

**Saroj Iyer And Anr.**

**vs**

**Maharashtra Medical Council Of Indian Medicines**

Bombay High Court

4 September, 2001

Citations: AIR 2002 Bom 97, 2002 (3) BomCR 416, (2002) 1 BOMLR 504

Bench: R Lodha, N Mhatre

**JUDGMENT**

1. These two writ petitions were heard together and are being disposed of by this common judgment as common issues are involved therein and principal prayer is identical for issuance of direction to the Maharashtra Medical Council of Indian Medicines from preventing the members of the public in general and the petitioners in particular from attending the enquiries held under Section 22 of the Maharashtra Medical Council Act, 1965.

2. For the sake of convenience we intend to refer to the facts of writ petition No. 493 of 1990. The first petitioner in this writ petition is a journalist employed in the Times of India and she has filed the petition in her capacity as Journalist as well as in public interest. The second petitioner Medico Friends Circle is a registered society and trust. The first respondent is the Maharashtra Medical Council of Indian Medicine, statutory body established under Section 3 of Maharashtra Medical Council Act, 1965 (for short 'Act of 1965') and the second respondent is the State of Maharashtra. The first petitioner claims to have interest in socio-medical issues and has published some articles in that regard. Both the petitioners claim to be keenly involved in the issues relating to medical ethics. It is petitioners' case that one Mr. Singhi made a complaint to first respondent on 28-4-1989 principally against Dr. P. B. Desai of Bombay Hospital alleging therein that on account of Dr. Desai's criminal negligence and unethical behaviour his wife died. As a result of this complaint filed by Mr. Singhi, the Maharashtra Medical Council of Indian Medicine (respondent No. 1) issued notice to Dr. P. B. Desai and others and commenced an enquiry under Section 22 of the Act. Mr. Singhi retired in 1988 as Deputy Secretary to Government of Rajasthan and the complaint filed by him attracted national attention. The first petitioner as a Journalist sought to attend the enquiry proceedings before Maharashtra Medical Council but the same was refused giving rise to the present writ petition.

3. In response to the writ petition, the first respondent filed initially an affidavit opposing admission of the petition and thereafter filed affidavit in reply after rule was issued. The first respondent has set up the case that the right claimed by petitioners to attend the enquiry proceedings under Section 22 of the Act of 1965 cannot be an absolute right and petitioners cannot claim as a matter of right to attend the enquiry proceedings. The diverse reasons given therefor are that Maharashtra Medical Council is a professional tribunal and is entitled to regulate its own proceedings which would include holding of proceedings in camera; the reputation of a person against whom complaint is lodged is sacrosanct and cannot be allowed

to be damaged, tarnished or prejudiced if the complaint is frivolous or bogus and, therefore, publication of establishment of the truth in the enquiry proceedings in camera proceedings would be essential. In the affidavit in reply it is admitted that Maharashtra Medical Council is quasi-judicial body empowered to regulate professional conduct, discipline and ethics in Indian medicine and similar to Medical Council of India are bodies like institute of Chartered Accountants of India constituted under Chartered Accountants Act, 1949, the Bar Council constituted under the Advocates Act, 1961, the Press Council of India constituted under the Press Council Act, 1965, the Dental Council of India constituted under the Dentists Act, 1948 and before all these statutory bodies the disciplinary proceedings are held in camera and are not open to public at large.

4. Mr. Gonsalves, learned counsel appearing for petitioners relying upon the provisions of Maharashtra Medical Council Act, 1965 and the Maharashtra Medical Council Rules, 1967 submitted that the enquiry held by the Maharashtra Medical Council or the Executive Committee of the said Council in respect of misconduct of any registered practitioner under Section 22 of the Act of 1965 is in the nature of quasi-judicial proceedings and thus ordinarily cannot be held in-camera and therefore, there cannot be blanket ban for public from attending such proceedings. He submitted that neither the Act of 1965 nor the Rules framed thereunder provides that the enquiry proceedings under Section 22 shall be held in secrecy or that such enquiry proceedings shall be confidential. The contention of Mr. Gonsalves, learned counsel for petitioners is that fundamental right of first petitioner under Article 19(1)(a), (d) and (g) of Constitution of India has been infringed by respondent No. 1 viz. Maharashtra Medical Council by not permitting her to attend the enquiry proceedings under Section 22 of the Act of 1965.

5. On the other hand, Mr. Jamdar, learned counsel appearing for Maharashtra Medical Council strenuously urged that by virtue of Section 9(1) of the Act of 1965, the proceedings of the enquiry under Section 22 of the Act of 1965 are confidential and, therefore, general public cannot as a matter of right claim to attend such enquiry proceedings. He submitted that the patient and doctor has fiduciary relationship and in the very nature of such relationship the general public cannot be permitted to attend disciplinary enquiry proceedings against the registered doctor. He submitted that Section 9(1) is applicable to enquiry proceedings under Section 22 of the Act of 1965.

6. The Maharashtra Medical Council Act, 1965 was enacted to unify, consolidate and make better provision in the law regulating the registration of persons practising modern scientific medicine in the State of Maharashtra and to provide for matters connected therewith. Section 3 provides for constitution of the Council for the Maharashtra Medical Council and its composition. Section 8 provides that the meetings of the Council shall be convened, held and conducted in such manner as may be prescribed. It provides for the coram and the presiding authority at the meeting and that all questions at the meeting of the Council shall be decided by majority of votes. Section 9(1) makes a provision that the proceedings of the discussion of every meeting of the Council shall be treated as confidential and no person shall disclose any portion of proceedings of the discussion without the previous resolution of the Council. However, It does not prohibit any person from disclosing or publishing the text of any resolution adopted by the Council unless the council directs that such resolution shall be treated as confidential. Section 10 deals with powers and functions of the Council which inter alia empowers the Maharashtra Medical Council to reprimand the medical practitioner or to suspend or remove him from the register or to take such other disciplinary action against him which may be deemed necessary. Section 11 provides for the Executive Committee. Section

22 enables the Maharashtra Medical Council or its Executive Committee to hold enquiry against the registered practitioner in respect of the alleged misconduct in the prescribed manner and if found guilty of any misconduct to pass an appropriate order contemplated therein including removal of his name from register for a particular period or permanently. In enquiry proceeding under Section 22, the Medical Council or the Executive Committee, as the case may be, has same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 when trying suit in respect of matters viz. (i) enforcing the attendance of any person, and examining him on oath; (ii) compelling the production of documents; and (iii) issuance of commissions in examination of witnesses. For the purposes of Sections 193, 219 and 228 of the Indian Penal Code, the enquiries under Section 22 are deemed to be judicial proceedings. The State Government has been empowered to frame rules to carry out the purposes of this Act under Section 30 including for Section 8 in respect of manner of convening, holding and conducting meetings of the Council and Section 22 about the manner of holding enquiries. In exercise of its powers conferred by Sub-sections (1) and (2) of Section 30 of the Act of 1965, the Government of Maharashtra has made the Rules titled Maharashtra Medical Council Rules, 1967 (for short 'Rules of 1967'). Chapter I of the rules is preliminary; Chapter II deals with election; Chapter III deals with conduct of business of the Council; Chapter IV makes rules in respect of Executive Committee; Chapters IV-A and V deals with President's powers and duties and registration respectively; Chapter VI deals with the enquiries under Section 22; Chapter VII provides for appeal by a person aggrieved for any decision of the Registrar; Chapter VIII is in respect of the conditions of service of Registrar and other staff and supervisory powers and duties of Registrar; and Chapter IX is miscellaneous.

7. There is no dispute before us that enquiries conducted by the Medical Council or Executive Committee under Section 22 are quasi-judicial proceedings. The question that arises for our consideration is, is it open to Maharashtra Medical Council or the Executive Committee in relation to the enquiries conducted under Section 22 of the Act of 1965 and the Rules framed thereunder to issue blanket ban prohibiting public to attend such enquiry proceedings.

8. In Naresh Shridhar Mirajkar and others vs. State of Maharashtra, a nine Judge constitution bench of the Apex Court observed in para 19 of the report thus -

"Let us begin by assuming that the petitioners who are Journalists, have a fundamental right to carry on their occupation under Article 19(1)(g); they have also a right to attend proceedings in court under Article 19(1)(d); and that the right to freedom of speech and expression guaranteed by Article 19(1)(a) includes their right to publish as Journalists a faithful report of the proceedings which they have witnessed and heard in court. In Sakal Papers (P) Ltd., and others vs. The Union of India, , it has been

held by this Court that the freedom of speech and expression guaranteed by Article 19(1)(a) includes the freedom of press. That being so, the question which we have to consider is : does the impugned order contravene the petitioner's fundamental rights to which we have just referred?

9. We have no hesitation in observing that first petitioner being Journalist employed in the Times of India has fundamental right to carry on her occupation under Article 19(1)(g) and that she has a fundamental right as well to attend the proceedings in Court under Article 19(1)(d). It need not be overemphasised at the end of the day that right to freedom of speech and expression guaranteed under Article 19(1)(a) includes right to publish as Journalist a

faithful report or the proceedings witnessed and heard in court. It is now well settled that freedom of speech and expression guaranteed by Article 19(1)(a) includes freedom of Press. Generally the proceedings in judicial court must be held in open and public must have access to the proceedings in the judicial court. As a broad proposition, there cannot be any doubt that judicial courts or judicial tribunals or judicial forums discharging judicial functions must hear causes in open and must permit public admission to the court room. It is now almost universally accepted principle that trials or hearing of causes in judicial courts or tribunals must be in open unless exceptions are made out for holding the proceedings in-camera. We find it appropriate to refer to the observations made by Apex Court in paras 20 and 21 of Naresh Shridhar Mirajkar (supra) which read thus -

"Before dealing with this question, it is necessary to refer to one incidental aspect of the matter. It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. As Bentham has observed, "in the darkness of secrecy sinister interest, and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice, operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the judge himself while trying under trial in the sense that the security of securities is publicity, 1911 All.E.R. p. 30.

Having thus enunciated the universally accepted proposition in favour of open trials, it is necessary to consider whether this rule admits of any exceptions or not? Cases may occur where the requirement of the administration of justice itself may make it necessary for the Court to hold a trial in camera. While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his Inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then only principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before Courts must be held in public was treated as inflexible and universal, and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if

the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable to ensure fair administration of justice; it is a means not an end. It is the fair administration of justice which is the end of judicial process, and so if ever a real conflict arises between fair administration of justice itself on one hand, and public trial on the other, inevitably public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved. Whether or not in the present case such a conflict did in fact arise, and whether or not the impugned order is justified on the merits, are matters which are irrelevant to the present enquiry."

10. What is deduced from the aforesaid proposition laid down by the Apex Court is that as a general rule and accepted proposition cases brought before the courts must be heard- in open court but this cannot be treated as inflexible and universal rule and it admits of exceptions where the court is of the opinion that hearing of the cause in open court would defeat the ends of justice. The exception to hear the case in camera by the court is based on overriding principle that such court is satisfied beyond doubt that ends of justice clearly and necessarily require the hearing of the cause in camera. In other words, the court hearing a cause in the interest of administration of justice may hear the cause in camera and in that event public trial must yield to the interest of administration of justice. In our view, the principle that cause should be heard in open by judicial court may also be ordinarily made applicable to quasi-judicial tribunals or forums as they are also required to discharge their functions analogous to judicial function. The quasi-judicial tribunals or forums though are not Court in the ordinary sense but share the qualities of and approximating to what is judicial. Such quasi-judicial tribunals or forums or authorities are essentially judicial in character but not within the judicial power of function as constitutionally defined and we find no justifiable reason in the absence of any statutory prohibition why hearings before quasi-judicial tribunals or forums should not be open to public. As we have already noted above, before us, there is no dispute that Maharashtra Medical Council acts as quasi-judicial tribunal while holding enquiries under Section 22 of the Act of 1965. Does Act of 1965 provide that the enquiries under Section 22 shall be held in camera or that proceedings in the enquiry shall be confidential to which our answer is in the negative. We may consider now Section 9(1) upon which strong reliance was placed by the learned counsel for respondent No. 1 in support of his contention that enquiry proceedings under Section 22 are confidential. Section 9(1) reads thus -

"9. (1) The proceedings of the discussion of every meeting of the Council, shall be treated as confidential; and no person shall, without the previous resolution of the Council, disclose any portion thereof:

Provided that, nothing in this Section shall be deemed to prohibit any person from disclosing or publishing the text of any resolution adopted by the Council, unless the Council directs such resolution also to be treated as confidential.

11. Section 9(1) provides for the proceedings of the discussion of every meeting of the Council to be confidential. It refers to the proceedings of the discussion of meetings of Council convened and held under Section 8 of the Act of 1965 and cannot be said to include the enquiry held by Council or Executive Committee under Section 22. Meetings of the Council convened and held under Section 8 are entirely distinct, different and separate from the enquiries of misconduct held by Council or Executive Committee under Section 22. This

is further clear from the Rules framed by the State Government. Chapter III of the Rules of 1967 provides for conduct of the business of the Council. Rule 28 which provides for calling of meetings reads thus -

"28. Calling of Meetings. - (1) The Council shall ordinarily meet for the transaction of business in the months of February and September in each year; but the President may, whenever he thinks fit, and shall, upon a written requisition of not less than seven members and on a date not later than 15 days after the receipt of such requisition, call an extra-ordinary meeting.

(2) The exact date, hour and place of such meetings shall be decided by the President."

12. Rules 29 and 30 which provide for notice for calling the meeting and motion for insertion in Agenda make following provision :-

"29. Notice for calling a meeting. -- (1) All members of the Council shall be given thirty clear days notice of an ordinary meeting and ten clear days notice of an extraordinary meeting. Every notice shall also be posted at the office of the Council. Such notice shall specify the date, time and place of the meeting and state whether the meeting is a special business the nature of such business shall also be mentioned in the notice.

(2) The Registrar shall send to all members a copy of the agenda and explanatory notes thereon ten clear days before the date fixed for an ordinary meeting.

30. Motions for insertion in Agenda. ~ Any member may send a motion to be inserted in the agenda for an ordinary meeting so as to reach the Registrar twenty clear days before the date fixed for the meeting. The Registrar shall take the orders of the President for inclusion of such motion in the agenda, and where any motion is disallowed the reasons for doing so shall also be communicated along with the agenda to the member who sent the motion."

13. The aforesaid rules have no application to the enquiries conducted and held under Section 22 of the Act for which rules have been framed under Chapter VI of the Rules which provide for detailed procedure for the proceedings against the registered practitioner suo-motu or on any complaint. The said procedure provided under rules 62 to 75 is different from the procedure of calling meetings under Section 8 of the Act of 1965. Rule 74 (VI) reads thus - .

"74. Decision of Council and Implementation. - As soon as the hearing of the case is over and the registered practitioner has made his oral or written statement, if any, the Council shall deliberate thereon in private and at the conclusion of the deliberation, the President shall pronounce its decision immediately thereafter or at any time thereafter in terms of Clause (a) or (b) of Sub-section (1) of Section 22; and thereupon the President shall direct the Registrar to implement the decision."

14. From the aforesaid rule 74 it transpires that as soon as the hearing of the case is over and registered practitioner has made his oral or written statement, the Council shall deliberate thereon in private which means that after the hearing of the case is over, the confidentiality of deliberations by the Council has, to be maintained till the decision is pronounced. Thus deliberations by the Council after hearing is over cannot be attended to by the public. However upto the stage of hearing of the case by the Council the procedure provided under Chapter VI of the Rules of 1967 for holding enquiries under Section 22 of the Act of 1965

does not make a provision that such enquiries should be held in camera or confidentiality of proceedings in such enquiries are required to be maintained. In the very nature of quasi-judicial nature of enquiries conducted under Section 22, it cannot be held that there should be blanket ban for public in attending the enquiry proceedings. To the extent the respondent No. 1 has set up the case that public cannot claim absolute right to attend the enquiries conducted by it under Section 22 cannot be said to be unjustified. There is no doubt that in appropriate cases in the larger interest of the enquiry of professional misconduct against a registered practitioner in a particular matter it is always open to the Maharashtra Medical Council to direct that enquiry proceeding in such matter shall be held in camera but that must, be in suitable cases where the Medical Council is of the opinion that attendance of such enquiry by the public at large may defeat the very ends of justice and may affect the just decision on merits in the enquiry. It is also true that it is always open to the Maharashtra Medical Council to regulate and control the proceedings of enquiry held under Section 22 in accordance with Act of 1965 and Rules framed thereunder but for want of any statutory prohibition expressly or by necessary implication by regulating or controlling the proceedings it cannot impose blanket ban for public in attending such enquiry proceedings. It may be beneficial here to refer to para 29 of the report in Naresh Shridhar Mirajkar (supra) wherein the Apex Court observed thus -

"Looking at the problem from another point of view, Viscount Haldane, L.C. observed that while the broad principle is that the courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions. By way of illustration, reference was made to two cases of wards of court and of lunatics where the court is really sitting primarily to guard the interest of the ward or the lunatic. In such matters, the jurisdiction of the court was in a sense parental and administrative. That is how the broad principle which ordinarily governs open public trial, yields to the paramount duty which is the care of the ward or the lunatic. Similarly, in regard to litigation as to a secret process, where the effect of publicity would be to destroy the subject-matter, trial in camera would be justified, because in such a case, justice could not be done at all if it had to be done in public (pp. 8-9). In other words, unless it be strictly necessary for the attainment of justice, there can be no power in the court to hear in camera either a matrimonial cause or any other where there is a contest between parties. He who maintains that by no other means than by such a hearing can justice be done may apply for an unusual procedure. But he must make out his case strictly, and bring it up to the standard which the underlying principle requires. He may be able to show that the evidence can be effectively brought before the court in no other fashion. In either case, he must satisfy the court that by nothing short of the exclusion of the public can justice be done."

We find it difficult to be persuaded by the submission of the learned counsel appearing for first respondent that in view of fiduciary relationship between the patient and a doctor in all cases of misconduct for which enquiry is instituted under Section 22 it would defeat the ends of justice if such enquiries are held in public. This sweeping proposition does not sound logical nor is acceptable in the light of the legal position which we have already indicated above. In our considered-opinion, therefore, it is not open to the Maharashtra Medical Council to hold the view that enquiry proceedings held under Section 22 of the Act of 1965 are confidential in nature and have to be held in camera.

15. We, accordingly, allow the writ petition in part and issue direction that petitioners and accredited members of the press shall be permitted admission to the enquiry proceedings held under Section 22 of Act of 1965 save and except in cases where the Maharashtra Medical

Council is of the opinion that presence of petitioners or the accredited members of the press in the enquiry proceedings shall affect the just decision in the enquiry on merits or any statutory provision that may be enacted or made providing for such enquiry proceedings to be confidential, costs.

16. No costs