC Act, which reads as under :

"S.24 Removal of names from the Indian Medical Register :

If the name of any person enrolled on a State Medical Register is removed therefrom in pursuance of any power conferred by or under any law relating to registration of medical practitioners for the time being in force in any State, the

Council shall direct the removal of the name of such person from the Indian Medical Register.

(2) Where the name of any person has been removed from a State Medical Register on the ground of professional misconduct or any other ground except that he is not possessed of the requisite medical qualifications or where any application made by the said person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions including conditions as to the payment of a fee as may be laid down in rules made by the Central Government in this behalf, to the Central Government, whose decision, which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register."

A perusal of this provision would indicate that if the name of any person/s enrolled on the State Medical Register is removed therefrom in pursuance of any power conferred by or under any law relating to registration of medical practitioners in force in any State, then the Council shall direct removal of name of such person/s from the Indian Medical Register. Great emphasis has been placed on sub-section (2) of Section 24 of IMC Act, but that provision would indicate as to how when the name of a person has been removed from the State Medical Register on the grounds stated in sub-section (2) of Section 24 or where any application made by the person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions including conditions as to the payment of a fee, as may be laid down by the Central Government, and such an appeal lies to the Central Government. However, the removal must be on the ground of

professional misconduct or any other ground, except lack of requisite medical qualifications. We do not see how any assistance can be derived from this provision simply because the appellate power is conferred in the Central Government to interfere on specific grounds against an action of removal of the name of any person from a State Medical Register. Far from assisting the Petitioners before us, it would indicate as to how the Council would act in matters of removal of names from the Indian Medical Register. Apart from possessing a power to remove the name of such a person from the Indian Medical Register, the Council does not interfere with the independent exercise of power by the State Medical Council. However, that does not mean that the Council can take no action when it finds patent violation of the standards of professional conduct, etiquette or code of ethics for medical practitioners prescribed by it. As far as that power is concerned, we have been rightly referred to other sections of IMC Act. We need not refer to other provisions, save and except Section 27 of IMC Act, which gives a privilege to every person enrolled on the Indian Medical Register, to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled to. Sections 26 and 28 to 31 of IMC Act need not be referred to. Section 32 of IMC Act confers a power to make rules in the Central Government. Section 33 of IMC Act confers power on

the Council to make regulations, which has to be exercised with the previous sanction of the Central Government. The regulations may provide for, inter alia, standards of professional conduct, etiquette and code of ethics to be observed by the medical practitioners [See Section 33(m)].

35. By Section 34 of IMC Act, all previous enactments have been repealed. Three Schedules to this Act recognize medical qualifications. First schedule recognizes medical qualifications granted by the Universities or medical institutions in India. Second schedule recognizes medical qualifications granted by medical institutions outside India and the third schedule recognizes medical qualifications granted by medical institutions not included in the first schedule. As far as the subject regulations are concerned, they are known as the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter referred to as "the IMC Regulations"). These are made by the Council in exercise of the powers conferred by Section 20A read with Section 33(m) of the IMC Act. They are made with the previous approval of Central Government. The preamble to the IMC Regulations would indicate that they relate to professional conduct, etiquette and ethics for registered medical practitioners. Chapter-1 thereof provides for a declaration by the applicant doctor in prescribed format while making an application for registration as a doctor/ medical practitioner. Chapter-1 deals

with ethics to be observed by the Physicians and its clauses set out duties of physicians in general. Then by Chapter-2, duties of Physicians to their patients are settled. Chapters-3 and 4 of IMC Regulations deal with duties of Physicians in consultation and responsibilities of Physicians to each other respectively. By Chapter-5, duties of Physicians to the public and to the paramedical profession are set out and by Chapter-6, unethical acts are mentioned. Thus, these comprehensive provisions would take care of not only the duties and responsibilities of Physicians but deal with their manner of conduct, etiquette and ethics in general with the patients and obligations qua each other to maintain their dignity. When it comes to misconduct, we have Chapter-7 and the instances set out therein or violations mentioned therein, would constitute professional misconduct on the part of physicians. They render him/her liable for disciplinary action. Punishment and disciplinary action is dealt with by Chapter-8. Clauses 8.1 and 8.2 of Chapter-8 of IMC Regulations would indicate as to how the instances of offences and of professional misconduct which are prescribed in Chapter-7, do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action. Clauses 8.1 and 8.2 read as under :

" CHAPTER-8

8. *Punishment and Disciplinary Action*

8.1 It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/Bodies."

36. This would indicate as to how despite making comprehensive provisions but finding that instances or cases of professional misconduct are not exhaustive and there could be acts of omission and commission which are termed as infamous and calling for disciplinary action, that the Council or the State

Medical Councils are in no way precluded from considering and dealing with them. They would take within their import instances of the nature complained in the present petitions. The circumstances may arise from time to time in relation to professional misconduct which may not fall within these categories, but the regulations caution that care has to be taken that the code of professional conduct, etiquette and ethics is not violated. The code is for professional conduct, etiquette and equally of ethics. These words would take their colour from the context in which they are used. Any behaviour which is bad, immoral against accepted social norms by a doctor/medical practitioner in any capacity including as an administrator, teacher, would tarnish the image and reputation of the profession. In ordinary, normal circumstances, seeking employment opportunity even after becoming a qualified medical practitioner is not prohibited, but to gain it, if such doctors involve themselves in illegal, unethical practices, then, they have to be dealt with strictly. Thus, a doctor or medical practitioner may perform multiple duties and engage himself in different capacities, but he remains a doctor. The ordinary and plain meaning of the above words in the context of the Council's duties and functions, its obligations and responsibilities to the society and the public, would alone subserve and rather carry forward the object of the IMC Act. If regulating the medical profession and generally the conduct of the medical practitioners is what is expected from the Council, then it must

possess requisite powers and to put an end to such cases and instances which bring a bad name to the profession as a whole and tarnish and spoil its clean image and reputation. Therefore, it is not possible to accept the contention of the learned counsel for the Petitioners that Council cannot take any action against them. Sub-clauses 8.1 and 8.2 of Regulation 8 of the IMC Regulations cannot be read in the manner suggested by the learned counsel for Petitioners simply because in the instances which are set out in sub-clause 8.2 of Regulation 8 and all others, both the parent Council and State Medical Councils have powers to deal with the cases brought before them. If the appropriate medical council holds an enquiry and gives an opportunity to the registered medical practitioner and if he is found guilty, then it may inflict such punishment as deemed necessary and that is a matter which will be dealt with by sub-clauses 8.2, 8.3 and 8.5 of Regulation 8 of IMC Regulations. Then by sub-clause 8.7 of Regulations, a power is given to the Council to take action in the event the State Medical Council does not proceed and act within six months from the date of receipt of a complaint against a delinquent physician. Then the Council, for the reasons to be recorded can justifiably impress upon the concerned State Medical Council to decide and conclude the complaint in time bound schedule or withdraw the said complaint pending before the concerned State Medical Council to itself for the purpose of reference of the same to the Ethical Committee of the Council for its expeditious disposal.

By sub-clause 8.8 of Regulation 8 of the IMC Regulations, an aggrieved physician can appeal to the Council against a decision of a State Medical Council on any complaint made against him.

37. We are in complete agreement, therefore, with Mr.Gole that the Council has original and appellate power as well in terms of the IMC Regulations. Once these Regulations and all the chapters thereof are read together and harmoniously, it is evident that nothing which is a misconduct or an infamous conduct, can go without a disciplinary enquiry and unpunished. If the larger public interest is to be served and bearing in mind the role of medical practitioners and physicians, then such comprehensive regulations and measures have to be enacted. Having enacted them, a meaning will have to be placed on its clauses enabling the Councils to deal with the misconduct and/or infamous acts. That would be advancing the remedy. A narrow or restricted interpretation is likely to frustrate and defeat the IMC Act itself. Therefore, we are not in agreement with the learned counsel for the Petitioners insofar as the jurisdiction, power and authority of Council are concerned.

38. Mr.Vashi's arguments have overlooked these very vital aspects of the matter. Merely because a power is conferred in the State Medical Council to register a medical practitioner or to enroll a medical practitioner in the State Medical Register, does not mean that the concerned medical practitioner or

doctor/physician cannot be subjected to the regulatory measures and control of the Council. There is nothing like distinct area and field covered by the IMC Act and the MMC Act. Apart therefrom, there is no substance in the contention that the Petitioner Dr.Patel is not on the IMC register and, therefore, there is no power in the Council to take any action against him. All the provisions of IMC Act referred above in extenso would indicate that nothing can be kept back or maintained as a secret by the State Medical Council from the Council. Everything is transparent, open and for public consumption. These are public records and public documents. There is an obligation on both the Councils (MCI and State Medical Council) to update and upkeep the medical registers so that the enrollment of a medical practitioner in the registers is made properly enabling him to carry on his professional activities through-out the country. Such provisions are for the benefit of medical practitioners and merely because the enactment contains regulatory provisions and restrict the professional activities in order to ensure that they do not lack professionalism and become unethical, does not mean that only one authority or only one Council can proceed against parties like Dr.Patel. The removal of name from the State register would definitely follow once disciplinary power is exercised by the Council. Subject to the legal rights and contentions of the medical practitioners, the punishment of removal of name from the register is to take full effect. If the contentions of Mr.Vashi and Mr.Chavan are accepted, that would

mean that though removal of the name from the IMC register is a punishment inflicted, but the concerned doctor can continue his profession/practice, because he is enrolled by a State Medical Council and it is that council which must take the follow up action. If the Council or the State Medical Council has decided to initiate a action or has failed to take it or has delayed it, does not mean that parties like the Petitioners herein can insist on continuing the practice or continue to impart medical education. That would be a complete farce and a mockery of the rule of law.

39. Mr.Chavan's contentions essentially are based on the understanding of the provisions of IMC Act and the MMC Act. How that understanding is not accurate but erroneous, is demonstrated by us hereinabove. Merely because a misconduct is committed outside the State of Maharashtra but the enrollment of the doctor or medical practitioner is in the State of Maharashtra, would not mean that it is the State Council which alone possess the power to take action and the MCI will not be able to exercise any control or regulate the conduct of the doctor concerned. This would be a wholly incorrect, inaccurate and improper reading of the provisions of IMC Act and Regulations framed thereunder. We cannot attribute to the Legislature absurdity or patent incongruity or inconsistency. An enactment must be read as a whole. Each provision, each section, each sub-section and paragraphs of each section and

sub-sections have to be read together and harmoniously, so as to make a consistent whole of the enactment. We have done precisely that and we do not find any such legal requirement as has been read by Mr.Chavan. Mr.Chavan referred to Maharashtra Medical Council Act, 1965 but his arguments overlook the fact that it is enacted to regulate the registration of the persons practicing modern scientific medicine in the State of Maharashtra. Chapter-1 of the Act and the sections appearing, particularly definitions, and the provisions of Chapter-2, would not enable us to conclude that preparation and maintenance of register vide Chapter-3 being an obligation of the State Medical Council, it is the sole repository of the disciplinary and regulatory powers. If that had been the position earlier, we do not see how after Section 20A being introduced and brought in the IMC Act, 1956, can it be urged by the learned counsel for the Petitioners that power of State Medical Council to take action, particularly disciplinary, is exclusive. It is to deal with cases of breach of professional code of conduct, etiquette and code of ethics for which regulations have been made and once MCI has been conferred the requisite powers in pursuance of which it has taken action, then the State Medical Council may or may not take follow up action. But by that, we cannot see how we can accept the contentions of Mr.Chavan. That would mean that the very object of introduction of Section 20A in the IMC Act, 1956 is defeated. The regulations have been prescribed and they have come into force from 2002. They

equally empower the State Medical Council to act and thus both the Councils retain their powers and authority. We do not see any inconsistency and conflict. Once the parent body is empowered by the substantive provisions of Section 20A to prescribe standards of professional conduct, etiquette and a code of ethics for medical practitioners, then, it is futile to urge that the Regulations made by it and to enforce such standards do not enable it to take disciplinary action. Merely because the doctor is registered as such by a State Council, does not mean the MCI does not have power to deal with and proceed against him. Such a stand would render Regulations 8.1 and 8.2 of the IMC Regulations nugatory and meaningless. Thus, the MCI has power to order the removal of the Petitioners' name from the register altogether or for a specified period.

40. Now, the only contention which remains to be dealt with, is about non-compliance with the principles of natural justice. From the affidavit-in-reply which has been filed by MCI in case of both Dr.Patel and other petitioners, and to which there is absolutely no rejoinder, it is apparent to us that at the said college, there was a gross and flagrant breach of standards of professional conduct, etiquette and code of ethics. That CBI had to intervene is a shame. That the inspection by the MCI revealed as to how a college styled as a medical college, is running and imparting so called medical education without qualified and competent staff and trained personnel. Persons

under bogus appointment letters and orders were brought in and portrayed as professors and teachers. It is hardly open to the petitioners to complain because the affidavit-in-reply demonstrates as to how 32 doctors along with the Dean had to be proceeded against. The facts as narrated reveal a very sorry state of affairs. The affidavit-in-reply indicates as to how elaborate statements of all concerned including the Petitioners were recorded by CBI and which were specifically brought to the notice of the Petitioners. No other material was necessary to be relied upon nor has been relied. It is clear that each of these Petitioners were called upon to appear before the Ethics Committee. We have already rejected the arguments of these Petitioners on the point of lack of power in the Ethics Committee. We find that it is completely empowered. CBI wrote a letter to the Secretary of the MCI bringing to his notice the professional misconduct of 32 faculty members of the said college in having falsely signed the declaration forms and appeared before the MCI team allegedly as full time faculty members on the date of MCI inspection. The note forwarded by CBI and the inspection report which came to be equally received by MCI from the inspection team, revealed that there was a shortage of eligible faculty members. A case was registered against Dr.Ketan Desai and whatever may be the outcome of the criminal prosecution against him and others, it is accepted before us that independent thereof and in terms of the settled legal principles, a departmental or disciplinary action can

proceed and its outcome is not influenced by that of the criminal prosecution. The standards of proof are different and distinct in both. In the present case, it was revealed that the faculty members and posing as such, were not only not employed in the said college on regular basis as declared in the declaration forms but they were also working in other hospitals. The declaration forms of all these 32 faculty members contained misleading information in the form of an undertaking to the effect that these were full time teachers of the said college but actually they were not working as such. The 32 faculty members who attended the MCI inspection on 29 January 2010, were not required to sign any attendance register or to attend the college regularly by the college authorities. They were paid salaries in cash either lumpsum or on case to case basis and not as per UGC Rules for which their acknowledgement of payment was taken on vouchers issued even after the date of inspection on 29 January 2010. The acknowledgements were obtained in some cases even after registration of an offence by CBI. The names of these faculty members were not provided to the Chartered Accountant of the trust managing and administering the said medical college, nor were their details compiled for Income Tax purposes, Professional Tax, nor is there any reference to their names in the Bank Accounts. It is revealed that these persons were brought in for inspection purpose and in most of the cases, what has been discovered is that their self declaratory form or self declaration is signed by Dr.Patel. The

appointment order also does not refer to any proceedings much less of a selection process undertaken by a duly constituted selection committee, which has interviewed the candidates. It is no doubt true that Dr. Patel did not sign the appointment orders but having counter-signed the declaration forms, his complicity in the act is proved. There is no reason for these persons to then complain of any breach of principles of natural justice. None of them made any grievance of this nature before the Ethics Committee. None of them have objected to the Ethics Committee accepting the report of CBI and the Inspection Team of MCI and in any event, the whole case was based on the statements made by the Petitioners to CBI. That some of the Petitioners were not aware of the fact that these statements may be used against them or that all were not cited as accused but some were referred as witnesses, is a plain after thought. This is not a criminal prosecution. It is not a case where statements to the Police are being relied upon and to the prejudice and detriment of the Petitioner. It is an over all assessment and view taken of the materials collected by the inspection team and compiled in its report. That those coupled with the statements made by the Petitioners to the CBI reveal that there is no dispute nor there is any debatable issue on facts. Everything including the declaration forms, the cash vouchers, the appointment orders were shown to these persons and they have very clearly stated in their statements that they have not paid the income tax on the salary received nor they received any TDS

certificate. If they were indeed regularly appointed candidates, they would have clearly stated as to how many classes they have conducted, the attendance slips would have been produced, the number of lecturers and the dates and the details thereof would also have been produced. Nothing of this nature has been found in the record. Payment of the amount stated to be salary is made in installments and in cash. This was an arrangement facilitating the said college and in collusion and in connivance with all including the Dean.

41. In this behalf, a reference can usefully be made to the show cause notice issued to Dr. Shashikant Patel. It reads as under :

"MEDICAL COUNCIL OF INDIA
Pocket-14, Sector-8, Dwarka, New Delhi-110 077.
No.MCI-211(2)(CBI)/2012-Ethics/116947 Date : 3/7/2012

To,
Dr. Shashikant Patel,
the then Dean,
Melmaruvathur Adiparasakthi Institute of
Medical Sciences & Research,
Melmaruvathur-603 319
Tamil Nadu.

Subject : Providing forged/fake certificates/or false information in the declaration forms submitted to the MCI during assessment of Melmaruvathur Adi Parasakthi Institute of Medical Sciences, Melmaruvathur, Tamilnadu on 29.03.2010.

Sir/Madam,

The Medical Council of India has received a letter No.C2/RC.25(A)2010/ CBI/ACB/Chennai dated 27.02.2012 from ACB, CBI, Chennai, wherein it has been stated as under :

"The investigation by CBI had brought out the Professional Misconduct of 32 faculty members of Melmaruvathur Adi Parasakthi Institute of Medical Sciences, Melmaruvathur, Tamil Nadu in having falsely signed the declaration forms and appeared before the MCI team to make it appear as full time faculty members on the dates of MCI inspection."

The necessary documents, including the declaration forms are enclosed herewith.

The Council, in light of the above observation has now decided to take appropriate steps and necessary action in accordance with law. Accordingly, you are required to show cause why disciplinary action be not taken against you in accordance with "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2000". You are requested to appear before the Ethics Committee, Medical Council of India on 21st August, 2012 at 11:00 AM along with any statement of defense and/or documentary evidence in your support. Please note that in case you fail to appear on the said dates and time, the Ethics Committee will proceed ex-parte against you.

Yours faithfully,

(Dr.PPrasannaraj)
(Additional Secretary)"

Thus, Dr.Patel was aware that he had to appear before the Ethics Committee of MCI on the given date and time. That he did appear before this Committee on 21.8.2012 is clear from page 141 of the paper book. His statement as recorded and the Ethics Committee's recommendation read as under :-

"Statement submitted to Medical Council of India :

I, Dr.Shashikant Patel, Dean of Adhiparasakthi Medical College, Melmaruvathur did my MBBS from Grant Medical College, Mumbai in the year 1982 and did my post graduation in Anatomy in the year 1985 from the same college. I joined the Adhiparasakthi Medical College, Melmaruvathur in December, 2007 as Professor in Anatomy Department. I was appointed adhoc Dean on January, 2010 just three weeks before the MCI inspection on 16.2.2010. I am registered with the Maharashtra Medical Council bearing No.47177.

I signed the Declaration Forms after verifying the eligibility only and signed the same. I have not verified whether the candidate himself/herself filled the form in their own handwriting and whether the candidate was working elsewhere. It was practically impossible to verify these details myself.

The college has been maintaining attendance register since beginning but I am not sure whether they were complete and signed by the 32 candidates under scrutiny. The responsibility of maintaining the attendance register was by the Administrative Office.

I was not involved in the mode of payment to the faculty or paying of income tax (TDS) or issuing Form-16 to the candidates. The responsibility of Accounts was with Accounts Office and the Managing Director."

The Ethics Committee observed as under :

The Ethics Committee after detailed deliberation and perusal of all the relevant documents as well as the oral and written statement submitted by Dr.Shashikant Patel have come to the unanimous decision that Dr.Shashikant Patel has violated the Professional Conduct, Etiquette and Ethics Regulations, 2002 in terms of providing false information regarding appointment of above mentioned faculty members. He has violated the following provisions of the regulations :-

Section 1.1.1

A Physician shall uphold the dignity and honour of the profession.

Section 1.1.2

The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life.

Section 8.1 - PUNISHMENT AND DISCIPLINARY ACTION

"It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and/or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of

these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Council has to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils."

(Dr.PPrasannaraj)
Additional Secretary

(PROF.SNEH BHARGAVA)
CHAIRPERSON

(Dr.Y.K.Gupta)
Member

(Dr.Chander S. Shetty)
Member

(Dr.Atul Sood)
Member

(Dr.B.G.Tilak)
Member

(Dr.G.K.Sharma)
Member

(Amit Bansal) (Advocate)
Member

The Ethics Committee is of the opinion that the Act of Commission in the part of Dr.Shashikant Patel constitutes PROFESSIONAL MISCONDUCT, which renders him liable for disciplinary action.

Under the above mentioned circumstances, the Ethics Committee unanimously recommended that a punishment of removal of his name from the concerned State Medical Council's register as well as the Medical Council of India register for a period of Five (05) years."

Thus, after its earlier findings on the undisputed material, this Committee made the above recommendations and which were placed before the Board of Governors on 4th December 2012 at its duly convened meeting. The Board of Governors approved the same. Dr.Patel was not unknown to the said college. He claimed to be associated with it from December 2007 and just on the eve of MCI inspection given the charge of the post of Dean. All this shows that the manner in which the said college was functioning was known to him. He is not as innocent as he is now projecting. The case of one other Petitioner may now be noted. The Petitioner Dr.Bapat in Writ Petition No.11431 of 2012 gave his following statement and based on which the Committee recommended as under :

"Sl.No.15

Dr.Vishnu Prasad Madhusudan Bapat (F.No.20)**Statement submitted by CBI :**

"Statement of Dr.Vishnu Prasad Madhusudan Bapat, (aged 59 years), s/o. Shri Madhusudan Bapat, earlier working as Professor, Department of Pathology, Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research, Melmaruvathur presently working as Freelance Pathologist, Vidish Bungalow, S.No.86/3, Erandavane, near Kamla Nehru Park, Pune 411 004 Phone No.98220-14214; 020-25672608.

I am working as above since 01.08.2010, earlier I worked in Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research, Melmaruvathur from 18.2.2010 to 31.7.2010.

I did my MBBS from B 3 Medical College, Pune, University Pune in the year 1973 vide Reg.No.MMC-32639 dated 17.12.1974. After this I went on to study MD (Pathology) in the year 1978. After passing out I joined as lecturer in Pathology in the same college from 30.4.1977. Thereafter, I became 'Reader' in the year 1979. Thereafter I got promotion as Professor in the year 1995. I took voluntary retirement in the year 10th December 1999. Thereafter, I joined as HOD Lab in Jahangir Hospital, Pune in December, 1999, where I worked till December 2009. I retired from service that year since I completed 58 years.

On 10th March, 2010, I was contacted by one Shri Subramaniam, who asked me if I was interested in joining Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research where there was a vacancy in Pathology Dept. As per the terms and conditions offered, I was to be paid Rs.25,000/- per month and I was to be called for about a week in a month. I informed him that I was interested. He told me that he would contact me later.

In the month of March, 2010 I was first called for 2 to 3 days between 22nd to 25th March 2010 and later during 29th to 30th.

On 12th March, 2010, I proceeded to Chennai, as per the directions of Shri Subramaniam who contacted me at Chennai Airport. On that day I had signed Declaration form. I came over and my papers were scrutinized by Shri Ramabadrana. On the same day I was taken in as Professor of Department of Pathology and given the appointment order.

On 22nd March, 2010, I proceeded to Chennai as there was a message from Shri Subramaniam that an MCI inspection was to take place. I was met at the Airport by Shri Subramaniam who picked me up at the Airport and dropped us at the Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research. Dr.Verma of Pune also returned on 25th March, 2010 with me on the same day.

For attending the inspection on 29.3.2010, I was called on 28.3.2010. I travelled to Chennai on 28.3.2010 by Kingfisher flight starting at 6.15 PM from Pune and reaching Chennai at 7.30 PM. Dr. (Col.)Verma was also travelling with me to Chennai. The flight reached Chennai and as per instructions we waited at the Airport for a vehicle. After some time other doctors also joined us from Bangalore and Hyderabad. Some of them were from Nanded, Maharashtra. I remember Dr.Manjiri, Dr.Ramesh, Dr.Sachin Chandolkar etc. Some Doctors from Mumbai side were also present. All of us left for Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research, after some time around 9.00 PM by a Tempo traveller and other vehicles arranged by the college.

After attending the inspection on 29.3.2010, on 30.3.2010 all of us who had come from outside Chennai like Bangalore, Hyderabad, Mumbai etc. were taken back in Tempo traveller to Chennai Airport from where all of us left for our home towns. I had left along with Col.Varma by the Kingfisher flight at 3.30 on 30.3.2010.

During my period in that college I had practically visited only three times after the initial visit on 12.3.2010.

I am shown the declaration form of MCI for 2010-11 dated 15.3.2010. The declaration form has not been filled in by me, but is signed by me at two places. The declaration form states that I am working as full time teacher. However, it is not true that I have worked as full time. I was, in fact, not in a position to work full time. A blank declaration form was given to me and I had signed on it under the impression that it was going to be as a visiting Faculty Member.

I am shown the appointment order, joining report form and quarters allotment order all dated 18.2.2010. I have not seen my appointment order nor the quarter allotment letter. I have not stayed in the quarter in the college at any time and I do not know about the quarter allotted to me. The joining report bears my signature, which I identify.

I have not signed any attendance register during my tenure in Melmaruvathur Adhi Parashakthi Institute of Medical Sciences and Research, Melmaruvathur.

I am shown the cash voucher towards salary dated 3.4.2010. This shows an amount of Rs.60,000/- having been paid to me. However, they had, in fact paid me Rupees One lakh at the time of my first visit i.e. 12.3.2010 as part payment of the total salary package. The actual package offered was of Rs.3 lakhs upto 31 of July 2010 (academic year August 2009 to July 2010). Out of this, the remaining Rs.2 lakhs was paid on 30.3.2010 after the inspection on 29.3.2010.

I have been paid salary by cash only. I remember having signed a blank voucher in token of having received payments towards salary. I was told that I would be receiving the TDS certificate in token of the amount paid. However, I have not received my TDS certificate till date. I have paid my Income Tax dues on the payment received partly for in

the previous years IT returns and partly I have to pay in the returns for the AY 2011-12.

Statement submitted to Medical Council of India by the alleged doctor :

Dr.Vishnu Prasad Madhusudan Bapat stated that he joined MAPMS as Professor of Pathology in 18.2.2010 and relived on 31.7.2010. He stated that he was irregular and attended the college after visiting the same on 4 occasions in 8 days (March 12, 22, 23, 24, 25, 29, 30 and July 14, 2010). He stated that he was called one week - 10 days before the inspection and accordingly was present on 22/23 . 3.2010 and also 28/29.3.2010. He did not take any classes. He stated that he has received Rs.3,00,000/- in cash in spite of persistent request to management to pay by cheque and issue Form-16. He stated that the declaration form not filled by him but signed by him and joining report was not signed by him. There was no attendance register.

The Ethics Committee observed as under :

Dr.Vishnu Prasad Madhusudan Bapat-Age 59 years. He has been shown as the professor of dept. of pathology and 18.2.2010 as his date of joining in the statements given before CBI officials and the ethics committee of Medical Council of India. He has stated that during his period in that college he had practically visited only three times after the initial visit on 12.3.2010. The declaration form has not been filled in by him, but is signed by him at two places. In his declaration form, he stated that he was working as full time teacher. However, it is not true that he was worked as full time. He said that, in fact, he was not in a position to work full time. A blank declaration form was given to him and he had signed on it under the impression that he was going to be working as visiting faculty member. Thus this conclusively proves that he was not a full time faculty of the said college and as such he has violated the professional conduct, Etiquette and Ethics Regulations, 2002.

The Ethics Committee after detailed deliberation and perusal of all the relevant documents as well as the oral and written statement submitted by Dr.Vishnu Prasad Madhusudan Bapat, have come to the unanimous decision that Dr.Vishnu Prasad Madhusudan Bapat has violated the Professional Conduct, Etiquette and Ethics Regulations, 2002 so far as the following provisions of the regulations are concerned :

Section 1.1.1

A Physician shall uphold the dignity and honour of the profession.

Section 1.1.2

The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an

upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life.

Section 8.1 - PUNISHMENT AND DISCIPLINARY ACTION

"It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and/or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Council has to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils."

The Ethics Committee is of the opinion that the Act of Commission in the part of Dr. Vishnu Prasad Madhusudan Bapat constitutes PROFESSIONAL MISCONDUCT, which renders him liable for disciplinary action.

Under the above mentioned circumstances, the Ethics Committee unanimously recommended that a punishment of removal of his name from the concerned State Medical Council's register as well as the Medical Council of India register for a period of four (04) years."

42. Such are the undisputed facts pertaining to all petitioners. Hence, their stand and statements need not be reproduced. We do not see how in such circumstances there is any cause for a complaint. The affidavits-in-reply have annexed a copy of the Roznama of the proceedings of Ethics Committee and the assertion in the affidavit is that there are lot of instances wherein people like the medical practitioners before us have, for petty financial gains, obtained benefits in the form of

appointment orders as teachers/part time teachers and they would oblige the colleges from where such orders were issued or procured, by appearing before the MCI inspection team. In the light of such unhealthy practices, we do not expect the MCI or the authorities to remain silent spectators. The Petitioners' attendance before the Ethics Committee and the signatures on the Roznama would indicate that they did not appear under protest or were in any manner forced to submit to its jurisdiction. The Ethics Committee after its deliberations and proceedings, submitted a report to the Board of Governors and the Board took the ultimate decision.

43. In such circumstances, it is impossible to agree with the submission that is canvassed by the learned counsel for the Petitioner Mr.Vashi that one who has not heard the Petitioners has inflicted the punishment. The Petitioners were through out aware that they were to appear before the Ethics Committee for hearing and it would make a recommendation or report the proceedings to the MCI/the Board of Governors. We do not find in the regulations anything whereby the proceedings before the Governing Board had to conclude within a time frame. Further, the role of the Petitioner Dr.Patel is not on account of his assumption of office as a dean but as an ad-hoc dean having become a party to the fraudulent and unethical act. He counter-signed the declaration forms. In these circumstances, we are not in agreement with Mr.Vashi that a copy of the report of the

Ethics Committee not being furnished and in the absence of hearing by the Board of Governors, the Petitioners have been seriously prejudiced. Once the admitted position has been taken into account and as revealed from the records of the MCI and the CBI, then we do not see how the Board of Governors was required to give a oral hearing. We are not shown any regulations much less rules which would require the Board of Governors to act in terms of the judgment of the Hon'ble Supreme Court in the case of Institute of Chartered Accounts of India Vs. L.K.Ratna and others². For the reasons indicated and in the absence of a statutory scheme, we do not see how before taking a final decision, the Petitioners were required to be heard once again. The Petitioners were heard by the Ethics Committee and thereafter it submitted its report to the Board of Governors. The Board of Governors took the ultimate decision by accepting the report. The report has, as indicated above, not made any reference to other material save and except to the statements of the Petitioners recorded by CBI and the note of CBI to the Secretary to the MCI. In the statements made to the CBI and recorded by the Petitioners, each of the Petitioners agreed and admitted that they have stated that there is no record of their appointment, their attendance, the number of lectures that they have taken. The salary having received in the form and manner recorded by CBI. Thus, they have admitted that they obtained the appointments wrongfully and illegally.

² AIR-1987-SC-71

Then there was nothing for the Board of Governors but to convey its final decision. Unprofessional conduct contrary to etiquette and breach of code of ethics being serious, that for such violations, the Board of Governors decided to inflict the punishment of removal of the names of the Petitioners before us from the medical register for a specified period. We do not see how that can be faulted and made a ground to approach the writ Court. A bare assertion of breach of principles of natural justice without a proof of resultant prejudice cannot, therefore, be accepted and such a complaint cannot be upheld.

44. Each of the decisions which have been cited before us and particularly in the case of Institute of Chartered Accounts of India Vs. L.K.Ratna and others² will have no application.

45. In the backdrop of the peculiar facts and the rules and regulations requiring two opportunities, that the Supreme Court emphasized the need for a dual hearing. This dual hearing and compliance with the principles of natural justice at the stage of enquiry and at the stage of infliction of punishment by the disciplinary authority, was necessitated because of such requirement. We have not been shown any legal requirement of such a nature but everything is being read into the rules, regulations by implication. We are unable to uphold such a contention and apart therefrom having found no prejudice

² AIR-1987-SC-71

caused to the Petitioners nor any miscarriage of justice, we cannot agree with the learned counsel and their reliance on these judgments of Supreme Court is, therefore, misplaced.

46. The Hon'ble Supreme Court had an occasion to consider the grievance of parties like the Petitioners of breach of principles of natural justice. In the case of **Nirma Industries Limited Vs. SEBI**⁴, the Hon'ble Supreme Court held as under :

"25. In B.Karunakar & others (supra), having defined the meaning of "civil consequences", this Court reiterated the principle that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove the prejudice that has been caused by the non-grant of opportunity of hearing. In the present case, we must hasten to add that, in the letter dated 4th May, 2006, the appellants have not made a request for being granted an opportunity of personal hearing. Therefore, the ground with regard to the breach of rules of natural justice clearly seems to be an after-thought."

Earlier, in the case of **Kesar Enterprises Limited Vs. State of Uttar Pradesh and others**⁵, the Hon'ble Supreme Court held that these principles guard against arbitrary exercise of power by the State and its functionaries and aim at preventing miscarriage of justice (See para 17 at page 2714).

4 AIR-2013-SC-2360

5 AIR-2011-SC-2709

Mr.Chavan sought to rely on the common order passed by the Nagpur Bench of this Court in Writ Petition Nos.4905 of 2014 and 4922 of 2014 dated 21 July 2015 (Coram: Smt.Vasanti A. Naik and A.M.Badar, JJ.) and which we find to be equally misplaced. There, the Petitioners challenged the orders of Maharashtra Medical Council suspending the registrations for a period of six months and prohibiting them from working as teachers/lecturers in any institution imparting medical education. Though the orders refer to the CBI inspection at a college at Chennai, what we find is that an independent disciplinary action was initiated against those Petitioners by MMC. That was found to be vitiated because a notice to show cause did not contain specific allegations. The allegations were found to be vague. There was thus a peculiar breach of the relevant disciplinary rules that enabled the Petitioners to argue that there is a violation of principles of natural justice.

47. Apart from the fact that the above order of Nagpur Bench is distinguishable as a different issue and controversy was raised, additionally we find that the matter was never argued in the manner brought before us and by highlighting the role of MCI. Therefore, the order of Nagpur Bench is of no assistance to the Petitioners.

48. Before parting, we would like to remind all concerned, what the Hon'ble Supreme Court had to say about Doctors and specifically as Teachers. In the case of **Sukumar Mukherjee Vs State of West Bengal and others**⁶, the Hon'ble Court observed as under :

"Every teacher-doctor must endeavour to make his institution a brighter institution - a fragment of Heaven on earth, an El Dorado of peace, joy and wisdom. After all, an institution is what its teachers and Professors make it even as a nation is what its patriots make it, a religion is what its prophets make it and a home is what its women make it. Without a band of devoted men of medicine who are inspired by a holy zeal, an institution with the paraphernalia of modern conveniences will be like without the spark of life; without soul. When there are all the advantages, it is no virtue if tolerable work alone is turned out. But it is only when there are handicaps, mocking at enterprise should the human spirit triumph and establish that the Will is an all-conquering force. The greatest men of medicine of the past and the present who have profoundly influenced men's minds have been indomitable spirits who have struggled against tremendous odds.

Inner strength which is not cowed down by adversities is what is required. If that noble quality is to be nurtured one must have tremendous faith in one's mission. To practise medicine is not a craft but a calling; not a profession but a vocation.

Sincerity of purpose and earnestness of endeavour are the two wings that will bear one aloft to the tower of success. Given these virtues, other qualifications will follow of their own accord.

It is a cold and irresistible fact of logic that doctors exist for the institution and that the institution does not exist for their convenience and profit. It sustains and nourishes them, and it is up to them to cling to it with steadfast loyalty and to toil to promote its highest interests.

"From good to better; daily self-surpassed", has to be our motto. The nature of the profession is such that it definitely demands a spirit of service and sacrifice. After all what lends dignity to any person is his attitude to work and not the emoluments of his office.

⁶ AIR-1993-SC-2335

"Honour and shame from no condition rise act well thy part : there all the honour lies." The duty of a true teacher-doctor is to instruct, inspire and illumine."

49. As a result of the above discussion and for the reasons recorded above, each of these petitions fail. The Rule is discharged in each of the petitions, but without any order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST