GAHC010215192018

2026:GAU-AS:12408

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : WP(C)/6702/2018**

SIDDHARTHA BURAGOHAIN
S/O LT. DR. BHARAT CHANDRA BURAGOHAIN
R/O HOUSE NO. 2,
AMAR PATH,
LAST GATE, GUWAHATI - 781028, IN THE DIST. OF KAMRUP (METRO),
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM,
CAPITAL COMPLEX, DISPUR, GUWAHATI- 781006, ASSAM

2:THE PRINCIPAL SECRETARY

GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM

3:THE SECRETARY GOVT. OF ASSAM

HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR
GUWAHATI - 781006
ASSAM.

4:ASSAM MEDICAL COUNCIL

REP. BY ITS CHAIRMAN

SIX MILE

KHANAPARA
GUWAHATI - 781022
ASSAM.

5:THE REGISTRAR
ASSAM MEDICAL COUNCIL

SIX MILE
KHANAPARA
GUWAHATI - 781022
ASSAM

**Advocate for the Petitioner** : MR. A K BHATTACHARYYA, MS R B DEB,MR. K K BHATTACHARYYA,MR D K BHATTACHARYYA

**Advocate for the Respondent** : GA, ASSAM, MR B GOGOI (R4 & 5),SC, HEALTH

**– B E F O R E –**

**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For the Petitioner : Mr. A K Bhattacharyya, Sr. Adv; Mr. D K Bhattacharyya, Ms. R B Deb, Mr. K K Bhattacharyya, Advocates.

For the Respondent(s) : Mr. D Upamanyu, SC, Health & Family Welfare Department.

Date on which judgment is reserved : **27.08.2026**

Date of pronouncement of judgment : **28.08.2026.**

Whether the pronouncement
is of the operative part
of the judgment ? **: yes.**

Whether the full judgment

has been pronounced **: No.**

## JUDGMENT & ORDER (CAV)

Heard Mr. A K Bhattacharyaa, learned senior counsel assisted by Mr. D K Bhattacharyaa, learned counsel appearing for the petitioner. Also heard Mr. D Upamanyu, learned Standing counsel, appearing for the Health Department.

**2**. By way of this writ petition under Article 226 of the Constitution of India, the petitioner assails the order dated 07.09.2018 issued by respondent No. 5, whereby his name was removed from the Register of the Assam Medical Council for a period of six months from the date of issuance of the said order.

**3**. The brief facts of the case, as projected by the petitioner, are that after completing his MBBS degree in the year 1996, the petitioner obtained his MD in Obstetrics and Gynaecology in the year 2004 from Assam Medical College and Hospital, Dibrugarh. He thereafter joined Jorhat Medical College and Hospital, Jorhat as Registrar in the year 2009 and was promoted as Assistant Professor in the year 2012. He continued in the said capacity until 11.08.2017, when he was transferred to Silchar Medical College and Hospital, Silchar.

On 16.07.2017, while the petitioner was on duty in the Emergency Labour Room at Jorhat Medical College and Hospital, one Junali Das was admitted at about 5:00 p.m. The petitioner examined her and found that she was at an advanced stage of

pregnancy with no foetal movement. An ultrasonography examination subsequently confirmed intrauterine foetal death, the absence of foetal movement having been noticed since the morning of 16.07.2017.

It is the specific case of the petitioner that, as there was no other complication in the condition of the patient at that stage, immediate caesarean section was not advised and, in accordance with the prevailing medical protocol in cases of intrauterine foetal death, an attempt was made for vaginal delivery. On 17.07.2017 at about 8:00 a.m., upon completion of his duty, the petitioner handed over the patients under his charge, including the said patient, to the next duty doctor.

It is further the case of the petitioner that thereafter he was entrusted with duty in the Emergency Labour Room only once, i.e. on 19.07.2017, when he again examined the patient and found no complication warranting any immediate surgical intervention. According to him, the patient continued to be attended by different duty doctors, including Visiting Surgeons, Assistant Professors, Associate Professors and Professors, and attempts were made to induce normal labour from 17.07.2017 to 20.07.2017.

On 21.07.2017, a decision was taken to perform a lower segment caesarean section (LSCS), and the operation was performed by Dr. Bornali Pegu under the supervision of Dr. Runjun Doloi. The patient subsequently developed complications and died on 22.07.2017.

**4**. Following the death of the patient, enquiries were conducted at different levels. The petitioner was held responsible principally on the ground that he was the duty doctor when the patient was initially admitted. He was transferred from Jorhat Medical College and Hospital to Silchar Medical College and Hospital by order dated 11.08.2017 and was thereafter placed under suspension by order dated 25.08.2017 pending initiation of departmental proceedings on the allegation of serious negligence of duty resulting in the death of the patient. He was also debarred from private

practice during the period of suspension.

During the pendency of the departmental proceedings, respondent No. 5, by the impugned order dated 07.09.2018, withdrew the petitioner's registration for a period of six months purportedly in exercise of the power under Section 32(D) of the Assam Medical Council Act, 1999, on the ground that he was guilty of not maintaining good medical practice and the duties of a physician towards his patient. The petitioner was also directed to surrender the original registration certificate.

Aggrieved thereby, the present writ petition has been filed.

**5**. Mr. A K Bhattacharyaa, learned senior counsel appearing for the petitioner submits that the Assam Medical Council, being a statutory authority constituted under the Assam Medical Council Act, 1999 (hereinafter referred to as the "1999 Act"), could exercise the power of removal of the name of a registered medical practitioner only in accordance with Section 23 of the said Act and not under Section 32(D).

According to the learned senior counsel, a conjoint reading of Sections 17 and 23 of the Act makes it clear that removal of the name of a registered practitioner from the Register is permissible only upon compliance with the safeguards prescribed therein. It is submitted that Section 17(b), which is made applicable to an enquiry under Section 23, requires a due enquiry, an opportunity of hearing to the medical practitioner, either personally or through his pleader, and a finding of guilt by a majority of two-thirds of the members present and voting. According to learned senior counsel, none of these statutory requirements was complied with before the petitioner's registration was withdrawn.

It is further submitted that the impugned order was passed during the pendency of the departmental proceedings initiated against the petitioner and, therefore, the action of the Medical Council was premature and unsustainable. Learned senior counsel submits that the enquiry committee itself found that the patient was operated upon by another doctor and that, after the operation, she

ceased to be under the responsibility of the petitioner. It is, therefore, contended that the petitioner could not have been held guilty of professional misconduct merely because he was the doctor who had initially admitted the patient.

Learned senior counsel further submits that the withdrawal of the petitioner's registration, which directly affected his right to practise his profession and consequently his livelihood, could not have been ordered without a proper enquiry and an effective opportunity of defence. It is contended that the action was also vitiated by malice in fact as well as malice in law, since the impugned order was passed pursuant to the directions or dictates of the State Government.

In this regard, reliance is placed upon the communications dated 17.08.2017 and 11.08.2017 issued by the Director of Medical Education, Assam and the Joint Secretary to the Government of Assam respectively, requesting cancellation of the petitioner's registration. Learned senior counsel submits that such communications demonstrate that the Medical Council did not independently apply its mind but acted at the instance of the State Government.

In support of the aforesaid submissions, learned senior counsel relies upon the following decisions of the Apex Court:

1. ***Smt. S. R. Venkataraman v. Union of India & Anr***., reported in (***1979) 2 SCC 491***; and

2. ***Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. & Ors. v. Secretary (Food and Agriculture), Government of Andhra Pradesh & Ors.***, reported in ***(1977) 4 SCC 337***.

**6**. Per contra, Mr. D Upamanyu, learned Standing Counsel, Health Department, submits that the petitioner was afforded adequate opportunity before the impugned order was passed. It is submitted that a notice was issued to the petitioner and that, pursuant thereto, he was called upon to attend the office of the Assam Council of Medical Registration with the relevant documents and to submit a written statement

regarding the treatment of the deceased patient. It is further submitted that the petitioner participated in the proceedings and submitted his defence.

It is submitted that a preliminary enquiry conducted by the District Commissioner, Jorhat, resulted in a report dated 25.07.2017 pointing towards serious medical negligence on the part of the petitioner, who was the doctor on emergency duty when the patient was admitted. Pursuant thereto, the competent authority, on 31.07.2017, directed immediate exemplary action, including placing the petitioner under suspension, transferring him to Silchar and taking steps before the Medical Council for cancellation of his registration.

According to learned counsel, the communication dated 11.08.2017 relied upon by the petitioner does not constitute an order cancelling his registration, but merely requested the Director of Medical Education to take appropriate steps before the competent professional body. It is submitted that the said communication was only the initiation of the process before the Medical Council and did not, in any manner, curtail the petitioner's statutory right to a hearing.

Learned counsel submits that upon examination of the relevant records and consideration of the material placed before it, the Ethical Committee found several procedural lapses on the part of the petitioner in his capacity as the admitting doctor and, accordingly, exercised the power available under Section 32(D) of the Act.

**7**. I have considered the submissions advanced by learned counsel for the parties and have perused the materials available on record, including the original records and the instruction dated 21.08.2026 furnished by the learned Standing counsel, Health Department. I have also considered the authorities relied upon at the Bar.

**8**. The material on record shows that on 16.07.2017, while the petitioner was on duty in the Emergency Labour Room at Jorhat Medical College and Hospital, Junali Das was admitted at about 5:00 p.m. The petitioner examined her and, upon ultrasonography, intrauterine foetal death was detected. The patient was thereafter

kept under observation. On 17.07.2017 at about 8:00 a.m., upon completion of the petitioner's duty, the patient was handed over to the next duty doctor.

The record further shows that the patient continued to be attended by different doctors and that attempts were made to induce labour on 17th, 18th, 19th and 20th July. On 21.07.2017, a decision was taken to perform an LSCS, which was carried out by another doctor under the supervision of another Assistant Professor. The patient subsequently developed complications and died on 22.07.2017.

Following the death, several enquiries were conducted. The petitioner was transferred, suspended and departmental proceedings were initiated against him. Separately, the Assam Council of Medical Registration also initiated proceedings in relation to the patient's death.

**9**. In the course of the proceedings before the Medical Council, an enquiry committee comprising four members was constituted by order dated 25.08.2017 to examine the complaints against the petitioner. The committee was directed to examine the relevant documents and interview the persons concerned.

The committee examined the petitioner and other persons and scrutinized the relevant medical records. Its report recorded, inter alia, as follows:

> ""*1. The patient Mrs Junali Das was admitted by Dr Siddhartha Buragohain, Assistant Professor of O & G, JMC on 16th July 2017 as a case of G3P2 at 31 weeks pregnancy with suspected intra uterine death of the foetus. On ultrasound subsequently it was confirmed to be intra uterine death. Patient was admitted in the ward. There is no record of Dr Buragohain examining the case in the ward during the entire stay of the patient.*
>
> *2 The patient was periodically examined by the emergency staff and Visiting Surgeons (VS) and a decision was taken to induce labour Induction of labour was done by different VS on 17, 18, 19 and 20th July with no result. There was no responsible management of the patient by Dr. Buragohain under whom the patient was admitted.*
>
> *3. When a decision to do a LSC.S operation was taken by Dr. Runjun Doley, Assistant Professor, according to the system of duty roster*

*prevalent at that time the patient came under the charge of Dr Doley LSCS was done on 21st July Once LSCS was done the patient was no longer under the responsibility of Dr Buragohain. There is no record of examination of the patient in the post operative period except on the morning of 22nd July when patient complained of respiratory distress. There is no record of Dr Doley examining the case after surgery was done.*

*4. Post mortem examination has shown the cause of death to be due to pulmonary oedema which may be because of fluid overload, or left ventricular failure.*

*5. While post operative complications can happen to any patient, the duty doctors and nurses should have detected the onset of pulmonary oedema if proper monitoring of the patient was done.*

*6. During investigations it has come to light that there was no proper system of duty rosters for the VSs and MOs in the department. The system prevalent at that time put every patient who delivered or had LSCS done on any day under the charge of the VS on duty on that day irrespective of the time or day she was admitted earlier It may have been done for shortage of doctors in a new hospital, but it does not lead to responsible management of a patient which was seen in this case. The duty system has since been corrected.*"

**10**. The aforesaid committee found that there was no record of the petitioner examining the patient in the ward during her subsequent stay and that there was no responsible management of the patient by him after admission. At the same time, the committee specifically recorded that, after the decision to perform LSCS was taken by Dr. Runjun Doloi and the operation was performed on 21.07.2017, the patient was no longer under the responsibility of the petitioner.

The committee also noticed that there was no proper system of duty rosters for the Visiting Surgeons and Medical Officers and that the prevailing system placed a patient under the charge of the doctor on duty on the particular day, irrespective of the date on which the patient had been admitted. It expressly recorded that the duty system had subsequently been corrected.

**11**. The report was thereafter placed before the Ethical Committee of the Assam

Council of Medical Registration in its meeting held on 07.09.2018. The minutes of the meeting disclose that the Ethical Committee considered, inter alia, a communication from the Director of Medical Education, Assam, enclosing a communication from the Joint Secretary to the Government of Assam, wherein cancellation of the registration of the petitioner was requested.

The Ethical Committee thereafter recorded the following resolution:

> *(1) The meeting resolved that since it has been found that Dr Siddhartha Buragohain, being the doctor under whom deceased Junali Das was admitted did not attend to her after admission is therefore guilty of not maintaining good medical practice and duties of physicians to... their patients under Clause 1.2 of Chapter 1 and Clause 2.4 of Chapter 2 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.*
>
> *(2) The Ethical Committee of Assam Council of Medical Registration, therefore decided to withdraw the Registration of Dr Siddhartha Buragohain for a period of six months, as empowered by Sec. 32D of the Assam Medical Council Act, 1999."*

It thereafter resolved to withdraw the petitioner's registration for a period of six months under Section 32(D) of the 1999 Act.

**12**. The impugned order dated 07.09.2018 was accordingly issued, recording that the Ethical Committee had found the petitioner guilty of not maintaining good medical practice and duties of physicians towards their patients under Clauses 1.2 of Chapter 1 and 2.4 of Chapter 2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, and withdrawing his registration for six months.

**13**. The issues which arise for determination in the present writ petition are: first, whether the Ethical Committee was competent to exercise the power under Section 32(D) of the 1999 Act to withdraw the petitioner's registration; and, second, whether the exercise of such power in the facts of the present case was in accordance with the statutory framework and the principles of natural justice and can be sustained in

exercise of the power of judicial review under Article 226 of the Constitution of India.

**14**. Before examining the statutory provisions, it would be appropriate to determine the nature of the power exercised by the Ethical Committee under Section 32(D) of the 1999 Act.

In ***A.K. Kraipak & Ors. v. Union of India & Ors***., reported in ***AIR 1970 SC 150***, the Apex Court observed that the dividing line between administrative and quasi-judicial power is thin and has progressively become narrower. The Court held that, for determining whether a power is administrative or quasi-judicial, regard must be had to the nature of the power conferred, the person or body upon whom it is conferred, the statutory framework, the consequences flowing from the exercise of such power and the manner in which the power is expected to be exercised.

The Apex Court further observed that the requirement to act judicially is, in substance, a requirement to act justly and fairly and not arbitrarily or capriciously.

**15**. The principle was also clearly enunciated in ***State of Orissa v. Dr. (Miss) Binapani Dei & Ors.***, reported in ***AIR 1967 SC 1269***, wherein the Apex Court held that where an order of the State prejudicially affects a person, such order must be made consistently with the basic requirements of justice and fair play. The person against whom an enquiry is held must be informed of the case he is required to meet and must be afforded an opportunity to controvert the material relied upon against him.

The Apex Court held that the duty to act judicially arises from the very nature of the function intended to be performed and need not necessarily be expressly superadded by the statute. Where there is power to decide and determine a matter to the prejudice of a person, the duty to act judicially is implicit in the exercise of such power.

**16**. Likewise, in ***Ridge v. Baldwin***, reported in ***(1963) 2 WLR 935***, the House of Lords recognized the requirement of affording a reasonable opportunity of hearing

before exercising a power having civil consequences.

**17**. What emerges from the aforesaid decisions is that the character of the power cannot be determined merely by the label attached to the authority or the provision under which the power is exercised. The nature of the decision, the consequences flowing from it and the obligation of the authority to arrive at a fair and objective determination are equally relevant.

**18**. In the present case, the Ethical Committee was not merely performing an administrative or regulatory function. It was called upon to determine whether the petitioner, a registered medical practitioner, had committed a violation of professional ethics and, on that basis, to withdraw his registration for a specified period. The determination necessarily involved consideration of facts, appreciation of the petitioner's conduct and an adjudication as to whether such conduct amounted to a violation of the professional obligations prescribed by law.

The consequence of such determination was the deprivation, for the specified period, of the petitioner's ability to practise his profession. The exercise of power thus directly affected a valuable professional right and entailed serious civil consequences.

**19**. It is in this context that the relevant provisions of the Assam Medical Council Act, 1999 require consideration. The Act was enacted for the reconstitution of the Medical Council of Assam and for maintaining a register of medical practitioners in the State, thereby regulating the right of duly qualified medical practitioners to practise medicine within the State of Assam.

**20**. Section 17 deals with enrolment in the register and refusal of registration. The relevant provision reads as follows:

> "***Enrolment in the register of the registered practitioner and refusal of registration***
>
> *Subject to the other provisions contained in this Act and on payment of*

*such fees as may be prescribed in this behalf by regulations made under section 34 any of the medical qualifications referred to in the Schedule shall be recognised medical qualifications for enrolment in the register of registered practioners:*

*Provided that the Council may refuse to permit the registration of the name of any person-*

*(a) who has been sentenced by any competent court for any offence or any offence involving moral turpitude, such sentence not having been subsequently reversed or quashed, and such persons, disqualification an account of such not having been removed by an order which the State Government is hereby empowered to make, if it thinks fit, in this behalf or*

*(b) whom the Council after due enquiry and after giving the person an opportunity of being heard in person or through his pleader, has found guilty, by a majority or two-third of the members present and voting, on the ground of any professional misconduct or on any offence involving moral turpitude."*

**21**. Thus, while Section 17 primarily deals with enrolment and refusal of registration, the proviso thereto expressly contemplates an enquiry, an opportunity of hearing and a finding by the requisite majority where refusal is founded upon professional misconduct or an offence involving moral turpitude.

**22**. Section 23 deals specifically with removal or re-entry of names from the Register and provides as follows:

"*23. (1) The Council may direct the removal altogether or for a specific period from the register of the names of any registered practitioner for the same reasons for which registration may be refused by the Council under section 17 and the conditions mentioned in clause (b) of section 17 shall apply to any enquiry under this section.*

*(2) The Council may also direct that any names so removed shall be restored."*

It is, therefore, apparent that Section 23 confers upon the Council the power to remove the name of a registered practitioner, either altogether or for a specified

period, but expressly makes the safeguards contained in Section 17(b) applicable to an enquiry under Section 23.

**23**. Section 32(D), introduced by the Assam Medical Council (Amendment) Act, 2014, provides for constitution of an Ethical Committee and reads as follows:

> "*32.D Ethical Committee shall be constituted by three (3) Members of the Council and they shall be elected by the members of the council and this Ethical Committee shall function as per guidelines laid down by the Medical Council of India from time to time. If any doctor is found guilty of violation of ethic by the Ethical Committee, his/her Registration may be withdrawn for a period of time as may be decided by the Ethical Committee.*"

**24**. Section 32(D), therefore, specifically empowers the Ethical Committee to withdraw the registration of a doctor if the doctor is found guilty of violation of medical ethics. The provision does not, however, prescribe the procedure to be followed before such power is exercised.

The absence of an express provision regarding hearing cannot, in my view, be understood as excluding the principles of natural justice. More particularly, where the exercise of the power is founded upon a determination of guilt and carries with it the consequence of depriving a registered medical practitioner of the ability to practise his profession, the obligation to act fairly and in accordance with the principles of natural justice necessarily inheres in the exercise of such power.

**25**. The consequence of withdrawal of registration is of considerable significance. A medical practitioner whose registration is withdrawn is disabled, for the period of such withdrawal, from practising his profession. The order therefore directly affects the practitioner's statutory entitlement to practise medicine and, consequently, his professional status and livelihood. Such an order undoubtedly entails serious civil and professional consequences.

The requirement of procedural fairness must, therefore, be scrupulously observed before such power is exercised. Where the statutory authority is required to

determine whether a medical practitioner has violated professional ethics and, upon such determination, is empowered to withdraw his registration, the authority is required to act fairly, objectively and judicially.

**26**. The power exercised under Section 32(D), therefore, cannot be treated as a purely administrative power. The determination of whether a doctor has violated professional ethics, followed by withdrawal of his registration, involves adjudication of disputed facts and has serious civil and professional consequences. The function is accordingly quasi-judicial in character.

What follows from the above is that an order withdrawing registration must not only be preceded by an effective opportunity of hearing, but must also disclose an independent consideration of the material on record and the reasons which have led the Ethical Committee to its conclusion. In other words, the order must be a speaking and reasoned order.

**27**. At this stage, it would also be apposite to bear in mind the limited scope of interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution. The jurisdiction of this Court is not appellate in character and the Court would ordinarily refrain from re-appreciating the evidence or substituting its own conclusion for that arrived at by the statutory authority. Merely because another view of the material on record may reasonably be possible would not, by itself, furnish a ground for interference.

The Court would, however, be entitled to examine whether the authority has acted within the bounds of its jurisdiction; whether the enquiry has been conducted in accordance with the statutory framework and the principles of natural justice; whether the finding of violation of medical ethics is supported by relevant and legally permissible material; whether relevant considerations have been ignored or irrelevant considerations taken into account; whether the conclusion is perverse or manifestly unreasonable; and whether the consequence imposed is the result of a lawful and

rational exercise of the discretion vested in the statutory authority.

**28**. These limitations assume particular significance in the present case because the consequence of an order directing removal of the name of a registered medical practitioner from the State Medical Register, even for a limited period, is not merely incidental. Such an order directly affects the practitioner's statutory entitlement to practise medicine and, consequently, carries serious civil and professional consequences.

The Court, therefore, has to examine not the correctness of the medical opinion as an appellate court but the legality and fairness of the decision-making process by which the Ethical Committee arrived at its conclusion.

**29**. It is in the aforesaid legal framework that the decision-making process in the present case requires examination.

**30**. Upon perusal of the records called for by this Court and placed before it, a significant aspect of the matter emerges. The notice issued by the Assam Council of Medical Registration to the petitioner, dated 16.09.2017 and thereafter, merely required him to attend the office of the Council on 25.09.2017 and subsequent dates, with relevant documents in relation to the treatment of Junali Das and to submit a written statement regarding the matter.

The notice did not set out any specific allegation of violation of medical ethics against the petitioner. It did not inform him as to what particular act or omission on his part was alleged to constitute negligence or violation of the Code of Medical Ethics. No specific particulars of the alleged lapse were furnished to him along with the notice.

**31**. More importantly, the complaints on the basis of which the enquiry committee was constituted by letter dated 25.08.2017 were not furnished to the petitioner. Indeed, from the records placed before this Court, the complaints themselves are not available.

This assumes considerable significance because the enquiry committee was constituted specifically "to examine about the complaints" against the petitioner. If the complaints constituted the foundation of the proceedings, the petitioner was entitled to know the substance of those allegations so as to enable him to effectively meet the case against him.

**32**. The principles of natural justice do not contemplate an opportunity to answer an allegation which has not been disclosed. A person cannot be expected to defend himself against an unknown case. The essence of a reasonable opportunity is that the person concerned must know the precise case which he is required to meet and must have a fair opportunity to controvert the allegations and the material relied upon against him.

The Apex Court in ***Gorkha Security Services v. Government of NCT of Delhi***, reported in ***(2014) 9 SCC 105***, while considering the requirement of a proper show-cause notice, emphasized that the fundamental purpose of such notice is to enable the noticee to understand the precise case set up against him, including the imputations relating to the alleged breaches or defaults. Though the decision arose in the context of blacklisting, the underlying principle that a person facing adverse action must know the case he is required to meet is a facet of the broader requirement of fair procedure.

**33**. Moreover, the ultimate finding against the petitioner was not founded merely upon the fact that he had admitted the patient. The enquiry report proceeded on the basis that the petitioner, as the admitting doctor, continued to have responsibility for the patient even after his duty period had ended. The report specifically found fault with the petitioner for not examining the patient in the ward during the subsequent period of her stay and for not providing what the committee described as "responsible management" of the patient.

The petitioner, therefore, was required to meet a case of continuing

responsibility extending beyond his rostered emergency duty. Yet, the material placed before this Court does not show that this precise case was ever put to the petitioner in the notice issued to him.

**34**. The contention of the respondents that the petitioner participated in the proceedings and submitted his written statement, by itself, cannot cure such defect. An opportunity of hearing must be an effective opportunity and not merely a formal opportunity to submit a response. A reply submitted without knowledge of the specific allegations and the material on which the authority proposes to act cannot, in the circumstances of the present case, be treated as a meaningful opportunity of defence.

**35**. The matter becomes still more significant when the basis of the alleged continuing responsibility of the petitioner is examined. The preliminary report of the Director of Medical Education, Assam, dated 10.08.2017, is stated to have proceeded on the basis that the admitting doctor was entrusted with the primary, continuous and overall responsibility for the treatment and follow-up of the patient during her stay.

However, when the matter came before the enquiry committee constituted by the Assam Council of Medical Registration, the committee itself noticed that the system of duty rosters then prevailing was defective. It recorded that every patient who delivered or underwent LSCS on a particular day was placed under the charge of the Visiting Surgeon on duty on that day, irrespective of when the patient had been admitted. It further recorded that the system had subsequently been corrected.

**36**. If the petitioner was nevertheless to be held responsible for the patient throughout her stay on the basis of his status as the admitting doctor, it was necessary for the authority to establish the source of that responsibility. The relevant charter of duties, duty roster or other document demonstrating that an admitting doctor retained such continuous and overall responsibility ought to have been placed before the petitioner and considered by the Ethical Committee.

It is significant that, despite opportunities being granted during the hearing, no

such charter of duties has been produced before this Court. In the absence of such material, the conclusion that the petitioner had a continuing and overriding responsibility for the patient after completion of his rostered duty cannot simply be assumed from the fact that he was the doctor who had initially admitted her.

**37**. There is another aspect which requires consideration. The enquiry report itself records that, on 21.07.2017, when a decision was taken to perform LSCS, the patient came under the charge of Dr. Runjun Doloi according to the duty-roster system then prevailing. It further records in express terms that, once the LSCS was performed, the patient was no longer under the responsibility of the petitioner.

The report also records that there was no record of Dr. Doloi examining the patient after surgery, except when the patient complained of respiratory distress on the morning of 22.07.2017. The report further observes that the duty doctors and nurses ought to have detected the onset of pulmonary oedema if proper monitoring had been undertaken.

**38**. The record, therefore, itself discloses that the management of the patient was not confined to the petitioner. Different doctors attended to her at different stages. The patient was examined by the emergency staff and Visiting Surgeons, induction of labour was attempted on several successive days, and the eventual surgical intervention was undertaken by another doctor under the supervision of another Assistant Professor.

The question that naturally arises is why, in these circumstances, the petitioner alone was held guilty of violation of professional ethics and subjected to the serious consequence of withdrawal of his registration.

**39**. This Court is conscious that the mere fact that other doctors were involved in the treatment does not necessarily exonerate the petitioner. Nor is it for this Court, in exercise of jurisdiction under Article 226, to undertake a fresh assessment of the medical responsibilities of each doctor who attended the patient.

However, once the statutory authority chose to attribute professional misconduct specifically to the petitioner on the basis of a continuing duty of supervision and management, it was incumbent upon it to identify the legal or institutional basis of that duty, to examine the petitioner's explanation in that regard and to give reasons as to why the conduct attributed to him amounted to violation of medical ethics warranting withdrawal of registration.

**40**. The enquiry committee's own report makes the issue more complicated rather than simpler. On the one hand, it attributes to the petitioner a failure to responsibly manage the patient after admission; on the other hand, it recognizes that the patient was being attended by different Visiting Surgeons and emergency staff, that the patient came under the charge of another doctor when the decision for LSCS was taken, that she ceased to be under the petitioner's responsibility after the LSCS, and that the prevailing duty-roster system itself was defective.

These circumstances were relevant considerations which the Ethical Committee was required to examine before arriving at a finding of professional misconduct against the petitioner.

**41**. Another aspect of the matter came to the notice of this Court while perusing the records produced by learned counsel appearing for the Health Department. Prior to the enquiry committee's report dated 20.08.2018, an enquiry committee comprising Prof. (Dr.) Pranabjit Biswanath, Dr. Gonesh Borah, Dr. Nitu Kr. Gogoi, Dr. Manab Narayan Baruah and Dr. Nilutpal Bhattacharjee, constituted pursuant to the order of the Principal-cum- Chief Superintendent, Jorhat Medical College & Hospital, by letter dated 22.07.2017, had enquired into the matter relating to the death of the patient.

A perusal of the said report dated 22.07.2017 indicates that the committee, upon examining the doctors and on-duty nurses and recording their written and oral statements, observed as under:

"*The patient was admitted under Dr S Buragohain on 16/07/17 at 4.59*

*pm in the department of O&G with the complaint of loss of foetal movement. The attending doctor examined the patient and advised necessary investigations including emergency USG.*

*As per bed head ticket, it was evident that IUFD(Intrauterine Foetal Death) was recorded, however the USG report is not attached in the bed head ticket.*

*After going through the statements and records, the treatment protocol was maintained with proper medications and due care.*

*The patient was operated (LSCS) for extracting the dead foetus as per vaginal evacuation could not be done due to failure of induction with cerviprime and misoprostol for four days (17th July. to 20 July 2017).*

*The patient was operated after taking informed written consent on 21st July 2017 as the patient complained of abdominal distension and vomiting.*

*During operation records show that the patient had developed transient hypotension which was managed by the Anaesthesiologist.*

*The post operative period the patient was shifted to postnatal ward with necessary medication However on the next day the patient developed difficulty in breathing and shifted to HDU and given necessary resuscitation but the patient unfortunately expired."*

Thereafter, the committee concluded as under:

"*There was no negligence on part of the Doctors and Staffs in treatment of the patient.*

*The operation (LSCS) was unavoidable as multiple inductions for labour failed.*

*Although there was transient hypotension which was managed by the anaesthesiologist.*

*To ascertain the exact cause of death postmortem examination is necessary.*

*Bed head ticket maintenance of the patients in the department of O&G, is very poor and needs regular monitoring by the senior Faculty members.*

*It is also observed that, the department of O&G,JMCH is under staffed. No designated Medical officers in the department are available to monitor the patients round the clock There is also dearth of senior of residents in the department considering the heavy work load."*

The aforesaid report is material because the committee, after examining the doctors, nurses and relevant records, specifically recorded that there was no negligence on the part of the doctors and staff in the treatment of the patient and that the treatment protocol had been maintained with proper medication and due care.

These findings were plainly relevant to the question whether the petitioner had committed professional misconduct. Curiously, the Principal-cum-Chief Superintendent, Jorhat Medical College & Hospital, despite the fact that the Enquiry Committee constituted by him had submitted its report, held an emergent death review meeting on 27.07.2017, i.e. almost five days thereafter, with different HODs, Faculty Members/Officers and Nursing staff in connection with the death of the said patient. Upon discussion of the matter, a resolution was taken, inter alia, to the effect that the petitioner had failed to provide proper treatment to the patient from 16.07.2017 till her death on 22.07.2017, constituting gross negligence on duty. There is, however, no mention whatsoever of the earlier report dated 22.07.2017 during such deliberation. In fact, the note-sheets also do not indicate why the Principal-cum-Chief Superintendent, Jorhat Medical College & Hospital did not accept the findings of the Enquiry Committee contained in its report dated 22.07.2017.

**42**. The records further show that the competent authority thereafter acting upon the preliminary enquiry, had already directed, by communication dated 31.07.2017, immediate action including suspension of the petitioner, his transfer to Silchar and initiation of steps before the Medical Council for cancellation of his registration. The subsequent communication dated 11.08.2017 to the Director of Medical Education, Assam, was also in furtherance of that process.

This Court is in agreement with the respondents that these communications, by themselves, cannot be treated as a final cancellation of the petitioner’s registration.

The power to take the ultimate decision was vested in the competent statutory body.

However, the minutes of the Ethical Committee meeting dated 07.09.2018 themselves disclose that the Committee considered the communication from the Director of Medical Education enclosing the communication of the Joint Secretary to the Government of Assam which specifically requested cancellation of the petitioner's registration.

**43**. In ***Chintapalli Agency*** (supra), the Apex Court emphasized that a request by the Government to a subordinate authority tantamount to a direction. The relevant observation reads as follows:

> "*24. Since we are allowing these appeals by setting aside the order of the Government, we express no opinion as to whether the Government in exercising revision power under Section 77 of the Act was competent to issue directions to the Excise Department in the matter of settlement of arrack shops. It was submitted, however, that there was no direction in the order which was only by way of "request" and suggestion. We are, however, unable to accept this submission as correct. Any "request" of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same.*"

**44**. The aforesaid principle does not mean that every action taken by a statutory authority after receiving a request from the Government is necessarily vitiated. What it does signify is that, where the statutory power is vested in an independent authority, the authority must itself examine the matter and arrive at its own conclusion in accordance with the statute.

In the present case, therefore, the communications emanating from the State Government assume significance not because they, by themselves, establish that the Ethical Committee acted under dictation, but because, in the circumstances of the case, they made it all the more necessary for the Ethical Committee to demonstrate an independent application of mind to the material before it.

**45**. The impugned order, however, is silent. After recording that the Ethical

Committee had found the petitioner guilty of not maintaining good medical practice and duties of physicians towards their patients, it simply proceeds to withdraw his registration for six months under Section 32(D) of the 1999 Act.

There is no discussion of the petitioner's defence. There is no reference to the precise explanation offered by him. There is no consideration of the defective duty-roster system noticed by the enquiry committee. There is no discussion as to why the petitioner's responsibility continued after his duty had ended. There is no discussion of why the involvement of the other doctors who attended the patient did not affect the conclusion against the petitioner. There is also no discussion as to why the material relied upon was sufficient to constitute professional misconduct under the particular provisions of the Code of Medical Ethics invoked against him.

Viewed in this context, the communications dated 17.08.2017 and 11.08.2017 issued by the Director of Medical Education, Assam and the Joint Secretary to the Government of Assam, respectively, requesting cancellation of the petitioner's registration assume significance. The record does not disclose that the Ethical Committee independently considered whether the request for cancellation was justified on the basis of the material available before it.

**46**. The requirement of a speaking order is not an empty formality. Reasons provide the link between the material placed before an authority and the conclusion ultimately reached. They enable the affected person to understand why the adverse decision has been taken and enable the constitutional court, in exercise of its power of judicial review, to ascertain whether the statutory authority has acted within the bounds of law.

Where an authority is exercising a quasi-judicial power carrying serious civil consequences, the obligation to record reasons assumes even greater importance.

**47**. At this stage, it would be apposite to reiterate that this Court is not exercising appellate jurisdiction over the decision of the Ethical Committee. The Court is not

called upon to decide whether the medical treatment adopted by the petitioner was the most appropriate course or whether another medical view could be taken on the treatment of the deceased patient.

This Court is examining the decision-making process. The question is whether the petitioner was informed of the case against him, whether the material relied upon was made available to him, whether the relevant evidence and circumstances were considered, whether the authority had a proper basis for attributing continuing responsibility to him, and whether the conclusion reached is supported by reasons.

**48**. In my considered view, these requirements have not been satisfied in the present case.

The notice issued to the petitioner did not disclose the specific allegations which he was required to meet. The notice did not set out the particular act or omission which, according to the Council, constituted violation of professional ethics. The complaints on the basis of which the enquiry was initiated were not furnished to him and are not even available on the record placed before this Court.

The subsequent enquiry proceeded on a particular conception of the petitioner's continuing responsibility as the admitting doctor, without demonstrating that this aspect was ever specifically put to him. The enquiry committee itself found the prevailing duty-roster system to be defective, yet no charter of duties or duty-roster establishing the alleged continuing responsibility of the petitioner has been produced.

It may be noted at this stage that the show-cause notice dated 05.09.2017 perused by this Court from the records produced pertains to the disciplinary proceedings initiated against the petitioner by the State authorities and not to the proceedings initiated by the Assam Council of Medical Registration for withdrawal of his medical registration. The said notice, therefore, is of no relevance to the case in hand, as the same cannot be treated as an effective notice of the allegations forming the basis of the subsequent action taken by the Ethical Committee under Section

32(D) of the 1999 Act.

**49**. That apart, the conclusion of professional misconduct appears to have been reached without adequately addressing the distinction between the petitioner's role as the admitting doctor and the roles subsequently assumed by other doctors who attended the patient under the duty-roster system.

The Ethical Committee was required to determine, on the basis of relevant material, whether the petitioner continued to bear a professional responsibility for the patient after completion of his duty and, if so, what was the nature and extent of that responsibility. That foundational question has not been addressed in the impugned order.

**50**. Undoubtedly, merely because the petitioner's duty had ended, it cannot be said that the petitioner could never be responsible. Nor can the mere existence of a duty roster, by itself, necessarily determine the entire scope of professional responsibility.

What is required, however, is that such responsibility must be established on the basis of relevant material and that the practitioner must be afforded an opportunity to meet the case built upon that material. In the present case, that essential requirement has not been demonstrated.

**51**. The consequence imposed also requires consideration. Withdrawal of registration for six months is not a minor or incidental consequence. It prevents a qualified medical practitioner from practising medicine during that period. The consequence therefore operates directly upon his profession and livelihood and has serious civil and professional implications.

When such a consequence is imposed, the authority is required to exercise a greater degree of care in ensuring that the finding of professional misconduct is reached through a fair procedure and upon relevant material. The more serious the consequence, the greater the obligation to ensure that the person affected has had a real and meaningful opportunity to defend himself.

**52**. The respondents have relied upon the fact that the petitioner was examined by the enquiry committee and that he submitted a written statement. But participation in an enquiry cannot, by itself, be treated as sufficient compliance with natural justice where the foundational allegations and the material relied upon are not disclosed.

Natural justice is not satisfied by giving a person an opportunity to speak in the abstract. The opportunity must be one which enables him to meet the case actually being considered by the decision-making authority.

Having held so, the fact that the State authorities had earlier formed an opinion regarding the petitioner's responsibility could not relieve the Ethical Committee of its obligation to independently examine the matter in accordance with law.

**53**. In the circumstances, I am of the view that the impugned decision cannot be sustained merely on the ground that the petitioner was given an opportunity to submit a written statement. The opportunity was not an effective one because the specific case against the petitioner, the complaints forming the foundation of the enquiry and the material establishing the alleged continuing responsibility of the petitioner were not adequately disclosed.

**54**. The impugned decision is further vitiated by the absence of a reasoned consideration of the material which was itself generated in the course of the enquiry. The Ethical Committee was required to reconcile its conclusion with the findings that the patient was attended by different doctors, that the duty-roster system was defective, that the patient came under the charge of another doctor when the LSCS was decided upon and that, after the LSCS, she was no longer under the petitioner's responsibility.

No such reconciliation or consideration is found in the impugned order.

**55**. This Court is mindful that the Court must exercise restraint in interfering with the findings of a statutory authority. The fact that another view of the medical material may reasonably be possible would not justify interference. However, the present case

does not involve a mere difference of opinion on medical evidence.

The interference is warranted because the decision-making process did not satisfy the minimum requirements of a fair and reasoned exercise of quasi-judicial power. The defect lies not in the Court preferring one medical opinion over another, but in the failure of the statutory authority to disclose the case against the petitioner, consider the relevant material and furnish reasons for the conclusion reached.

**56**. This Court is, therefore, not substituting its own view on the merits of the medical treatment. It is only holding that before visiting the petitioner with the serious consequence of withdrawal of his professional registration, the Ethical Committee was required to disclose the precise allegations, afford him an effective opportunity to meet those allegations and the material relied upon, examine the relevant circumstances bearing upon his responsibility and thereafter record a reasoned conclusion.

These are not requirements which can be dispensed with merely because the allegation concerns medical negligence or because the statutory provision does not expressly prescribe the procedure to be followed.

**57**. This Court, however, is mindful of the fact that allegations of medical negligence resulting in the loss of human life are required to be viewed with utmost seriousness by the medical authorities. Where professional negligence is duly established, appropriate and even stern action may certainly be warranted. The medical profession carries with it a corresponding responsibility towards the life and well-being of patients, and any established dereliction of that responsibility cannot be viewed lightly.

At the same time, the seriousness of the allegation or of the consequence cannot justify the statutory authorities giving a go-by to the basic requirements of a fair, just and reasonable procedure. Before a medical practitioner is visited with a serious consequence such as withdrawal of his registration, he must be made aware of the precise case against him and afforded a meaningful opportunity to meet the

allegations and the material relied upon.

The requirement of natural justice is not an impediment to taking stern action where warranted; rather, it is the safeguard which ensures that such action is taken against the person who is actually responsible and on the basis of a fair and lawful determination.

The protection of the patient and the accountability of the medical practitioner are undoubtedly important considerations, but they cannot be secured at the cost of fairness in the decision-making process. The obligation of the medical authorities to act firmly where negligence is established and their obligation to act fairly before determining such negligence are not competing obligations; they are complementary requirements of a lawful exercise of statutory power.

**58**. In view of the totality of the facts and circumstances of the case, this Court is of the unhesitant view that the impugned order dated 07.09.2018 fails to satisfy the requirements of a fair and lawful exercise of the power vested under Section 32(D) of the 1999 Act. The decision-making process preceding the impugned order was vitiated by failure to disclose the specific case against the petitioner, failure to furnish the foundational material, failure to establish the basis of the alleged continuing responsibility of the petitioner and failure to record reasons upon consideration of the relevant material.

The impugned order is, accordingly, liable to be interfered with in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.

**59**. Consequently, the order dated 07.09.2018 issued by respondent No. 5 withdrawing the petitioner's registration for a period of six months is hereby set aside and quashed.

**60**. This order, however, shall not preclude the competent statutory authority from taking such action as may be permissible in law, if so advised, by initiating or undertaking proceedings afresh in accordance with the Assam Medical Council Act,

1999 and the applicable regulations.

In the event the competent authority proposes to proceed afresh, the petitioner shall be furnished with the specific allegations against him and the material sought to be relied upon, shall be afforded a meaningful and effective opportunity to submit his defence, and the authority shall thereafter consider the matter independently and pass a reasoned and speaking order in accordance with law.

**61**. It is made clear that this Court has not expressed any opinion on the ultimate question as to whether the petitioner was medically negligent or whether his conduct amounted to professional misconduct. This Court has also not expressed any opinion on the liability, if any, of the other doctors who attended the deceased patient.

The observations made herein are confined to the legality and fairness of the decision-making process culminating in the impugned order and shall not be construed as an adjudication on the merits of any allegation of medical negligence or professional misconduct.

**62**. The writ petition stands allowed in the aforesaid terms. There shall be no order as to costs.

**63**. Interim order, if any, stands merged with this order.

**64**. The records placed by learned Standing Counsel, Health Department, be returned forthwith.

**JUDGE**

**Comparing Assistant**

Pranab Kumar Deka

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