Chia Yang Pong v Singapore Medical Council
[2004] SGHC 111

Case Number : OM 11/2004/D

Decision Date : 31 May 2004

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Myint Soe and Deepak Raja (Myint Soe and Selvaraj) for appellant; Philip Fong and Chang Man Phing (Harry Elias Partnership) for respondent

Parties : Chia Yang Pong — Singapore Medical Council

Administrative Law – Disciplinary proceedings – Disciplinary Committee of Singapore Medical Council – Medical practitioner fined $65,000 on 80 counts of professional misconduct – Whether Disciplinary Committee empowered to impose fine exceeding $10,000 – Section 45(2)(d) Medical Registration Act (Cap 174, 1998 Rev Ed)

Administrative Law – Disciplinary proceedings – Disciplinary Committee of Singapore Medical Council – Whether empowered to impose financial penalty on medical practitioner in addition to ordering his name be removed from the Register of Medical Practitioners – Sections 45(1), 45(2) Medical Registration Act (Cap 174, 1998 Rev Ed)

Courts and Jurisdiction – Appeals – Appeal against findings of Disciplinary Committee of Singapore Medical Council – Principles to be applied – Section 45(13) Medical Registration Act (Cap 174, 1998 Rev Ed)

31 May 2004

Tan Lee Meng J (delivering the judgment of the court):

1 The appellant, Dr Chia Yang Pong ("Dr Chia"), a medical doctor, appealed against the decision of the Disciplinary Committee of the Singapore Medical Council ("SMC") to remove his name from the Register of Medical Practitioners and to fine him $65,000 for professional misconduct. We allowed the appeal in part by reducing the fine to $10,000 and now give the reasons for our decision.

Background

2 Dr Chia was the sole licensee of a chain of seven medical clinics, known as Grace Polyclinic. In November 2002, an inspection team from the Ministry of Health called at all the branches of Grace Polyclinic and inspected the clinical cards of their patients. The investigations revealed that benzodiazepines had been improperly prescribed for quite a number of patients. Dr Chia was summoned to appear before a disciplinary committee of the SMC ("the Disciplinary Committee") to answer charges relating to his failure to act with due care in the management of 80 patients who had been prescribed benzodiazepines without a proper record of their symptoms and condition. Such proper records would have enabled him or his colleagues at Grace Polyclinic to properly assess the medical condition of the patients over the periods of treatment.

3 At a hearing of the Disciplinary Committee on 26 February 2004, Dr Chia faced 80 charges of professional misconduct. He pleaded guilty and made submissions in mitigation. The Disciplinary Committee then convicted him of all the charges under s 45(1)(d) of the Medical Registration Act (Cap 174, 1998 Rev Ed) and made the following orders:

Order 1 - That his name be removed from the Register of Medical Practitioners with

effect from 29 March 2004;

Order 2 - That he be fined $1,000 per charge on 65 of the 80 charges against him;

Order 3 - That he be censured; and

Order 4 - That he pay the costs and expenses of the proceedings before the Disciplinary Committee, including the costs of the solicitors for the SMC and the Legal Assessor.

4 Dr Chia, who was dissatisfied with the first two orders, relied on s 45(12) of the Medical Registration Act to lodge his appeal to the High Court. Section 45(12) of the said Act requires such an appeal to heard by a Court of Three Judges.

The appeal

5 Dr Chia contended that the Disciplinary Committee erred on three counts. Firstly, he claimed that the sentence imposed on him was manifestly excessive and that his name should not have been removed from the Register of Medical Practitioners. Secondly, he asserted that if his name was to be removed from the Register of Medical Practitioners, he should not have been fined as well. Thirdly, he submitted that the fine of $65,000 is above the limit permitted by s 45(2)(d) of the Medical Registration Act, which provides that the penalty imposed shall not exceed $10,000.

Whether the sentence was manifestly excessive

6 In arguing that the sentence imposed on him by the SMC's Disciplinary Committee was manifestly excessive, Dr Chia asserted that account should have been taken of the following three mitigating factors:

(a) A reasonable degree of care was taken in the management of the patients' health and benzodiazephines were not freely prescribed;

(b) There was no allegation that any of his patients had suffered perceptible harm or injury; and

(c) Five of the seven Grace Polyclinic branches had suffered losses between 2000 and 2002.

7 At the outset, it ought to be pointed out that s 45(13) of the Medical Registration Act provides that in any appeal by a medical practitioner, the High Court shall accept as final and conclusive the finding of a disciplinary committee on any issue of medical ethics or standards of professional conduct unless it is unsafe, unreasonable or contrary to evidence. It is worth noting that in *Libman Julius v General Medical Council* [1972] AC 217 at 221, Lord Hailsham of St Marylebone LC explained that it is difficult to displace a finding or order of a disciplinary committee in such cases:

> … unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread.

8 It ought not to be overlooked that the Disciplinary Committee made it clear that it had

considered the mitigating factors, including the fact that Dr Chia had pleaded guilty. However, it pointed out that doctors have a responsibility to prescribe medicines properly and that this responsibility must be safeguarded in the public interest. That was why it recommended that his name be removed from the Register of Medical Practitioners. Evidently, the Disciplinary Committee took the view that the seriousness of Dr Chia's professional misconduct was not alleviated by the assertion that a reasonable degree of care had been taken in the dispensing of benzodiazepines and that no patient had suffered perceptible harm or injury. As for the claim that five out of the seven clinics run by Dr Chia suffered losses from 2000 to 2002, we did not see how the seriousness of professional misconduct is connected with whether or not a clinic makes profits or losses.

9 On the basis of the evidence before us, we were not in a position to say that the Disciplinary Committee's finding that Dr Chia was guilty of professional misconduct is unsafe, unreasonable or contrary to evidence. Neither were we able to say that his professional misconduct did not warrant the removal of his name from the Register of Medical Practitioners. As such, we dismissed Dr Chia's first ground of appeal.

Whether a fine may be imposed in addition to an order of striking out

10 Dr Chia next contended that as the Disciplinary Committee had ordered that his name be removed from the Register of Medical Practitioners, it was wrong in principle for a fine to be imposed on him.

11 Section 45(1) of the Medical Registration Act provides that where a registered medical practitioner is found or judged by a disciplinary committee to have been guilty of professional misconduct, "the Disciplinary Committee may exercise *one or more* of the powers referred to in subsection (2)" [emphasis added], which include the issuing of an order directing the Registrar to remove the name of the registered medical practitioner from the appropriate register as well as an order imposing on the registered medical practitioner a fine not exceeding $10,000. In our view, the effect of s 45(1) is very clear. In this regard, the following oft-cited words of Lord Tindal CJ in the *Sussex Peerage* case (1844) 11 Cl & Fin 85 at 143; 8 ER 1034 at 1057 are worth repeating:

> [T]he only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

12 In the face of the wording of s 45 of the Medical Registration Act, Dr Chia's second ground of appeal need not be further considered.

Whether the fine of $65,000 contravenes s 45(2)(d) of the Medical Registration Act

13 Dr Chia's third ground of appeal was that the fine of $65,000 imposed on him by the Disciplinary Committee is contrary to s 45(2)(d) of the Medical Registration Act, which provides that the powers of a disciplinary committee include the imposition of a fine not exceeding $10,000. He pointed out that this limit applies to the entire proceedings before the Disciplinary Committee regardless of the number of charges levelled against him.

14 The SMC pointed out that if the Disciplinary Committee is only entitled to impose a fine of $10,000 regardless of the number of charges faced by a medical practitioner, a person who faces one

charge at an inquiry will be subject to the same limit as a person who faces 100 charges. Surely, the simple answer to this argument is that where the offences are serious enough, the errant medical practitioner can be struck off the Register of Medical Practitioners. If the SMC's approach is accepted, its disciplinary committees will have an unrestricted power to fine a medical practitioner any amount so long as they do not impose a fine of more than $10,000 in respect of each charge. This cannot be right as the power to impose a fine was intended to be an intermediate penalty to address the wide gap between a mere censure and a removal of a medical practitioner's name from the Register of Medical Practitioners. In our view, the wording of s 45(2)(d) of the Medical Registration Act leads to the inescapable conclusion that a fine imposed on a medical practitioner after an inquiry by a disciplinary committee of the SMC should not exceed $10,000. As such, the fine imposed on Dr Chia was reduced to $10,000.

Costs

15 On the question of costs, we noted that the appellant was successful in only part of his appeal. As such, we made no order with respect to the costs of the appeal.

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