

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 2ND DAY OF SEPTEMBER, 2022 / 11TH BHADRA, 1944

WA NO. 1141 OF 2020

[AGAINST THE JUDGMENT DATED 27.05.2020 OF THE LEARNED SINGLE JUDGE IN  
WP(C) NO.34537/2019]

APPELLANTS/1ST, 2ND, 4TH & 7TH PETITIONERS:

- 1 DR. MATHEW JACOB, AGED 47 YEARS  
S/O. K.C. JACOB, RESIDING AT NSC, KENT ILLAM,  
VENNALA P.O, KOCHI-682028.
- 2 DR. SANGEETH P.S., AGED 41 YEARS  
S/O. P.K. SRINIVASAN, RESIDING AT PERATH HOUSE,  
ALA WEST, THRISSUR-680 668.
- 3 DR. SHEJOY P. JOSHUA, AGED 41 YEARS  
S/O. LATE P.I. JOSHUA, RESIDING AT 23, MARVEL MANISOINS,  
KATHRIKADAVU, KOCHI-682 017.
- 4 DR. T.R. JOHN, AGED 53 YEARS  
S/O. LATE T.M. JOHN, RESIDING AT HOUSE NO. 242,  
14TH CROSS ROAD, GIRINAGAR, KADAVANTHRA, KOCHI-682 020

BY ADVS. SRI. E. K. NANDAKUMAR (SR.)  
SRI. M. GOPIKRISHNAN NAMBIAR  
SRI. JOSON MANAVALAN  
SRI. PAULOSE C. ABRAHAM  
SRI. PRANOY HARILAL  
SRI. KURYAN THOMAS

RESPONDENTS/RESPONDENTS 1 TO 3/3RD 5TH & 6TH PETITIONERS:

- 1 STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001
- 2 TRAVANCORE-COCHIN COUNCIL OF MODERN MEDICINE,  
COMBINED COUNCIL BUILDING, RED CROSS ROAD,  
THIRUVANANTHAPURAM, KERALA-695 035

- 3 DR. S. GANAPATHY,  
ANJALY, MARUTHADI P.O, KOLLAM-691 003.
- 4 DR. RAJESH RAJAGOPAL, AGED 40 YEARS,  
S/O. G. RAJAGOPAL, RESIDING AT DEVIGOPALAM, VNRA-16/A,  
VADAKKENADA ROAD, ALAPPUZHA-688 003.
- 5 DR. DEEPAK VENUGOPALAN,  
AGED 30 YEARS, S/O. DR. V.C. VENUGOPALAN,  
RESIDING AT FLAT NUMBER 12A, ASSET OCEAN GROVE APARTMENTS,  
SOUTH CHITTOOR TEMPLE, KOCHI-682 027.
- 6 DR. ARUN GEORGE,  
AGED 34 YEARS, S/O. GEORGE M.T,  
RESIDING AT MULAVARICKAL HOUSE, ANAPPARA P.O,  
ANGAMALY, ERNAKULAM-683 581.

R1 BY ADV. SRI. V. TEK CHAND, SENIOR GOVERNMENT PLEADER  
R2 BY ADV. SRI. N. RAGHURAJ  
R3 BY ADV. SRI. R. RANJITH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02.09.2022, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****S. Manikumar, CJ**

Instant writ appeal is filed petitioner Nos.1, 2, 4 and 7 respectively, against the judgment dated 27.05.2020 in W.P.(C) No.34537/2019, by which, a learned single Judge dismissed the writ petition, holding thus:

“8. The 2002 Regulation prescribes a Code of Medical ethics to be followed by medical practitioners. Chapter 1 thereof provides for duties and responsibilities of physician in general. Chapter 2 prescribes the duties of physicians to their patients. Chapter 6 enumerates unethical Acts while Chapter 7 enumerates misconduct. Chapter 8 prescribes punishment and disciplinary action. Regulation 8.2 reads as follows:-

“8.2. It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/Societies/ Bodies.”

Therefore, it is evident that the notices issued to the petitioners are only in respect of the misconduct alleged against them. Exhibit P2 complaint discloses allegations of

offences under the 1994 Act. However, there are clear allegations in Exhibit P2 complaint as regards violation of medical ethics and professional conduct by the doctors involved. Prayers are specifically made for imposition of punishments under the 2002 Regulations. Exhibit P1 dated 25.11.2019 is a notice issued by the 2nd respondent to the 1st petitioner. It forwards a copy of Exhibit P2 complaint and directs the 1st petitioner to furnish explanation to the Council within 15 days. The contention of the petitioners is that on the basis of the self same complaint, action has been initiated by the authorised officer vide Exhibit P4 notice. It is, therefore, contended that the parallel action taken by the 2nd respondent is bad in law. However, on an examination of Exhibit P2 complaint as well as the provisions of the Indian Medical Council (Professional conduct, Etiquette, Ethics) the Regulations 2002, I am of the considered opinion that the 2<sup>nd</sup> respondent would be duty bound to examine an allegation of violation of Professional conduct, Etiquette and Ethics by a medical practitioner. The fact that an investigation has been initiated by the appropriate authority under the 1994 Act can, by no stretch of imagination, be a ground to interdict an investigation by the empowered authority under the 2002 Regulations. A reading of Exhibit P2 would make it clear that allegations are made both in respect of offences under the 1994 Act as well as professional misconduct in terms of the 2002 Regulations. If that be so, I am of the opinion that there is absolutely no legal infirmity in the action of the 2nd respondent in requiring the petitioners to offer their explanations to the allegations of professional misconduct which has been raised in Ext.P2 complaint. The judgments relied on by the learned Senior Counsel for the petitioners have no application whatsoever in the facts of the case, since they relate to prosecution for offences under the 1994 Act, which is not the factual situation in the instant case. The writ petition therefore fails and the same is accordingly dismissed.”

2. The writ petition was filed seeking, *inter alia*, to quash Exhibit-P1 show cause notice and identical show cause notices issued

to writ petitioners; to direct the 2<sup>nd</sup> respondent to refrain from considering Exhibit-P2 complaint dated 27.08.2019; and to declare that the said complaint cannot be enquired into and adjudicated, in terms of the provisions contained in the Travancore - Cochin Medical Practitioners Act, 1953.

3. Brief facts for disposal of the appeal are that: appellants/writ petitioners are doctors working in Aster Medcity, Kochi. On 27.11.2019, each of the appellants have received Exhibit-P1 show cause notice dated 25.11.2019 issued by the 2<sup>nd</sup> respondent, Travancore-Cochin Council of Modern Medicine, Thiruvananthapuram, directing them to furnish explanation, in response to a complaint filed by respondent No.3, alleging serious misconduct in the conduct of organ transplantation surgeries conducted in Aster Medcity Hospital on 5.3.2019 and 7.3.2019. According to the appellants, the allegations levelled against them were outright defamatory and contrary to truth.

4. Appellants have further stated that the Transplantation of Human Organs and Tissues Act, 1994 is a comprehensive legislation

equipped with adequate and in built safeguards to ensure utmost transparency in the process of organ donation and lays down the mechanism to streamline the process of organ donations as well as in taking cognizance of any contravention of the provisions contained in the said Act.

5. According to the appellants, in Kerala, additional steps have been incorporated in the brain death certification process and that the Kerala Network for Organ Sharing (KNOS) is the Kerala Government initiative established on 12.08.2012. The Organ Transplant Registry maintains records of patients on waiting list for Kidney, Liver, Heart and Pancreas transplant in the State; the programme was initiated, as a large number of patients suffer on account of irreversible organ ailments involving Heart, Liver, Pancreas and Kidney.

6. Appellants have further stated that considering the ethical issues surrounding the live and deceased organ transplantation, the Government felt the need to streamline the procedures for Deceased Donor Multi Organ Transplantation (DDMOT) in the State. According

to the appellants, brain death certification is done in the presence of Kerala Network for Organ Sharing (KNOS) Coordinator and that the certification is done by a panel of four doctors on two occasions six hours apart. Out of the four doctors, one is a Government doctor, who is on duty for brain death certification, as directed by the Director of Health Services and another is a neurologist or neurosurgeon from a different hospital, who is on the panel with Appropriate Authority. The whole process is video recorded. It is submitted that each and every provision and protocols were strictly followed in the case of transplants/surgeries mentioned in Exhibit-P2 complaint.

7. Appellants have further stated that the allegations levelled by the 3<sup>rd</sup> respondent in Exhibit-P2 complaint are limited to the alleged contraventions of the provisions of the Act. The DME, i.e., the Appellate Authority, in response to the said complaint has initiated due proceedings to investigate the matter and issued order dated 17.09.2019 (Exhibit-P4), informing Aster Medcity of the proposed steps that will be taken, in view of the complaint received. Pursuant

to the complaint, enquiry was conducted, perused the case records and the report of the Appellate Authority is awaited.

8. That being so, the 3<sup>rd</sup> respondent filed another complaint before the 2<sup>nd</sup> respondent, which is a replica of the complaint filed before the DME. The 3<sup>rd</sup> respondent has not even disclosed in Exhibit-P2 complaint the fact that he had already approached the Appropriate Authority under the Act, with an identical complaint, with regard to the very same incidents. In this context, appellants contended before the writ court that the 2<sup>nd</sup> respondent cannot enquire into the allegations contained in Exhibit-P2 complaint since the enquiry and adjudication of such complaints can only be under the provisions of Transplantation of Human Organs and Tissues Act, 1994 and the rules framed thereunder. According to the appellants, this point is no longer *res integra*. In such circumstances, the appellants along with respondents 4, 5, 6 herein have filed the writ petition for the reliefs stated supra.

9. Refuting the allegations contained in the writ petition, 3<sup>rd</sup> respondent has filed a counter affidavit dated 9.1.2020, wherein it

was contended that it is trite that a writ court will not normally entertain a writ petition challenging a notice issued. Likewise, challenging an order passed by a competent authority appointing a competent person to enquire into a complaint is also unheard of and, therefore, the writ petition is liable to be rejected for that reason alone. Still further, effective alternate remedy is available to the writ petitioners, in case they are aggrieved by any decision taken by the Registrar of Travancore Cochin Medical Council, in pursuance of Exhibit-P1 notice. Similarly, effective alternate remedy is available to an aggrieved person against any action taken by the Appropriate Authority appointed under Section 13 of the Transplant of Human Organs and Tissues Act, 1994 (THOT Act, for short).

10. The 3<sup>rd</sup> respondent has further contended that the Registrar of Travancore Cochin Medical Council, who is the authority empowered under the Act to act upon a complaint, has not been made a party in the writ petition. Director of Medical Education, who has passed Exhibit-P4 order dated 17.09.2019, has also not been made a party. Apart from all these, Exhibit-P4 order was passed as

early as on 17.09.2019, whereas the writ petition was filed only on 16.12.2019, without referring to the delay. On that count also, it is contended that the writ petition is liable to be rejected.

11. The 3<sup>rd</sup> respondent has further contended that seeing the exploitation of poor and brain injured patients in private hospitals, by way of wrong and deliberate certification of brain death cases, the 3<sup>rd</sup> respondent approached this Court by filing writ petition for a direction to prevent premature and wrong certification of brain death cases. Hence, the contention taken by the writ petitioners that his intention behind filing the subject complaint is ill motivated, is absolutely wrong.

12. The 3<sup>rd</sup> respondent has further contended that the professional misconduct led to the death of two persons mentioned in Exhibit-P2 complaint. The complaint was filed before the Registrar of Travancore Cochin Medical Council, which is an authority empowered under the Act to enquire into a complaint of professional misconduct. Going by the provisions contained in the Act, Registrar can conduct/cause to conduct enquiry into the complaint, after

hearing all the parties. The expert panel so constituted will enquire into the complaint and will come to a conclusion. Any person aggrieved by the decision of the Registrar, is at liberty to file an appeal to the council, as provided under Section 33 of the Act and second appeal to the Government, as provided under Section 35 of the Act.

13. Referring to Code 1.7 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, 3<sup>rd</sup> respondent has contended that he has- locus standi to file a complaint and that Regulation 1.9 of the Regulations empowers the Registrar to look into a complaint touching the provisions contained in the THOT Act. Going by Section 13-B of the THOT Act, the Appellate Authority is competent to enquire into a complaint regarding violation of the provisions contained therein.

14. It was further contended that in so far as Exhibit-P4 is concerned, the Director of Medical Education is the Appropriate Authority constituted under the THOT Act and in case, the Appropriate Authority, after conducting enquiry, comes to a

conclusion that a particular hospital has not followed/violated any of the provisions contained in the THOT Act, the Authority is empowered to suspend or cancel the registration of hospital for transplantation alone as provided under Section 16 of the Act. He also submitted that the aggrieved person is free to file appeal, in terms of Section 17 of the Act.

15. He further contended that even if the registration of a hospital for transplantation is suspended or cancelled, the hospital is free to go ahead with other surgical procedures. Still further, the transplant surgeons can continue to perform surgeries other than transplant surgery in the very same hospital. Apart from all these, the very same transplant surgeons can perform transplant surgery in other hospitals. In short, the 3<sup>rd</sup> respondent submitted that action under the provisions of Travancore Cochin Medical Practitioner Act and the THOT Act are distinct and different and that cause of action is also different. For the foregoing reasons, the 3<sup>rd</sup> respondent prayed for dismissal of the writ petition.

16. That apart, in the counter affidavit filed for and on behalf of

the 2<sup>nd</sup> respondent, it is contended as under:

- A. At the outset, it is submitted that the above writ petition is not maintainable either in law or on facts. The principal challenge in the above writ petition is against Ext.P1, which is only a notice calling for the explanation of the 1<sup>st</sup> petitioner on a complaint lodged by the 3<sup>rd</sup> respondent before the 2<sup>nd</sup> respondent Council. It is settled in law that no challenge would normally lie against a notice, under Article 226 of the Constitution of India. As evident from Ext.P1, the 1<sup>st</sup> petitioner is only required to furnish his explanation on a complaint of the 3<sup>rd</sup> respondent (Ext.P2), a copy of which was annexed therewith. No penal action against the 1<sup>st</sup> petitioner is proposed or even suggested through Exhibit-P1 notice, which is only a device to ascertain his version about the allegations in Exhibit-P2 complaint, and therefore, the challenge in the writ petition, being highly premature, is liable to be rejected at the threshold itself.
- B. It is submitted that the Regulations confer authority on the 2<sup>nd</sup> respondent to take appropriate action for violation of professional conduct by a medical doctor. As mentioned earlier, the 2<sup>nd</sup> respondent Council received a complaint dated 27-08-2019 (Ext.P2) from the 3<sup>rd</sup> respondent alleging that the petitioners, who are admittedly working as doctors in Aster Medcity, have violated the Code of Conduct and Ethics. In terms of the Regulations, the Ethics

Committee of the 2<sup>nd</sup> respondent Council considered the complaint and decided to seek explanations from the doctors mentioned in the said complaint and Medical Superintendent of the Aster Medcity. Accordingly, Ext.P1 and similar notices were issued to them. In this context, it is submitted that each and every certificate of practice is issued by the 2<sup>nd</sup> respondent Council to a doctor enabling him/her to practice as a Doctor in the State of Kerala in the concerned system of medicine, with utmost care and caution. The 2<sup>nd</sup> respondent Council is statutorily obliged to ensure that the doctors registered with it do not commit any professional misconduct or indulge in unethical activities. It is the primary duty of the 2<sup>nd</sup> respondent Council to protect and safeguard the sanctity of the medical profession. Therefore, a complaint against a doctor, even if trivial in nature, is subjected to meticulous examination by the 2<sup>nd</sup> respondent Council to rule out any possibility of damage to the esteem and dignity of the medical profession in the eyes of the public as well.

- C. At the risk of repetition, it is submitted that there is no adverse action or imposition of punishment involved in the process of issuing notice, which is only a fact finding method to elicit true facts. If the petitioners are able to submit a cogent and convincing reply, to the allegations levelled against them, the proceedings initiated against them will be terminated. On the other hand, if there is prima facie laxity or negligence on the part of the

petitioners, the Ethics Committee would solicit opinion from the expert bodies and approved agencies before proceeding further with the subject complaint. In either way, for disposing of a complaint preferred before the 2<sup>nd</sup> respondent Council, explanations from the concerned doctors are inevitable. It is submitted that the petitioners, obviously to scuttle the actions initiated by the 2<sup>nd</sup> respondent Council, are deliberately portraying Ext.P2 complaint as one under the provisions of Transplantation of Human Organs and Tissues Act, 1994 and that the authority competent to call for explanation from them under the said Act is the Director of Medical Education alone, and hence, it is submitted that the said contention is not tenable in law.

- D. It was further contended that the 2<sup>nd</sup> respondent is considering only whether there is any lapse, laches or violation on the part of the petitioners which would offend the Code of Ethics, stipulated by the Regulations. It is submitted that there is no attempt on the part of the 2<sup>nd</sup> respondent Council to proceed directly or indirectly against the petitioners based on an allegation, without confirming the entire factual and other materials related to the subject matter. The issuance of notices to the petitioners is only a part of the preliminary investigation about the alleged ethical violation, without which it cannot be preceded further. It is submitted that any violation of the provisions of Transplantation of Human Organs Tissues

Act, 1994 (the THOT Act' for short) is a criminal offence and appropriate measures can be taken by the competent authority empowered under the said Act, whereas, the 2<sup>nd</sup> respondent Council examine only whether registered Medical Practitioners are keeping the dignity and professional ethics and whether they have committed any professional misconduct during the validity of Certificate of Registration held by them. The petitioners are trying to misinterpret the action of 2<sup>nd</sup> respondent Council as an intrusion into the field allegedly occupied by the THOT Act. The pleading in the writ petition, which is legally unsustainable, is an affront to the disciplinary authority of the 2<sup>nd</sup> respondent Council.

- E. It is finally contended that if any order is passed by the 2<sup>nd</sup> respondent Council adverse to the interest of the writ petitioners, they can avail statutory remedies as stipulated in the State. According to the 2<sup>nd</sup> respondent, availability of a statutory remedy by way of appeal is another valid reason to decline the exercise of jurisdiction under Article 226 of the Constitution of India. The writ petitioners cannot claim themselves to be aggrieved by the action on the part of the 2<sup>nd</sup> respondent Council, since no final decision is taken against them in the matter, except calling for their explanation. It is, therefore, obvious that there is no cause of action for the writ petitioners to approach this Court through this writ petition. For the foregoing reasons, the 2<sup>nd</sup> respondent prayed for dismissal of WP(C).

17. Learned single Judge, after considering the submissions and relevant statutory provisions, has passed the impugned judgment. Being aggrieved, instant appeal has been filed by the appellants, who are writ petitioners, 1, 2, 4 and 7, raising the following grounds:

- A. Writ court ought to have appreciated the legislative intent behind the THOT Act, 1994 which is a self-sustained code. Apart from the need to provide for the regulation of removal, storage and transplantation of human organs or tissues for therapeutic purposes and to prevent commercial dealings in human organs or tissues, the THOT Act was enacted to protect the process of organ transplantation from frivolous and ill-intentioned complaints, keeping in mind the sensitive and umbrageous nature of the steps involved in this process.
- B. The mere fact that the THOT Act provides for an in-built regulatory mechanism in the nature of an 'Appropriate Authority', is a testament to the nuanced nature of the organ transplantation process, as well as the intention of the legislature in placing the same on a higher pedestal. That the legislature intended to position the Appropriate Authority as the regulatory authority equipped to take cognizance of any contravention of the provisions of the THOT Act or Rules, is evident from the statutory nature of its powers conferred under Section 13B of the Act, by which the Appropriate Authority is vested with all the

powers of a civil court trying a suit under the Code of Civil Procedure, 1908.

- C. The impugned judgment derails and demotes the authority of the Directorate of Medical Education (DME), which is the designated body duly appointed by the State Government as the 'Appropriate Authority' under Section 13 of the Act, by permitting the 2<sup>nd</sup> respondent to parallelly entertain and adjudicate Exhibit P2 complaint, which contains nothing but alleged contraventions of the provisions of the THOT Act. Therefore, the impugned judgment fails to take into account the scope of the authority conferred on the DME, robs the DME of its prerogative in the investigation of a complaint under the Act, and thereby operates against the scheme of the Act. Ergo, the impugned judgment is liable to be set aside.
- D. Writ court has arrived at a conclusion that the 2<sup>nd</sup> respondent is duty bound to consider and adjudicate Exhibit P2 complaint, based on an incorrect finding that the allegations referred to in Exhibit P2 are made in respect of offences under the THOT Act, as well as professional misconduct, in terms of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter referred to as the 2002 Regulations). A perusal of the impugned judgment would reveal that it does not contain any findings as to the nature of the allegations referred to in Exhibit P2 complaint. Further, the impugned judgment is silent on

the ratio, if any, that has been applied to distinguish or compartmentalize the allegations made in the complaint into offences under the THOT Act under one chamber and those under the 2002 Regulations into another.

- E. Assuming while denying that Exhibit P2 complaint contains allegations with respect to professional misconduct under the 2002 Regulations, such allegations would crystallize only if/when the Appropriate Authority finds any contravention of the provisions of THOT Act after the completion of its investigation. This is so, since Section 18(2) of THOT Act provides that, if any registered medical practitioner is convicted under Section 18(1) i.e., for removal of human organs or tissues without authority, the Appropriate Authority (DME) shall report the name of such medical practitioner to the respective State Medical Council (the 2<sup>nd</sup> respondent, in this case) for taking necessary action. It was contended before the writ court that the report of the investigation by the DME was awaited and that the 2<sup>nd</sup> respondent may take necessary action based on the report.
- F. Though the aforesaid contention was advanced at the time of hearing the writ petition, the impugned judgment failed to address the same. So also, the impugned judgment is liable to be set aside for want of ratio in distinguishing the preliminary issue raised in the writ petition, ie, whether Exhibit P2 complaint contains any allegation beyond those pertaining to the alleged contraventions of the THOT Act.

- G. Writ court ought not to have overlooked the settled principle of law that the provisions of a general statute must yield to those of a special one. Annexure-A complaint filed by the 3<sup>rd</sup> respondent before the Director of Medical Education is, in sum and substance, is a replica of Exhibit P2 complaint filed by the 3<sup>rd</sup> respondent before the 2<sup>nd</sup> respondent. Seemingly, writ court has proceeded to dismiss the writ petition on the basis of the contention advanced by the 2<sup>nd</sup> respondent that Exhibit P2 complaint contains allegations of professional misconduct as well, along with the allegations of offenses under the THOT Act. As stated hereinabove, there are no findings on the aforesaid aspect in the impugned judgment. The contention advanced by respondents 2 and 3 have been accepted without assigning any reason for the same.
- H. It is submitted that a conjoint reading of Exhibit P2 and Annexure-A complaint would reveal that both of them contain the same set of allegations. Materially, the only difference between the two complaints is that Exhibit P2 complaint addressed to the 2<sup>nd</sup> respondent includes as its subject, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002'.
- I. It is also submitted that, when the entire factual matrix as alleged in Exhibit P2 complaint point to the alleged contraventions of the THOT Act alone, a cursory mention of the 2002 Regulations under the heading 'subject' or otherwise in the very same complaint cannot entitle/equip

the 2<sup>nd</sup> respondent with the necessary jurisdiction to entertain and adjudicate Exhibit P2 complaint. The THOT Act is a complete code in itself, as far as the issue of human organ transplantation is concerned and the DME is the appropriate authority envisaged to deal with all the possible contingencies that may arise in the process of organ donation/transplantation. The impugned judgment overlooked the settled law that the provisions of general statute must yield to those of a special one, which has its origins in the maxim '*generalia specialibus non derogant*'. Further, the judgment cited in the writ petition, in furtherance of the aforesaid contention were not distinguished and were discarded in limine. Hence, the appellants contended that in view of the above, the impugned judgment is liable to be interfered with.

- J. Relying on the decision in **Jeewan Kumar Raut & others v. Central Bureau of Investigation**, reported in (2009) 7 SCC 526, appellants contended that the question of precedence of the THOT Act, 1994 over other general statutes was distinctly answered by the Hon'ble Supreme Court in the said decision, and that In the above-mentioned case, applicability of Section 167(2) of the Code of Criminal Procedure, 1973 was pitted against Section 22 of the Transplantation of Human Organs and Tissues Act, 1994. The Hon'ble Apex Court has made it clear, in no uncertain terms, that the Act being a special statute takes precedence over the Code.

K. It is further contended that the validity and rationale of such statutory authorities have been upheld by the Hon'ble Apex Court in **Raj Kumar Gupta v. L. Governor, Delhi & others**, reported in (1997) 1 SCC 556. The existence of such statutory authorities is to prevent the cognizance of frivolous, vexatious or otherwise patently untenable complaints, unless made with the authorisation of the appropriate authority. It is in furtherance of this intention, and after taking into account the sensitive and umbrageous nature of the human organ transplantation process, that the legislature has provided for the 'Appropriate Authority' under Section 13 of the THOT Act, 1994. The impugned judgment turns a blind eye towards the critical aspect also, and is, therefore, liable to be interfered with by this Court.

18. Heard learned Senior Counsel, Mr. E.K. Nandakumar for the appellants, assisted by Adv. Mr. Jai Mohan, Mr. N. Reghu Raj, learned counsel for the Travancore Medical Council, and Mr. R. Ranjith, learned counsel for the 3<sup>rd</sup> respondent - complainant, and perused the material available on record.

19. Exhibit-P2 complaint dated 27.08.2019 submitted by the 3<sup>rd</sup> respondent to the Registrar of Travancore Cochin Medical Council, is extracted hereunder:

From

DR. S. GANAPATHY  
ANALI, MARUTHADI PO, KOLLAM 691003  
Email: docganapathy@gmail.com  
Mob: 9847077078

To

THE REGISTRAR  
Travancore Cochin Medical Council Near General Hospital,  
TRIVANDRUM 695035.

Dear Sir,

Sub-SERIOUS MISCONDUCT BY DOCTORS NAMED BELOW.  
Ref.- 1) INDIAN MEDICAL COUNCIL ACT (102 of 1956)  
2) INDIAN MEDICAL COUNCIL (PROFESSIONAL  
CONDUCT, ETIQUETTE AND ETHICS) REGULATIONS, 2002.  
3) CODE OF MEDICAL ETHICS

My SLP on irregularities in Organ Transplant is before His Lordship, The Hon'ble Chief Justice of India. During the last hearing His Lordship asked me to Implead some of the Offending Hospitals before the next Hearing on 4-10-19. I am giving hereunder the details of DELIBERATE & WRONG Brain Death Certification of Mr. Ajay Johnny & Adv. Suresh K., in ASTER MEDICITY, KOCHI.

This Complaint is based on Chapter 1, Clause 1.9 EVASION OF MEDICAL ETHICS, Clause 2.3 PROGNOSIS & 8.1 to 8.6 PUNISHMENT & DISCIPLINARY ACTION.

1. DR. MATHEW JACOB (Reg No.25186), Integrated Liver Care, ASTER MEDCITY, CHERANALLOOR, KOCHI 632027

Dr. Mathew Jacob informed Adv. Suresh, who was waiting for a Cadaver Liver Transplant, at 3.30 pm on 4-3-19, that a Cadaver Liver was available and that he should get admitted immediately. Adv. Suresh was admitted at 8-50 pm on 4-3-19. According to the THOT Act, Organ Transplant can be considered only after the Second Apnoea Test and Brain Death is Confirmed. According to the

decision taken by the Experts Committee that was accepted by the Hon'ble Chief Justice of Kerala High Court (Enclosure 1) the Second Apnoea Test can be performed only after the First Apnoea was confirmed by the Nodal Officer, KNOS. But Mr. Ajay Johnny was CERTIFIED BRAIN DEAD ONLY AT 3-15 AM ON 5-3-19 and Adv. Suresh was informed more than 12 hours before Ajay Johnny was certified Brain Dead. Dr. Mathew Jacob knew very well that Adv. Suresh had suffered a Cerebral bleed and was NOT A FIT CANDIDATE FOR LIVER TRANSPLANT. IF HE HAD REMNANTS OF MEDICAL ETHICS, HE SHOULD HAVE IMMEDIATELY SOUGHT ASSISTANCE OF THE NEURO SURGEON BUT A BRAIN DEAD ADV SURESH V MORE PROFITABLE TO HIM THAN ADV SURESH WHO IS ALIVE.

The wife of Adv. Suresh, Adv. Deepthi, was informed by Dr. Mathew Jacob 2-30 pm on 6-3-19 that Adv. Suresh was Brain Dead and suggested Organ Donation.

THIS IS AGAINST ALL NORMS OF ORGANS TRANSPLANT, THE WORLD OVER THAT A TRANSPLANT SURGEON SHALL NOT IN ANY MANNER BE INVOLVED IN THE PROCESS OF ORGAN DONATION. THAT IS THE JOB OF TRANSPLANT COORDINATORS. But Adv. Suresh was Certified Brain Dead only 6-46 am on 7-3-19. SO, THE WIFE IS INFORMED THAT HER HUSBAND WAS BRAIN DEAD MORE THAN 16 HOURS EARLIER. (Dr. Mathew Jacob must be a good Astrologer to predict Brain Death, hours before they were certified Brain Dead).

THE STORY THAT AJAY JOHNNY'S LIVER THAT WAS TRANSPLANTED TO ADV. SURESH WAS RE TRANSPLANTED TO MR. V.S.UNNIKRISHNAN IN 48 HOURS LATER, IS A MEDICAL FICTION, NOT POSSIBLE AND NOT FOUND IN MEDICAL LITERATURE (Enclosure- 9) AND IF PERFORMED, THE PROGNOSIS WILL BE EXTREMELY POOR.

So, Dr. Mathew Jacob violated Medical Ethics in not making effort to save the life of Adv.Suresh. Ho violated Medical Ethics in seeking Organs for Transplant. By informing Adv.Suresh that a Cadaver Liver was available, Dr. Mathew Jacob was sure he could INFLUENCE THE PANEL OF DOCTORS TO CERTIFY AJAY JOHNNY AS BRAIN DEAD. The

same game was played on Adv. Suresh's case.

I REQUEST YOU TO REMOVE PERMANENTLY DR MATHEW JACOB FROM THE REGISTER OF TRAVANCORE COCHIN MEDICAL COUNCIL. HIS WIELDING SURGEON'S KNIFE IS A MENACE TO THE SOCIETY 2-DR SANGEETH, ASTER MEDCITY, KOCHI. He certified Adv. Suresh K., as Brain Dead at 1-40 pm on 6-3-19. The initial, surname, qualification and TCMC Registration Number is not mentioned. Official Seal is also not affixed. Such a Doctor may not be working in Aster Medcity, and if he is working he may not be Registered with TCMC.

MOREOVER, ONLY THE PANEL OF FOUR DOCTORS EMPANELLED TO DO SO, TOGETHER CAN CERTIFY BRAIN DEATH AS STIPULATED IN THE THO&T ACT. THE APNOEA TEST IS A VERY DANGEROUS TEST AND CAN EVEN CAUSE DEATH EVEN IF PERFORMED BY EXPERTS. HE ENDANGERED THE PATIENT'S LIFE.

I REQUEST YOU TO TAKE STRINGENT ACTION AGAINST DR. SANGEETH AND REMOVE HIM FROM THE TCMC REGISTER. 3-DR RAJESH RAJGOPAL, DUTY INTENSIVIST, ASTER MEDCITY, KOCHI. He performed APNOEA TEST on Adv. Suresh K., and certified him Brain Dead at 8.50 pm 6-3-19. The APNOEA TEST CERTIFICATE of Adv. Suresh K., doesn't contain the Educational Qualification or TCMC REGISTRATION NUMBER of Dr. Rajesh Rajgopal or Official Seal.

As mentioned in the case above, he performed the Apnoea Test, he is not authorised to perform as per THO Act. Showing his absolute ignorance of the THO&T ACT.

Dr. Rajesh Rajgopal performed a THIRD APNOEA TEST on Adv. Suresh K., and certified him Brain Dead at 7-11 am on 7-3-2019. THE CERTIFICATE DOES NOT EVEN HAVE THE SIGNATURE OF DR. RAJESH RAJGOPAL.

DR. RAJESH RAJGOPAL VIOLATED THE THOT ACT ENDANGERING THE LIFE OF ADV. SURESH K., AND MAY EVEN HAVE CAUSED THE DEATH OF THE PATIENT. KINDLY TAKE STRINGENT ACTION AGAINST DR RAJESH RAJGOPAL AND REMOVE HIM FROM THE REGISTER OF TCMC.

Observing the three Apnoea Test Certificates, it looks as if the three Certificates were filled by the same person WITHOUT PERFORMING THE APNOEA TEST. FORM 10 (For Certification of Brain Death), was signed by 1-Dr. Deepak Venugopalan. TCMC Reg No. 53825, RMP In Charge of the Hospital, 2- Dr. Raj Anderson Correa, TCMC No.36785, Junior Consultant, Kerala Health Service, 3-Dr. Prithvi, TCMC Reg No. 17717, Neurologist, Lakeshore Hospital and Dr. Shejov P. Joshua, TCMC Reg No. 45907, NeuroSurgeon, Aster Medcity.

According to the history of the patient discussed earlier it was obvious that the patient was administered SEDATIVES, NEURO PARALYTIC AGENTS AND WE ARE TO BELIEVE THE STORY THAT ADV. SURESH UNDERWENT SURGERY, HE WAS CERTAINLY ALSO GIVEN ANESTHESIA. THAT BEING THE CASE, EVEN IF THE PATIENT IS NOT BRAIN DEAD, CNS EXAMINATION AND APNOEA TEST WILL BE POSITIVE FOR BRAIN DEATH. IN SUCH CASES, AS RECOMMENDED BY THO&T ACT, AMERICAN ACADEMY OF NEUROLOGY AND GUIDELINES OF BRITISH ROYAL COLLEGES, WHICH WE IN INDIA ADOPT, ANCILLARY TESTS, EEG & BRAIN PERFUSION STUDIES MUST BE PERFORMED. SADLY, BUT PURPOSELY THIS WAS NOT DONE.

Moreover, according to Enclosure No.1, after the First Apnoea Test is performed, THE VIDEO RECORDING OF THE TEST MUST BE SEEN ON LINE BY THE NODAL OFFICER KNOS AND APPROVED BEFORE THE SECOND APNOEA TEST CAN BE PERFORMED AFTER SIX HOURS. IN THE APNOEA TEST REPORT OF DR.RAJESH RAJGOPAL, THE FIRST APNOEA TEST WAS COMPLETED AT 8.50 PM ON 6-3-19 & THE SECOND APNOEA TEST WAS COMPLETED AT 7.11 AM ON 7-3-2019.

BUT IN FORM 10 SIGNED BY THE FOUR DOCTORS, THE FIRST APNOEA TEST WAS COMPLETED AT 8-30 PM ON 6-3-2019 & THE SECOND APNOEA TEST WAS COMPLETED AT 6-46 AM ON 7-3-2019.

VERY OBVIOUSLY THEY NEVER PERFORMED APNOEA TESTS AND EVEN IF THEY DID IT WAS WRONG ACCORDING TO THE THO ACT.

THE PRESENCE OF DR.PRITHVI CANNOT BE BELIEVED. NO ONE WILL SIGN WITHOUT WRITING HIS FULL NAME WITH INITIALS AND SURNAME HE HAS ALSO NOT AFFIXED HIS OFFICIAL SEAL.

I, THEREFORE REQUEST YOU TO TAKE STRINGENT ACTION AGAINST THE FOUR DOCTORS AND REMOVE THEM FROM THE REGISTER OF TCMC.

Brain Death Certification of Mr. Ajay Johnny in ASTER MEDCITY (Encl No.2).

According to Form 10, Ajay Johnny was certified Brain Dead after the 2<sup>nd</sup> Apnoea Test at 3-45 am on 5-3-2019. But, as said earlier, Dr. Mathew Jacob Informed Adv. Suresh that a Cadaver Liver was available for Transplant 12 hours earlier. DR. MATHEW JACOB WAS SURE THAT HE COULD MANIPULATE THE FOUR MEMBER EXPERTS COMMITTEE TO WRONGLY, DELIBERATELY AND PREMATURELY CERTIFY POOR (He was from a very poor family) AJAY JOHNNY AS BRAIN DEAD. AND THAT IS EXACTLY WHAT HE MANAGED TO DO.

The Form 10 was signed by 1- ARUN GEORGE, RMP In Charge of Aster Medicity. His Signature is very suspicious, obviously not signed by him, does not show his initial and most importantly, HIS REGISTER NUMBER OF TCMC IS NOT MENTIONED AND HIS TWO SIGNATURES IN FORM 10 ARE VERY DIFFERENT. OBVIOUSLY HE DID NOT PERFORM THE APNOEA TEST. 2-DR RAKHI R., TCMC Reg No.23132, Government Hospital, Muvattupuzha. BY NO STRETCH OF IMAGINATION CAN WE SAY THE SIGNATURE IS THAT OF DR RAKHI R. Moreover when there were many Empanelled Doctors in and around Kochi, and Professors of Neurology in Four Government Medical Colleges in Kochi, Kottayam, Alleppy and Trichur, IT IS VERY SUSPICIOUS TO CALL A LADY DOCTOR TO COME FROM 50 Km. AWAY AND STAY FROM 9-30. Pm to 3-45 (very early in the morning TO CERTIFY BRAIN DEATH. HER ABSENCE FROM ASTER MEDCITY DURING THE PERIOD CAN BE SCIENTIFICALLY PROVED. OR ASTER MEDICITY WAS SURE THEY COULD MANIPULATE HER TO SIGN ON THE DOTTED LINES. 3-DR. VIVEK NAMBIAR, TCMC REG No.28559, Neurologist, Amrita

Institute of Medical Science. HIS SIGNATURES AND NAME IN TWO PLACES IN FORM 10 ARE DIFFERENT, THERE IS NO INITIAL WHICH EVERYONE WILL PUT BEFORE OR AFTER THE NAME. OBVIOUSLY, HE WAS NOT PRESENT FOR THE APNOEA TEST, IF AT ALL THE TEST WAS PERFORMED. DR. SHEJOY P.JOSHUA, Reg No.45907 TCMC, NEUROSURGEON, ASTER MEDCITY.

As the Ajay Johnny was admitted after a Road Traffic Accident. In such a case, the presence of ALCOHOL AND DEPRESSANT DRUGS HAVE TO BE RULED OUT. BUT TOXICOLOGY SCREENING IS NOT PERFORMED IN KERALA, BUT THE PANEL OF DOCTORS WILL ENTER IN THE FORM AS THE TESTS PERFORMED. BEING A ROAD TRAFFIC ACCIDENT AN INQUEST SHOULD HAVE BEEN CONDUCTED BEFORE ORGAN HARVESTING. I DON'T THINK THIS WAS DONE. ASTER MEDCITY REWARDED AMRITA INSTITUTE WITH A KIDNEY AND PANCREAS, AGAINST ALL NORMS OF PRIORITY, FOR THE HELP RENDERED BY DR. VIVEK NAMBIAR.

ASTER MEDICITY WAS THE GREATEST BENEFICIARY, IT RECEIVED TWO LIVERS (for the COST of one) & IT'S SISTER CONCERN THE ASTER MIMS, CALICUT RECEIVED TWO KIDNEYS. IT WAS MANDATORY FOR ONE KIDNEY TO BE GIVEN TO A GOVERNMENT HOSPITAL. THE OTHER KIDNEY SHOULD HAVE BEEN GIVEN TO THE NEXT PATIENT IN THE WAITLIST.

ACCORDING TO SOME NEUROLOGISTS AND SENIOR FACULTY IN THESE CORPORATE HOSPITALS, THE DOCTORS FROM OUTSIDE HOSPITALS WHO SIGN THE BRAIN DEATH CERTIFICATE ARE PAID RS. 25,000/-. THEY OFTEN SIGN WITHOUT SEEING THE PATIENT. THE ORGAN RECIPIENT HOSPITALS PAY THE HOSPITAL WHERE THE PATIENT CERTIFIED BRAIN DEAD, Rs. 2 Lacs FOR EACH ORGAN RECEIVED. I REQUEST you TO TAKE SERIOUS NOTE OF MY COMPLIANT, CALL FOR ALL ORIGINAL RECORDS - ENTIRE CASE SHEETS, ALL INVESTIGATIONS, INCLUDING EEG AND SCAN REPORTS, ANESTHETIST'S RECORDS AND THEATRE NURSE'S RECORD. INQUEST REPORT AND POST MORTEM REPORT MUST BE COLLECTED FROM THE CONCERNED

AUTHORITIES. ACTION MUST ALSO TAKEN AGAINST ANAESTHESIOLOGIST IN ADV. SURESH'S CASE.

ANY ANAESTHESIOLOGIST WORTH HIS SALT WILL RECOGNISE THAT ADV. SURESH SUFFERED A STROKE AND IS NOT FIT FOR TRANSPLANT AND THE NEUROSURGEON MUST BE IMMEDIATELY CALLED. HE FAILED IN HIS DUTY TO SAVE ADV. SURESH.

MOST UNETHICAL ACTIONS, NOT BEFITTING A HOSPITAL & DOCTOR ASTER MEDICITY AND DR. MATHEW JACOB IN PARTICULAR, WITH COLLABORATION OF A NUMBER OF DOCTORS, ESPECIALLY THE NODAL OFFICER KNOS, MISUSED THE TRUST BESTOWED ON THEM BY THE UNSUSPECTING PATIENTS AND RELATIVES.

ASTER MEDICITY MADE RS. 50 LACS FOR DOING ONE LIVER TRANSPLANT, BY CLAIMING TO HAVE PERFORMED TWO. DR. MATHEW JACOB, WHO IS KNOWN TO COLLECT RS. 2 Lacs AS SURGEON'S FEE FOR LIVER TRANSPLANT, COLLECTED SURGEONS FEE OF FOUR LACS FOR TWO LIVER TRANSPLANTS, BUT DOING ONLY ONE.

I MAY BE GIVEN A CHANCE TO BE HEARD IN PERSON.

With Regards,

27-8-2029

S. Ganapathy”

20. Exhibit-P4 is the proceedings of the Director of Kerala Medical Education Department, Thiruvananthapuram dated 17.09.2019 and it reads thus:

“DME/1602/2019-K3.

PROCEEDINGS OF THE DIRECTOR OF KERALA MEDICAL  
EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

Enquiry regarding confirmation on brain death / organ transplantation at Aster Medicity Kochi - Complaint raised by Dr. S. Ganapathi-Me.V.Va General, Aster Medcity, Kochi Order appointing Dr. Sasikala. K, authorizing her to collect information.

Reference:

- (1) Complaints dated 25.03.2019, 14.05.2019 and 26.09.2019 of Dr. S. Ganapathi.
- (2) Government Letter No. 194/84/2019 Aa.Ku.Va dated 01.08.2019.

Order No. K.3-4602/2019. Me.V.Va dated 17.09.2019.

Dr. S. Ganapathi has lodged complaints against organ transplantation of Baby Parvathi, Ajay, Johny, Advocate Suresh and Mr. Unnikrishnan, performed at Aster Medcity Kochi, vide reference (1) as above.

The Government has recommended to initiate appropriate steps vide reference (2) above, stating that the D.M.E is the Appropriate Authority as enshrined in the Transplantation of Human Organs Act. As such, the D.M.E with this power vested in him, can investigate the complaints raised by Dr.Ganapathi. After a detailed investigation, the D.M.E is required to initiate suitable proceedings, and has to submit a Report to the Government on the enquiry and the steps taken by him.

Under the circumstance, based on the complaint of Dr. S. Ganapathi, and as part of the above said enquiry Dr. Sasikala.K, Professor and Head of Forensic Department, Government Medical College, Thiruvananthapuram, is hereby authorised to collect all the documents and records pertaining to the organ transplantation of Baby Parvathi, Ajay. Johny, Advocate Suresh and Mr. Unnikrishnan, conducted on 21.09.2019 at the Aster Medcity, Kochi.

The Authorities of Aster Medicity, Kochi, are directed to handover all the relevant documents and records related to above to Dr. Sasikala. K.

21. In exercise of the powers conferred under section 20A read with Section 33(m) of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the previous approval of the Central Government, has framed the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

22. Regulation 1.9 - Evasion of Legal Restrictions - states that, the physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws. He should be cooperative in observance and enforcement of sanitary laws and regulations in the interest of public health. A physician should observe the provisions of the State Acts like Drugs and Cosmetics Act, 1940; Pharmacy Act, 1948; Narcotic Drugs and Psychotropic substances Act, 1985; Medical Termination of Pregnancy Act, 1971; Transplantation of Human Organ Act, 1994; Mental Health Act, 1987; Environmental Protection Act, 1986; Pre-natal Sex Determination Test Act, 1994; Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954; Persons with Disabilities (Equal Opportunities and Full Participation) Act, 1995 and Bio -

Medical Waste (Management and Handling) Rules, 1998 and such other Acts, Rules, Regulations made by the Central/State Governments or local Administrative Bodies or any other relevant Act relating to the protection and promotion of public health .

23. Regulation 2.3 - Prognosis - under chapter 2, states that The physician should neither exaggerate nor minimize the gravity of a patient"s condition. He should ensure himself that the patient, his relatives or his responsible friends have such knowledge of the patient"s condition as will serve the best interests of the patient and the family.

24. Regulation 7 - Misconduct - under chapter 7 states that the following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action:

**7.1 Violation of the Regulations:** If he/she commits any violation of these Regulations.

7.2 If he/she does not maintain the medical records of his/her indoor patients for a period of three years as per regulation 1.3 and refuses to provide the same within 72 hours when the patient or his/her authorised representative makes a request for it as per the regulation 1.3.2.

7.3 If he/she does not display the registration number accorded to him/her by the State Medical Council or the Medical Council of India in his clinic, prescriptions and certificates etc. issued by him or violates the provisions of regulation 1.4.2.

**7.4 Adultery or Improper Conduct:** Abuse of professional position by committing adultery or improper conduct with a patient or by maintaining an improper association with a patient will render a Physician liable for disciplinary action as provided under the Indian Medical Council Act, 1956 or the concerned State Medical Council Act.

**7.5 Conviction by Court of Law:** Conviction by a Court of Law for offences involving moral turpitude / Criminal acts.

XXXXXXXXXXXXXXXXXXXXX”

25. Chapter 8 under the Regulation deals with punishment and disciplinary action and it reads thus:

“8.1 It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the

appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicised in local press as well as in the publications of different Medical Associations/ Societies/Bodies.

8.3 In case the punishment of removal from the register is for a limited period, the appropriate Council may also direct that the name so removed shall be restored in the register after the expiry of the period for which the name was ordered to be removed.

8.4 Decision on complaint against delinquent physician shall be taken within a time limit of 6 months.

8.5 During the pendency of the complaint the appropriate Council may restrain the physician from performing the procedure or practice which is under scrutiny.

8.6 Professional incompetence shall be judged by peer group as per guidelines prescribed by Medical Council of India.

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8.8 Any person aggrieved by the decision of the State Medical Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council;"

26. The thrust of the contention advanced by learned Senior Counsel appearing for the appellants is that Transplantation of

Human Organs and Tissues Act, 1994, an Act to provide for the regulation of removal, storage and transplantation of human organs and tissues for therapeutic purposes and for the prevention of commercial dealings in human organs and issues, governs the field, and therefore the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (for short, Ethic Regulations, 2002), cannot be applied going by the nature of the complaint filed by the 3<sup>rd</sup> respondent/complainant.

27. However, on a reading of the provisions of Act, 1994, it could be deduced that the Appropriate Authority is vested with powers under Section 13(2)(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action.

28. But the contention put forth by the learned Senior Counsel appearing for the appellant is that after conducting such an investigation, the person who is found to have violated the provisions of Transplantation of Human Organs and Tissues Act, 1994 can only be prosecuted invoking Section 18 read with Sections 20 and

22 of the Act, 1994. In our view, there cannot be any dispute with regard to the said aspect, so far as the offence committed by any medical practitioner is concerned, and the powers vested with the Appropriate Authority, to prosecute the offender.

29. It is equally important to note that, it is not only the Appropriate Authority vested with powers to prosecute, but also any person, who has given notice of not less than 60 days, in such a manner, as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the Court, is entitled to prosecute an offender, by virtue of the specific provisions contained under Section 22 of Act, 1994. However, that is not the issue here.

30. The issue here, is a notice issued by the authority under the Ethics Regulations, 2002, to conduct an enquiry into a complaint received in respect of a professional misconduct. This we say because, as per Regulation 1.9 of the Regulations, 2002, which deals with “Evasion of Legal Restrictions”, it is clear that the Physicians shall observe the laws of the country in regulating the practice of

medicine and shall also not assist others to evade such laws, wherein, apart from other statutes, the Transplantation of Human Organs and Tissues Act, 1994 is included; meaning thereby that, in case of any violation of the provisions of Act, 1994, the authority under the Ethics Regulations, 2002 is conferred with powers to take disciplinary action or make any enquiries, on receipt of a complaint, with regard to any professional misconduct.

31. On an analysis of the provisions of Ethics Regulations, 2002, it is clear that the said regulations are made by the Medical Council of India, in exercise of the powers conferred under Section 20A read with Section 33(m) of the Indian Medical Council Act, 1956, to maintain a set of medical ethics and to regulate the professional activities of the physicians.

32. Going by the provisions of the Ethics Regulations, 2002, we could also gather that clear provisions are made with respect to the Code of medical ethics and duties and responsibilities of the physician in general, wherein it is specified that the physician shall uphold the dignity and honour of his profession, and that the prime

object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration; and whoever chooses his profession, assumes the obligation to conduct himself, in accordance with its ideals.

33. Regulation 1.7 makes it clear that a Physician should expose, without fear or favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession, and therefore, the complaint filed by the 3<sup>rd</sup> respondent, is in terms of the provisions of the Ethics Regulations, 2002.

34. Further, Regulation 2.3 dealing with prognosis, makes it explicit that the physician should neither exaggerate nor minimize the gravity of a patient's condition; he should ensure himself that the patient, his relatives or his responsible friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family.

35. The above provisions are referred to by us since, in the complaint filed by the 3<sup>rd</sup> respondent, various allegations are made which interfere with the duties, Code of conduct, and obligations

contained under the Ethics Regulations, 2002. Moreover, Chapter 7 of the regulations, extracted above, deals with misconduct. It is stated under Chapter 7 that, if any physician committed violation of the regulations, which constitute professional misconduct, he/she is liable for disciplinary action.

36. It may be true, as per Regulation 7.5 that Conviction by Court of Law for offenses involving moral turpitude/Criminal act, might also be a ground for initiating disciplinary action against a physician. However, that by itself will not detain the authority under the Ethics Regulations, 2002 to take disciplinary action, if any of the conduct/act of a physician is a professional misconduct. That is why, Chapter 8 dealing with punishment and disciplinary action, is empowering the authority therein to ensure that whenever a complaint is received in respect of professional misconduct, it should be investigated/enquired into and take appropriate action.

37. In our view, the Ethics Regulations, 2002 by itself is a self contained code since it clearly specifies the procedure and manner in which disciplinary action has to be proceeded with ; and any person

aggrieved by any action taken is conferred with the liberty to prefer an appeal before the higher statutory authority. That apart, on an analysis of the provisions of Transplantation of Human Organs and Tissues Act, 1994, we could not locate any prohibition so as to detain the authority under the Ethics Regulations, 2002, to take any disciplinary action whenever a professional misconduct is detected or to make an enquiry when a complaint is received. In fact, in the case on hand, the authority has issued only a notice to conduct an enquiry on a complaint received, in terms of the Ethics Regulations, 2002, with the intention of finding out the veracity and truth, which cannot be said to be illegal, bad, or arbitrary, taking into account the provisions of law discussed above.

38. Therefore, considering the facts and figures, and the law as above, we are of the considered opinion that the notice issued by the Deputy Registrar, Travancore-Cochin Council of Modern Medicine, respondent No.2, to conduct an enquiry, is in accordance with law.

39. That apart, going through the provisions of Transplantation of Human Organs and Tissues Act, 1994 and Ethics Regulations, 2002,

we are of the opinion that the statutory authority was duty bound to conduct necessary enquiry or investigation when a complaint is received even from a third person, including a physician because, even that physician has a duty to expose unethical conduct on another physician and that the truth and reality of the allegations in the complaint can be found out only if an enquiry is conducted.

40. Considering all the above aspects and statutory provisions, we do not think that the appellants have made out a case of any jurisdictional error or other legal infirmities, justifying interference of this Court in an *intra* court appeal filed under the provisions of Kerala High Court Act.

In the result, the appeal fails and accordingly, dismissed.

Sd/-  
**S.MANIKUMAR**  
**CHIEF JUSTICE**

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

**APPENDIX**

**APPELLANTS' ANNEXURES:-**

ANNEXURE A:- COPY OF THE COMPLAINT DATED 26.08.2019 (WITHOUT ENCLOSURES) FILED BY THE 3RD RESPONDENT BEFORE THE DME.

**RESPONDENTS' ANNEXURES:- 'NIL'**

//TRUE COPY//

P.A. TO C.J.