



Neutral Citation Number: [2023] EWHC 2809 (Admin)

Case No: CO/3715/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Friday, 10th November 2023

Before:
FORDHAM J

Between:

SHEELA JOGULA RAMASWAMY
- and -
GENERAL MEDICAL COUNCIL
(No.2)

Claimant

Defendant

Daniel Matovu (instructed by Direct Access) for the **Claimant**
Ivan Hare KC (instructed by GMC Legal) for the **Defendant**

Written submissions 17/4/23, 15/8/23, 18/9/23

Approved Judgment
(Application to Re-Open)

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

FORDHAM J

FORDHAM J:

Introduction

1. This judgment is the sequel to my judgment [2023] EWHC 100 (Admin) (the “Judgment”). In the Judgment I refused Dr Ramaswamy’s claim pursuant to s.41A(10) of the Medical Act 1983, asking this Court to revoke the interim conditional registration order (“ICRO”) imposed on her on 14 September 2021 and maintained on review on 9 March 2022 and 25 August 2022 (Judgment §1). The Judgment arose out of proceedings at the Administrative Court in Manchester (“ACM”), where there was a substantive hearing on 13 December 2022. The Judgment was handed down on 24 January 2023 and on the same day I made an Order dismissing the claim with costs (Judgment §§45-46). I am told that no step has yet been taken by the GMC to enforce that costs order.
2. This is a determination on the papers. But it is a judicial act, and it engages the open justice principle. I am satisfied that it is appropriate to deal with it by means of a short judgment rather than in an Order embodying reasons. By an application, filed by Dr Ramaswamy at the Administrative Court (but in London) on 17 April 2023, she asks this Court for permission to reopen my final determination, revoke the Order rejecting the claim and reverse the Order as to costs. Dr Ramaswamy also asks the Court to deliver a short judgment in the public domain which would describe what happened on 25 January 2023, 13 February and 16 February 2023.
3. When the April 2023 application – after a delay within ACM – eventually came to my attention on 6 July 2023, I was able to consider the papers and make an Order (14 July 2023) giving directions. I directed notice to the GMC (which took place on 20 July 2023), and a time-frame for GMC to respond (as it did on 15 August 2023) and for Dr Ramaswamy to reply (as she did on 18 September 2023). Neither party has asked for a hearing, and I do not consider that a hearing is necessary. The practice is for applications to re-open to be considered by the same Judge who made the determination. But the Judge needs to think carefully about whether that is appropriate. I had done so and am satisfied that I can properly deal with this application.

The Medical Practitioners Tribunal

4. What happened was this. The Judgment had been circulated as a confidential draft on 9 January 2023, for a hand-down on 16 January 2023. I then acceded to a well-founded request from Dr Ramaswamy for a postponement of the hand-down. The deferred hand-down duly took place on 24 January 2023. By then, the part-heard substantive hearing on remitted issues of alleged non-compliance had resumed in the Medical Practitioners Tribunal. This was as expected (Judgment §1). There was a hearing day on 9 January 2023 and another on 11 January 2023. Dr Ramaswamy was represented by Mr Matovu in those resumed proceedings, as she had been at the hearing before me on 13 December 2022 and as to the typographical corrections and consequential matters for the hand-down of Judgment on 24 January 2023. The resumed hearing before the Tribunal was dealing with the alleged non-compliance with the Directions for Health Assessment (“DHAs”) (Judgment §8), following Morris J’s June 2021 judgment at [2021] EWHC 1619 (Admin).

5. The Tribunal reconvened on 25 January 2023 and gave its 21-page determination. It ruled in Dr Ramaswamy's favour. The Tribunal determined that Dr Ramaswamy had failed to comply, but that she had "good reason". This was not a question which I had addressed (see Judgment §28). The Tribunal said the central point was not whether there was a cause for concern, but whether the concern could be investigated without the necessity for a health assessment. On the particular facts, it could be investigated without the necessity for a health assessment, and so there was a "good reason".
6. The Tribunal's determination came subsequently to be discussed in a reasoned Decision dated 13 February 2023, taken by the GMC's Case Examiners, to which I will come below. That discussion identifies key points of particular relevance to the issue which the Case Examiners were considering: whether there was now a realistic prospect of establishing that Dr Ramaswamy's fitness to practise was currently impaired to a degree justifying action on her registration. As the Case Examiners recorded, the Tribunal's reasoning had included the following: (1) The consultant psychiatrist (Dr Gilvarry) had described a health assessment as "appropriate" and reasonable, rather than describing it as "necessary". (2) Dr Gilvarry had stated that it was unlikely that Dr Ramaswamy would be able to maintain the persona unnoticed by people outside the GMC. (3) A range of alternative evidence had been obtained, which had not been challenged by the GMC, which provided no basis for concern about Dr Ramaswamy's fitness to practise. This evidence included multisource feedback reports from colleagues; feedback from patients; an assessment by a consultant physician; further assessments from professional colleagues; and patient feedback questionnaires. (4) The concerning and inappropriate content of Dr Ramaswamy's emails to the GMC had not been reflected in the tone or content of communications sent to anyone else; nor in other behaviour. Many of these points are reflected in key submissions which had been made about the evidence to me, for the purposes of the issue which I had to decide (see Judgment §§18-21, 23).

The Case Examiners

7. After the Tribunal's determination of 25 January 2023, the GMC (2 February 2023) referred Dr Ramaswamy's case to Case Examiners for consideration. By their Decision (13 February 2023) the Case Examiners addressed this question: whether there was now a realistic prospect of establishing that Dr Ramaswamy's fitness to practise was currently impaired to a degree justifying action on her registration. The Case Examiners considered the allegation that Dr Ramaswamy's fitness to practise was impaired by reason of adverse health. That was directly relevant to the claim before me (Judgment §7). They were not considering the matters relating to Mrs RC and AC (Judgment §11). They did consider a separate allegation of fitness to practise impairment by reason of misconduct, arising from an allegation that Dr Ramaswamy had worked while suspended by an interim orders Tribunal. That had not featured in the claim or arguments before me.
8. In their Decision, the Case Examiners explained that they were satisfied that the allegations were serious enough to warrant action on Dr Ramaswamy's registration. They then dealt with the question whether the allegations were "capable of proof to the required standard, namely more likely than not". As to the allegation of working while suspended, the Case Examiners referred to the absence of any evidence to contradict Dr Ramaswamy's statement that she had not received correspondence notifying her of the interim order. As to the allegation of fitness to practise impairment by reason of

adverse health, the Case Examiners decided that there was not a realistic prospect of establishing that Dr Ramaswamy's fitness to practise was currently impaired to a degree justifying action on her registration. In their reasons, the Case Examiners began with features of the Determination of the Tribunal on 25 January 2023. They noted that Dr Ramaswamy was not non-compliant with a direction requiring her to undergo a health assessment. They recognised that the Tribunal had cited "alternative evidence that had been obtained to assure them" that Dr Ramaswamy's failure to comply did not give rise to a risk to public protection and that she had "good reason" not to comply with the direction. They referred to comments made by the consultant psychiatrist commissioned by the GMC to review the documentation relating to the case and considered at the Tribunal hearing. They referred to Dr Gilvarry's view about Dr Ramaswamy being unlikely to maintain the persona unnoticed by people outside the GMC, considered alongside the alternative evidence which did not raise any concerns about her fitness to practise or her health. The Case Examiners concluded that there was no realistic prospect of proving the Dr Ramaswamy's fitness to practise is currently impaired by reason of adverse health. Their decision was to "close the case with no action", pursuant to rule 8 of the General Medical Council (Fitness to Practise) Rules 2004.

The GMC

9. The GMC communicated the Case Examiners' Decision to Dr Ramaswamy by letter dated 13 February 2023, to which the reasoned decision of the Case Examiners was attached. Dr Ramaswamy was informed in that GMC letter that, in light of the Case Examiners' Decision, to conclude the case with no further action, the upcoming Interim Orders Tribunal ("IOT") review hearing would now be a "revocation hearing". By an email the next day, 14 February 2023, the Investigation Officer at the GMC informed Dr Ramaswamy that the GMC would be making a submission at the upcoming IOT review hearing on 16 February 2023, for the ICRO to be completely revoked.

The Interim Orders Tribunal

10. At the hearing on 16 February 2023 the IOT heard, and agreed with, the GMC's submission that the ICRO should now be revoked. That course was duly taken. It follows that the ICRO, which I upheld in the Judgment and Order, has been revoked.

The Court of Appeal

11. In response to the Judgment, circulated in draft, both parties through their Counsel had made submissions on whether I should grant permission to appeal to the Court of Appeal (Judgment §47). Those submissions had focused on whether such an appeal would pass the relevant legal merits threshold. They had proceeded on the premise that the Court of Appeal would have jurisdiction to entertain an appeal. So did I. I refused permission to appeal on the legal merits. The shared premise was flawed. The Judgment and Order were, and are, final and unappealable. That is by reason of section 18 of the Senior Courts Act 1981, as Dr Ramaswamy was told by the Civil Appeals Office when she sought permission to appeal and that application was rejected on 19 March 2023.

The Application to Re-Open

12. The application to this Court (17 April 2023) was supported by a statement from Dr Ramaswamy setting out its basis. It relied on CPR 52.30, or alternatively – bearing in mind that the claim with which I had dealt had not been an appeal – CPR 3.1(7) or the Court’s inherent jurisdiction. The application made the case that the Court should reopen the Judgment and the Order on the basis that it was necessary to do so in order to avoid real injustice, in circumstances which are exceptional and make it appropriate, in the absence of any alternative effective remedy. Dr Ramaswamy argued that “exactly what I was contending for has now proved to be correct following the recent concession by the [GMC] of its own volition”, and that the GMC’s post-Judgment concession “has demonstrated that the integrity of the High Court proceedings has been critically undermined”. She emphasised that “it is now accepted that the ICRO I was challenging should have been revoked”. And she emphasised that the GMC’s decision, of its own volition, to revoke the ICRO as no longer necessary or proportionate was reached “without any evidence coming to light or any change in the evidential position”. The application is opposed by the GMC, essentially because there is nothing in the post-Judgment events which critically undermines the integrity of the litigation process. In the reply submissions (18 September 2023), Mr Matovu developed the arguments. But he also developed what seems to me to be a distinct line of argument. This is that there had been a “material change of circumstances”, and that the Court has “a broad power to vary and revoke a previous order ... where there has been a material change of circumstances since the order was made”. He cited Tibbles v SIG Plc [2012] EWCA Civ 518 [2012] 1 WLR 2591 at §39 and Thevarajah v Riordan [2015] UKSC 78 [2016] 1 WLR 76 at §15.
13. I record that there is a disagreement as to the characterisation of the evidence that was before the Tribunal. The GMC says it included “a number of assessments of Dr Ramaswamy’s performance and fitness to practise which were placed before the [Tribunal] for the first time”. Dr Ramaswamy says it was “more information of a similar nature” to what was available in December 2022. I will proceed on the basis of Dr Ramaswamy’s characterisation.

Discussion

14. I cannot accept that there is a proper basis to reopen the Judgment or the Order that I made. Dr Ramaswamy exercised her right of access to this Court, pursuant to section 41A of the 1983 Act, to obtain a judgment on the question whether the ICRO should be set aside. That was essentially an evaluation of risk: see eg. Judgment §§4, 33, 36.
15. I entirely accept that there may be a change of circumstances which puts into a new light the question whether an interim order can properly be maintained. I accept that the Tribunal’s Determination (25 January 2023), followed by the Case Examiners’ Decision (13 February 2023), raised that question for the GMC. In particular, I accept that, once the GMC reached the view that the ICRO could not properly be maintained, it was incumbent on it to act promptly. But that is what happened. The GMC did act promptly. The ICRO was promptly considered by the IOT. The submission was properly made that it should be revoked. It was revoked. It follows that there is no injustice from the continuation of an interim order which this Court upheld, in light of a change of circumstances. Quite the opposite is true. The change of circumstances has

led to the ICRO being revoked. There could now be no new (or reopened) claim to have an ICRO set aside. It has already been set aside.

16. I do not accept that the circumstances are so exceptional as to justify the reopening of the Judgment and Order, with that course being necessary in order to avoid real injustice. I can see nothing which has critically undermined the integrity of the litigation process. The GMC's proceedings against Dr Ramaswamy have involved different decision-makers at different stages, asking different questions, for different purposes. Each has had to arrive at their own evaluative assessment of the materials that are put before them, so far as relevant to the question being asked. What I had to do in the Judgment was to conduct a "risk assessment" paying attention to the nature of the allegations and the evidence relied upon to support them, including the quality of the evidence and the possibility or prospect that it may not be sufficient to justify the view that there is a risk, but with no applicable threshold (Judgment §4). I explained that it was not the function of the Court – in dealing with "interim" orders – to try to arrive at definitive conclusions on contentious factual matters; but that the question of interim orders raises questions of risk-assessment, questions about the sufficiency of the quality of the evidence, questions of necessity and of proportionality (Judgment §45). It was Dr Ramaswamy's statutory entitlement to bring her section 41A(10)(b) claim to the High Court, to have her interim order revocation claim heard in the High Court on its legal merits (Judgment §1). She did so and obtained a judgment of the Court on the revocation of the ICRO, on the evidence and submissions.
17. By the time of the IOT review hearing (16 February 2023), the circumstances had changed. First, the Tribunal made its Determination on the resumed substantive hearing, including its findings and observations about aspects of the evidence. Secondly, the Case Examiners had reached their reasoned Decision – in large part informed by the Tribunal's substantive Determination – as to the overall prospects of proving the remaining health-based impairment case. If, at the time of the hearing before me on 13 December 2022 – or even in the run up to the hand-down of judgment – the self-same case on the self-same evidence had already been assessed by a decision-maker or by the GMC as providing no realistic prospect of establishing that fitness to practise was impaired to the degree to justify action, then I do not see how the GMC could have maintained its position before me. But the events and materials relied on do not substantiate that position. What happened was that decisions were taken, and circumstances changed.
18. A change of circumstances, or the fact that a decision would be different if later events had happened earlier, is not a basis to reopen a judgment or Order of the Court. Neither Tibbles nor Thevarajah nor CPR 3.1(7) are any basis for saying that a final judgment of the High Court should be reopened on the basis that something has happened since, which means the decision would have been different had it been made now. Take a straightforward example. Suppose there is a contested issue of interim relief in which the party who prevails secures an order for costs. Suppose that party then loses the substantive trial. If that had happened before interim relief was decided, the judgment on interim relief would necessarily have been different. But that is not a basis for reopening the judgment on interim relief and reversing the costs order. Or suppose new legislation is enacted, or a new Supreme Court case is decided. These are not a basis for reopening and reversing those decisions made before that happened.

19. That is sufficient to dispose of this application. But there is a further important feature, on the facts of the present case. It is recorded in the Judgment at §1. The starting-point is that I had adjourned Dr Ramaswamy's claim, originally scheduled for a substantive hearing on 29 March 2022, at her request: see [2022] EWHC 732 (Admin). The claim was then refixed for hearing on 13 December 2022. The GMC had then made an application for a further adjournment, to a date in early 2023. As I recorded in the Judgment (§1), the GMC submitted that such an adjournment was an appropriate course in circumstances where: (a) the substantive hearing on remitted issues of alleged non-compliance had adjourned part-heard on 30 November 2022, to hearing dates on 9-11 and 25-27 January 2023; and (b) the ICRO, being due to expire on 12 March 2023, was likely to require an application to the High Court for an extension. As I explained, GMC's position was that:

it would make best sense for this claim for revocation of the ICRO to be considered, alongside those other matters and on an updated basis, early in 2023.

20. That, however, as I also explained in the Judgment, was a course which was "strongly opposed," by Dr Ramaswamy. She wanted to pursue her statutory entitlement to have her claim for revocation of the ICRO heard, on its merits, in the High Court. Dr Ramaswamy opposed the idea of waiting to see what happened in January 2023 and where that left the position regarding the ICRO. In light of that strong opposition, I declined GMC's application for an adjournment. I explained that Dr Ramaswamy was entitled to have the access to the Court which the statutory scheme conferred. She was not required to await further events which could constitute a material change in circumstances. The Court respected that choice, and determined the issues before it, producing its reasoned determination.
21. The making of that choice, given that opportunity for a deferral, makes it quite impossible in my judgment for Dr Ramaswamy to now say that there is some injustice arising from what happened in January and February 2023, so that the Judgment needs to be reopened and rewritten on an "updated basis". That is to have it both ways. Decisions of different decision-makers, addressing distinct questions albeit on the same evidence, and arriving at their own evaluative conclusions in the discharge of their own distinct roles, necessarily need to take place with a sequence. Dr Ramaswamy was perfectly well aware of the sequence, and indeed was insistent on it.
22. It is necessary to hold a principled line. Dr Ramaswamy sought and obtained the evaluative judgment of the High Court on a question of risk-assessment, on the evidence and in the circumstances as they stood at the time of the hearing before the High Court, and at the time of the judgment. She does not have an entitlement to challenge that decision as 'wrong', there being no right of appeal. She does not get a second bite at the cherry, as if the case had been adjourned. Especially when she opposed the adjournment that would have involved that evaluative judgment taking place on an updated basis. It is of the nature of a risk assessment determination regarding an interim order that the practitioner who is the subject of the interim order may come subsequently to be vindicated as to questions of impairment. But that, and the events in the present case, do not begin to constitute the sort of injustice or circumstances which warrant the reopening of a previous determination – here by the High Court – in the assessment of risk by reference to the evidence for the purposes of evaluating the justification for continuing the interim order at a previous stage.

Conclusion

23. I will dismiss the application for permission to reopen the Judgment and Order. It follows that the Judgment and Order stand. That includes the costs order. Enforcement of that costs order is a matter for the GMC to consider, in all the circumstances. The ICRO, which I declined to revoke, has fallen away. Finally, Dr Ramaswamy has this sequel judgment in the public domain. It records what took place in January and February 2023, and how the GMC proceedings against her – in which the ICRO which I upheld as an interim order had arisen – were dropped and the ICRO itself discharged, shortly after the Judgment.

Unilateral Communication with the Court

24. On 7 November 2023 Dr Ramaswamy sent an email to my clerk. It was cc'd to Mr Matovu but not to GMC or its lawyers. On my instruction, my clerk responded as follows. "Unilateral communications with the Court are inappropriate (CPR 39.8) and I am asking my clerk to cc the GMC's team to this response, so that they are aware of it and this reply. If Dr Ramaswamy has points properly relating to the draft judgment, these are to be provided by her advocate within the timeframe given by the Court, as they are both aware. Dr Ramaswamy can of course also take advice from her advocate on any other matter she wishes to raise with him. I decline the invitation to enter into an email dialogue." By a subsequent email to the GMC, cc'd to my clerk, Dr Ramaswamy sought to excuse her unilateral communication on the basis that her email to my clerk (7 November 2023) "related to a completely different case". The idea of a litigant seeking unilaterally to communicate with a Judge, behind the other party's back, about some new claim or case is no less alarming than is the idea of seeking to do so in relation to the case with which the Judge is actually dealing.

Costs

25. Mr Matovu resists the GMC's application for its costs (£2,139.30 including VAT) of responding to Dr Ramaswamy's failed application to reopen the Judgment and Order. He repeats many of the points which featured in the application. He also says the Court must have considered that the application had some merit, because I ordered service on the GMC and the opportunity to respond, instead of peremptory dismissal. I am going to order that Dr Ramaswamy pay the GMC's costs summarily assessed in the sum of £1,750 including VAT. The application has failed and the points in support of it have been rejected. The fact that the Court wants to give an opportunity to learn the other side of the story, especially when imputations of concealment are raised, is not a provisional finding of merit. It was obvious that the course being invited would necessitate the chance for the GMC to be heard, and this would entail costs being incurred. My Order for directions was an opportunity for Dr Ramaswamy to decide what to do, knowing that the GMC was about to incur costs. My observations within that Order even drew attention to the adjournment sought by the GMC and resisted by Dr Ramaswamy (§§19-20 above). I am satisfied that the costs order is just and appropriate. The broad-brush reduction is because I am not awarding costs on an indemnity basis.