

IN THE HIGH COURT OF FIJI AT SUVA
MEDICAL AND DENTAL APPEAL

Appeal No. MDTA 01 of 2017

IN THE MATTER of a complaint against SACHIDA MUDLIAR by the
Medical Council and pursuant to 74(1)(d) of the
Medical Council and Dental Practitioners
Decree 2010

BETWEEN

SACHIDA MUDLIAR

APPELLANT

AND

FIJI MEDICAL COUNCIL

RESPONDENT

Counsel : Mr. A.K. Singh for the Appellant
Ms. N. Tikoisuva for the respondent

Date of hearing : 15th September, 2017

Date of Judgment : 28th September, 2017

JUDGMENT

- [1] This is an appeal from the decision of the Medical and Dental Professional Conduct Tribunal (the Tribunal) dated 24th April, 2017.
- [2] The Tribunal dismissed the complaint against the appellant. However, the appellant preferred this appeal on the finding that the provisions of section 74(2) of the Medical Council and Dental Practitioners Decree 2010 (the Decree) are directory and for not awarding costs.
- [3] Before considering the law it is important to ascertain the basis on which the learned President of the Tribunal arrived at the conclusion that time limit prescribed in section 74(2) of the decree is directory and not mandatory.
- [4] Paragraph 8 of the decision reads as follows;

The lawmaker of the Decree has laid down the following schedule of actions and times for the laying of complaint to the Tribunal.

- (a) Under s.56(1) a complaint is laid before the Professional Conduct Committee (Committee)
- (b) Under s.62(1) the Committee (a) should conduct proceedings as expeditiously as possible and (b) must report to the Council its findings and recommendation on a complaint as soon as practicable after making them.
- (c) Under s.74(2), a complaint must be laid within 42 days of the receipt of the recommendation by written notice to the Registrar of the Tribunal.
- (d) Under s.74(1)(d) the Tribunal has jurisdiction to hear a complaint laid by a Council on the recommendation of a committee.

Paragraph 9 of the decision the learned President has arrived at the following conclusion;

A perusal of the relevant provisions I have set out above cause me to lean towards a conclusion that the law maker did not intend the time schedules to be strictly adhered to, though he did want complaints to be attended to.

- [5] In the Decree I find provisions which prescribe time limits to do certain acts such as section 74(2) and also certain other provisions such as section 62(1) which do not prescribe a time limit but provides that the Committee should conduct the proceedings as expeditiously as possible and its findings and recommendation on a complaint must be reported to the Council as soon as practicable after making them.
- [6] If the 42 days period prescribed by section 74(2) of the decree is directory a complaint can be laid even after many years which could not have been the intention of the legislature when it enacted these provisions.
- [7] The legislature imposes a particular period within which a certain act to be done with a purpose and when such a limitation is imposed by the statute it expects the strict compliance of such provision. If the legislature intended to grant an extension of time to do a particular act it always makes provisions for such extensions.
- [8] In my view whether the delay was excusable or not, the non-compliance of the provisions of section 74(2) of the decree is fatal and any complaint made in contravention these provisions is liable to be rejected and the Tribunal does not have power to extend the time.
- [9] The appellant sought costs both in the matter before the Tribunal and also in appeal on indemnity basis on the ground that respondent knowing very well that the period within which the complaint should be laid, had lapsed the respondent instituted proceedings against him. The proceedings against the appellant were instituted by the respondent knowing very well that the period within which the matter should have been brought before the tribunal had lapsed. It is not an excuse to say that the relevant officers were not aware of the express provisions of the Decree.

[11] Section 81 of the Decree provides thus:

- (1) The Tribunal may award costs (to be fixed by the Tribunal or taxed by a Master of the High Court) against a party to proceedings before the Tribunal as it thinks fit.
- (2) Costs awarded by the Tribunal under this section may be recovered as a debt.

[12] The courts are generally reluctant to award costs against state institutions which are maintained at the expense of the general public. However, in this instance, since the statute has conferred a discretion on the Tribunal to award costs and for the reasons stated above I am of the view that the appellant is entitled to the costs incurred in prosecuting the appeal and for defending himself before the Tribunal.

[13] For the reasons aforementioned I make the following orders:

1. The appeal is allowed.
2. The finding of the learned President that the provisions of section 74(2) of the Decree are directory is set aside.
3. The court holds that the provisions of section 74(2) of the Decree are mandatory and not directory.
4. The respondent is ordered to pay the appellant \$1000.00 as costs of this appeal and of the matter before the Tribunal.



28th September, 2017


Lyone Seneviratne

JUDGE