

Privy Council Appeal No. 14 of 1982

Deb Narayan - - - - - *Appellant*

v.

The General Medical Council - - - - - *Respondent*

FROM:

**THE PROFESSIONAL CONDUCT COMMITTEE OF THE
GENERAL MEDICAL COUNCIL**

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
16TH JUNE 1982

Present at the Hearing:

LORD FRASER OF TULLYBELTON

LORD KEITH OF KINKEL

LORD BRIGHTMAN

[*Delivered by* LORD FRASER OF TULLYBELTON]

The appellant in this case appeals from a decision of the Professional Conduct Committee of the General Medical Council given on 8th March, 1982, directing that his name be erased from the Register of Medical Practitioners on the ground that he had been found to have been convicted of criminal offences. These offences have been admitted by him.

The issue in the case turns entirely upon whether the procedure required by rule 36 of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee Procedure Rules Order of Council 1980 has been properly observed. Rule 36 comes at the end of the elaborate procedure laid down in the previous rules for dealing with disciplinary cases, setting out the various stages by which the Committee has to proceed by findings of fact followed by determination as to sentence.

Rule 36 is in the following terms. It has the cross-heading: "*Announcement of determination*" and then proceeds: "36. The Chairman shall announce the determination or determinations of the Committee under the foregoing rules in such terms as the Committee may approve."

What the chairman did in this case was to address the appellant in the following terms: "Dr. Narayan, by reason of the conviction which has been proved against you and having regard to your previous record, the Committee have directed the Registrar to erase your name from the Register." Then he went on to explain the effect of that.

The appellant's complaint is that the chairman ought to have announced each of the stages by which the Committee had arrived at that final result and the argument depends largely upon the terms of rule 34, which sets out in detail the steps by which the Committee must proceed by obliging them to consider possible penalties in ascending order of gravity. It finally provides that, the Committee not having determined to impose any of the lesser penalties, the automatic result is that they must direct that the name of the practitioner be erased from the register.

Looking at the matter from a practical point of view, the answer of the respondent Council is that all that rule 36 requires is that the chairman shall announce the effective or operative decision of the Committee and that the chairman is not bound to announce publicly the various steps by which the Committee has reached that decision.

The only practical reason in favour of requiring the chairman to announce each step would be to ensure, and to enable the appellant in this case to be sure, that the Committee had proceeded properly in their deliberations, but their Lordships are of the opinion that that is not what the rule requires. All that it requires, in the view of their Lordships, is that the chairman shall announce the final decision of the Committee. Anything else would require the chairman to go through what might be a comparatively lengthy narrative dealing with each of the penalties which the Committee might have determined to impose, but had in the end decided not to, finishing up with the result that they had directed the erasure of the practitioner's name from the Register.

It seems to their Lordships that that would be a formal and not useful proceeding to be gone through and that that is not what the rule requires. That would be sufficient for a decision on the appeal, but their Lordships are also of the opinion that, even if the matter were reviewed more precisely on the exact words of rules 34 and 36 together, the rather semantic argument open to the appellant would not succeed.

Rule 34(1) is in the following terms: "Where in any case a conviction has been found proved or a practitioner has been found guilty of serious professional misconduct in accordance with the foregoing rules, the Committee shall proceed to a determination in accordance with the following provisions of this rule."

Their Lordships pause to emphasise the words "a determination", which seem to suggest that at least in many cases there will be a single determination or decision of the particular case.

Then sub-rule (2) provides that: "The Committee shall first consider and determine whether it shall be sufficient to admonish the practitioner and conclude the case."

Sub-rule (3) provides that: "If the Committee do not determine as aforesaid they shall next consider and decide whether they should postpone their determination until such future date or meeting of the Committee as they may specify."

Again there is a reference to "their determination", in the singular, but the more important words in sub-rule (3) are: "If the Committee do not determine as aforesaid." If the appellant's argument were correct it would seem to require that those words should be read as meaning, "If the Committee determine not to do as aforesaid", but that is not what the sub-rule says and, in their Lordships' view, the negative decision not to postpone is not a determination within the meaning of rule 36, and the same point can be made again at the later stages of rule 34.

A point was taken that in rule 36 the provision is that the chairman shall announce the determination, in the singular, or determinations, in the plural, of the Committee under the foregoing rules and it was said that that pointed to each decision under rule 34 being a determination which ought to be announced; but, in their Lordships' view, that submission is not well founded because, even taking the literal words of rules 33, 34 and 35 together, there are several examples where more than one determination, in the strict way that the word is used there, would be necessary.

For example, it might happen that under rule 33(1) the Committee would determine that a practitioner had been guilty of serious professional misconduct. Where they do so determine they are obliged to go on under rule 34(1) to proceed to a further determination as to the sentence in accordance with the provisions of rule 34, so there would necessarily be two determinations in that case.

Another example is that in rule 35 it is provided that: "If in any case the Committee determine to suspend the registration of a practitioner or to erase his name from the Register the Committee shall then consider and determine also whether it is necessary for the protection of members of the public . . . that his registration shall be suspended forthwith."

Their Lordships emphasise the words "determine also" as showing that there are two determinations involved in that rule. There is another somewhat similar example in rule 34 ~~(4)(a) and (b) and of course there might well be a case where there were several separate charges before the Committee requiring a separate determination on each.~~

For these reasons, even if the matter should properly be approached on the more semantic level, the appeal would, in the opinion of their Lordships, fail.

In these circumstances, their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed with costs.

In the Privy Council

DEB NARAYAN

P.

THE GENERAL MEDICAL COUNCIL

DELIVERED BY

LORD FRASER OF TULLYBELTON