IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 999/2018

Dr. Parthsarthi S/o Mukund Shukla,
aged 45 years, Occ. Medical Practitioner,
r/o Gangadhar Plot, Akola. ....PETITIONER

...V E R S U S...

1. The Maharashtra Medical Council,
Mumbai, through its Registrar, having
office at 189-A, Anand Complex,
First Floor, Sane Guruji Marg,
Arthur Road Naka, Chinchpokhli (W),
Mumbai-400 011.
E-mail:
maharashtramcouncil@gmail.com

2. Smt. Laxmi Harish Chutlani,
aged major, c/o New Laxmi Steel Centre,
Main Road, Sindhi Camp, Nanak Nagar,
Akola. ...RESPONDENTS

Mr. F. T. Mirza, Advocate for petitioner.
Mr. V. P. Panpalia, Advocate for respondent no.1.
Mr. R. L. Khapre, Senior Advocate Assisting The Court.
Mr. A. A. Naik, Advocate Assisting The Court.

CORAM:- V. M. DESHPANDE, PUSHPA V. GANEDIWALA
AND ANIL S. KILOR, JJ.

DATE OF RESERVING THE JUDGMENT :- 21.12.2020
DATE OF PRONOUNCING THE JUDGMENT :- 21.01.2021

JUDGMENT (Per : V. M. Deshpande, J.)

1. This writ petition is placed before Full Bench in view of the reference made by the learned Single Judge of this Court on 22.01.2020. Though the writ petition was disposed of by learned Single Judge by permitting respondent no. 1-Maharashtra Medical Council (hereinafter referred to as 'MMC') to withdraw the notice dated 01.09.2012, the learned Single Judge, in paragraph 21, observed thus:

> *"21. I, however, find that since there is a conflict of view in Saroj Iyer (supra) and Dr. Megha Mahendra Topale (supra), both delivered by two learned Division Benches of this Court, I, direct the learned Registrar (Judicial) of this Court to place this matter before The Hon'ble The Chief Justice of the Bombay High Court under Chapter-I, Rule 8 of the Bombay High Court Appellate Side Rules, 1960 for considering a reference to a Full Bench of this Court."*

2. Accordingly, this Full Bench was constituted. Judgment in ***Saroj Iyer and another v. Maharashtra Medical (Council) of Indian Medicine, Bombay and another*** reported in ***2002(1)Mh.L.J. 737*** was delivered by Division Bench (R.M.Lodha and Smt. Nishita Mhatre, JJ.) of this Court and judgment in ***(Dr.) Megha Mahendra***

Topale v. Navi Mumbai Municipal Corporation and others reported in ***2014(5) Mh.L.J. 323***, was delivered by Division Bench (A. S. Oka and A. S. Chandurkar, JJ.) of this Court.

3. As per learned Single Judge, there is a conflict of views in these two cases. This reference was placed before us on 11.12.2020. On the said day, because Writ Petition No. 999/2018 in which reference is made was disposed of on 22.01.2020, we invited learned members of the Bar to address the Court on the following questions in order to reach to the correct position of law in respect of the issue referred to the Full Bench. The questions, which we formulated are as under:

> *"(i) Whether there could be a reference by the Court when the cause is not live or not in existence or, in other words, whether the Larger Bench can answer the issue for academic purpose?*
>
> *(ii) What is the exact difference of opinion in between two Hon'ble Benches of this Court as referred in the reference?"*

The matter was then placed on 21.12.2020. On 21.12.2020, apart from Mr. F. T. Mirza, learned counsel for petitioner in Writ Petition No. 999/2018 and Mr. V. P. Panpalia, learned counsel for respondent no.1-MMC, Mumbai, Mr. R. L.

Khapre, learned Senior Counsel and Mr. A. A. Naik, learned counsel also addressed on the above referred questions.

4. Since Writ Petition No.999/2018 is already disposed of, we thought it fit to have its factual matrix in this judgment.

5. **Factual Matrix of Writ Petition No.999/2018**

(a) Petitioner is a Doctor having educational qualification of MBBS, DCH, MD (Pediatric). His wife is a Gynecologist and his father is a General Practitioner. The petitioner runs 80 bedded hospital which was started by his grandfather in the year 1927 and as per the petition, he was the first surgeon in the Central India. Hospital of the petitioner is recognized by Medical Council for teaching course of DCH.

(b) One Mohanlal Chutlani, father-in-law of respondent no.2 in the writ petition, Smt. Laxmi Harish Chutlani, filed a report at Police Station, Ramdaspeth, Akola on 16.12.2008 stating therein that on 31.07.2008 his daughter-in-law gave birth to a premature baby, which was earlier treated at Government Hospital but as baby's condition was not improving, the baby was admitted to hospital of one Dr. Anup

Kothari and the baby was in the said hospital till 13.10.2008. However, since health of the baby was further deteriorated, the baby was admitted in the hospital of the petitioner on 11.11.2008 and it was kept in incubator in the ICU of the petitioner's hospital. Name of the baby was Saurabh. It was alleged in the report that on 15.11.2008, when the first informant went to see the child, he found that the baby in incubator was not his grandson and the baby was changed. On the report lodged by Mohanlal, a crime was registered vide Crime No.255/2008 for an offence punishable under Sections 363, 417 of the Indian Penal Code. The investigating officer, after completing the investigation, filed report under Section 173 of the Code of Criminal Procedure for an offence punishable under Section 363, 417, 419, 420, 467, 468, 469, 470, 304A, 120B, 201 read with Section 34 of the Indian Penal Code. The petitioner filed discharge application. The same was rejected. Against that, the petitioner filed Criminal Application (APL) No.27/2017. The same is admitted and is pending for its final hearing in this Court.

(c) In the meanwhile, the petitioner received notice dated 01.09.2012 from MMC along with complaint dated

04.08.2012 calling upon him to submit his explanation to the complaint filed by Smt. Laxmi Harish Chutlani (respondent no.2).

(d) Though the petitioner submitted his explanation, he also moved an application before the MMC that complaint of respondent no.2 be kept in the *sine die* list since the criminal Court is seized of the matter and the allegations are identical. Despite that, MMC continued with the proceedings. Therefore, an application was made before the MMC on 10.08.2017 to stay the proceedings unless the High Court decides the matter filed by the petitioner against the rejection of his discharge application. The said application was considered in the meeting of the MMC dated 28.08.2017 and the MMC refused to grant stay to the proceedings and directed its Registrar to frame charge against the petitioner for alleged unethical and unprofessional misconduct. Roznama of the Executive Committee meeting dated 28.10.2017 was forwarded to the petitioner through communication dated 04.01.2018. with this basic submission, the writ petition was filed praying following reliefs:

"a) Quash and set aside the entire inquiry No. MMC/DC/13/2012 initiated by the respondent no.1-Maharashtra Medical Council, Mumbai pursuant to the notice dated 01.09.2012 and be pleased to dismiss the complaint dated 04.08.2012 (Annexure-H) made by respondent no.2.

b) hold that the inquiry No. MMC/DC/13/ 2012 initiated by the respondent no.1 against the petitioner u/s. 22 of the Maharashtra Medical Council Act, 1965 is without jurisdiction.

c) stay the further proceedings in the inquiry on the complaint against petitioner made by the respondent no.2 bearing No. MMC/DC/13/2012 during pendency of this petition;

d) grant any other relief deems fit, just and proper in the circumstances of the case."

e) On 27.03.2018, the learned Single Judge issued notice for final disposal and granted stay in terms of prayer clause (c). On 15.01.2020, the learned Single Judge in paragraph 5 of the order, observed thus:

"5. In view of the above, I do not find that the notice dated 1.9.2012 is in tune with the Rules applicable to this case. The learned Advocate for respondent No.1 MMC, Mumbai seeks time to take instructions as to whether the MMC desires to withdraw the said notice or submit otherwise."

f) Thereafter the matter was posted on 20.01.2020. Accordingly, the matter was listed on 22.01.2020. On 22.01.2020, learned counsel for the MMC, on instructions, submitted that the MMC desires to withdraw the communication dated 01.09.2012 by referring the rules to exercise its powers Under chapter VI of the Maharashtra Medical Council Rules, 1967 (hereinafter referred to as 'Rules of 1967'). In view of the said statement, learned Single Judge disposed of the petition by permitting respondent-MMC to withdraw the communication dated 01.09.2012 and also observed that if they desire they can exercise powers under Chapter VI of the Rules of 1967 for the purpose of acting under Section 22 of the MMC Act and all the contentions of the parties were kept open. Thereafter, in the last paragraph of the order, the learned Single Judge observed that there is a conflict of views in Saroj Iyer (supra) and Dr. Megha Mahendra Topale (supra) and, therefore, directed Registrar (Judicial) to keep the matter before the Hon'ble Chief Justice for placing the same before the Full Bench.

6. We have heard Mr. Khapre, learned Senior Counsel, and Mr. Naik, learned counsel who argued as Officers of Court. We have also heard Mr. Mirza, learned counsel for petitioner and Mr. Panpalia, learned counsel for respondent, in extenso.

7. The opening statement of the learned Senior Counsel was that there is no conflict of whatsoever in nature in the two Division Bench decisions of Saroj Iyer (supra) and Dr. Megha Mahendra Topale (supra). He submitted that both the decisions operate in different fields and, therefore, the reference is unwarranted. Precisely, this is the submission by all the learned counsel who appeared before this Larger Bench.

8. According to Mr. Khapre, learned Senior Counsel, only for the academic purpose, there cannot be, rather there should not be a reference. He reiterated that only for academic purpose, there should not be a reference to the Larger Bench, with a caveat that it can be referred to avoid prospective litigation.

Mr. Naik, learned counsel submitted that while referring the matter to the Larger Bench, it should be alive. He read out Rule 8 of Chapter I of the Bombay High Court Appellate

Side Rules, 1960 to make a submission that the matter should be alive in which reference is made. He submitted that the academic question need not be answered by the Larger Bench unless it involves pure question of law and interpretation of the provisions of Constitution having impact and also interpretation of the provisions of public importance.

It is also urged that unless the question germane to the controversy is framed, no reference can be made. For this purpose, attention of this Court has been drawn to the fact that the learned Single Judge, while referring the matter to the Larger Bench, has not framed any question to answer by the Larger Bench.

Mr. Mirza, learned counsel for the petitioner and Mr.Panpalia, learned counsel for respondent no.1 also concur with the submissions put forth by Mr. Khapre, learned Senior Counsel and Mr. Naik, learned counsel.

9. We, at the outset, find substance in the contention that before making a reference to the Larger Bench, a question germane to the controversy needs to be framed to answer by the Larger Bench. Admittedly, no such question has been framed in

this reference but it was observed that there is a conflict in two Division Bench judgments of this Court. Therefore, in absence of any question framed to answer by us, we are of the opinion that, now we are required to examine whether there is any conflict in the views expressed by the two Division Benches, as observed by the learned Single Judge in the order of reference. Therefore, we will have to refer to the factual aspects of those two cases.

10. **Facts of Saroj Iyer's case:**

(i) Two writ petitions were decided by Division Bench (R. M. Lodha and Smt. Nishita Mhatre, JJ.) on 04.09.2001. Those two writ petitions were heard together and were disposed of by common judgment as common issues were involved therein and principal prayer was found to be 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 inquiries held under Section 22 of the Maharashtra Medical Council Act, 1965 (hereinafter referred to as 'Act of 1965').

(ii) The petitioner in Writ Petition No.493/1990 was a Journalist in Times of India and she filed a 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 petitioner claimed to be keenly involved 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. Their case was that one Mr.Singhi made a complaint to first respondent on 28.04.1989 principally against Dr. P. B. Desai, alleging that on account of 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 in the said writ petition issued notice to Dr. P. B. Desai and others and commenced inquiry under Section 22 of the MMC Act. Mr.Singhi was retired in 1988 as Deputy Secretary to the Government of Rajasthan and the complaint filed by him attracted national attention. The first petitioner in the said petition being journalist sought to attend inquiry proceedings before the MMC but the same was refused giving rise to the filing of the writ petition.

(iii) In response to the writ petition, the MMC filed an affidavit and set up a case that the right claimed by the petitioner to attend inquiry proceedings under Section 22 of the

Act cannot be an absolute right and petitioners cannot claim, as a matter of right, to attend inquiry proceedings. The diverse reasons given, therefore, are that MMC 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 inquiry proceedings in camera proceedings would be essential. However, in the affidavit, the said respondent admitted that the MMC is a 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 the 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.

(iv) It was urged before the Division Bench on behalf of the petitioner that the provisions of the Act of 1965 and the Rules of 1967 and the inquiry held by the MMC 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 nature of quasi judicial proceeding and therefore ordinarily cannot be held in camera and therefore, there cannot be blanket ban for public from attending such proceedings. It was also submitted that neither the Act of 1965 nor the Rules of 1967 framed thereunder provides that the inquiry proceedings under Section 22 shall be held in secrecy. The learned counsel appearing for petitioner submitted that it is the fundamental right of first petitioner under Article 19 (1)(a) (d) and (g) of Constitution of India and the said is infringed by the MMC by not permitting her to attend the inquiry proceedings under Section 22 of the Act of 1965.

(v) Learned counsel appearing for the MMC, however, urged before the Division Bench that by virtue of Section 9 (1) of the Act of 1965, the proceedings and the inquiry under Section 22 of the Act of 1965 are confidential and, therefore, general public cannot, as a matter of right, claim to attend such

inquiry proceedings. It was further submitted that provisions of Section 9 (1) are applicable to inquiry proceedings under Section 22 of the Act of 1965.

(vi) The learned Division Bench, after considering the rival submissions, observed as under:

> *"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 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."

(vii) It was observed by the learned Division Bench that the Bench is having no hesitation in observing that the first petitioner being journalist employed in 'Times of India' has fundamental right to carry on her occupation under Article 19 (1) (g) of the Constitution of India and that she has fundamental right to attend proceeding in the Court under Article 19 (1) (d).

(viii) The Division Bench also negates the arguments put forth on behalf of the council that Section 9 (1) of the Act of 1965 governs the inquiry under Section 22. The Division Bench lastly observed as under:

> *"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."*

(ix) Accordingly, the writ petition was allowed in part and directions were given that the petitioners and accredited members of the press shall be permitted admission to the inquiry proceedings held under Section 22 of the Act of 1965 save and except in cases where the MCI is of the opinion that the presence of the petitioners or the accredited members of the press in the inquiry proceedings shall affect the just decision in the inquiry on merits or any statutory provision that may be enacted or made providing for such inquiry proceedings to be confidential.

11. **Facts of *(Dr.) Megha Mahendra Topale's* case:**

(i) Dr. Megha Mahendra Topale filed a writ petition bearing Writ Petition No.11731/2013 and it was decided on 28.07.2014 by Division Bench (A. S. Oka and A. S. Chandurkar, JJ.) of this Court.

(ii) The challenge in this writ was to the communication dated 25.04.2013 issued by MMC- respondent No.2 whereby it has issued a letter of warning to the petitioner and has further directed her to refrain from using Ultrasound/Sonography equipment in practice of any type.

(iii) Petitioner Dr. Megha is a Radiologist running a diagnostic centre. She was holding license to undertake pre-natal diagnostic procedure. On 24.06.2011, appropriate authority under Navi Mumbai Municipal Corporation-respondent no.1, during visit to the petitioner's centre noticed certain discrepancies/irregularities. Certain records were seized and thereafter on 08.11.2011 a complaint was filed under provisions of Sections 23 and 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the "Act of 1994"). In aforesaid criminal proceedings, charge was framed against the petitioner on 07.11.2012 as regards the contravention of provisions of Section 3(A) and Section 5 of the Act of 1994. In view of framing of charge, Navi Mumbai Municipal Corporation-respondent No.1, in terms of provisions of Section 23 (2) of the Act of 1994, informed the State Family Planning Office. The said office, on 10.01.2013 brought the aforesaid fact to the notice of the respondent No.2 and thereafter, on 08.02.2013 the respondent No.2 through its Registrar issued a show cause notice to the petitioner as to why action under provisions of the

Act of 1994 and the Act of 1965 should not be taken. Dr. Megha submitted her reply on 13.03.2013. The matter was thereafter considered by the Executive Council of the respondent No.2. On 25.04.2013, the Registrar of the respondent No.2 issued a letter of warning to Dr. Megha. It was further stated in the aforesaid communication that Dr. Megha should refrain herself from using Ultrasound/Sonography practice of any type and endorsement as regards said action was made in the register of registration. This communication was the subject matter of challenge in the said writ petition.

(iv) It was the contention before the learned Division Bench on behalf of Dr. Megha that the communication dated 25.04.2013 is issued without following the due process of law. It was submitted that the letter of warning was issued to her without observing the principle of natural justice. It was also submitted that by directing her to refrain from using Ultrasound/Sonography machine, she was being prevented from carrying out profession, despite being a registered Medical Practitioner. It was her submission that the said direction had a grave consequence and there was no provision whatsoever either in the Act of 1994 and in the Act of 1965 to issue such a

direction. It was also contended that impugned communication was issued without holding any inquiry whatsoever.

(v) On behalf of Navi Mumbai Municipal Corporation-respondent no.1, it was contended that in terms of the provisions of Section 23 (2) of the Act of 1994, the appropriate authority had reported the aspect of framing of charge against Dr. Megha, to the State Medical Council and on that basis the action under challenge had been taken.

(vi) It was contended on behalf of the respondent no.2 that said course of action was permissible in view of the provisions of Section 23 (2) of the Act of 1994. Various provisions of Act of 1965 to support impugned action were pressed into service.

(vii) The learned Division Bench, thereafter, considered the provisions of Section 23 (2) of the Act of 1994, Section 22 of the Act of 1965 and the Rules framed under the Act. And, in paragraph nos. 11 to 18, observed thus:

> *"11. The impugned communication is thus in three different parts. By the first part a warning has been issued to the petitioner. By the second part the petitioner has been directed to refrain from using ultra sound/sonography practice and by the third part an endorsement to said effect has been made in the*

register. The legality of each of the three parts will have to be therefore examined.

12. In so far as issuance of letter of warning to a practitioner is concerned, the same is stipulated by Section 22 (1) (a) of the Act of 1965. Such letter of warning is to be issued to a practitioner after holding due inquiry and on finding him guilty of any misconduct. The expression "misconduct" has been explained in Section 22 (1) of the Act of 1965 to mean conviction of a registered practitioner by a criminal court for an offence which involves moral turpitude and which is cognizable within the meaning of the Code of Criminal Procedure, 1973. Under Rule 62 of Rules of 1967 the Council can hold an inquiry as regards the misconduct for the purposes of Section 22 of the Act of 1965.

13. In the present case, admittedly, no inquiry has been held against the petitioner as contemplated by Chapter VI of the Rules of 1967. In fact, the petitioner has not yet been found guilty of any misconduct contemplated by the explanation to Section 22 (1) of the Act of 1965. Merely a charge has been framed in the criminal proceedings initiated under Section 23 (2) of the Act of 1994. The stage of issuing a letter of warning would come into play only if the petitioner is found guilty of any misconduct after holding an inquiry in the manner prescribed. The petitioner not having been convicted for an offence

involving moral turpitude and there being no inquiry held as contemplated by Section 22 (1) of the Act of 1965 in the manner prescribed, it is clear that the first part of the impugned communication issuing warning to the petitioner is not in accordance with law.

14. Now, coming to the second part of the impugned communication whereby the petitioner has been refrained from undertaking ultra sound/ sonography practice is concerned, it is clear that such direction has the effect of suspending the petitioner's registration indirectly without actually suspending such registration. In effect while the registration for the petitioner continues, the petitioner has been directed not to conduct any ultra sound / sonography practice. This fact is further clear as in the subsequent paragraph of the impugned communication it has been stated that the Council would have liberty to pass an appropriate order of suspension or removal of the petitioner's name from the Register, if any, further irregularities and complaints were reported against her. Thus, without suspending the petitioner's registration she has been directed not to use any ultra sound sonography machine or equipment.

15. The nature of power to be exercised by the Medical Council under Section 23 (2) of the Act of 1994 was considered by the Division Bench in the case of Dr Ramineni Venugopal (supra). It was held that though the Act of 1994 did not expressly provide for

interim suspension, the Medical Council in an appropriate case or in case of grave urgency could suspend the registration as a holding order. In paragraph 34 it was observed as under:

> *"34. Thus, if in a case of grave urgency and if the Medical Council forms an opinion for instance that the continuation of a medical practitioner on its register for any length of time is detrimental to public interest or is likely to lead to the violation of the provisions of the said Act, it can always issue an order of suspension as a holding order and then follow it by an enquiry to consider whether or not to continue the suspension. The exercise of such power would only be in cases where the matter cannot be delayed at all."*

16. The aforesaid decision has been referred to and followed in the case of Dr Uttamkumar (supra) by another Division Bench of which one of us (Shri A.S.Oka,J) was a party. It is, therefore, clear that in case of grave urgency or in public interest, on the Medical Council forming such opinion in that regard it could direct in public interest immediate suspension of registration of a medical practitioner. In the present case, the impugned communication does not record that the Council had formed an opinion that the continuation of the name of the petitioner in the register was detrimental to public interest or that it was likely to lead to the violation of the provisions of the Act of 1994. In fact, the registration of the petitioner has not at all been suspended. However,

without doing so the petitioner has been directed to refrain from using ultra sound/sonography machine of any type. We have not been shown any such power with the respondent No.2 to direct a medical practitioner to refrain from undertaking ultra sound / sonography practice without even temporarily suspending his/her registration. In the absence of there being any such power with the respondent No.2 it could not have directed the petitioner to refrain from using the ultra sound/sonography machine without even temporarily suspending her registration as being detrimental to public interest. Hence, even the second part of the impugned communication is without any authority of law.

17. The third part of the impugned communication records that necessary endorsement of the first two parts had been made in the concerned register. However, in view of the fact that we have found the first and second part of the impugned communication to be bad in law, there would be no occasion whatsoever to make such endorsement in the concerned register. As the warning issued to the petitioner and the subsequent direction to refrain from undertaking ultra sound/sonography practice have been found to be illegal, there is no question of recording aforesaid endorsements in the concerned register.

18. In view of the aforesaid, the impugned communication dated 25th April, 2013 cannot be sustained and the same is required to be quashed. However, at the same time, it is clarified that it would be open for the respondents to take appropriate action in accordance with law against the petitioner in the background of the alleged incident that has led to initiation of prosecution against the petitioner under the Act of 1994. It is clarified that we have not gone into the sufficiency or otherwise of the material before the respondent No.2 for taking appropriate action against the petitioner."

12. From the facts detailed in the preceding paragraphs, it is clear that in Saroj Iyer's case (supra), the Division Bench was considering the question, *"Whether a journalist or member of the society can attend the inquiry proceedings against the delinquent Doctor under Section 22 of the Act of 1965?"*

Whereas, the question for decision of the Division Bench in Dr. Megha's case (supra), *"Whether without holding the inquiry under Section 22 of the Act of 1965, Dr. Megha can be refrained from using Ultrasound/Sonography machine without even temporarily suspending her registration?"*

13. In Saroj Iyer's case (supra), the Division Bench held that the inquiry under Section 22 of the Act of 1965, is a quasi judicial proceeding and the said proceeding cannot be held in camera. The petitioner therein was permitted to attend the inquiry proceeding under Section 22 of the Act of 1965. Lastly, the Division Bench, in paragraph 15, observed thus:

> *"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."*

14. Thus, the issue decided by the Division Bench was that the accredited members of the press shall be permitted to attend the inquiry proceeding under Section 22 of the Act of 1965, save and except the cases where MMC is of the opinion that the

presence of accredited members of the press in inquiry proceeding shall affect the just decision in the inquiry on merits or any statutory provision that may be enacted or made providing for such inquiry proceeding to be confidential.

15. Whereas in Dr. Megha's case (Supra), learned Division Bench found the communication dated 25.04.2013, which was impugned, cannot be sustained and therefore it was quashed.

16. From the detailed reading of both the judgments given by two different Division Benches, we are of the view that, they operate in two different fields namely;

(i) if any accredited member of the press wishes to attend the inquiry under Section 22 of the Act of 1965, such a member can attend by making appropriate application to the Council. And,

(ii) any penal action cannot be taken against any doctor by the MMC unless the inquiry under Section 22 of the Act of 1965, is conducted against the said Doctor.

17. We have no hesitation to record that there is no conflict of whatsoever in nature in the views taken by the Division Benches of this Court in Saroj Iyer's case (supra) and Dr. Megha's case (supra).

18. Mr. Khapre, learned Senior Counsel assisting the Court, invited our attention to authoritative pronouncement of Constitution Bench of Hon'ble Apex Court in ***Dr. Shah Faesal and Ors. .vs. Union of India and anr.;*** reported in ***AIR 2020 SC 3601***. Before the Hon'ble Apex Court, it was urged that the matter needs to be referred to a Larger Bench as there were contrary opinions by two different Constitution Benches on the interpretation of Article 370 of the Constitution. Whether the matter be referred to the Larger Bench or not was the only issue before the Hon'ble Apex Court. It was urged before the Hon'ble Apex Court that there is a conflict in ***Prem Nath Kaul vs. The State Of Jammu & Kashmir*** reported in ***AIR 1959 SC 749*** and in the Constitution Bench in ***Sampat Prakash vs. State Of Jammu & Kashmir & Anr*** reported in ***AIR 1970 SC 118***. In paragraphs 42, 43 and 44, the Hon'ble Apex Court ruled thus:

"42. First, it is worth highlighting that judgments cannot be interpreted in a vacuum, separate from their facts and context. Observations made in a judgment cannot be selectively picked in order to give them a particular meaning. The Court in the Prem Nath Kaul case (supra) had to determine the legislative competence of the Yuvaraj, in passing a particular enactment. The enactment was passed during the interregnum period, before the formulation of the Constitution of State of Jammu and Kashmir, but after coming into force of the Constitution of India. The observations made by the Constitution Bench in this case, regarding the importance given to the decision of the Constituent Assembly of the State of Jammu and Kashmir needs to be read in the light of these facts.

43. Second, the framework of Article 370 (2) of the Indian Constitution was such that any decision taken by the State Government, which was not an elected body but the Maharaja of the State acting on the advice of the Council of Ministers which was in office by virtue of the Maharaja's proclamation dated March 5, 1948, prior to the sitting of the Constituent Assembly of the State, would have to be placed before the Constituent Assembly, for its decision as provided under Article 370 (2) of the Constitution. The rationale for the same is clear, as the task of the Constituent Assembly was to further clarify the scope

and ambit of the constitutional relationship between the Union of India and the State of Jammu and Kashmir, on which the State Government as defined under Article 370 might have already taken some decisions, before the convening of the Constituent Assembly, which the Constituent Assembly in its wisdom, might ultimately not agree with. Hence, the Court in the case of Prem Nath Kaul (supra) indicated that the Constituent Assembly's decision under Article 370 (2) was final. This finality has to be read as being limited to those decisions taken by the State Government under Article 370 prior to the convening of the Constituent Assembly of the State, in line with the language of Article 370 (2).

44. Third, the Constitution Bench in the Prem Nath Kaul case (supra) did not discuss the continuation or cessation of the operation of Article 370 of the Constitution after the dissolution of the Constituent Assembly of the State. This was not an issue in question before the Court, unlike in the Sampat Prakash case (supra) where the contention was specifically made before, and refuted by, the Court. This Court sees no reason to read into the Prem Nath Kaul case (supra) an interpretation which results in it being in conflict with the subsequent judgments of this Court, particularly when an ordinary reading of the judgment does not result in such an interpretation."

19. In paragraph 45, the Hon'ble Apex Court found that there is no conflict between judgments in ***Prem Nath Kaul case*** and ***Sampat Prakash case*** and, therefore, plea of the learned counsel to refer he matter to the Larger Bench was rejected.

20. Thus, it is clear that from the dictum of the Hon'ble Apex Court's Constitution Bench that the judgments cannot be interpreted in vacuum, separate from their facts and context.

21. We have already observed what where facts of Saroj Iyer's case and Dr. Megha's case and also we have seen the context in which the judgments were delivered. In view of the above referred law laid down, the reference was clearly unwarranted as both the judgments were governing in altogether different fields.

22. The learned Single Judge disposed of the writ petition on the statement made by the learned counsel for the respondent and thereafter made a reference. Thus, at the time of making reference, the *lis* was not live before the Court.

23. Mr. Naik, learned counsel assisting the Court, submitted that pure question of law and those pertaining to the interpretation of the provisions of the Constitution alone can be referred to the Larger Bench, if the lis alive. He placed reliance on the Nine Judge Bench judgment of the Hon'ble Apex Court in ***Kantaru Rajeevaru Vs. Indian Young Lawyers Association through its General Secretary Bhakti Pasrija and ors;*** reported in ***(2020) 9 SCC 121***. We hereby reproduce below the observations of the Hon'ble Apex Court in paragraphs 30 and 31.

> *"30. By placing reliance on a judgment of this Court in Central Bank of India v. Workmen, it was submitted that this Court should not give speculative opinions or answer hypothetical questions. The reference of questions of law pertaining to the scope of Articles 25 and 26 of the Constitution of India are of utmost importance requiring an authoritative pronouncement by a larger bench, especially in light of the view of the reference Bench that there is a conflict between the Court's judgments in Shirur Mutt and Durgah Committee. An objection similar to the one in this case was taken in Indra Sawhney Vs. Union of India, which was rejected on the ground that the reference in that case was made to finally settle the legal position relating to reservations. Therefore, the*

reference in this case cannot be said to be suffering from any jurisdictional error.

31. Regarding the contention that pure questions of law cannot be referred to a larger bench, it was argued that it is not possible for the Court to decide the reference without any facts of a particular case before it. We do not agree. It is not necessary to refer to facts to decide pure questions of law, especially those pertaining to the interpretation of the provisions of the Constitution. In fact, reference of pure questions of law have been answered by this Court earlier. One such instance was when this Court was convinced that a larger bench has to discern the true scope and interpretation of Article 30 (1) of the Constitution of India. An eleven Judge Bench was constituted for the purpose and eleven questions of law were framed and answered in T.M.A. Pai Foundation v. State of Karnataka. Yet another case where there was a reference of pure questions of law for the larger bench needs mention. Finding a conflict between the judgments of this Court in M. P.Sharma v. Satish Chandra and Kharak Singh v. State of U. P., a three Judge Bench of this Court referred the matter to a larger bench of five Judge Constitution Bench, which referred the issue relating to the existence of the fundamental right to privacy in Article 21 of the Constitution of India to a nine Judge Bench. The question whether there is a constitutionally protected

right to privacy was decided by a nine Judge Bench of this Court in K.S. Puttaswamy (Privacy-9J) v. Union of India, without reference to any facts. As stated above, determination of the scope of Articles 25 and 26 is of paramount importance. To adjudicate the reference, there is no requirement to refer to any disputed facts by this Court."

24. We agree with the submissions of Mr. Naik, learned counsel assisting the Court that, whether to hold inquiry under Section 22 before issuing any punitive order is not the issue of national importance. It will always be a challenge that will be set up by the delinquent doctor against the council if punitive action is taken against him/her without holding an inquiry. Mr. Naik also pressed into service, to buttress his submission, that the Court should not undertake to decide an issue unless it is a living issue between the parties. For that he relied upon authoritative pronouncement of the Hon'ble the Apex Court reported in ***Dhartipakar Madan Las Agrawal Vs. Rajiv Gandhi,*** reported in ***1987 (Supp) Supreme Court Cases 93***. In paragraph 4, the Hon'ble Apex Court observed as under:

"4. The election under challenge relates to 1981, its term expired in 1984 on the dissolution of

the Lok Sabha; thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in Azhar Hussain Vs. Rajiv Gandhi and Bhagwati Prasad Vs. Rajiv Gandhi. Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it."

25. There is also a guiding light from the Hon'ble Apex Court in ***Shrimanth Balasaheb Patil Vs. Speaker, Karnataka Legislative Assembly and Ors.*** reported in ***(2020) 2 SCC 595*** for referring the matter to the Larger Bench. In paragraph 160 of the said judgment, it is observed as under:

> *"160. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench. The cardinal need is to achieve a judicial balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis."*

26. From the facts involved in Writ Petition No.999/2018, in which the reference is made and/or Dr. Megha Mahendra

Topale's case (supra), it is clear that challenge was that without there being an inquiry, punitive action cannot be taken against the delinquent doctor. So the law laid down by Dr. Megha's case is that before taking any punitive action, the MMC has to follow the provisions of Section 22 of the Act of 1965 by conducting the inquiry and in accordance with the Rules framed under the said Act. Whereas, in Saroj Iyer's case (supra), it was decided by the Division Bench that the inquiry under Section 22 of the Act of 1965 is conducted by a quasi judicial authority and, therefore, it can be attended.

27. **CONCLUSION:**

(i) There is no conflict of views between the judgments in ***Saroj Iyer and another v. Maharashtra Medical (Council) of Indian Medicine, Bombay and another*** reported in ***2002 (1) Mh.L.J. 737*** and ***(Dr.) Megha Mahendra Topale v. Navi Mumbai Municipal Corporation and others*** reported in ***2014(5) Mh.L.J. 323***.

(ii) The dictum of Division Benches in *Saroj Iyer's case* (supra) and *(Dr.) Megha Topale's* Case (supra) operates in different fields.

(iii) The judgments rendered cannot be interpreted in vacuum separate from their facts and contexts.

(iv) Reference is to be made to the Larger Bench after framing a question germane to the controversy and when the cause is live and in existence.

(v) For academic purpose, a reference can be made to the Larger Bench, only if the issue, though not live, is of national importance and in order to avoid prospective litigation.

28. In view of the discussions, we are of the view that the reference made by the learned Single Judge on 22.01.2020 was unwarranted.

Lastly, we express our sincere appreciation for the efforts taken by Mr. R. L. Khapre, learned Senior Counsel and Mr.A.A. Naik, learned counsel, in assisting the Court while deciding this reference.

(Anil S. Kilor) **(Pushpa V. Ganediwala)** **(V.M. Deshpande)**
JUDGE **JUDGE** **JUDGE**

kahale