Privy Council Appeal No. 36 of 1972

Sisir Kumar Datta – – – – – – – – *Appellant*

v.

General Medical Council – – – – – – *Respondent*

FROM

THE DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH APRIL 1973

Present at the Hearing:

LORD SIMON OF GLAISDALE

LORD KILBRANDON

LORD SALMON

[*Delivered by* LORD SIMON OF GLAISDALE]

This is an appeal by a Dr. Datta from a decision of the Disciplinary Committee of the General Medical Council on the 30th November 1972, after a three or four day hearing, directing that the appellant's name should be erased from the Register, they having found him in relation to the facts alleged against him guilty of serious professional misconduct. The facts need not be recited in detail, partly because counsel for the appellant in his very able address accepted as correct their recital in the respondent's case before this Board, and partly because it would be undesirable in any event to go too deeply into the facts, in view of the fact that there is outstanding a collateral criminal charge in relation to a man called Panayides.

In the summer of 1971 Panayides began working as a driver-courier for a firm called Pearson Consultants, which was an abortion agency. While he was engaged in that work he met the appellant doctor and told the doctor that he, Panayides, intended to go into the abortion business by setting up an agency in England. Before the General Medical Council he said that the appellant doctor then suggested to him, Panayides, that he should open an agency for the same purpose in Germany, and that the doctor would pay for setting up the agency and the expense of running it. An arrangement was made, according to Panayides, for a payment on patients introduced.

That was Panayides' evidence, but it would appear that it was uncorroborated and, as will appear, it seems likely that the Disciplinary Committee was not prepared to accept the evidence of Panayides without proper corroboration. They did not accept, it appears, his evidence that the suggestion as to the German agency was initiated by the appellant

doctor; but however that may be, the appellant doctor, according to Panayides—and this was not denied although an explanation was offered for it—gave Panayides a sum of 1,800 DM. In November 1971 Panayides went to Germany and he opened an agency there. He circulated German doctors; and one of the letters that was written was read to their Lordships —a letter inviting German doctors to refer pregnant patients through him to medical services in London, with the object of termination of pregnancy.

Panayides kept two diaries in which he wrote the names of all the women that he sent to the appellant doctor in London for the performance of an abortion operation. There was no evidence before the Disciplinary Committee that the provisions of the Abortion Act 1967 were not observed. The diaries, however, showed that between the 22nd November 1971 and the 10th March 1972 93 women were referred to the appellant doctor. While he was in Germany Panayides received letters from the appellant doctor, some of them enclosing money in payment of his services. He produced four such letters, which were read to the Board. One, dated 29th November 1971, enclosed 1,200 DM; and another, dated 21st December 1971, enclosed 2,000 DM.

Towards the end of his stay in Germany, on the 17th February 1972, Panayides was arrested by the police and later charged with contravention of an article of the German penal code which relates to abortion. He was granted bail, but returned to England on the 27th February 1972 without standing his trial. He subsequently contacted Dr. Datta, the appellant doctor, on a number of occasions; and there was a charge relating to a payment at the beginning of March 1972 which was apparently uncorroborated and which the Disciplinary Committee did not find proved.

In April 1972 Panayides went to see a chief crime reporter on a newspaper; he subsequently contacted the appellant doctor; and tape recordings were taken and a transcript made of the conversations. There was one telephone call on the 1st May and three on the 4th May 1972. In those tape recordings the appellant doctor confirmed arrangements about accepting women sent to him by Panayides and said that he would pay Panayides £20 for each woman sent. On the 14th May an article appeared in the newspaper about the appellant doctor and apparently it was after that that the appellant went to the police and alleged that Panayides had been demanding money from him by menaces. The result of that was that on the 9th June Panayides was arrested and charged; and he now stands, as he did at the date of the hearing by the Disciplinary Committee, remanded awaiting trial.

In consequence the appellant was charged before the Disciplinary Committee with offences relating to the matters that have been recited, specifically with instigating, sanctioning or acquiescing in arrangements to canvass for and effect the introduction of patients to his practice. Particulars were given, including particulars relating to four payments, together with a further charge in relation to a further alleged payment on the 5th May 1972.

The Disciplinary Committee found not proved that the appellant instigated the arrangements to canvass, although they did find proved that he sanctioned or acquiesced in them. They also found not proved the payment in February of the sum of 5,500 DM (or its equivalent in English money) and the payment alleged on the 5th May 1972. It seems likely—indeed it was not controverted—that in all those respects in which the charges were found not proved the evidence resided primarily or exclusively in what Panayides said and that the Disciplinary Committee must have found that his evidence was not corroborated in those respects. They must have found, however, if that is the right approach to those charges, that his evidence was adequately corroborated in respect of the matters that they found proved. At the conclusion of the hearing they

found that the appellant had been guilty of serious professional misconduct and ordered the erasure of his name from the Register.

In the appeal before the Board Mr. Sherrard took a number of points. The first is that he said that the Committee must have misdirected themselves; they made an order for the immediate suspension of the appellant's name from the Register, using their power in that respect under section 15 (1) of the Medical Act 1969. That is a power that is only exercisable if the Committee find that an immediate suspension is necessary for the protection of members of the public. Mr. Sherrard said that there was no evidence to justify that, and that they therefore must have misdirected themselves when they made their main finding that there should be an erasure under section 13. He said that they must have done so because they thought that it was necessary for the protection of the public.

It does not appear to their Lordships that that is the right approach. There are two separate steps here. The first is under section 13, whereby the Committee may, if they think fit, direct that a doctor's name shall be erased from the Register if he is judged by them to have been guilty of serious professional misconduct. There is nothing there about the protection of the public. But they then have to go on under section 15 to decide whether an immediate suspension is called for for the protection of members of the public. Here the appellant had two appointments as a consultant at private nursing homes; and the Committee could well have thought that, if the doctor was to have his name erased from the Register under section 13, the protection of the public required that he should not, in the meantime, continue to hold his appointments as a consultant. The effect of an immediate suspension would have been that those appointments would be automatically terminated, notwithstanding an appeal. Their Lordships are not prepared to conclude that the Disciplinary Committee in any way misdirected themselves in that regard, since the course that they took is entirely consistent with a correct direction.

But Mr. Sherrard said that this is, in any event, a case where the discretion of the Committee as to the penalty, which he accepts is discretionary, should be reviewed by this Board. He made a number of points. In the first place, he said that the erasure is the maximum penalty. He accepted that canvassing is a serious disciplinary offence; as it is indeed stated in the booklet of "Professional Discipline", which reads: "Canvassing for the purpose of obtaining patients, whether done directly or through an agent . . . may lead to disciplinary proceedings". But he said that this is not a bad case of canvassing. Secondly, he said that the appellant refused to succumb to blackmail, but instead went to the police, knowing that he must expose himself to disciplinary proceedings by doing that. Thirdly, he said that there was no evidence of any contravention of the Abortion Act. Fourthly, he said that this is a young doctor to whose professional skill there have been tributes paid in the way of testimonials that were produced. There was no complaint of any ill-treatment of any patient—by which is meant that there was no complaint of any shortfall in proper treatment of any patient—or of any risk to any patient. Fifthly, the Disciplinary Committee rejected the allegation that the instigation of the misconduct came from the appellant.

However, all those matters were within the purview of the Disciplinary Committee. It is necessary only to refer to one of them—the point that the appellant refused to succumb to blackmail. To that Mr. Du Cann, representing the Council, replied, and Mr. Sherrard accepted this as correct, that the appellant did not go to the police and denounce Panayides until the article had already appeared in the newspaper. As to all the other matters, they were essentially, as it seems to their Lordships, matters

for weighing by the Disciplinary Committee. Their Lordships were referred to a number of authorities, previous decisions of the Board, in this type of case. It is only necessary for their Lordships to refer to three of them.

The first is the case of *McCoan v. General Medical Council* [1964] 1 W.L.R. 1107. The Board was there comparing the disciplinary powers of the Committee and those relating to solicitors, and comparing powers to review and methods of review in respect of those two procedures respectively. Lord Upjohn, towards the end of the judgment of the Board in that case, said this:

> " Their Lordships are of opinion that Lord Parker C.J. may have gone too far in *In re a Solicitor* [1960] 2 Q.B. 212 when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with Lord Goddard C.J. in *Re a Solicitor* [1956] 3 All E.R. 516 when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct. No general test can be laid down, for each case must depend entirely on its own particular circumstances. All that can be said is that if it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified ".

That judgment was delivered at a time when erasure was the only penalty that the Disciplinary Committee could impose; but it was cited with approval in a case where the appeal was heard after the coming into force of the 1969 Act, an unreported case called *Tarnesby v. General Medical Council* (Privy Council Appeal No. 21 of 1969). There, it is true, the Board did interfere with the penalty imposed by the Disciplinary Committee, which was a sentence of erasure from the Register, but on the specific ground, bearing in mind what was said in *McCoan,* that at the time the Disciplinary Committee heard the charges they had no power to impose a sentence of suspension of the registration for a period. That power having come into existence pending appeal, the Board reviewed all the circumstances and said:

> " But the special feature of the present case is that there is a new power which has come into existence by a change in the law since the sentence was pronounced. Counsel have explained that there are important differences between the consequences of suspension of the registration and the consequences of erasure of the name from the Register even if it is afterwards restored ".

Then the Board reviewed the matters of mitigation.

The third case was the unreported one of *Segall v. General Medical Council* (Privy Council Appeal No. 12 of 1971), which is of significance because after the review by the Board the only charges that remained proved and sustained were charges that the appellant there sanctioned or knowingly acquiesced in an arrangement to canvass for and effect the introduction of patients to his practice, and a charge that the appellant informed a man called Gordon, a taxi driver, that he would pay to him the sum of £15 on each occasion on which he brought a patient requiring termination of pregnancy to him, the appellant doctor in that case. The judgment of the Board was delivered by Sir Gordon Willmer and, having indicated why one of the charges which the Disciplinary Committee had found proved could not stand, he said this:

> " The appellant now stands convicted of only one offence, namely that set out in paragraph (1) (*c*) and (*d*) of the charge ".

(Those are the ones just referred to.)

> " Their Lordships are acutely conscious of the fact that the decision as to the appropriate penalty for any offence is a matter which is peculiarly one for the Disciplinary Committee ".

Then he refers to the fact that there is no power to remit, and he goes on:

> " In such circumstances their Lordships have considered the booklet published by the General Medical Council entitled ' Professional Discipline ', which makes it clear that canvassing for patients is serious professional misconduct. Such precedents for penalties imposed by the Disciplinary Committee as have been drawn to their Lordships' attention have mostly related to what seems the closest analogous offence, namely, advertising. In the light of such guidance it seems to their Lordships that despite their quashing the finding under paragraph (3) of the charge, the appropriate penalty still remains erasure from the Register ".

That, as it seems to their Lordships, is very close in its result to the present case. It shows that the Board in that case felt that the penalty of erasure was the appropriate one. In this case it is not necessary for their Lordships to consider how, if the matter were at large before their Lordships, the discretion as to penalty should be used. It is sufficient to say that, in their Lordships' view, there was adequate material before the Disciplinary Committee to justify the penalty that they imposed and their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

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In the Privy Council

SISIR KUMAR DATTA

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY

LORD SIMON OF GLAISDALE

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