

Dr. Govindasamy Thanapal

Appellant

v.

The General Medical Council

Respondent

FROM

THE HEALTH COMMITTEE OF THE
GENERAL MEDICAL COUNCIL

ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,
DELIVERED THE 5TH OCTOBER 1992

Present at the hearing:-

LORD GOFF OF CHIEVELEY
LORD MUSTILL
LORD WOOLF

[Delivered by Lord Goff of Chieveley]

The appellant, Dr. Govindasamy Thanapal, appeals from a direction of the Health Committee of the General Medical Council made on 26th June 1992 that, by reason of a determination that the appellant's fitness to practise was seriously impaired, the appellant's registration be suspended for a period of twelve months. The direction of the Health Committee was made under jurisdiction conferred upon it by section 37(1)(a) of the Medical Act 1983. By section 40(1)(b) of the Act a decision of the Health Committee giving a direction for suspension is appealable to Her Majesty in Council. It is under that section that the appellant, Dr. Govindasamy Thanapal, now appeals. However it is provided by section 40(5) of the Act that such an appeal only lies on a question of law and it follows that if the appellant is to succeed in his appeal, he must establish that his appeal does raise a question of law.

The history of the matter is briefly as follows. It appears that the first occasion, or at least the first relevant occasion upon which the appellant's fitness to practise was called into question before the Health Committee, was on 25th June 1987 when the Committee concluded that his fitness to practise was seriously impaired and made a direction of suspension of his

registration for twelve months. At subsequent hearings, on 3th June 1988, 26th July 1989, 25th June 1990, 17th June 1991 and now on 26th June 1992, the Health Committee, acting under powers conferred upon it by section 37(3) of the Act of 1983, directed that the period of suspension be continued for a further period of twelve months. The hearing on 26th June 1992, at which the direction which is the subject matter of the present appeal was made, was the first of the series of hearings which the appellant himself attended.

It appears that, on each occasion, the direction of the Health Committee was made on the same basis, which is that the appellant suffered from paranoid psychosis. At the hearing on 26th June 1992 there was before the Health Committee evidence in the form of reports by two consultant psychiatrists, Dr. Peter Dally and Dr. S. Dasgupta, in which they both expressed the opinion that, by reason of his condition, namely the paranoid psychosis which they diagnosed, the appellant was not fit to practise. Both doctors gave evidence before the Health Committee and were cross-examined by the appellant. The record of the hearing before the Health Committee was before their Lordships and discloses that the general theme or tenor of the appellant's cross-examination was that the opinion of the two consultants was not founded upon a diagnosis of a scientific nature but was no more than a subjective opinion without any true scientific basis, and this theme has been developed by the appellant, Dr. Govindasamy Thanapal, before their Lordships both in his written case and in the course of his submissions before the Board.

Their Lordships have of course studied the appellant's written case and have listened with care to his oral submissions. Dr. Govindasamy Thanapal very helpfully sought to summarise the points which had already been made in his written case in a series of propositions which, in his submission before their Lordships, raised questions of law which were proper for consideration and upon which he asked that his appeal should be allowed.

His first submission was that the Health Committee sought to act upon evidence which was inadmissible in law, namely the evidence of the two consultant psychiatrists. He submitted again that this evidence was simply evidence of opinion, although he went further and in a later submission suggested that the evidence was not founded upon any basic facts. Their Lordships have of course read not only the reports but also the evidence given by the consultant psychiatrists, and are satisfied that that evidence was undoubtedly admissible in the ordinary way as expert evidence. Then it was said that there was no warrant for calling the consultant psychiatrists, but their Lordships can see no basis for that submission. The evidence, which was undoubtedly admissible, was certainly evidence which could properly be called, and the Health Committee were entitled to consider it in coming to their conclusion.

Then, as his third point, Dr. Govindasamy Thanapal said that the Committee in effect allowed their own functions to be usurped by the opinions, or he would go further and say by the decisions, of the two consultant psychiatrists. Their Lordships, having read the documents and the evidence are satisfied that there is no question of any such thing having occurred. That evidence was given in the form of expert evidence by the two consultants. No evidence was called on behalf of the appellant in rebuttal, and the Health Committee took the evidence of the consultants into account, together with the evidence of the appellant himself, and reached their own conclusion as expressed in their direction. For the same reason their Lordships can see no basis upon which the appellant's fourth submission can be upheld, which was that the Committee gave undue weight to that evidence. Their Lordships can see no reason for thinking that they did more than give proper weight to the evidence before them.

Next, there is a complaint that the Health Committee flouted the basic principles upon which the NHS was formed. This was really directed to an unfortunate episode, which their Lordships do not need to go into but which was explained to their Lordships very fairly by Dr. Govindasamy Thanapal, which resulted in a scuffle between him and a physiotherapist on a certain occasion. His suggestion was that the Health Committee by acting as it did, and indeed those who advanced the complaint against the respondent, were tacitly agreeing with an order previously made under which no action was taken against the physiotherapist involved. Their Lordships can see no reason to give any credence to that submission.

In the sixth point of his argument, Dr. Govindasamy Thanapal raised a fundamental matter. He said in effect that the procedure had been adopted in order to achieve the effect of suppressing opinions which had been expressed by him in a letter which was critical of the activities of certain people, and that this suppression was redolent of a similar kind of activity which had taken place in the Soviet Union, of which their Lordships are of course well aware. Their Lordships have heard what Dr. Govindasamy Thanapal has to say, but they can see absolutely no reason to think that any such thing happened in the present case, where there was ample evidence before the Committee to reach the conclusion which they in fact reached.

Finally, Dr. Govindasamy Thanapal suggested that there was some curtailment of his right of freedom of expression as set out in the European Convention for Human Rights. Again their Lordships can see no basis for any such suggestion.

In the light of the submissions that have been made and the conclusions which their Lordships have reached upon

them, their Lordships are satisfied that there is no basis upon which this appeal can be allowed. Their Lordships think it right to say that this matter is one of concern to them, as indeed it was for by the Health Committee who expressed their own concern about the appellant's continued unwillingness to accept assistance from qualified psychiatrists. Their Lordships echo that view, but are satisfied that there is no basis upon which this appeal can be allowed.

It follows that their Lordships will humbly advise Her Majesty that the appeal must be dismissed.