

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.15724 of 2022

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

Professor Zaheer Al-Amin

... Petitioner

-vs-

***Bangladesh represented by the Secretary,
Ministry of Health and Family Welfare,
Government of Peoples Republic of
Bangladesh, Secretariat Bhaban, Ramna,
Dhaka-1000***

... Respondents.

And

Dr. Rafiqur Rahman, Senior Advocate with
Mr. Mustafizur Rahman Khan, Senior Advocate
Mr. Md. Khalilur Rahman, Advocate with
Dr. Nasima A. Rahman, Advocate with
Ms. Mehreen Hassan, Advocate with
Ms. Sumaiya Ifrit Binte Ahmed, Advocate and
Mr. Shafayet Ahmed, Advocate

.... For the Petitioner.

Mr. Md. Faruk Hossain, Advocate

..... For the respondent No.1

Mr. K.M. Tanjib-ul-Alam, Senior Advocate with
Mr. Kazi ErshadulAlam, Advocate and
Ms. Nazmun Binte Islam, Advocate

.... For the respondent No.3

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with
Mr. Md. Modersher Ali Khan (Dipu), A.A.G. and
Mr. Md. Taufiq Sajawar (Partho), A.A.G.

....For the Respondents-government.

**Heard on:15.06.2023, 17.08.2023, 08.11.2023, 12.11.2023,
15.11.2023, 16.11.2023 and Judgment on:19.11.2023**

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

This Rule Nisi was issued under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondents to show cause as to why the impugned office order dated 16.11.2022 issued under the signature of the Registrar (in-charge), Bangladesh Medical and Dental Council, respondent No.3 vide Memo No. BM&DC/12-E-2022/1027 suspending the operation of registration of the petitioner and thereby debarring him as a doctor to do medical practice for a period of 1(one) year (Annexure-G), should not be declared to have been passed without lawful authority and hence, of no legal effect.

Facts, in brief, are that the petitioner after obtaining his MBBS degree from Dhaka Medical College (DMC) in 1983 got his registration bearing No. A-12688 on 28.11.1984 from Bangladesh Medical and Dental Council (in short, BMDC) to practice as a doctor. Subsequently, he obtained several foreign degrees in order to maintain a high-level medical competence and also, to gather professional knowledge and skills. Considering his performance with unblemished record of service the petitioner was subsequently promoted to the post of Professor at Ibrahim Medical College and Hospital vide appointment letter dated 10.01.2008 (Annexure-A-4).

During the course of practice period as a doctor a complaint was lodged against the petitioner by the husband of the patient concerned before the Chairman, BMDC, Bangladesh on 01.06.2020 (Annexure-B2) alleging, *inter-alia*:

“..... রাত আনুমানিক ৩ টায় লাল ড্রেস পরিহিত এক ভদ্রমহিলা আমাকে জানান যে অপারেশন সাকসেসফুল হয়েছে এবং আমার হাতে একটি কৌটাতে কিছু স্যাম্পল দিয়ে

বায়োপসি টেস্টের জন্য ল্যাবে জমা দিতে বলেন (মানি রিসিট সংযুক্ত)। যথারীতি ল্যাবে জমা দিয়ে এসে অপারেশন থিয়েটারের সামনে ফিরে এসে দেখি আমার শ্বাশুড়ি, আমার বন্ধু ও তার স্ত্রী কান্নাকাটি করছে। তখন জানতে পারি ভুল অপারেশন করা হয়েছে অর্থাৎ বাম গালের পরিবর্তে ডান গালে কানের পিছনে অপারেশন করা হয়েছে।

..... আমার অনুমতি না নিয়েই পুনরায় আমার স্ত্রীর বাম গালের কানের পাশে অপারেশন করেন। অর্থাৎ প্রথমে ডান গালের কানের কাছে অপারেশন এবং পরবর্তীতে পুনরায় বাম কানের কাছে অপারেশন করা হয়। বায়োপসি করার জন্য পুনরায় স্যাম্পল (মানি রিসিট সংযুক্ত) নিয়ে এলে ওদের এসব কাণ্ড দেখে আমি হতবিস্ময় হয়ে পড়ি। ইতমধ্যে আমার বেশকিছু বন্ধুবান্ধব ও বড় ভাই এসে উপস্থিত হয়ে ডাক্তারের এসব পাগলামির প্রতিবাদ করলে জাহির আল আমিন, কর্ণেল মাগরুব, ডাইরেক্টর বেলাল এবং তেজগাঁও থানার পুলিশের উপস্থিতিতে তিনি স্বীকার করেন যে, তিনি ভুল অপারেশন করেছেন।.....”

Pursuant thereto the Registrar (In Charge) BMDC, respondent No.3 vide notice dated 03.06.2020 (Annexure-C) with copy of the said complaint asked the petitioner to give written explanation within 15(fifteen) days of receipt thereof. In response thereof the petitioner gave written reply on 23.06.2020 (Annexure-C1) to the said respondent denying the allegations so made against, with request to allow him to place his respective explanation before the Council or any specialized committee. After more than a year, without giving any notice whatsoever of constitution of the disciplinary committee concerned “শৃংখলা কমিটি” vide order dated 29.09.2021 (Annexure-D) the petitioner was asked by the respondent No.3 to appear before the said committee on 05.10.2021 at 11:00 am for “উক্ত অভিযোগের বিষয়ে সঠিক তথ্য উদঘাটন ও সিদ্ধান্ত গ্রহণের সুবিধার্থে”. In response thereof the petitioner duly appeared before the said committee on the respective date and time. In this regard the assertion of the petitioner is that his statements were not recorded in writing.

About a year later, the respondent No.3 vide order dated 31.10.2022 (Annexure-E) issued a show cause notice upon the petitioner

as to why his registration to do medical practice should not be suspended under Section 23(1) of the Bangladesh Medical and Dental Council Ain, 2010 (in short, the Ain) read with clause 5.3.3 of the Code of Professional Conduct, Etiquette and Ethics (in short, the Code) with direction to give written reply within 7(seven) working days of receipt thereof.

Said show cause notice dated 31.10.2022 (Annexure-E) is quoted below:

“বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল
Bangladesh Medical & Dental Council

স্মারক নং-বিএম এন্ড ডিসি/১২-ই-২০২২/৮৪০

তারিখ: ৩১/১০/২০২২ইং

প্রপাক:

অধ্যাপক ডাঃ আলী জাহির আল-আমীন
বিভাগীয় প্রধান
নাক কান গলা ও হেক নেক সার্জারী বিভাগ
ইমপালস হেলথ সার্ভিসেস এন্ড রিচার্স সেন্টার লিঃ
৩০৪/ই, তেজগাঁও শিল্প এলাকা, ঢাকা-১২০৮।

বিষয়ঃ রোগীর অভিভাবকের অনুমতি ছাড়া চিকিৎসা প্রদানে বাম কানের পরিবর্তে ডান কান ভুল অপারেশন ও রোগীর অভিভাবকে মিথ্যা তথ্য প্রদান করায় বিএমএন্ডডিসি কর্তৃক শাস্তিমূলক ব্যবস্থা গ্রহণ প্রসঙ্গে।

উপরোক্ত বিষয়ে আপনাকে জানানো যাইতেছে যে, ইমপালস হাসপাতাল, ৩০৪/ই, তেজগাঁও, ঢাকা ভর্তিকৃত রোগী মিসেস মোমেনা হক মুন-৩৮বৎসর(Patient ID-2003000192, Date:11.03.2020) এর চিকিৎসা প্রদানে আপনার ভুল অপারেশন, বাম কানের পরিবর্তে ডান কানের অপারেশন, রোগীর মুখের আকৃতি বাকা হয়ে যাওয়ার ও রোগীর অভিভাবকে মিথ্যা তথ্য প্রদানের বিষয় উল্লেখ করিয়া রোগীর স্বামী জনাব জিয়াউর রহমান ভূঁইয়া গত ০১/০৬/২০২০ইং তারিখে অত্র কাউন্সিলে অভিযোগ দাখিল করেন। উক্ত অভিযোগের প্রেক্ষিতে কাউন্সিল কর্তৃক গঠিত তদন্তে প্রতীয়মান হয় যে, চিকিৎসা কার্যে আপনার যথেষ্ট অবহেলা ও গাফিলতি ছিল তাহা প্রমানিত হইয়াছে। এমতাবস্থায় বিএমএন্ডডিসি এর Code of Professional Conduct, Etiquette and Ethics এর অনুচ্ছেদ 5.3.3 এবং বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল আইন ২০১০ এর ধারা ২৩(১) অনুযায়ী আপনার বিরুদ্ধে শাস্তিমূলক ব্যবস্থা হিসাবে বিএমএন্ডডিসি হইতে প্রদত্ত আপনার রেজিস্ট্রেশন এর কার্যকারিতা কেন সাময়িক স্থগিত করা হইবে না তাহা পত্র প্রাপ্তির ০৭(সাত) কর্মদিবসের মধ্যে নিম্নস্বাক্ষরকারীকে লিখিতভাবে অবহিত করার জন্য জানানো যাইতেছে।

রেজিস্ট্রার (ভারপ্রাপ্ত)

বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল”

In response thereof the petitioner gave written reply on 10.11.2022 (Annexure-F) denying the allegations so brought against, with request for re-enquiry and accordingly to allow him to appear during the course of re-enquiry. However, without affording him an opportunity to remain present before the enquiry committee in order to controvert the allegations, without informing the charges levelled against him, without examining him or any other witnesses in support of his defence and also, to allow him to inspect the documents which were relied upon for the purpose of being used against him and lastly, without even supplying the so called enquiry report, the Council in its 242nd Executive Meeting dated 12.09.2022 (Annexure-6 of the supplementary affidavit to the affidavit in opposition) took decision to suspend the operation of registration of the petitioner for 1(one) year. Pursuant thereto vide the impugned order dated 16.11.2022 (Annexure-G) issued under the signature of the respondent No.3 the operation of the registration of the petitioner bearing No. A-12688 had been suspended under Section 23(1) of the Ain, 2010 and Clause 5.3.3 of the Code of Professional Conduct, Etiquette and Ethics for a period of 1(one) year with effect from 20.11.2022, as a mode of punishment, with further direction that the petitioner would not be allowed to practice during the said period.

Impugned order dated 16.11.2022 (Annexure-G) issued by respondent No.3 is quoted below:

“বাংলাদেশ মেডিকল এন্ড ডেন্টাল কাউন্সিল
BANGLADESH MEDICAL & DENTAL COUNCIL

স্মারক নং-বিএমএন্ডডিসি/১২-ই-২০২২/১০২৭

তারিখঃ ১৬/১১/২০২২ইং

প্রাপক,

অধ্যাপক ডাঃ আলী জাহীর আল-আমীন (বিএমএন্ডডিসি রেজিস্ট্রেশন নম্বর: A-12688)

ব্যবস্থাপনা পরিচালক
ইমপাল্‌স হেলথ সার্ভিসেস এন্ড রিচার্স সেন্টার লি:
৩০৪/ই, তেজগাঁও শিল্প এলাকা, ঢাকা-১২০৮।

বিষয়ঃ বিএমএন্ডডিসি কর্তৃক আপনার রেজিস্ট্রেশন স্থগিত করণ প্রসঙ্গ।

উপরোক্ত বিষয়ে স্মারক নং-বিএমএন্ডডিসি/১২-ই-২০২২/৮৪০ তারিখ ৩১/১০/২০২২ইং এর প্রেক্ষিতে আপনার প্রেরিত লিখিত জবাব কাউন্সিলের নিকট সন্তোষজনক প্রতীয়মান হয় নাই। আপনি ইমপাল্‌স হাসপাতাল, ৩০৪/ই, তেজগাঁও ১/এ, ঢাকা ভর্তিকৃত রোগী মিসেস মোমেনা হক মুন- ৩৮ বৎসর (Patient ID-2003000192 Date: 11.03.2020) এর চিকিৎসা প্রদান আপনার ভুল অপারেশন, বাম প্যারোটাইড গ্ল্যান্ড এর পরিবর্তে ডান প্যারোটাইড গ্ল্যান্ড অপারেশন, রোগীর মুখের আকৃতি বাঁকা হয়ে যাওয়ায় ও রোগীর অভিভাবককে মিথ্যা তথ্য প্রদানের বিষয় উল্লেখ করিয়া রোগীর স্বামী জনাব জিয়াউর রহমান ভূঁইয়া অত্র কাউন্সিলে অভিযোগ দাখিল করেন। উক্ত অভিযোগের প্রেক্ষিতে কাউন্সিল কর্তৃক গঠিত তদন্তে প্রতীয়মান হয় যে, চিকিৎসা কার্যে আপনার যথেষ্ট অবহেলা ও গাফিলতি ছিল তাহা প্রমাণিত হইয়াছে। এমতাবস্থায় বিএমএন্ডডিসি এর Code of Professional Conduct, Etiquette and Ethics এর অনচ্ছেদ 5.3.3 এবং বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল আইন, ২০১০ (৬১ নং আইন) এর ২৩(১) ধারায় প্রদত্ত ক্ষমতাবলে বিএমএন্ডডিসি হইতে প্রদত্ত আপনার রেজিস্ট্রেশন (A-12688, Date of Registration, 28th November, 1984) ১(এক) বৎসরের জন্য স্থগিত করা হইল যাহা ২০/১১/২০২২ইং তারিখ হইতে কার্যকর হইবে। উল্লেখিত সময় বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল আইন, ২০১০ (৬১ নং আইন) এর ধারা ২২(১) অনুযায়ী আপনার রেজিস্ট্রেশন স্থগিতকালীন সময়ে আপনি চিকিৎসক হিসাবে কোথাও কোন প্রকার চিকিৎসা সেবা প্রদান করিতে পারিবেন না। এমনকি উক্ত সময় আপনি নিজেকে চিকিৎসক হিসাবে পরিচয় দিতে পারিবেন না।

ডাঃ মোঃ লিয়াকত হোসেন
রেজিস্ট্রার (ভারপ্রাপ্ত)
বাংলাদেশ মেডিকেল এন্ড ডেন্টাল কাউন্সিল”

Challenging the said order dated 16.11.2022 (Annexure-G) the petitioner preferred appeal before the respondent No.1 on 28.11.2022 (Annexure-H) under Section 24 of the Ain, 2010. However, pending disposal of the said appeal the petitioner filed the instant writ petition under Article 102 of the Constitution and obtained the present Rule Nisi.

The petitioner being a registered doctor under BMDC is guided and governed by the BMDC Code of Professional Conduct, Etiquette and

Ethics and also, Bangladesh Medical and Dental Council Ain, 2010 (Act No. 61 of 2010) (in short, the Ain, 2010).

Section 18(1) of the Ain, 2010 prescribes the conditions for registration of a qualified doctor with the Council with a view to do medical practice and that the Council shall publish and preserve the register containing the respective registration numbers of the registered doctors.

Section 18(1) is quoted below:

“১৮(১) এই আইনের উদ্দেশ্য পূরণকল্পে, কাউন্সিল, পেশাদার ও স্বীকৃত মেডিকেল চিকিৎসকদের নিবন্ধন করতঃ উহাদের নাম, এতদসংক্রান্ত প্রয়োজনীয় বিবরণসহ, একটি রেজিস্টারে অন্তর্ভুক্ত করিবে, এবং উক্ত রেজিস্টার প্রকাশ ও সংরক্ষণ করিবে।”

Vide Section 22 of the said Ain, without having registration under this Ain, 2010 no doctor is allowed to do medical practice.

Section 23(1), however, empowers the Council to remove the name of the delinquent doctor from the respective register upon cancelling his registration, if he is found guilty for violation of any provision of the Ain, 2010 or prescribed Code of Conduct or any provision of the respective guidelines. Vide sub-section (2) the Council is authorised to re-register the name of the delinquent doctor whose registration has been cancelled and removed from the register under sub-section (1).

Section 23 of the Ain, 2010 is quoted as under:

“২৩(১) এই আইনের অধীন নিবন্ধিত কোন পেশাদার মেডিকেল চিকিৎসক, ডেন্টাল চিকিৎসক বা মেডিকেল সহকারী এই আইনের কোন বিধান লংঘন বা নির্ধারিত পেশাগত আচরণ বা নীতিমালার কোন বিধান লংঘনের কারণে দোষী সাব্যস্ত হইলে, কাউন্সিল উক্ত ব্যক্তির নিবন্ধন বাতিলক্রমে সংশ্লিষ্ট রেজিস্টার হইতে তাহার নাম প্রত্যাহার করিতে পারিবে।

২। কাউন্সিল, উহার বিবেচনাক্রমে, উপ-ধারা (১) এর অধীনে নিবন্ধন বাতিলকৃত ও রেজিস্টার হইতে প্রত্যাহারকৃত ব্যক্তির নাম এই আইনের বিধান অনুসারে পুনরায় নিবন্ধন ও রেজিস্টারভুক্ত করিতে পারিবে।”

Section 24 provides forum of appeal before the government to be preferred within the prescribed period against the order of refusal of the Council for registration of the name of the person concerned or removal of the name of the doctor concerned from the register maintained by the Council, as the case may be. However, the decision to be given by the government shall be treated as final.

From the above, it appears that Section 23 though empowers the Council to cancel registration of a medical practitioner as a mode of punishment, but it does not prescribe the statutory procedures to be observed prior to passing such order. Moreso, the Legislature does not in express term requires compliance of the principles of natural justice along with personal hearing of the delinquent person concerned prior to taking the decision for cancellation of registration. In this connection, it is also pertinent to observe that within the four corners of the Ain, 2010 neither there is any provision for suspension of the operation of the registration nor suspension has been prescribed by the Legislature as a mode of punishment.

As it is seen from record, vide the impugned order dated 16.11.2022 passed by the respondent No. 3 (Annexure-G) the operation of registration of the petitioner has been suspended by the Council for a period of 1(one) year as a mode of punishment with direction that he shall be debarred from practicing for the said period.

However, fact remains that the impugned order of suspension of the registration of the petitioner is rooted in the complaint dated 01.06.2020 (Annexure-B2) so made by the husband of the patient concern alleging, *inter-alia*, that on the respective date the petitioner as the doctor concern

was supposed to conduct surgery on the left parotid gland of the patient basing on the diagnosis report and to that effect required written consent of the guardian of the patient was taken prior to surgery. But during the course of surgery instead of left parotid gland the petitioner conducted surgery on the right parotid gland. Later, on the same date without taking written consent of the guardian of the patient concerned the petitioner again conducted surgery on the left parotid gland. Pursuant thereto vide office letter dated 03.06.2020 (Annexure-C) the petitioner was directed by the respondent No.3 to give written reply within a prescribed period. In response thereof the petitioner gave reply on 23.06.2020 (Annexure-C1) to the respondent No.3 denying the assertions so made against. Later, the said respondent vide officer letter dated 29.09.2021 (Annexure-D) directed the petitioner to appear before the “শুজলা কমিটি” in order to find out the veracity of the allegations.

At this juncture, Mr. Mustafizur Rahman Khan, the learned Senior Advocate appearing for the petitioners submits that in response to order dated 29.09.2021 (Annexure-D) the petitioner duly appeared before the Disciplinary Committee on the respective date but neither the notice of constitution or formation of the said committee nor its report has been furnished to the petitioner. Rather, from Annexure-5 to the affidavit in opposition it is apparent that after hearing the petitioner and the complainant respective decision was taken by the said committee to go for investigation.

In this regard, drawing attention to the investigation report (Annexure-3 to the affidavit in opposition) he submits that on a plain reading of the same it apparently appears that neither the petitioner nor the

complainant as well as the patient concern was called upon to give statement to find out the genuineness of the allegations nor has cited the respective documents which were relied upon against the petitioner. Consequently, he submits that the impugned process has caused prejudice to the right of the petitioner in defending himself properly and effectively, which ultimately culminated in suspension of his registration to practice for a period of 01(one) year.

The ultimate and overriding objective underlying the rule of *audi alteram partem* is to ensure a fair hearing and to ensure that there is no failure of justice. However, the general principles of service law is that the process of domestic enquiry is undertaken by the authority concern prior to issuance of show cause notice to find out the *prima facie* substance to the allegations so brought against and if found substance thereto upon supplying the copy thereof the person concern is asked to give reply. If reply is found not satisfactory, upon formation/constitution of Disciplinary Committee the delinquent is called upon to represent his case with required documents in support of his defence, record the statements of other witnesses, if be needed, to allow him to cross examine those witnesses if situation requires to and also, to allow him to controvert the documents as relied upon against him. Considering the above, the Disciplinary Committee shall be able to form its opinion basing on preponderance of probability whether charges are proved against the person concern, which may ultimately culminate in imposition of penalty, either major or minor, considering the context of the respective case.

In the present case, admittedly on 11.03.2020 the patient concern was admitted in the hospital in question under the supervision and advice

of the petitioner basing on his own examination for “revision parotid surgery”, as is supported from the letter issued by him to the respondent No.3 on 23.06.2020 [(Annexure-C(1))] and most importantly, with written consent. However, during the course of surgery instead of left parotid gland as previously advised and planned the petitioner conducted surgery on right parotid gland with collection of sample and sent it for histopathology test at 3:23 a.m. (Annexure-2 to the affidavit in opposition) without any mention whatsoever of any diagnosis of any problem on the right parotid gland. Subsequently, without taking written consent from the relatives of the patient he went on to conduct another surgery on the left parotid gland with collection of sample of the left parotid gland and sent it for histopathology test at 6:26 a.m. for examination [(Annexure-2(A) to the affidavit in opposition)]. Moreso, on 15.03.2020 pursuant to complaints so made by the patient and her relatives the petitioner gave an undertaking [(Annexure-2(b))] stating, *inter alia*, that “*the hospital (Impulse) authority is hereby giving commitment that Impulse will take responsibility of any unacceptable complications arising out of this operation any time in future.*”

Considering the above admitted position of facts, Mr. K.M. Tanjib-ul- Alam, the learned Senior Advocate appearing for the respondent No.3 by filing affidavit-in-opposition as well as supplementary affidavit to the affidavit-in-in opposition referring to Ain, 2010 goes to contend that said Ain does not deal with the terms and conditions of service of the petitioner, but deals with respective requirements for being enlisted as a registered doctor with the Council for medical practice. Hence, he submits, question of following the procedures in connection with

domestic enquiry and or disciplinary proceeding, which are squarely applicable in connection with the terms and conditions of service of the delinquent person, are not applicable in the instant case. In this regard, he goes to argue that despite the fact that the petitioner is responsible for the wrong surgery the authority concerned vide order dated 03.06.2020 (Annexure-C) gave him opportunity to reply to the allegations so brought against. Again, on 29.09.2021 (Annexure-D) the petitioner was given accommodation to appear before the committee concerned to give reply in order to defend his part of the case. Subsequent thereto the petitioner was served with a show cause notice on 31.10.2022 with opportunity to give reply. Ultimately, upon considering his reply and the report submitted by the investigation committee on 19.05.2022 the Council instead of cancelling the registration of the petitioner permanently under Section 23(1) took lenient view by suspending the operation of registration of the petitioner for a period of 01 (one) year only. Accordingly, he submits that the assertion of being prejudiced by the petitioner for not being provided reasonable opportunity, has no legal to stand.

He lastly submits that challenging the order of suspension the petitioner preferred appeal before the government on 28.11.2022 (Annexure-H) and prior to disposal of the said appeal he filed the instant writ petition and obtained the present Rule. On that score as well, he submits, this Rule must fail as being not maintainable.

We find substance to the contention of the respondent No.3 that Ain, 2010 does not deal with the terms and conditions of services of the registered medical practitioner, but it deals with, amongst others, the conditions required for registration with the Council in order to allow the

qualified doctor concern to do medical practice. However, vide Ain, 2010 the Council ensures that the registered qualified doctor does not compromise with the principles that characterize good medical practice and the standards of ethical and professional conduct expected of doctors by their professional peers and the community, as enshrined in the Bangladesh Medical and Dental Council Code of Professional Conduct, Etiquette and Ethics, as framed in exercise of power as provided under Section 5(22) of the Bangladesh Medical and Dental Council Ain, 2010.

The allegation against the petitioner is that he was supposed to perform surgery on the left parotid gland with written consent with diagnosis report but instead he operated on right parotid gland. After conducting wrong surgery on the right side he further conducted surgery on the left parotid gland after almost 3 hours of the first surgery without any reference of any diagnosis of any problem on the right parotid gland. Further, in the investigation report dated 19.05.2022 submitted by the Committee concerned it was opined, *inter alia*,

“তদন্ত কার্যক্রম ও মন্তব্যঃ-

অভিযোগকারী মোঃ জিয়াউর রহমান ভূইয়া এবং অভিযুক্ত চিকিৎসক অধ্যাপক ডাঃ জাহীর আল-আমীন এর ডকুমেন্টগুলো পর্যালোচনা করে নিম্নলিখিত বিষয়গুলো সনাক্ত করা হয়ঃ-

- ১। চিকিৎসক অপারেশনের আগে ব্যবস্থাপত্রে ডান পাশের Parotid Swelling সম্পর্কে কোন তথ্য উল্লেখ করেন নাই।
- ২। ব্যবস্থাপত্রে শুধুমাত্র বাম পাশের Parotid Swelling এর FNAC সহ পরীক্ষা-নিরীক্ষা উল্লেখ আছে।
- ৩। অপারেশনের সময় চিকিৎসকের ভাষ্যমতে বাম পাশের Parotid gland এর অপারেশন আগে না করে সনাক্তকৃত Incidental Tumor of Right parotid gland- এর অপারেশন করেন। কারণ হিসাবে চিকিৎসক অপারেশনের সময় টেবিলে তাৎক্ষণিকভাবে ডানপাশে Tumor সনাক্তের কথা উল্লেখ করেন।
- ৪। রোগী বা রোগীর অভিভাবকের সম্মতি ছাড়া তাৎক্ষণিকভাবে সনাক্তকৃত Tumor এর অপারেশন আগে করেন।

৫। তাত্ক্ষণিকভাবে সনাক্তকৃত ডান পাশের Parotid gland - এর অপারেশনকৃত কথিত Tumor এর Histopathology রিপোর্ট পাওয়া যাই নাইঃ

মন্তব্যঃ-

উল্লিখিত বিষয়গুলো পর্যালোচনা করে তদন্ত কমিটির কাছে প্রতীয়মান হয় যে চিকিৎসাক্ষেত্রে চিকিৎসকের যথেষ্ট অবহেলা ছিল।”

However, considering the reply of the petitioner and the findings of the investigation committee the Council took lenient view imposing punishment of suspension instead of cancellation of registration of the petitioner in exercise of power as provided under Section 23(1).

The legal position is well settled that power of judicial review under Article 102 of the Constitution of the People’s Republic of Bangladesh in cases of imposition of punishment of the delinquent person is not on merits of the impugned decision. Moreso, while exercising this power it is not open to this court to reappraise and reappraise the documents led before the inquiry committee and examining the findings recorded by the said committee as a court of appeal. This court is to see whether there was non-observance of the principle of natural justice, denial of reasonable opportunity or the punishment so has been imposed is totally or shockingly disproportionate to the proven context.

As observed earlier, prior to issuance of the impugned order of suspension the petitioner was asked to give reply on the allegations on two occasions; one, immediate after receipt of complaint i.e. on 03.06.2020 (Annexure-C) and another, on 29.09.2021 (Annexure-D) before the Disciplinary Committee. Later, vide show cause notice dated 31.10.2022 (Annexure-E) he was again given opportunity to give reply to the allegations so brought against, in order to defend his part of the case. In the given facts and circumstances, absence of service of notice at the

stage of investigation does not go to negate the admitted fact that the petitioner did conduct surgery on the right parotid gland without taking written consent and again conducted surgery on the left parotid gland on the same date. It also cannot dislodge the fact that for non-compliance of service of notice at investigation stage the patient did not suffer.

Considering the context of the case and position of law we have no manner of doubt to find that raising the plea of non-service of notice during the course of investigation and thereby claimed to have been prejudiced for having been deprived of getting reasonable opportunity to defend his case, falls through. Moreover, in view of the facts and circumstances of the instant case the impugned punishment of suspension of registration cannot be termed as shockingly disproportionate to the findings of the authority concerned.

In view of the above, it is accordingly found that prior to issuance of the impugned order of suspension dated 16.11.2022 there was due observance of the basic principle of natural justice with reasonable opportunity so has been provided to the petitioner to defend his case.

In view of the findings that the impugned order of suspension is lawful hence, filing the instant writ petition pending disposal of the appeal, so has been preferred by the petitioner challenging the said order of suspension and thereupon obtaining the present Rule, is not maintainable.

Considering the above facts and circumstances of the case, observations and findings we do not find any substance for interference in the instant Rule.

In the result, this Rule is accordingly discharged without any order as to costs.

At this juncture, Mr. Mustafizur Rahman Khan, the learned Senior Advocate appearing for the petitioner informs the court that due to the impugned order of suspension adverse steps are being taken by the authority concern of the respective foreign institutes with regard to the foreign degrees so have been obtained by the petitioner therefrom. Accordingly, he submits that since the impugned judgment and order passed today by this Hon'ble Court is not based on finding of facts rather on compliance of the principle of natural justice; hence, he prays for an observation to that effect.

The submissions so have been advanced by the learned Counsel for the petitioner is not supported with affidavit along with documents; hence, we refrain from making any observations to that effect.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.

Montu (B.O)