IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1176 OF 2013

1. Dr. Ramineni Venugopal Somaiah)
Age 47 yrs, Occ. Orthopedic Surgeon)
permanently r/o. 1/92, Laxmi Estate)
Dr. Radhkrishnan Marg, Andheri (E),)
Mumbai-400 069)

2. Dr. Prabhudas Solanki)
Age 57 yrs, Occ. Orthopedic Surgeon)
presently residing at 502/B, Harivijay)
Society, Bhagatsingh Road, Vile Parle)
(W), Mumbai-400 056) … Petitioners

Versus

1. Maharashtra Medical Council)
Through its Registrar having his office)
At 189-A, Anant Complex, 2nd floor)
Sane Guruji Marg, Arthur Road Naka)
Mumbai – 400 001)

2. Shri. Sanjaykumar Dattatraya Funde)
Medical Officer, 'L' Ward, M.C.G.M.)
Kurla, Mumbai-400 017)

3. Medical Officer,)
Appropriate Authority under the)
Pre-conception and Pre-natal Diagnostic)
Techniques (Prohibition of Sex Selection)
Act, 1994, “L” Ward, M.C.G.M., Kurla,)
Mumbai - 400 017) … Respondents

Mr. Ravi Kadam, senior counsel with Mr. Rajendra Sorankar for the Petitioners.

Mr. Rahul Nerlekar for the Respondent No.1.

Mr. Anil Singh, senior counsel with Mr. Vinod Mahadik for the Respondent Nos.2 & 3 - BMC.

CORAM : S. J. VAZIFDAR &
M. S. SONAK, JJ.

FRIDAY, 23RD AUGUST, 2013.

JUDGMENT :- [Per S.J. Vazifdar, J.]

1. The petitioners are orthopedic surgeons. Respondent No.1 is the Maharashtra Medical Council. Respondent No.2 – one Sanjaykumar Dattatraya Funde is the Medical Health Officer of the Mumbai Municipal Corporation, who had filed a complaint against the petitioners, which we will refer to shortly. Respondent No.3 is the Appropriate Authority under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, (hereinafter referred to as the "said Act").

2. The petitioners seek a writ setting aside an order passed by respondent No.1 suspending their registrations with the Maharashtra

Medical Council for a period of five years from 20th April, 2013, and/or till the final decision of a criminal case on charges framed against them for contravening the provisions of the said Act and the Rules framed thereunder, whichever is earlier. The impugned action is taken under Section 23 (2) of the said Act. They further seek an order staying the impugned order till the decision in the criminal case pending before the Metropolitan Magistrate and in any event till the Review Application filed by them before respondent No.1.

3. The question that falls for consideration is whether section 23(2) of the said Act makes it mandatory for respondent No.1 to suspend the registration of a registered medical practitioner, if charges are framed against him by the Court under the said Act.

Sub-section (2) of Section 23 reads as under :-

> *"(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence."*

Respondent No.1 was itself of the view that the mere filing of charges does not require it to compulsorily suspend the registration of a registered medical practitioner. Respondent No.1 was rightly of the view that upon charges being framed, it was to initiate an enquiry whether the registration of the concerned medical practitioner ought to be suspended and if so, for what period. We have upheld this view and the submission on behalf of the petitioner. Respondent No.1, however, has taken the impugned action of suspending the petitioner's registration without anything more only in view of a judgment of a learned single Judge of this Court.

4. Mr. Ravi Kadam, the learned senior counsel appearing on behalf of the petitioners submitted that even though charges have been framed against the petitioners, respondent No.1 is bound to issue a show cause notice and take a decision of its own as to whether in the facts and circumstances of the case, their registration as medical practitioners ought to be suspended or not and if so for what period. The charges being framed is only an aspect which respondent No.1 may consider in deciding whether or not the registration ought to be

suspended till the disposal of the case. He further submitted that in the present case there is nothing to indicate the involvement of the petitioners in an offence admittedly committed by another doctor one Dr. Ivan Rocha. Moreover, according to him, even the complaints filed do not indicate any offence by the petitioners.

5. Petitioner Nos.1 and 2 have been practising as surgeons for 17 years and 27 years respectively. They are attached, *inter-alia*, with J.P. Hospital, Mumbai. The petitioners as partners have taken the said hospital on the basis of a leave and licence agreement dated 25th October, 2010 for a period of three years.

6. Respondent No.2, who was appointed as the Appropriate Authority under the said Act filed a complaint dated 19th November, 2011, against one Dr. Ivan Rocha and the petitioners under section 190 of the Code of Criminal Procedure, 1973 alleging violation of various provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The complaint states as follows:

The said Dr. Ivan Rocha, a medical practitioner practices at the said hospital and at another clinic by the name of Pooja Clinic and Archana Diagnostic Center. The petitioners are partners of the said hospital but are not connected with the Pooja Clinic.

One Ms. Kamya Bhattachariya, a reporter with a television channel, was informed that the said Dr.Ivan Rocha was performing sonography on pregnant ladies with a view to detect the sex of the foetus in violation of the provisions of the said Act. With a view to conduct a sting operation to expose the same, she took an appointment with Dr.Ivan Rocha for performing a sonography on a relative who was pregnant to ascertain the sex of the child. She informed Dr. Ivan Rocha on the telephone that she was a relative of one Ms. Priyanka Patil (assumed name), who was five months pregnant and wanted her sonography done to ascertain the sex of the child. Dr. Ivan Rocha gave her an appointment for 7.00 p.m. on 8th July, 2011, at the said hospital. As per the appointment, the said Ms. Kamya Bhattachariya, one Ms.Priyanka Patil and one Ms. Thori Bhavine (assumed name) went to the said hospital where they registered the said Ms. Priyanka Patil with the receptionist, after informing her about their appointment with

Dr. Ivan Rocha and the receptionist after about ten minutes directed the three ladies to Dr. Ivan Rocha's cabin.

Ms. Kamya Bhattachariya introduced the other two ladies to Dr. Ivan Rocha. After performing a sonography of Ms. Priyanka Patil. Dr. Ivan Rocha informed the three ladies that the child was perfectly well. He, however, refused the request to divulge the sex of the child and stated that he would do so only, if they paid him for the same. He stated that normally he charged Rs.8000/- to disclose the sex of a child, but he would give them a concession of Rs.2000/-. Accordingly, Ms. Thori Bhavine paid him Rs.6000/- in Rs. 500 notes, the numbers of which had been noted by the ladies. Upon receipt of the money, Dr. Ivan Rocha informed them that it was definitely a female child. He told them to come the next day at 8.00 a.m., for the report. Ms. Kamya Bhattachariya collected the sonography report dated 8th July, 2011, on 9th July, 2011. Dr. Ivan Rocha then fixed up an appointment for Ms. Priyanka Patil at the said hospital – J.P .Hospital for an abortion on 11th July, 2011, and instructed them to bring Rs.10,000/- for the same.

Thereafter, the said ladies contacted respondent No.2, and

informed him about the above facts. Respondent No.2, thereupon visited the said hospital on 11th July, 2011. and found various irregularities qua the said Act including that the original certificate under the Act had not been displayed in the waiting area, the F-forms were incomplete. As per the registration Certificate issued under the Act, one Dr. Sharad Sancheti was supposed to do the sonography, but the said Dr. Ivan Rocha who is a Gynecologist was doing the sonography during the consultation hours with his own portable machines without filling the 'F' forms and without his machine being included in the registration. Thus, the portable machines brought in by Dr. Ivan Rocha was being used unauthorisedly. Dr. Ivan Rocha who performed the sonography in his consulting room without his name being included in the certificate issued under the said Act and without his consultation room being included as a place for sonography. As per the application and the place shown in the application, the F-form for the said Ms.Priyanka Patil was also not found.

Various items were seized and a panchanama to that effect was prepared. The panchanama was signed by petitioner No.1.

Thereafter respondent No.2 visited Pooja Clinic and met Dr. Ivan Rocha who sent for and handed over the said Rs.6000/-. The same notes were handed over.

After setting out the above facts, the complaint stated that Dr.Ivan Rocha had conducted the sonography. Para 18 of the complaint reads as under:

> *"18. Under the circumstance I submit that Accused No.1 Dr. Ivon Rocha, who conducted the Sonograph, Accused No.2 Dr. Venugopal Ramineni, Accused No.3 Dr. Prabhu Solanki, the partners of J.P. Hospital, who permitted the illegal Sonograph and who were permitting the performance of abortions in this Hospital have all jointly and severally flouted the provisions of Sections 3(A), 4(1), (3), 5, 6(a), (b) (c) and rules 9(i), (ii), (iii), (iv),X(i), (i-A), 17 (1), 18(1) (3) (5) of The PNDT Act."*

7. It is important to note the examination-in-chief of the said Ms. Kamiya Bhattacharya, in the evidence before charge. Mr. Kadam placed considerable reliance upon the same to indicate that there were no allegations against the petitioners. There was nothing in the evidence, which even remotely suggested any complicity leave alone collusion between the petitioners and said Dr. Ivan Rocha. The entire evidence is only with respect to the acts and conduct of Dr. Ivan Rocha.

8. In her examination-in-chief, Ms. Kamiya Bhattacharya, in fact stated that when she asked Dr. Ivan Rocha to give her the sonography report, he told her to come on the next day, i.e., 9th July, 2011 at his Pooja Clinic to collect the same. In other words, the report was not even handed over at the J.P. Hospital. She, in fact, went the next day and collected the report from the Pooja Clinic. Mr. Kadam, stated that the witness has not even alleged that thereafter the J.P. Hospital was in any manner informed or even contacted about the abortion procedure.

9. As far as the entire incident regarding the visit of the said three ladies to the said Dr. Ivan Rocha and the transactions between them are concerned, we see the force in Mr. Kadam's submission that it is not even alleged that the petitioners had any role to play in the same. All allegations by the witness and respondent No.2 are only against Dr. Ivan Rocha. It is also important to note that the conversation between Dr. Ivan Rocha and the ladies took place only in one room, which he was permitted to occupy for only a part of the day by the J.P. Hospital which was managed by the petitioners. There is nothing to

indicate that Dr. Ivan Rocha acted on behalf of the hospital or it's partners or either of the petitioners. There is nothing to indicate that the petitioners even knew about what Dr. Ivan Rocha had done in respect of said incident or any other incident for that matter. Dr. Ivan Rocha did not use the equipment of the hospital in respect of said incident. He used his own portable machine brought in by him. Neither the complaint, nor the evidence of the witnesses suggest that the petitioners knew about the said machine.

10. However, the complaint also refers, especially in paragraph 13, to various other violations of the Act such as the PCPNDT Certificate not being displayed in the waiting area and the 'F' Forms being incomplete; the patient's declaration containing only the patient's signature but not her name and the name of the doctor and the sonologist not being written.

11. The complaint was filed on 19th November, 2011 and the learned Metropolitan Magistrate on the very same day passed the order of issuance of process. Thereafter on 6th June, 2012, the

Metropolitan Magistrate allowed the addition of said Dr. Sharad Sancheti as accused No.4.

By a letter dated 26th May, 2012, respondent Nos.2 and 3 informed the Registrar of respondent No.1 - Maharashtra Medical Council about the case having been filed against the petitioners for determination of sex of foetus at the said hospital run by the petitioners.

12. Before referring to the charges, it is necessary to note that the said Dr. Sharad Sancheti challenged the said order of issuance of process before this Court by filing Criminal Writ Petition No.2601 of 2012. By an order dated 31st July, 2012, ad-interim reliefs have been granted. By an order dated 4th December, 2012, the learned Judge noted that the matter is required to be heard finally and clarified that the prosecution would proceed to the extent of the existing accused. The interim relief to the extent of said Dr. Sharad Sancheti was continued from time to time and remains in force. Unfortunately, the petitioners have not filed similar proceedings.

13(A). By an order dated 6th June, 2012, the Metropolitan Magistrate noted that the law does not permit a roving inquiry or detailed analysis of evidence at the time of framing charge and it is permissible for the Court to appreciate the evidence for the limited purpose of ascertaining whether a *prima facie* case has been made out. Having said that the learned Metropolitan Magistrate held that it is *prima facie* evident that the said Dr. Ivan Rocha was practising at the said hospital – J.P. Hospital which was jointly run by the petitioners as partners and that the said Dr. Ivan Rocha conducted the sex determination test at J.P. Hospital.

(B) By an order dated 6th June, 2012, the learned Metropolitan Magistrate observed that on 8th July, 2012, the said Dr. Ivan Rocha "aided" by the petitioners conducted the said procedure and had committed an offence under section 23 read with sections 3-A, 4 and 6 of the Act. The order also records that it had been found that they had committed a breach of Rules 9(i) to (iv), 10(1), (1A), 17(1) and 18(1), (3) and (5) of the said Rules by not maintaining proper records, forms and not displaying the notice to the effect that disclosure of the sex of

the foetus is prohibited under law. The order states that the said offences are punishable under section 23.

14. There is considerable force in Mr. Kadam's submission that it was not even the allegation in the complaint or in the evidence of the said Ms. Kamya Bhattachariya that the petitioners had aided the said Dr. Ivan Rocha. It is important to note that there is not even a *prima facie* observation against the petitioners regarding this incident i.e. the conduct of Dr. Ivan Rocha in the order dated 6th June, 2012. The Metropolitan Magistrate, however, observed that respondent No.2 during his visit noticed certain irregularities committed by the petitioners and that there was *prima facie* evidence against all of them for framing the charge for the commission of offences under sections 3A, 4(1) and (3), 5 and 6 of the Act and Rules 9(i) to (iv), 10(1) and (1A), 17(1) and 18(1), (3) and (5) of the said Rules. He, accordingly, directed that the charge be framed.

15. By a letter dated 8th June, 2012, addressed to the petitioners, respondent No.1 stated that they had been informed that a case had

been filed against the petitioners and called upon them to explain why the Maharashtra Medical Council should not take action against them under the said Act and the Maharashtra Medical Council Act, 1965 (hereinafter referred to as the "MMC Act").

16. Respondent No.1, however, did not pursue the show cause notice. It did not afford the petitioners an opportunity to respond to this show cause notice. Nor did it form any opinion of its own regarding the petitioners involvement in the said incidents. Instead, by the impugned letter dated 25th April, 2013, addressed to the petitioners, respondent No.1 stated that it had been resolved by the Council on 20th April, 2013, that there was sufficient material / allegations against the petitioners to suspend their registration under section 23(2) of the said Act and that, therefore, their registration was thereby suspended for a period of five years from 20th April, 2013 and/or till the final decision of the criminal case, whichever is earlier and that the petitioners are restrained from medical practice and/or profession of any nature during the period of suspension.

17. The petitioners filed a review application before respondent No.1 against the said order which is pending.

We may have directed the petitioners, in the first instance, to pursue the review before respondent No.1. However, Mr. Nerlekar, the learned counsel appearing on behalf of respondent No.1 stated that this would be a futile exercise in view of a judgment of a learned single Judge of this Court dated 22nd October, 2012, in the case of *Dr. Pradipchandra Mohanlal Gandhi & Anr. v. Maharashtra Medical Council & Anr. in Writ Petition No. 6495 of 2012*. The learned Judge observed that respondent No.1 understood section 23(2) to mean that it would have to hold an enquiry before passing an order of suspension. The learned Judge, however, held that section 23(2) contained a mandate to the Appropriate Authority to inform the State Medical Council, the name of the registered medical practitioner against whom the charges are framed by the Court and that when charges are framed, the State Medical Council must take action, including of suspension of the registration till the case is decided. The learned Judge held that there was absolutely no warrant for holding any enquiry so as to delay the taking of action in terms of

section 23(2). The learned Judge thereafter recorded the statement on behalf of respondent No.1 that it would now follow section 23(2) accordingly. The order recorded that the Writ Petition was withdrawn.

18. Mr. Nerlekar submitted that the petitioners registration under the Maharashtra Medical Council Act was suspended without holding any inquiry or affording them any opportunity of defending themselves only in view of the judgment of the learned single Judge. He fairly stated that the respondent No.1 had itself not formed any opinion as to whether or not the petitioners' registration ought to be cancelled. Nor had it formed any opinion whatsoever regarding the merits of the matter. Mr. Nerlekar, however, rightly stated that the Maharashtra Medical Council is bound to act on the basis of the judgment. It would be futile, therefore, to require the petitioners to pursue the review application filed by them before the Maharashtra Medical Council.

19. The question, therefore, is whether section 23(2) of the Act requires the State Medical Council to mandatorily suspend the

registration of a registered medical practitioner upon charges being framed against him for violation of the provisions of the said Act and the Rules. In other words, whether section 23(2) prohibits the State Medical Council from doing anything other than suspending the registration of a registered medical practitioner, the moment charges are framed.

20. It is unnecessary to emphasize the adverse consequences upon the suspension of the registration of a registered medical practitioner under the State Medical Council Act – in this case the Maharashtra Medical Council Act, 1965. The adverse consequences are too obvious to necessitate any elaboration.

21. Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, reads as under :-

> *"**23. Offences and penalties.**-(1) Any medical geneticist, gynaecologist, registered practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable*

with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the Court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection."

22. As we mentioned earlier, the consequences of suspension of registration of a registered medical practitioner are extremely drastic.

Section 23(2) of the Act does not exclude the principles of natural justice either expressly or by necessary intendment. In fact, as we will shortly demonstrate, the provisions of the Act and especially sub-section (1) of section 23 establish the contrary. Before going further, however, it is necessary to note the objects of the said Act.

23. We are fully conscious of the fact that The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, was enacted to protect against and remedy a very disturbing and unfortunate trend of alarming proportions. As the preamble itself states, the Act was to provide, *inter alia*, for prohibition of sex selection and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. It is necessary to set out the Statement of Objects and Reasons of the Act as well as of the Amendment Act 14 of 2003.

The Statement of Objects and Reasons of the Act are as under:-

> ***Statement of Objects and Reasons.-*** *It is proposed to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. Such abuse of techniques is discriminatory against the female sex and affects and dignity and status of women. A legislation is required to regulate the use*

of such techniques and to provide deterrent punishment to stop such inhuman act.

(2) The Bill, inter alia, provides for.-
(i) prohibition of the misuse of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide;
(ii) prohibition of advertisement of pre-natal diagnostic techniques for determination of sex;
(iii) permission and regulation of the use of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities or disorders;
(iv) permitting the use of such techniques only under certain conditions by the registered institutions; and
(v) punishment for violation of the provisions of the proposed legislation."

The Statement of the Objects and Reasons of the Amendment Act 14 of 2003, insofar as they are relevant, read as under :-

"***Amendment Act 14 of 2003 – Statement of Objects and Reasons***.- *The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques (for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.*

2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detection of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being

used on a large scale to detect the sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the large interests of the society.

4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended."

24. It is clear, therefore, that the Act was introduced to curb an extremely unfortunate and dangerous trend. The Legislature, therefore, provided for punishment for violation of the provisions of the Act.

25. We do not, however, find the Legislature having gone to the extent of visiting registered medical practitioners with drastic and far reaching consequences without affording them any opportunity of even having their case considered in any manner whatsoever. More important, we do not find the Legislature as having intended visiting registered medical practitioners with drastic civil consequences for a substantially long period of time irrespective of the nature or extent of the alleged violation of the provisions of the Act. It is clear from the provisions of the Act itself that the intention of the Legislature was not so. Much less, do we find the Legislature having intended in such cases to render the powers and the jurisdiction of the Maharashtra Medical Council redundant.

26. It is pertinent to note that the Medical Council itself was not of this view. It's present stand is only in view of the said judgment of the learned single Judge of this Court. This is evident from the judgment itself. In paragraph 2, the learned Judge noted that the Maharashtra Medical Council understood section 23 to mean that it would have to hold an enquiry before suspension or removal of the concerned

registered medical practitioner.

27. Firstly, if the Legislature intended the name of a registered medical practitioner to be suspended the moment charges are framed against him by the Court under the Act and till the case is disposed of without affording the registered medical practitioner an opportunity of defending himself, it would have provided for the same in clear language to that effect. Further, if the Legislature intended the suspension to continue till the case is disposed of, it would have provided for the same in clear, express terms. Most important, if the intention of the Legislature was to do so irrespective of the gravity of the offence under the Act, irrespective of the nature of the offence under the Act and irrespective of the extent of the offence under the Act, it would have provided for the same in clear language to that effect. The language of the section would have been entirely different. If that was the intention of the Legislature, it would have provided that upon charges being framed, the registration of the registered medical practitioner would stand suspended.

28. Section 23(2) provides that in the event of the charges being framed against a registered medical practitioner under the Act, the Appropriate Authority shall report the same to the State Medical Council "for taking necessary action, including suspension of the registration". The section does not state that upon the Appropriate Authority reporting the fact of charges being framed, the State Medical Council must suspend the registration. Section 23(2) does not require the State Medical Council to suspend the registration of the medical practitioners but only to take necessary action for suspension. Had the intention been otherwise, sub-section (2) would have provided that the name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council for suspending the registration if the charges are framed by the Court. In other words, sub-section (2) would in that case have provided that the name of such registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council and upon receipt thereof, the registration of the concerned medical practitioner will be deemed to have been suspended. Sub-section (2) would have provided that in such a case, the State Medical Council

would forthwith suspend the registration.

29. To the contrary section 23(2) only provides that upon receiving the report from the Appropriate Authority, the State Medical Council must take steps, including for suspension of the registration, meaning thereby, it must initiate the process for considering suspending the registered medical practitioner and not to suspend his registration without anything more.

30. This view is, in fact, supported by sub-section (1) of section 23. Before construing sub-section (1), it is necessary to note that under sub-section (2), the suspension is to continue from the date of framing of the charges till the case is disposed of. There is no guarantee as to when the case will be disposed of. Under sub-section (1) the persons contemplated therein who contravene any of the provisions of the Act or Rules shall be punishable with imprisonment for a period which may extend to three years and with fine which may extend to Rs.10,000/- and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to

Rs.50,000/-. There is no minimum term of imprisonment. This is clear from the words "*with imprisonment for a term which may extend to*" in respect of the first offence and any subsequent conviction.

There can be various offences under the Act with varying degrees of seriousness. For instance, the carrying out of a test prohibited under the Act with a view to determine the sex of the foetus would be a serious offence. On the other hand, the Rules provide for various things to be done, including in respect of the paper work. If, for instance, through inadvertence and with no mala fide intention some paper work remains to be done and such a lapse has no adverse consequence, the offence would not be serious. This is especially so when the person covered by section 23, though technically responsible for maintaining the records was, not responsible, for the lapse having entrusted it to another. It may still be an offence under the Act or the Rules. In such a case, however, the concerned person would in all probability not be visited with a drastic sentence. The Legislature could never have intended suspending the registration of such a person for an inordinately long period of time – indeed an indeterminate period of time viz. from the framing of the charge till the case is

disposed of and that too by depriving him of any opportunity whatsoever of having his case even considered.

31. Although the respondents did not raise the issue, it did occur to us that considering the mischief sought to be suppressed by the Act, a serious offender may, by being afforded an opportunity of being heard, manage to avoid the consequences of the law till the State Medical Council concludes the hearing. Our apprehension in this regard is, however, unfounded.

32. There is a distinction between suspensions which are made as holding operations and suspensions by way of punishment. Although the said Act does not expressly provide for interim suspension, the State Medical Council would always have the power in appropriate cases or grave urgency to suspend the registration as a holding action and afford the registered medical practitioner a post-decisional hearing. Such an order pending the enquiry would not be a penalty or punishment. It would be open thereafter for the Council, after the enquiry is conducted, to suspend the registration for such period of

time as may be warranted by the facts of a particular case. The period of suspension naturally would depend upon the nature of the alleged offence. Such an order, after hearing the medical officer finally, would be by way of penalty.

33. In *Anand Rathi & Ors. v. SEBI & Anr. (2002) 1 LJSOFT 82 = 1 Mah.L.J. 522*, a Division Bench of this Court, to which one of us (S.J. Vazifdar, J.) was a party, held :-

> ""***28.*** *In the instance case the impugned order has been passed not by way of punishment or penalty but only by way of an interim measure, pending enquiry into the manipulations. There is a well settled distinction in law between the suspensions which are made as holding operation pending enquiry and suspensions by way of punishment. As observed by Lord Denning in Lewis v. Heffer (supra), (cited with approval by the Supreme Court in Liberty Oil Mills) there is a distinction between the suspensions which are inflicted by way of punishment, as for instance, when a member of the Bar is suspended for six months or when a Solicitor is suspended from practice. He said (All E. R. page 364 para 13):*
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> > *"But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a government department or in a business house: and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he*

is given notice of the charge and an opportunity of defending himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended . At that stage the rules of natural justice do not apply. See Furnell v. Whangarei High Schools Board."

In Liberty Oil Mill's case (supra), the Supreme Court observed (SCC page 486 para 15):

"We do not think that it is permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre decisional: it may necessarily have to be post decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show cause notices to requisition beds in hospital, public or private. In such situation, it may be enough to issue post decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirement of procedural fairness and natural justice. There can be no tape measure of the extent of natural justice. It may and indeed it must vary from statute to

statute, situation to situation and case to case. Again. it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has. nevertheless. always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of principles of natural justice if an ex parte ad interim order is made unless of course. the statute itself provides for a hearing before the order is made as in clause 8A.

Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim order." (Emphasis supplied)

.....

31. *It is thus clearly seen that pre decisional natural justice is not always necessary when ad interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. In this regard the following observations of Chinnappa Reddy, J. in Liberty Oil Mill's case are pertinent (SCC page 490 para 20):*

"We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however temporarily say, from pursuing his profession or line of business, may have substantial serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice sufficient to enable the affected person to make an adequate representation (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right: See Chingleput Bottlers v. Majestic Bottling Company). That may be and in some cases it can only be after an initial ex parte interim order is made."

.....

33. *We may add that if interim action, which is of a drastic nature is to be taken ex parte, it must necessarily be animated by sense of urgency and to quote the words of Chinnappa Reddy, J. (SCC pg. 492, 493 paras 23, 24). "The sense of urgency may be infused by a host of circumstances such as trafficking and unscrupulous puddling in licences, large scale misuse of imported goods, attempts to monopolise or corner the market, whole sale prevalence of improper practices among classes of importers, public sentiment etc. etc Public interest must nolens volens be the paramount consideration."*

34. Thus, if in a case of grave urgency and if the Medical Council forms an opinion for instance that the continuation of a medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of the provisions of the said Act, it can always issue an order of suspension as a holding order and then follow it by an enquiry to consider whether or not to continue the suspension. The exercise of such power would only be in cases where the matter cannot be delayed at all.

35. In this manner, public interest, the implementation of this provision of the Act and the interest of registered medical practitioners are adequately and fairly protected.

36. We are, with respect, therefore, unable to agree with the judgment in *Dr. Pradipchandra Mohanlal Gandhi & Anr. v. Maharashtra Medical Council & Anr*.

37. In the case of the petitioners, for instance, the Medical Council would be entitled to form an opinion not merely on the basis of the

record before us, but on the basis of any other material on the question whether the petitioner's registration ought to be suspended either as a holding operation or otherwise. Our observations are only based on the record that is before us. We have recorded only *prima facie* observations. The Medical Council would be entitled to construe even the record before us on its own. They are experts who would be able to appreciate the evidence in its correct perspective and come to an informed decision as regards the petitioner's involvement or the absence thereof in the alleged violations of the provisions of the Act and the Rules.

38. Indeed, nothing prevents the Maharashtra Medical Council from proceeding against a registered medical practitioner under section 22 of the Maharashtra Medical Council Act, 1965 (MMC Act) even where a criminal case is pending against him.

Section 2(b), 2(c), and section 22(1) thereof read as under :-

> *"**2.** In this Act, unless the context otherwise requires.-*
> *….....*
> *(b) "council" means the Maharashtra Medical Council constituted or deemed to be constituted under section 3 ;*
> *(c) "Executive Committee" means the Executive*

Committee of the Council constituted under section 11 ;
….....
22. *(1) If a registered practitioner has been, after due inquiry held by the Council (or by the Executive Committee) in the prescribed manner, found guilty of any misconduct by the Council, the Council may -*
(a) issue a letter of warning to such practitioner, or
(b) direct the name of such practitioner -
(i) to be removed from the register for such period as may be specified in the direction, or
(ii) to be removed from the register permanently.

Explanation.- For the purposes of this section, "misconduct" shall mean-

(i) the conviction of a registered practitioner by a criminal court for an offence which involves moral turpitude, and which is cognizable within the meaning of the Code of Criminal Procedure, 1973 ; or

(ii) the conviction under the Army Act, 1950, of a registered practitioner subject to military law for an offence which is cognizable within the meaning of the Code of Criminal Procedure, 1973 ; or

(iii) any conduct which, in the opinion of the Council, is infamous in relation to the medical profession particularly under any Code of Ethics prescribed by the Council or by the Medical Council of India constituted under the Indian Medical Council Act, 1956, in this behalf."

39. It is well established that the nature of the proceedings and the level of proof in a criminal case and in an enquiry of the nature contemplated by section 22 of the MMC Act are different. In certain

circumstances, even if a registered medical practitioner is acquitted in the criminal proceeding, that by itself would not prevent the Maharashtra Medical Council from taking action against him under the MMC Act.

40. It is a moot point whether the powers and jurisdiction of the Council or the Executive Committee to suspend a registration as a holding operation only pending an enquiry can also be traced to section 23(2) of the Act. We, however, do not express any view on this issue as in this case, in any event, the power to do so lies in section 23(2) of the said Act.

41. In the circumstances, Rule is made absolute by quashing the suspension order. Respondent No.1, however, is directed to forthwith initiate proceedings to consider whether the registration of the petitioners under the said Act ought to be suspended and if so, for what period of time. Further, the respondent No.1 shall be entitled to issue such directions and orders to the petitioners in respect of the working of the said J.P. Hospital in order to ensure that there are no

violations of the provisions of the said Act and/or the said Rules.

There shall be no order as to costs.

M.S. SONAK, J. ***S.J. VAZIFDAR, J.***