Privy Council Appeal No. 48 of 1993

Dr. Pratibha Salvi *Appellant*

v.

The General Medical Council *Respondent*

FROM

THE PROFESSIONAL CONDUCT COMMITTEE OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH JUNE 1994

Present at the hearing:-

LORD TEMPLEMAN
LORD LLOYD OF BERWICK
LORD NOLAN

*[Delivered by **Lord Templeman**]*

The appellant, Dr. Pratibha Salvi, was registered with the respondent, General Medical Council, as a general medical practitioner in 1965. In 1989 she was conducting a sole general practice at Bolton. In 1989 and 1990 several complaints were made about the conduct by Dr. Salvi of her practice. These complaints were investigated on different occasions by the Medical Services Committee which deals with breaches by National Health Service doctors of their contractual duties. Dr. Salvi appeared before the Committee and must have become well aware of the substance and details of the complaints made against her. The Committee imposed a reprimand and fines; some of the fines were not upheld by the Secretary of State on appeal. The substance of the complaints was then referred to the respondent Council which is the disciplinary body charged *inter alia* with the responsibility of determining whether a registered medical practitioner has been guilty of serious professional misconduct and, if so, of determining whether the public interest requires that the practitioner shall be struck off the register or otherwise dealt with.

By a letter dated 8th April 1993 the Council detailed five complaints which appeared to raise a question whether Dr. Salvi had committed serious professional misconduct. Copies of the witness statements were enclosed. Dr. Salvi

was invited to submit a written explanation to the Preliminary Proceedings Committee of the Council by 6th May 1993. She was advised that if she intended to consult her medical defence society or take other legal advice she should do so without delay. Dr. Salvi did not respond to that letter.

On 7th May 1993 Dr. Salvi was informed that the complaints had been referred to the Professional Conduct Committee. By a letter dated 3rd June 1993 Dr. Salvi was given notice that on 26th July 1993 the Committee would inquire into a charge of serious professional misconduct arising from the complaints which were again set out in detail. The Committee would then "determine whether or not they should direct the Registrar to erase your name from the Register or to suspend your registration therein or to impose conditions on your registration ...". Dr. Salvi could not then have been under any illusion about the seriousness of her position or the consequences of the inquiry possibly being fatal to her occupation and career.

On 11th June 1993 the Council supplied to Messrs. Hempsons, the solicitors employed by the Medical Defence Union, the witness statements and documents relevant to Dr. Salvi's case. Dr. Salvi was a member of the Union. On 30th June 1993 copies of the witness statements and documents were served personally on Dr. Salvi.

On 16th July 1993 Messrs. Maliks, solicitors, wrote to the Council's solicitors stating that they had been instructed to act for Dr. Salvi and asking for an adjournment to enable them to interview witnesses. Messrs. Maliks and Dr. Salvi were informed that an application for an adjournment should be made to the Committee at their meeting on 26th July 1993. On 21st July 1993 Messrs. Maliks informed the Committee that they would not be attending the meeting of the Committee but had advised Dr. Salvi to appear in person. At the meeting of the Committee on 26th July 1993 Dr. Salvi did not appear. After considering the history of the case and being referred to previous dilatory conduct by Dr. Salvi the Committee deliberated in private. The Chairman then made an announcement which referred to the facts and to the seriousness of the charge and concluded as follows:-

> "The Committee have decided to adjourn the inquiry into this case until their meeting in the week beginning 11th October, 1993, which Dr. Salvi will be expected to attend. This gives Dr. Salvi and her legal representatives ten clear weeks, together with the remainder of this week and the period which they have already enjoyed, to consider the evidence and prepare Dr. Salvi's case.
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> This decision will be notified to Dr. Salvi and her legal representatives. The Committee wish me to send with the notification a further copy of their Procedure Rules and to draw attention to Rule 23, which permits the Committee to proceed with an inquiry where the practitioner does not appear and is not represented, if the Committee think fit."

On 17th September, Messrs. Hempsons wrote to the Council saying that they had been instructed but that Dr. Salvi was due to appear as a witness at the Manchester Crown Court on 11th October 1993. They requested an adjournment until late November. On 23rd September 1993 Messrs. Hempsons and Dr. Salvi were informed that the inquiry would be postponed until 15th November 1993. On 1st November 1993 Messrs. Maliks wrote to the solicitors for the Council asking for an adjournment "as Dr. Salvi has many professional commitments and will not be free until the end of January 1994". Messrs. Maliks also said that Dr. Salvi had been served with a summons to attend as a medical expert witness at a two-week trial beginning on 8th November 1993. On 10th November 1993, as it subsequently transpired, Messrs. Maliks were present in court in Liverpool when the trial for which Dr. Salvi was required as a witness was adjourned until February 1994. There was nothing then to prevent Dr. Salvi from attending the inquiry by the Committee on 15th November 1993. Despite this, counsel was instructed to appear before the Committee on 15th November and to ask for an adjournment on the grounds that Dr. Salvi was required to attend the trial in Liverpool on that date. The representatives of the Council discovered, and informed counsel for Dr. Salvi, that the trial had been postponed until February. Counsel therefore submitted only that there should be an adjournment in view of the apparent change of solicitors from Messrs. Hempsons to Messrs. Maliks. It was established that Messrs. Hempsons, Maliks and Dr. Salvi had all had the papers since the end of June at the latest. The Committee deliberated and determined that in the public interest the inquiry must proceed. This decision was conveyed to Messrs. Maliks and Dr. Salvi the same day by fax message. The inquiry took place on 15th and 16th November 1993 in the absence of Dr. Salvi or any representative on her behalf. Oral and written evidence was submitted, the case against Dr. Salvi was presented with scrupulous fairness and the witnesses were on occasions questioned by members of the Committee. At the conclusion of the inquiry the Committee deliberated and the Chairman then announced that all the facts alleged against Dr. Salvi in the charge had been proved to the satisfaction of the Committee with one immaterial deletion. After hearing further evidence about Dr. Salvi and her practice and deliberating the Chairman announced that:-

> "The Committee take a very grave view of the facts proved in this case which reveal that Dr. Salvi has, on a number of occasions and in various ways, seriously disregarded her professional responsibilities.
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> By her behaviour as proved against her, she has displayed irresponsibility to a degree which has repeatedly placed patients at risk.

The Committee have judged Dr. Salvi to have been guilty of serious professional misconduct in relation to the facts proved against her in the charge, and have directed the Registrar to erase her name from the Register.

The Committee have further determined that it is necessary for the protection of the members of the public that Dr. Salvi's registration on the Register should be suspended with immediate effect, and they have accordingly ordered that her registration be suspended forthwith."

The following day namely 17th November 1993 Dr. Salvi swore an affidavit in support of a judicial review application to the High Court to set aside the order of the Committee in so far as it suspended her from practice pending the hearing of an appeal by her from the Committee to Her Majesty in Council. That affidavit dealt fully with the complaints which had been investigated by the Committee and set out Dr. Salvi's denials, excuses and explanations which, it is obvious, could easily have been deployed before the Committee on 15th and 16th November 1993. The judicial review application was heard and dismissed by Macpherson J. in his judgment on 18th November 1993 in the following terms:-

"I am not proposing to go through all the letters which have been put before me, but I say at once that they show in my judgment a deplorable state of affairs on behalf of this applicant. She claims some protection in having had difficulty with her lawyers, but it is obvious to me that she has simply not taken this matter seriously and has attempted to delay the hearing of this case over the months that were available to her. She was told in April of 1993 what the charges were. The original date was given to her comfortably before the date fixed for the hearing. I have already commented during the argument on the nature of some of the letters that were written and, as I say, I believe that she has acted deplorably in failing to attend the General Medical Council. She seemed to think that the matter could be put off simply at her whim because of her own commitments at one stage.

Later she indicated to her lawyers that she needed to be at Manchester Crown Court on subpoena to be giving evidence in a criminal matter. When that matter went off, counsel who appeared before the Professional Conduct Committee was not in possession of the fact that the trial was not in fact taking place. It seems to me that that is a most revealing aspect of this case. Counsel was sent along in November to apply for adjournment, although the GMC and its agents in the correspondence had made it crystal clear that the adjournment would not be given but that an application could be made on the day of the hearing. That means of course that the application on the day of the hearing

> might be refused. I am not surprised that it was, even though a spurious ground, namely, that the lady was at the trial in Manchester, was put before the Professional Conduct Committee. I say no more about that. It may be that it will have to be explored in the future elsewhere, but the fact is that there can be no complaint whatsoever about the fact that the case went ahead last Monday. ... Whether these matters would form any point of substance in the appeal is doubtful, but that is not for me to resolve because the appeal is to a much higher court, namely, the Privy Council."

Dr. Salvi now appeals against the determinations of the Committee reached on 16th November 1993. On her behalf counsel submits that the Board should recommend the exercise of the power conferred by section 40(7)(d) of the Medical Act 1983 to remit the case to the Committee for a rehearing.

The question is whether the Committee should have granted an adjournment on 15th November 1993. Their Lordships are satisfied that it was the duty of the Committee forthwith to proceed with the inquiry. There was no justification for the absence of Dr. Salvi and, if there was any explanation for her conduct of which complaint was made, that explanation could have been given by Dr. Salvi in person to a Committee which included nine members of the medical profession well aware of the stresses and strains of a busy practitioner and ready to make due allowance for all Dr. Salvi's difficulties.

Accordingly there are no grounds upon which Dr. Salvi is entitled to the rehearing which is now sought. In view, however, of the consequences to Dr. Salvi of being struck off the register, their Lordships have carefully considered the evidence which was presented at the Committee, the written submissions comprising some 198 pages now presented by Dr. Salvi and the oral submissions of leading counsel on her behalf. In the result their Lordships are satisfied that no useful purpose would in any event be served by a rehearing which could only produce the same result as that reached on 16th November 1993. The lengthy explanations and excuses now put forward by Dr. Salvi only serve to emphasise that the observations of the Chairman at the conclusion of the hearing on 16th November 1993 were only too well justified. Dr. Salvi may have rendered valuable services and kindnesses to many patients and may be devoted to the practice of her profession but there is no doubt that she has been irresponsible and reckless in the conduct of her practice and has thoughtlessly caused unnecessary suffering and anxiety to some patients and their relations.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. Dr. Salvi must pay the costs of the Council before their Lordships' Board.