

Dr. Subhash Chandra Malliwal

Appellant

v.

The General Medical Council

Respondent

FROM

THE HEALTH COMMITTEE OF THE
GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
1ST JULY 1992

Present at the hearing:-

LORD TEMPLEMAN
LORD MUSTILL
LORD SLYNN OF HADLEY

[Delivered by Lord Templeman]

The appellant, Dr. Malliwal, appeals against an order of the Health Committee of the respondent, the General Medical Council, suspending the appellant's registration as a medical practitioner.

By section 37 of the Medical Act 1983:-

"(1) Where the fitness to practise of a fully registered person is judged by the Health Committee to be seriously impaired by reason of his physical or mental condition the Committee may, if they think fit, direct -

(a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or

(b) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests."

Under that provision Dr. Malliwal was suspended in February 1989 for twelve months. By section 37(3) the Committee may:-

"(a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or

(b) direct that the registration of the person whose registration is suspended shall, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;

but the Committee shall not extend any period of suspension under this section for more than twelve months at a time."

Under these provisions Dr. Malliwal's registration was suspended for four months in February 1990, for four months in June 1990, for eight months in June 1991 and for twelve months on 25th February 1992. Dr. Malliwal appeals against the suspension order made on 25th February 1992.

At the hearing of Dr. Malliwal's case on 25th February 1992 the Health Committee and its assessors were addressed by counsel on behalf of Dr. Malliwal and by a solicitor on behalf of the Council. The documentary evidence consisted of all the reports and correspondence relating to Dr. Malliwal's case since he first came to the attention of the Committee in 1985, brought up to date by reports made in 1992 by experts appointed by the Council and by Dr. Malliwal respectively. Dr. Malliwal gave oral evidence. At the conclusion of the hearing the Health Committee, pursuant to rules 22 to 26 of the General Medical Council Health Committee (Procedure) Rules Order of Council 1987 proceeded to consider the exercise of the following powers:-

- (1) To adjourn the case in order to obtain further medical reports or other information.
- (2) To postpone their findings as to the practitioner's fitness to practise.
- (3) To consider and determine whether the Committee judged the fitness to practise of the practitioner to be seriously impaired by reason of his physical or mental condition.
- (4) To consider and determine whether it was sufficient to direct that the registration of the practitioner should be conditional on his compliance, during such period not exceeding three years as the Committee might specify, with such requirements as the

Committee might think fit to impose for the protection of members of the public or in his interests.

- (5) If the Committee decided that it was not sufficient to impose conditions then to direct that the registration of the practitioner should in accordance with section 37(1)(a) of the Act of 1983 be suspended for such period not exceeding twelve months as the Committee might determine.

In the result, as has been indicated, the Health Committee judged that Dr. Malliwal's fitness to practise was seriously impaired and directed that his registration be suspended for a further period of twelve months.

By section 40 of the Act of 1983 an appeal against a decision of the Health Committee under section 37 lies to Her Majesty in Council but it is expressly provided that:-

"(5) No appeal under this section shall lie from a decision of the Health Committee except on a question of law."

Their Lordships consider that it is both unnecessary and undesirable to set out the details of the evidence in this case, especially as an appeal only lies to the Board on a question of law. The Committee and their assessors entrusted with the difficult task of applying section 37 of the Act of 1983, had ample written evidence and the opportunity to see and hear Dr. Malliwal. An expert examiner chosen on behalf of the Health Committee in a written report dated 28th January 1992 stated that:-

"My provisional conclusion is that Dr. Malliwal may at this stage be judged marginally fit for a return to medical practice, but with the important proviso that his performance should be monitored for a while."

All the experts who have from time to time examined Dr. Malliwal for the purpose of determining his fitness to practise are agreed that some years ago Dr. Malliwal suffered some form of minor brain damage; the experts are not agreed on the cause of the damage. Recent examinations have confirmed an improvement in the condition of Dr. Malliwal and that he has been stable for about the last year. The tentative conclusions of the report dated 28th February 1992 and the evidence of Dr. Malliwal given before the Health Committee when they last considered the matter were not sufficient to convince the Health Committee that Dr. Malliwal was fit to return to practise and they concluded that in the public interest, it was necessary that his suspension be continued.

Dr. Malliwal contended that some of the reports made about him from time to time have been unfair and motivated by racial bias against him. He has always maintained that he was suffering from nervous strain and overwork when he was first the subject of investigation by the Health Committee and that he now has no major problems. Dr. Malliwal also accuses the Health Committee of racial bias against him. He complained that while he is suspended he cannot prove his fitness and that until he can prove his fitness he remains suspended. He has set his heart on returning to practice as a sole general medical practitioner, the position in which, as he admits, his work could not be properly supervised, but he would be willing to contemplate a short period of group practice or some other form of work under supervision. He could of course work in a hospital while his registration as a doctor was suspended but there are very few jobs available and, as he says, he has great difficulty in obtaining any job in the medical field in view of his suspension.

This is obviously a sad and difficult case. Their Lordships are satisfied from their perusal of all the papers and after hearing Dr. Malliwal that the Health Committee and the experts have acted conscientiously in the discharge of their functions. Dr. Malliwal's views to the contrary can be explained by his frustration and by his very great desire to return to practice. There is no evidence of racial bias.

Their Lordships are satisfied that the Health Committee have not made any error of law and that there are no grounds for interfering with the decision which they reached. Their Lordships will accordingly humbly advise Her Majesty that the appeal ought to be dismissed. The Health Committee do not ask for any order for costs against Dr. Malliwal.