

**Dr. Subhash Chandra Malliwal**

*Appellant*

v.

**The General Medical Council**

*Respondent*

FROM

**THE HEALTH COMMITTEE OF THE  
GENERAL MEDICAL COUNCIL**

-----  
ORAL JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,  
Delivered the 18th December 1995  
-----

*Present at the hearing:-*

Lord Goff of Chieveley  
Lord Jauncey of Tullichettle  
Lord Hoffmann

*[Delivered by Lord Goff of Chieveley]*

-----  
The appellant, Dr. Malliwal, appeals against a determination by the Health Committee of the General Medical Council given on 21st February 1995 to the effect that his fitness to practise was seriously impaired and that in consequence his registration should be suspended for a further twelve months, this being the eighth occasion since February 1989 on which the Health Committee has made a direction of suspension from practice on the same grounds. Against two of those directions of previous years the appellant appealed unsuccessfully to Her Majesty in Council.

This is undoubtedly a very sad case and it is understandable that Dr. Malliwal, having been suspended from practice for so long, is deeply concerned about his professional future. Mr. Juss, who appeared on Dr. Malliwal's behalf, greatly assisted their Lordships with the lucidity and fairness of his argument.

There were two specific grounds of complaint. One related to a suggestion of bias on the part of a member of the Committee, Dr. Hill, in asking questions of the appellant towards the end of the hearing about his competence in the English language. It was

suggested that these questions were intrusive and showed evidence of a danger of bias on the part of the tribunal. Their Lordships have been shown the background to those questions which displayed a concern by Dr. Hill about the effectiveness of examinations in previous years directed to the appellant's competence to practise. Their Lordships do not think that it can possibly be said that these questions showed any sign of bias on the part of the tribunal. On the contrary they demonstrated concern in the interests of Dr. Malliwal about the efficacy of tests which were applied in his case, to make certain that those tests were culturally fair, and in no way unfair to Dr. Malliwal having regard to his own cultural background.

The second point raised by Mr. Juss related to the late admission of evidence of a pharmacist showing a most unwise action by Dr. Malliwal in seeking to prescribe when he was not authorised to do so, and doing this only a month before the matter was coming up before the Committee. A complaint that the evidence was not produced with proper notice was not seriously pursued by Mr. Juss, quite rightly, because obviously the tribunal had power to admit the evidence in the circumstances. It was submitted, however, that the evidence was not relevant to the determination of the Committee. But, having been assisted on this point by Mr. Miskin, it was clear that the evidence was highly relevant to the question of the judgment of Dr. Malliwal, and it cannot be denied that it provided confirmation for the view that his judgment was impaired. It was certainly a matter which the Committee were entitled to take into account.

With regard to the question of the fitness of Dr. Malliwal to practise, their Lordships have most helpfully been taken through the various reports of the specialists and the general practitioner, and there is very clear evidence, particularly in the report of Mr. Ball, that he is suffering from a cognitive impairment, although there appears to be some doubt as to the cause of his impairment. But doubt about the cause does not undermine the conclusion reached by those who carried out tests that there was a cognitive impairment. Indeed the report of Mr. Ball, in particular, was shown to be based on the kind of test which is undoubtedly culturally fair, not being dependent upon a mastery of the English language.

In their Lordships' opinion, having regard to the evidence before the Committee, there was ample ground for them to reach their conclusion namely that, having regard to the terms of section 37 of the Medical Act 1983, they could properly conclude that there was a serious impairment by reason of Dr. Malliwal's physical or mental condition. Having reached that conclusion their Lordships are equally satisfied that they were entitled to

conclude under section 37(1)(a) that the appropriate course was that he should be suspended from practise for a further period of twelve months. In all the circumstances therefore their Lordships have come to the conclusion that the appeal must fail. They will accordingly humbly advise Her Majesty that the appeal should be dismissed.