

36

**IN THE FIJI COURT OF APPEAL AT SUVA
ON APPEAL FROM THE HIGH COURT OF FIJI**

CIVIL APPEAL NO. ABU0041 OF 1997S
(High Court Civil Action No. HBC0010 of 1996)

BETWEEN:

THE FIJI MEDICAL ASSOCIATION

Appellant

AND:

RAMON FERMIN ANGCO

1st Respondent

AND:

THE FIJI MEDICAL COUNCIL

2nd Respondent

Coram:

**The Hon. Sir Moti Tikaram, President
The Rt. Hon. Sir Maurice Casey, Justice of Appeal
The Hon. Mr Justice J. D. Dillon, Justice of Appeal**

Date of Hearing:

Thursday, 13 August 1998

Counsel:

**Mr. M. Raza for the Appellant
Mr. A.K. Narayan for the 1st Respondent
Messrs. A. Rokotinaviti and S. Kumar for the 2nd Respondent**

Date of Judgment:

Friday 28 August 1998

JUDGMENT OF THE COURT

This appeal is against the judgment of *Scott J* delivered in the High Court at Suva on 10 July 1996 in respect of two appeals brought in the High Court by Dr Angco under s28 of the Medical and Dental Practitioners Act Cap.255 (the Act) against decisions of the second respondent, the Fiji Medical Council. In the first he challenged the Council's decision to remove or suspend his name from Part II of the register of medical practitioners kept under s8 of the Act, while in the second he complained of the Council's refusal of his application to be registered in that Part. His Lordship heard both appeals together and found that Dr Angco had been at all relevant times duly registered as a medical practitioner in Part II of the register kept under s8 of the Act, and it is this finding that is challenged in the present appeal to this Court.

The Act

To understand the issues raised in the appeal it is necessary to consider relevant provisions of the Act.

The Register. Section 3 establishes the Fiji Medical Council charged under s8 with keeping the medical register divided into two parts, in which the Council is to enter the name and qualifications and other particulars of medical practitioners in either Part I or Part II. Part I consists of persons conditionally registered as medical practitioners, and Part II of medical practitioners.

Conditional registration is dealt with in s9, which states that every person shall be entitled to be registered conditionally in the register who satisfies the Council that he or she holds an acceptable degree, diploma or other qualification as specified in the section, while s10 states that a person holding conditional registration shall be deemed to be a medical practitioner registered in Part II of the medical register only while he is a member of the staff of an approved institute or hospital. Under s11 the Council may cancel the registration if it considers the person is not fit and proper to be so registered for reasons stated in s20 referred to in the following paragraph.

Registration in Part II. Section 12 providing for registration as a medical practitioner in Part II requires the applicant to satisfy the Council that he or she is conditionally registered or is eligible to be so registered in Part I, and has had satisfactory experience in medicine and surgery in an approved institution or hospital for a total period of one year; or that he or she is eligible to be conditionally registered in Part I and has practised medicine or surgery for a continuous period of 5 years since obtaining their degree or diploma. These provisions are

subject to s20 stating that no person is entitled as of right to be registered if convicted at any time of an offence punishable by imprisonment for 2 years or upwards; or who is otherwise in the Council's opinion not of good fame or character.

Applications. An application to be registered by a person entitled to be conditionally registered or registered may be made to the Secretary of the Council along with documents or statements confirming or evidencing the applicant's qualifications (s15). Under s16 it is to be considered by the Council at its next meeting or as soon thereafter as practicable, and it has certain powers of enquiry or verification. Section 17 provides that if the Council determines that in its opinion the applicant is entitled to be registered in accordance with the application, the Secretary must register the applicant and notify him or her accordingly; conversely, if the Council determines that in its opinion the applicant is not so entitled, then he or she is to be notified of that decision.

Temporary Permission. There is provision in s18 for what is described in the heading as "Temporary registration". Under s18(1) the Council Chairman may issue to a Person who has applied for registration a temporary certificate of permission to practise, pending consideration of the application by the Council. This entitles him or her to practise to the extent he or she would have been entitled if registered in the manner specified in the application, and it remains in force until cancelled by the Council, but in any case for not longer than three months from the date of issue. Under s18(2) the Council may issue a similar certificate to a person not normally resident in Fiji if suitably qualified, and it is to remain in force for the time specified in it, being not longer than one year, and it may be subject to conditions. It entitles the person to practise medicine and surgery to the extent specified in the certificate, and may be renewed on one occasion only, for not longer than one year.

Appeals. There is provision in s28 for an appeal to the High Court by persons whose application for registration is refused, or whose conditional registration has been cancelled, or whose name has been deleted from the register.

History

In compiling the following narrative we have had the benefit of additional evidence admitted in this Court which was not available to *Scott J.*

Dr Angco arrived in Fiji in December 1991 as a visitor from the Philippines and on 10 February 1992 was appointed by the Public Service Commission as a Medical Officer on a three-year contract, first at the Nailaga Hospital and then at the Ba Medical Centre. The Chairman of the Medical Council issued him with temporary permission under s18(1)(a) of the Act to practise for a period of 6 months from 1 January 1993 to 31 May 1993. It will be noted that this exceeded the time prescribed for such permission by three months. There is nothing in the record to show that Dr Angco had applied for registration at that stage, nor is there any evidence that it was granted. On 30 June 1993 he resigned from his hospital employment, but was subsequently re-employed and given another temporary certificate of permission on 3 September 1993, evidently under s18(2), to cover the period up to 25 October of that year, and it was extended to 25 October 1994.

Following complaints about breaches of the code of ethics and malpractice, Dr Angco was asked for an explanation and after considering it on 23 June the Council wrote on 30 June 1994 advising that it had decided to suspend "his registration under Part II", and that this decision would be reconsidered at its next meeting which he would be expected to attend. We are satisfied that the reference in that letter to "registration under Part II" was the result of a

misunderstanding of the effect of the temporary permission granted. As stated above, it allowed Dr Angco to practise medicine and surgery only to the extent specified in the certificate. It did not constitute registration in Part II.

On 30 June 1994 Dr Angco again resigned from his hospital post, but was again re-employed in a similar position. He appealed under s28 to the High Court on 12 July 1994 against the Council's decision to suspend his "registration", and on 28 October 1994 he appeared before it with his lawyer to answer the allegations of misconduct. After a lengthy discussion with him, the Council noted that his temporary registration was due to expire on 25 October and decided to consider further allegations at a later meeting. So far as the record shows, there appears to have been no such later meeting, but on 1 February 1995 his employment contract was terminated.

On 9 May 1995 Dr Angco applied to the Council pursuant to s15(1) of the Act for registration under Part II as a medical practitioner, stating that he wanted to practise on his own account at Ba. On 17 November 1995 the Council decided to give him "temporary registration" for 6 months and that he be employed by the Ministry of Health and posted to Lautoka Hospital for close supervision; and that it be reviewed on expiry of that term. We were not referred to any certificate in respect of that registration, but it is clear from the further evidence in the affidavit of Dr Mudaliar (president of the Fiji Medical Association) sworn on 22 May 1997 that this "registration" was only a temporary permission under s18(1)(a) pending consideration of his application for registration. It is accepted that the review contemplated by the Council decision has not been held. On 13 February 1996 Dr Angco instituted his second appeal to the High Court under s28 against the Council's refusal to grant his application for registration. Dr Mudaliar deposed that he had made enquiry of the Council and that Dr Angco's name has never been in Part II of the register, and he annexed a letter from the Council confirming this.

The Appeals

As noted above, *Scott J* heard both appeals together, finding in Dr Angco's favour, in that he was and had been at all relevant times a medical practitioner duly registered in Part II. He added that whether he was entitled to practise privately on his own account would depend on the nature of his immigrant status and permit to work in Fiji. Accordingly, he made no orders on the appeals, directing them to be called at a later date for mention. So far as we are aware, no further orders have been made pursuant to that direction.

The Fiji Medical Association (the Appellant), a professional body established under s41 of the Act, became concerned about His Lordship's decision because in its view he had arrived at it on misleading and insufficient evidence. It was given leave by this Court to join the proceedings and to appeal and to adduce further evidence in the form of a lengthy affidavit by its President, Dr Mudaliar.

Thompson J, sitting as a single Judge of this Court, refused its application for an interim injunction restraining Dr Angco from practising pending determination of the appeal. It sought a determination by the Court under the former s20 of the Court of Appeal Act (Cap.12), which was adjourned to the hearing date of the substantive appeal. As that application for determination has now been overtaken by the decision in this appeal the application lapses and it is formally dismissed.

It would appear from a study of the steps taken by the Council in respect of Dr Angco that it may not have fully understood the impact of relevant provisions of the Act. For instance, (as already noted), the temporary certificates under s18(1) for permission to practise were issued for periods of 6 months, whereas the maximum was three months. Dr Angco claimed

in his supporting affidavits that he had always been registered, and in her affidavit in reply the Secretary of the Medical Council conceded that he was registered as a medical practitioner after he joined the Government in 1992, and that after his resignation on 30 June 1993 "his registration under Part II" of the Act was cancelled. This demonstrates a serious misunderstanding of the effect of the certificates issued under s18(1) and (2). As pointed out above, neither of those certificates constitutes registration under Part II and there is no evidence that Dr Angco was given conditional registration in Part I, which would have resulted in his deeming to be registered in Part II while employed in a hospital or institution.

It would seem from the various affidavits put to *Scott J* by the Council, and from Dr Mudaliar's affidavit now before this Court, that the Ministry of Health thought it could conditionally register foreign doctors in Part I so long as they were employed in hospitals. We have difficulty understanding this. Registration in Part I can only be effected by the Council on receipt of an application under s15 by the person seeking registration. In his affidavit of 14 May 1996 even the Chairman of the Council said that Dr Angco had always been temporarily registered under Part II because of his residential status as an expatriate while working for Government. In the light of the information before him, and in the absence of any evidence that Dr. Angco was not lawfully registered in Part II, it is not surprising that *Scott J.* presumed that at all material times he had been duly registered there.

The position is now quite clear from the additional material put to this Court that Dr Angco was never registered in Part II. He has an application for registration before the Council which it must now decide, following its resolution of 17 November 1995 to consider the matter further on the expiry of his 6-months "temporary registration". Obviously this should be done as soon as practicable so that all concerned can know where they stand.

Decision :

This decides the only matter argued in this Court on the appeal, which is allowed. The finding of *Scott J* in the High Court that Dr Angco was at all relevant times duly registered in Part II of the register of Medical Practitioners is set aside. As stated at page 7 of our judgment the application under section 20 has lapsed and it is therefore formally dismissed. In view of the confusion generated by the Medical Council's apparent misunderstanding of the Act and its failure to present all the facts to the High Court, it would be unfair to expect Dr Angco to meet the Association's full or substantial costs on this appeal. We consider that in the circumstances \$400.00 would be a fair sum for him to pay the Association by way of costs and disbursements. We order accordingly.

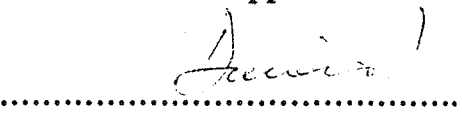
We also think the Council should consider a contribution to the Association's costs, since the latter's decision to bring the appeal has resulted in this clarification of the position under the Act.



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Sir Moti Tikaram
President



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Sir Maurice Casey
Justice of Appeal



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Justice J.D. Dillon
Justice of Appeal

Solicitors:

Messrs. Mehboob Raza & Associates, Suva for the Appellant
Messrs. A.K. Narayan & Co, Ba for the 1st Respondent
Messrs. A. Rokotnaviti and S. Kumar, Attorney-General's Chambers
for the 2nd Respondent