Privy Council Appeal No. 34 of 1985

Robindra Nath Datta *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 27TH JANUARY 1986

Present at the Hearing:

LORD KEITH OF KINKEL
LORD BRIGHTMAN
LORD GRIFFITHS

*[Delivered by **Lord Griffiths**]*

On 16th July 1985 the Professional Conduct Committee of the General Medical Council found the appellant guilty of serious professional misconduct and ordered his name to be erased from the Register. The appellant now appeals from that determination of the Professional Conduct Committee.

The charge against the appellant read as follows:-

"That, being registered under the Medical Act,

'(1)(a) On 24th November 1981 you failed to visit and provide or arrange treatment for a patient for whose general medical care you were responsible at the material time, namely the baby son of Miss Ann Brome, then resident at 36 Thistlecroft, Tanterton, Ingol, Preston,

(i) when you were requested to do so, and

(ii) when the patient's condition so required;

(b) When at about 12.15 a.m. and about 9.45 a.m. on 26th November 1981 you received further requests to visit Miss Brome's son, you failed at those times

(i) to visit the patient,

(ii) to provide or arrange any treatment for the patient

(iii) to refer the patient to hospital for investigation and treatment,

when the patient was in need of urgent medical attention;

'(2) On 26th September 1983 you failed to visit and treat Mr. Albert Ormerod, then resident at 37 Albyn Bank Road, Preston, a patient for whose treatment you were responsible at the material time,

(i) when you were requested to do so, and

(ii) when the patient's condition so required;

'(3) By your conduct as aforesaid, you neglected your professional responsibilities towards the aforementioned patients of your practice;'

And that in relation to the facts alleged you have been guilty of serious professional misconduct."

The evidence in support of these charges came from three witnesses. Mrs. Bateman (formerly Brome), a patient of the appellant, had given birth to a son on 30th October 1981. She said that the baby had had jaundice since his birth and after her return from hospital she had received no visits from her doctor, the appellant. On the afternoon of 24th November 1981 she telephoned to the appellant and asked him to visit the baby because she was worried about his condition. According to her evidence the appellant answered "I'm not coming out to see him. If it is his jaundice that is bothering you, bring him to the surgery in the morning". She said she protested that she would not be able to bring the baby out in the windy and rainy November weather to which the appellant answered "fresh air and plenty of liquids would do him good". The following morning she took the baby to the surgery where he was examined by the appellant who gave her a prescription. Despite giving the baby the prescribed medicine she said his condition worsened and he started to vomit matter which she thought was congealed blood. By about midnight she was so worried about the baby's condition that she asked her sister to ring Dr. Datta and ask him to come and see the child.

The sister, Mrs Madden, said in evidence that she telephoned the appellant's surgery and was given his home number, by his receptionist. She then telephoned the appellant and she said that she told the appellant that the baby had got considerably worse and was being sick and asked him to come straight away. To which, according to her evidence, the appellant answered "No, I saw him this morning. I do not need to see him again. If he is still the same in the morning, ring me back then".

The next morning the mother said she telephoned the surgery at about nine or half past nine and spoke to the receptionist. She said she told the receptionist that she had rung Dr. Datta that night and Dr. Datta had said "If he is no better in the morning give me a ring and I'll come and have a look at him". She also said that at the time she made that call she was panic stricken.

Despite the fact that this telephone call had been made at about 9.30 a.m. the appellant did not visit the child until after 1.00 p.m. It is common ground that the baby vomited again in the appellant's presence and the appellant said that he would go back to the surgery and phone for an ambulance to take him to hospital. About half an hour later an ambulance arrived and took the mother and child to the Royal Preston Hospital where he was placed in an isolation ward.

The evidence relating to the failure to visit and treat Mr. Ormerod was given by Mr. Brincat-Smith. Mr. Ormerod was a frail and elderly man living alone and Mr. Brincat-Smith was interesting himself in his welfare. This witness had nine years experience as a sick berth petty officer in the Royal Navy and twenty-five years in the Prison Service as a hospital officer. He was concerned about the condition of Mr. Ormerod and described his symptoms as "shortage of breath, he was starting to stoop forward, he had sores on his elbows and on his back, he was deteriorating". It was in these circumstances, the witness said, that on a Monday at the request of Mr. Ormerod he telephoned to Dr. Datta's surgery and spoke to the receptionist telling her that Mr. Ormerod was not too well and that he wanted Dr. Datta to visit him. By Thursday the appellant had not yet visited Mr. Ormerod and Mr. Brincat-Smith being worried about what he perceived as a worsening of the condition telephoned the emergency service to ask for a visit. Later that afternoon the appellant visited Mr. Ormerod.

This in summary was the evidence adduced in support of the allegations contained in the charge. The appellant in answer to the charge denied that he had been asked to visit the baby on 24th November

although he admitted that the mother had telephoned him on that date and was concerned about the condition of the child. He also denied that he had received a telephone call from the sister on the night of 25th/26th November. He admitted that his receptionist had received a call from the mother on the morning of 26th November but said that she did not tell him about it until the end of his surgery at 12.30 p.m. He said it was for this reason that he did not visit the child until about 1.30 p.m. Dealing with Mr. Ormerod, the appellant admitted that his receptionist had been telephoned asking for a visit on the Monday evening, but nothing was said to indicate that the condition of Mr. Ormerod required an urgent visit and in exercising his discretion he decided he would not visit until the Thursday. Although it was conceded that he in fact visited on Thursday evening after the telephone call by Mr. Brincat-Smith to the emergency doctor service, the appellant denied that his visit was prompted by that emergency call which he said he only learned of when he returned home after making the visit.

So in summary the appellant's defence to the failures to visit on 24th November and the night of 25th/26th November was that he was never asked to do so. In respect of the failure to visit on the morning of 26th November, his defence was that the message was not passed on to him until the end of his surgery, and he visited as soon as he reasonably could after he received the message. And in respect of Mr. Ormerod, that although he received the message asking him to visit on the evening of the Monday, he thought he was being asked to do no more than make the sort of routine visit that he had been making over recent weeks and that there was no urgency that necessitated a visit before the Thursday.

After hearing submissions, the Professional Conduct Committee announced their findings of fact in the following form:-

"(1)(a) On 24th November, 1981 you failed to visit and provide or arrange treatment for a patient for whose general medical care you were responsible at the material time, namely, the baby son of Miss Ann Brome, then resident at 36 Thistlecroft, Tanterton, Ingol, Preston, when you were requested to do so.

(b) When at about 12.15 a.m. and about 9.45 a.m. on 26th November, 1981 you received further requests to visit Miss Brome's son, you failed at those times,

(i) to visit the patient,

(ii) to provide or arrange any treatment for the patient,

(iii) to refer the patient to hospital for investigation and treatment,

when the patient was in need of urgent medical attention.

(2) On 26th September, 1983 you failed to visit and treat Mr. Albert Ormerod, then resident at 37 Albyn Bank Road, Preston, a patient for whose treatment you were responsible at the material time, when you were requested to do so.

(3) By your conduct as aforesaid, in Head (1)(b), you neglected your professional responsibilities towards the aforementioned patients of your practice.

They have recorded a finding that you are not guilty of serious professional misconduct in respect of those other facts alleged which have not been proved."

After hearing further submissions on these findings of fact, the Chairman announced the decision of the Committee:-

"Dr. Datta, the Committee take a very serious view of the circumstances in which you failed to fulfil your responsibilites as a doctor towards an infant patient of your practice who was in need of medical attention.

The Committee have judged you to have been guilty of serious professional misconduct in relation to the facts which have been proved against you in the charge, and, taking into consideration your previous history, they have directed the Registrar to erase your name from the Register."

The first challenge to the proceedings of the Professional Conduct Committee is that they were not conducted in accordance with the rules of natural justice. This submission is founded upon the fact that the same Chairman presided over this Committee as had presided over the proceedings of the Professional Conduct Committee which, on 29th November 1984, had found the appellant guilty of serious professional misconduct in that he had abused his position as a medical practitioner by borrowing substantial sums of money from a patient and had attempted to repay, with at least one cheque, which was dishonoured on presentation. Those proceedings resulted in an admonition.

There is no suggestion of any bias on the part of the Chairman nor was any objection taken to his chairing the Committee or sitting as a member of the Committee before these proceedings started. What is

said is that there being twenty persons who are qualified to sit as members of the Professional Conduct Committee of which only ten sit on any adjudication, it should have been possible to have arranged a Committee to hear this case which did not contain any of the members of the Committee who had adjudicated the previous November. The burden of this submission is not so much that justice was not done but that it was not manifestly seen to be done. There is no substance in this submission. It is inevitable that those who sit in a judicial or a quasi-judicial capacity will, from time to time, have to hear cases against accused persons who have appeared before them on previous occasions. As a general rule there can be no objection to this practice. Those entrusted with judicial or quasi-judicial functions must and can be trusted to try the case on the evidence before them and to put out of their minds knowledge, arising out of any earlier appearance before them by the same accused person. If in the particular circumstances of an individual case it is thought to be undesirable that the case should be heard by the same person then objection to the tribunal should be taken at the outset of the proceedings so that consideration can be given to the objection. In the absence of any such objection in the present case, the general rule must prevail and this first ground of challenge fails.

The next submission arises out of the form of the charge. It is submitted that the charge should be construed as one of serious professional misconduct in the form of persistent failure to visit and treat patients, particularised as once on 24th November 1981, twice on 26th November 1981, and once on 26th September 1983 and that it was not open to the Committee to find on the charges brought serious professional misconduct in respect of only 26th November 1981. This submission is misconceived. The charge alleged one offence namely serious professional misconduct. Under paragraphs 1 and 2 of the charge facts are set out which are alleged to warrant a finding of guilt. Provided sufficient of the facts are established to warrant a finding of serious professional misconduct it was open to the Committee to find the offence proved. This ground of appeal also fails.

The main challenge of the appellant is to the Committee's finding of fact that at about 9.45 a.m. on 26th November 1981, the appellant received a further request to visit the baby. There can be no doubt that the Committee took a more serious view of the failures to visit the child on 26th November than the failure to visit on 24th November, or the failure to visit Mr. Ormerod on 26th September 1983. It was the failure to visit on 26th November that was stigmatised in the findings of fact as a neglect of

the appellant's professional responsibilities. It would appear from the refusal of the Committee to find that it had been proved that the child's condition required a visit on 24th November, or that Mr. Ormerod's condition required a visit on 26th September, coupled with the statement at the end of their findings of fact which reads "they have recorded a finding that you are not guilty of serious professional misconduct in respect of those other facts alleged which have not been proved", that the Committee would not have been prepared to hold that those two failures to visit regarded in isolation amounted to serious professional misconduct. What is said on behalf of the appellant is that there was no evidence before the Committee which justified them in finding as a fact that the appellant had received a request to visit the child at 9.45 a.m. on 26th November 1981.

The appellant denied he had received that request until 12.30 p.m. at the end of his surgery. In cross-examination it was put to him that he had received the request from the mother first thing in the morning. The appellant denied it. The question was put again "she rang you did she not?" at this point counsel for the appellant intervened to point out that the mother had said she spoke to the receptionist. Counsel cross-examining corrected himself and said "she rang the surgery did she not?". The doctor repeated the evidence already given in chief "yes and I received a call at the end of my surgery from the receptionist". Counsel then asked the question "so you blame your receptionist?" to which the appellant answered "I'm not blaming my receptionist at all". Thereafter the matter was not pursued further in cross-examination. It is difficult however to see how further cross-examination could have carried the matter further: if counsel had then put to the doctor in terms "I suggest to you that your receptionist did tell you of the call as soon as it was received", it would have inevitably have received the answer, "no she did not". Their Lordships therefore cannot accept the submission that, in the absence of any direct challenge to the appellant's evidence on this issue, the Committee were precluded from finding that he had received the message shortly after the telephone call to his receptionist.

In their Lordships' view there was material from which the Committee were entitled to draw the inference that the appellant must have received the message much earlier than he claimed. The Committee were not of course bound to accept the appellant's answer that he received it after surgery. The Committee cannot have regarded the appellant as a truthful witness because they had preferred the evidence of the mother and the sister to the evidence

of the appellant on the question of requests for visits on both 24th of November and on the night of 25th/26th November.

The receptionist who received the message on the morning of 26th was the same receptionist who had received the call from the sister shortly after midnight. The receptionist had taken that call sufficiently seriously to give the doctor's home number. When the mother rang again next morning, she described her condition in evidence as panic stricken, a state of anxiety which the receptionist could scarcely have failed to recognise. The combination of a call after midnight and a call when surgery has started by a panic stricken woman leads to the over-whelming probability that if she had any sense of her duty she would have reported the matter forthwith to the doctor. Furthermore it is to be observed that when the appellant first put forward his answer to the allegation that he failed to visit on the morning of 26th, he did not suggest this was because he had not received the request until after surgery. What was said in a letter written on his behalf by his solicitors dated 7th May 1985 was this, "our client's receptionist (who is no longer employed in the practice) received a telephone call at 9.45 a.m. on 26th November 1981. No urgency was contained in the message passed to our client. He visited the patient at 1.10 p.m. that afternoon". There is no suggestion here of not receiving the message until 12.30 p.m. The implication is that he received the message at 9.45 a.m. but was not told how urgent it was. Furthermore, upon the basis that he had received a telephone call shortly after midnight and refused to pay a visit but told the mother to ring the surgery in the morning if she was worried, one would have expected that he would have at least told his receptionist that if the mother did telephone again he was to be told about it immediately. Taking all these matters into account, their Lordships are satisfied that there was material before the Committee that entitled them to make the finding of fact that the appellant had received a request at or about 9.45 a.m. on 26th November 1981 to visit the child. For these reasons this attack on the Committee's findings also fails.

Finally, it is submitted that the penalty of erasure was in all the circumstances too severe. Unfortunately this was not an isolated incident. The Committee had before them the appellant's record which showed a number of previous incidents of a similar kind in which disciplinary action had been taken following a failure to visit or treat patients. In all the circumstances, their Lordships have not been persuaded that there are any grounds upon which it would be appropriate to interfere with the penalty ordered by the Committee.

Before parting with this case, their Lordships would like to observe that their understanding of the Committee's conclusions was not assisted by the somewhat delphic form in which their findings of fact concluded namely "they have recorded a finding that you are not guilty of serious professional misconduct in respect of those other facts alleged which have not been proved". We were told by counsel that this was the consequence of a procedural format which has been evolved and is applied in all cases of professional misconduct. Their Lordships suggest that the procedure requires re-examination. If all the sentence means is that the Committee are not going to find the accused guilty of something that has not been proved, it is a statement of the obvious which should not require saying. If as we suspect it is intended to serve some other purpose, that purpose is far from clear to their Lordships.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs.