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MEDICAL TRIBUNAL OF NEW SOUTH WALES

JUDGE SMYTH

Monday 25 May 1992

IN RE DR MAHENDRAN PONABALLAM AND THE MEDICAL PRACTITIONERS'

ACT JUDGMENT

HIS HONOUR: In this matter the appellant, a registered medical practitioner, has had a complaint lodged against him in relation to his capacity to practise medicine. That complaint was made pursuant to s 32(1) of the Medical Practitioners' Act 1938, as amended, and particulars 1 to 10 have been annexed to that complaint. Particulars 9 and 10, being particulars of his mental capacity, referred to the taking of substances which of themselves under certain circumstances could constitute a complaint, under s 28, other than the one that was laid.

It is clear under certain provisions of s 32 sub-s 3 that a complaint under 28(1)E, namely, the physical and mental capacity to practise medicine - cannot be referred to a professional standards committee unless the secretary is of the opinion that no other complaint under any other provision of s 28(1) relating to the registered medical practitioner concerned should be referred to the Tribunal.

It seems to me to be clear beyond demonstration that if the Board wishes to proceed with the application before the professional standards committee, as presently framed there is, implicit in the continuing of the proceedings, an acknowledgement that the allegations contained in pars 9 and 10 of the complaint do not constitute grounds for a complaint under any other provision of s 28(1).

The main gist of the complaint by the appellant is that he was denied natural justice in that the professional standards committee refused to accede to his request for an adjournment. As has been properly pointed out by Mr Penhall, who appears for the appellant, the mere lodging of the appeal has achieved that result.

Dealing with the substance of the submissions made on behalf of the appellant, I cannot see, under the circumstances, that the refusal by the committee to grant the application for an adjournment can constitute an error in point of law. I am not persuaded that this Tribunal, constituted as it is pursuant to s 32L(6) of the said Act is constituted as a Tribunal empowered to apply the administrative provisions of the Commonwealth or the State. This Tribunal, if it can be called such, is peculiarly a creature of statute and the only basis on which this Tribunal can act is if there has been an error in a point of law before the committee.

The other ground of complaint by the appellant is that Dr Amos, having sat upon a Tribunal in times past and found adversely in relation to this appellant and because that doctor had acquainted himself with his medical condition other than in a professional capacity. It is said that because Dr Amos now being Director General of the Department, there was apparent bias in the appointment of any professional officer, and consequently there was an inherent risk of bias. This submission I cannot accept. There was one lay person appointed and there are two professional people. It seems to me to be verging on the ridiculous to suggest, as is the logical consequence of this submission, that any Board constituted whilst Dr Amos holds his present position would be subject to such a complaint. I do not accept that.

The second complaint is that the committee decided to admit the Board's file in relation to the appellant. However, the committee is required under the provisions of the Act, Schedule 4, to inform itself as to what the situation is. It is not bound by the rules of evidence. So it seems to me that, there can be no substance in an allegation that there was a procedural injustice in the

admission of that file. The whole context of the Act must be taken into consideration. Professional standards committees are by their very nature informal. They are basically held in camera. They consist of two members of the profession and a lay person. And to a very large extent their function is conciliatory and an attempt in an informal fashion to correct any errors which may have crept into either the personal or professional life of a registered medical practitioner. Under those circumstances it seems to me quite unreasonable that there should be any requirement that a transcript of the proceedings, as a matter of procedural fairness, should be kept.

If such a committee ultimately comes to a view that the person before it is not fit to continue as a registered medical practitioner, it is bound to make a recommendation to the Chairman of the Medical Tribunal who can appoint a Deputy Chairman to endorse that position. But from that endorsement there is an appeal to a Tribunal constituted under the Act which consists of a Chairman or Deputy Chairman, two medical practitioners and a lay person.

It should be clear from what I have said that unless the person appearing before the committee accepts the recommendation of that committee as confirmed by a Chairman or Deputy Chairman of the Tribunal, that the findings and the proceedings before the committee are of no effect.

It is also submitted that the committee acted improperly so as to deny justice to the appellant in that it took advice from the registrar, such advice not being given openly within the hearing of the appellant. All I will say is that the Act contemplates that the committee should have available to it such a person. And it seems to me again that this submission is without substance.

I can see no fault with how the proceedings have been conducted and I have no recommendation or directions to make to the committee. But it seems to me, when one takes into account the costs of the proceedings and the time involved, that there may well be merit in the Board considering discontinuing the proceedings before the professional standards committee and acceding to the appellant's request that the matter be conducted before the Tribunal. If there is any substance, and I emphasise if, in this complaint, it seems to me to be desirable that the matter be resolved as quickly as possible. And if there is a sufficient lack of substance in the complaint, well then it is equally desirable that the matter be resolved in the registered medical practitioner's interest as quickly as possible.

My order is that the appeal is dismissed. I do not propose to make any order as to costs.

IN THE MATTER of the Medical Practitioners Act, 1938.

AND IN THE MATTER of the referral to the Medical Tribunal in respect of Dr. Mahendran PONNAMBALAM pursuant to Section 32J(1) of the said Act.

TAKE NOTICE that the Medical Tribunal has received a reference from a Professional Standards Committee under Section 32J(1) of the Act with a recommendation that your name be removed from the Register of Medical Practitioners for the State of New South Wales.

AND FURTHER TAKE NOTICE that the Medical Tribunal pursuant to the said recommendation hereby orders that your name be removed from the said Register from this date.

Dated this 1st day of October, 1992.



J.H. Staunton

His honour Judge J.H. Staunton,
C.B.E., Q.C.,
Chairperson Medical Tribunal
constituted under Section 32J(2) of
the Medical Practitioners Act, 1938.

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