

**Dr. Nazir Ahmad Dhar**

*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 26th June 1995  
-----

*Present at the hearing:-*

Lord Jauncey of Tullichettle  
Lord Browne-Wilkinson  
Lord Hoffmann

*[Delivered by Lord Hoffmann]*

-----  
On 22nd November 1994 the Professional Conduct Committee of the General Medical Council found Dr. Dhar guilty of serious professional misconduct and directed that his name be erased from the register. He appeals on the ground that the Committee should have acceded, first, to the application of his solicitor on 21st November that the inquiry should be adjourned because he was abroad and unable to be present and, secondly, to his own application by telephone for an adjournment on the morning of 22nd November. Both applications were refused and the Committee proceeded to hold the inquiry in his absence. Their Lordships need not concern themselves with the details of the charges because it is accepted that there was ample evidence upon which the Committee was entitled to find them proved.

The Notice of Inquiry was dated 19th October 1994 and gave notice that the inquiry would be held on 21st November 1994. On 25th October 1994 the Council received a faxed letter from Dr. Dhar dated the previous day from Srinagar in Kashmir. It said that he was working with medical relief in Kashmir and asked that the inquiry should be adjourned until his return to

London. On 26th October Mr. A. Quist, a solicitor of the firm of Messrs. McHale & Co., wrote to the Council saying that Dr. Dhar's attempts to return to England had been hampered by an outbreak of pneumonic plague in India. In a postscript Mr. Quist said that since dictating the letter he had heard from Dr. Dhar. On 1st November the Council wrote to Messrs. McHale & Co. and to Dr. Dhar at his registered address in London, refusing the adjournment but saying that the application could be renewed at the hearing on 21st November.

At the hearing on 21st November Mr. Quist appeared for Dr. Dhar and again applied for an adjournment. He said that Dr. Dhar had gone to India in early August. He was working in a war zone in Kashmir. He should have returned in late September but could not get a flight home because of the plague. He knew about the proceedings because his wife had opened the letters from the Council and told him about them on the telephone. It was impossible to get in touch with Dr. Dhar in the war zone to take instructions, though he had telephoned his wife and Mr. Quist from Kashmir: in fact, he had made a long-distance call to Mr. Quist that very morning.

Miss Foster, for the Council, opposed an adjournment. She called as a witness a neighbour of Dr. Dhar's, a Mr. D'Souza, who said that he had seen Dr. Dhar on a date which he thought was in September. She also pointed out that Dr. Dhar's faxed letter dated 24th October was mysterious because it had been sent from a U.K. number but purported to have been written in Srinagar on the previous day. These two matters gave rise to suspicion that Dr. Dhar had been in England more recently than August.

The Legal Assessor advised the Committee that an application to adjourn "should of course be granted where the interests of justice require it" but that the Committee should also consider the public interest. The Committee refused the application. It is clear that the Committee were not satisfied that the application was *bona fide* and must have entertained considerable doubt as to whether Dr. Dhar was abroad at all. Mr. Quist withdrew and the inquiry proceeded without him. At the end of the day it was adjourned part heard.

On the following morning at 10.00 a.m. Dr. Dhar telephoned the Council's Assistant Registrar Mr. Howes. He said that he was calling from Kashmir. He asked Mr. Howes to put before the Chairman of the Committee a request for a 28 day adjournment; Kashmir was a war zone and a difficult place to get out of. Mr. Howes did so. The Committee decided to continue hearing the evidence *de bene esse* and to inform Mr. Quist of the communication from his client. This was done but by 2.45 p.m.

Mr. Quist had not appeared. The Committee then refused an adjournment. Again, it seems clear that the Committee had grave doubts as to where Dr. Dhar was calling from. It proceeded to its deliberations and findings.

Shortly before the hearing of this appeal on 14th June 1995, their Lordships were provided with an affidavit dated 12th June 1995 sworn by Ms. McArthur, a solicitor employed by Messrs. Le Brasseur J. Tickle, instructed by the Medical Protection Society on behalf of Dr. Dhar. This sheds some more light on his whereabouts at the relevant times. His passport showed that he entered India on 13th August 1994 and left on 29th October 1994 for London. On 31st October he left London for Riyadh and remained working there at all material times thereafter. He had gone to Saudi Arabia to take up paid employment, having worked as a volunteer in India. It followed that he had given false information to Mr. Quist about being in Kashmir at the time of the hearing and had falsely claimed to be in Kashmir when he spoke to Mr. Howes the next morning.

This information, coming as it did at the very last minute, put Mr. Hugh-Jones, who had been instructed by the Medical Protection Society to represent Dr. Dhar, in a very considerable difficulty. Most of his printed case, which was founded upon the proposition that the Committee should not have rejected Dr. Dhar's claim to be in war-torn Kashmir, had to be abandoned. But he skilfully attempted to salvage something from the wreck. He said that although Dr. Dhar was shown to have been telling lies, he should not for that reason alone have been refused an adjournment. It was the case that he was abroad, even if not where he said he was. In a matter of such gravity, natural justice required that he should have been given the opportunity to return to this country and defend himself. Mr. Hugh-Jones drew an analogy with the standard direction in a criminal trial that the putting forward of a false alibi should not necessarily be taken as proof of guilt; for various reasons, innocent people sometimes tell lies: see *R. v. Lucas* (1981) Cr.App.R. 159.

Their Lordships do not think that the alibi analogy is helpful. There is nothing to show that the Committee took account of Dr. Dhar's suspicious behaviour over the adjournment application in arriving at its determination on the substantive charges. So far as the adjournment application was concerned, the question of whether Dr. Dhar was telling the truth about being in war-torn Kashmir was the very matter which the Committee had to decide. The decision to grant or refuse an adjournment is a matter for the discretion of the Committee which will not be reviewed by this Board unless it amounted to a denial of natural justice. The Committee recognised the

gravity of the matter for Dr. Dhar and expressed its reluctance to proceed in his absence. But it was also rightly mindful of its duty to protect the public against misconduct by members of the medical profession. Their Lordships consider that if, as appears to be the case, the Committee rejected Dr. Dhar's claim to be unable to attend, he had only himself to blame. His elaborate pretence at being incommunicado led the Committee to think that his whole story about being detained abroad was a pack of lies. Furthermore, the evidence now shows that the Committee was right. Dr. Dhar was present in England at the end of October and there is no adequate explanation of why he could not stay in London, or return from Saudi Arabia, to attend the hearing. A refusal of an adjournment in these circumstances was not in their Lordships' opinion a denial of natural justice. They will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs before their Lordships' Board.