IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: **18180/2024**

In the matter between:

GANES ANIL RAMDHIN Applicant

and

RONDEBOSCH MEDICAL CENTRE (PTY) LIMITED Respondent

Coram: Acting Justice B Manca

Heard: 20 September 2024

Delivered: 7 October 2024 (by email to the parties' legal representatives and by release to SAFLII)

JUDGMENT

MANCA, AJ

Introduction

[1] The applicant is a specialist obstetrician and gynecologist.

[2] The respondent is a private company which carries on business as a private hospital.

[3] In 2019, the applicant was granted admission privileges at the hospital. Admission privileges are the rights granted to a medical doctor to admit and treat patients at a hospital. Without being accorded admission privileges, a doctor will not be able to admit and treat patients at a hospital.

[4] At that time, the respondent was owned and run by one Dr Moosa and the agreement in terms of which the applicant was granted admission privileges was concluded with the applicant by Dr Moosa on behalf of the respondent. The agreement was not recorded in writing, and its duration and the circumstances under which it would terminate was left to what the applicant referred to as an unarticulated understanding between the parties. This was not gainsaid by the respondent.

[5] The applicant exercised his admission privileges at the hospital until June 2023, when he was suspended from practice for one year by the Health Professions Council of South Africa ("the HPCSA"), after he pleaded guilty to two counts of unprofessional conduct.

[6] The HPCSA is established under the Health Professions Act ("the Act").[1] The Act provides for control over the education, training and registration of health

[1] Act 56 of 1974 (as amended).

professionals an prescribes, *inter alia*, the circumstances under which health professionals may be disciplined for unprofessional conduct.

[7] The Act provides for a range of penalties which may be meted out to health professionals who are found guilty of professional misconduct. Included in these penalties is a suspension from practice for a specific period of time, or the removal of the health professional from the register kept in respect of that health professional's category.[2]

[8] The Act also provides that no person shall practice as a registered health professional unless he or she is registered in terms of the Act[3] and provides that every person who has been suspended from practice or whose name has been removed from the register shall be disqualified from practicing his or her profession, and his or her registration shall be deemed to be cancelled until the period of suspension has expired, or until his or her name has been restored to the register by the professional board.[4]

[9] The applicant's period of suspension from practice ended on 23 May 2024, and his suspension was lifted by the HPCSA on 3 June 2024.

[10] During the applicant's suspension, the ownership and management structure of the respondent changed. Dr Moosa no longer owns any shares in the respondent but remains an executive director of the respondent.

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2 Sections 42 (b) and (c) of the Act.
3 Section 17(1) of the Act.
4 Section 44 of the Act.

[11] During May 2024, the hospital established a Physicians' Advisory Board ("the PAB") and, according to the respondent, the PAB adopted a policy which regulates the exercise of admission privileges at the hospital. The policy is said to make provision for admission privileges to be subject to periodical renewal and requires the completion of updated information.

[12] Towards the end of his suspension, the applicant made it known that he wished to return to the hospital, and on 31 May 2024 a hand delivered letter was sent to him by the respondent in which he was advised that, in order for him to admit patients to the hospital again, his suspension had to be officially lifted, and he would need to apply to the PAB for admission privileges.

[13] Applicant did not immediately apply for admission privileges and did so only on 1 July 2024.

[14] Although the applicant had not formally made a request for admission privileges before 1 July 2024, it is common cause that on 17 June 2024, Dr Moosa tabled a report compiled by him in respect of doctor recruitment for noting and discussion at the respondent's board meeting, which was to take place on 18 June 2024. In the report, Dr Moosa dealt with the applicant's position and proposed that the respondent reinstate his admission rights for reasons which he set out in the report.

[15] Although the minutes of the meeting were not made part of the record, it is common cause that, at that meeting, the respondent's board of directors resolved not to reinstate the applicant's admission privileges. It is unclear from

the evidence whether the applicant was informed of this decision. What is common cause is that he did make application on 1 July 2024.

[16] It is worth noting that, in his covering email to the applicant, he referred to the completed documentation being in respect of the continuation of his admission privileges at the hospital.

[17] On 3 July 2024, the applicant followed up his application with a request for the outcome, but no response was forthcoming.

[18] On 9 July 2024, the applicant's attorneys, Mcaciso Stansfield Inc, represented by Mr Stansfield, entered the fray and addressed correspondence to the respondent in which reference was made to the letter of 31 May 2024 requesting the applicant to reapply for admission privileges, as well as the applicant's letter of 3 July 2024, to which no response was forthcoming.

[19] In his letter, Mr Stansfield contended that there was no basis for the termination of the applicant's admission privileges, and posed a number of questions relating to who, when and why the applicant's admission privileges were terminated.

[20] No response was received to that correspondence, and Mr Stansfield followed it up with further correspondence on 11 July 2024.

[21] No response was received thereto either.

[22] This was followed up by a letter email from Mr Stansfield to one Morne Weideman of Africa Health Care (who one assumes is the new shareholder, although this was not made clear).

[23] Finally, on 19 July 2024, the respondent's attorneys, Motsoeneng Bill Attorneys Inc. ("MBA") advised that they would respond to the letters by Wednesday, 24 July 2024.

[24] On 5 August 2024, MBA sent an email to Mr Stansfield enclosing a letter dated 2 August 2024 in which, *inter alia*, the respondent advised Mr Stansfield that the applicant's admission privileges were terminated when the HPCSA removed the applicant from the list of registered health professionals due to unprofessional conduct in June 2023.

[25] That notification prompted the applicant to launch an urgent application in which he sought an interim interdict restraining the respondent from implementing a decision to prevent the applicant from exercising his admission privileges as an obstetrician and gynecologist at the hospital pending the determination of relief sought in part B of the application, declaring the purported termination of his admission privileges to be invalid and of no force or effect, and the applicant's admission privileges to be of full force and effect.

[26] The applicant also seeks a declaration declaring that the purported termination of his contractual rights, referred to as the decision, to be administrative action, and to infringe upon the constitutional rights of his patients to access to health

care; to the dignity and freedom of the person, including the freedom to make medical choices.

[27] The applicant also seeks a declaration that the decision was made without any consideration of the applicant's patients and, more particularly, their rights to make representations in regard to the decision, and the adverse effect it would have upon them, and that the decision be subject to review, and that it be reviewed and set aside.

[28] The urgent application was before court on 2 September 2024, and the matter was postponed by agreement to the opposed motion roll, with costs to stand over.

[29] It came before me on 25 September 2024 in respect of the interim relief only.

[30] The applicant's principal case is that the agreement in respect of his admission privileges has never been lawfully terminated and that he has a contractual right to those privileges.

[31] In what really amounts to an alternative case (although not pleaded as such) the applicant contends that the decision to terminate his admission privileges constitutes administrative action and falls to be reviewed and set aside under the provisions of the Promotion of Administrative Justice Act[5] ("PAJA").

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[5] No 3 of 2000.

[32] The respondent's case is that the agreement giving rise to the applicant's admission privileges contained a term implied by law to the effect that the applicant's admission privileges would terminate should he no longer be able to practise his profession. The respondent contends the effect thereof was that when he was suspended from practice and his registration was deemed to be cancelled under the HPSCA the admission privileges were terminated by operation of law. In regard to the alternative case, it contends that no decision was ever taken by the respondent to terminate the privileges but that if it is wrong and the admission privileges were not terminated by operation of law, that whatever decision the respondent may have taken in respect thereto dose not constitute administrative action and is not capable of review.

[33] Although the applicant only seeks interim relief and to succeed need only establish a *prima facie* right to the relief, the question of whether the admission privileges were terminated as a consequence of the implied term is a question of law which has been fully argued before me. There is no good reason for me not to decide that question and I intend to do so.[6]

[34[A term implied by law is one imposed upon the contracting parties, does not originate in their consensus and may derive from common law, precedent, trade usage, custom or statute. Once it is recognised, it applies to all contracts if it is of general application or into all contracts of a specific class unless it is expressly excluded by the parties in their contract. There is no *numerus clausus* of implied terms and the courts have the inherent power to develop an implied

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6 See *Eskom Holdings SOC Ltd v Vaal River Dev Assoc (Pty) Ltd* 2023 (4) SA 325 (CC) at paras [248] to [251].

term. This power should be exercised considering the requirements of justice, reasonableness, fairness and good faith.[7]

[35] As I have already indicated, the Act makes it clear that if a medical practitioner is suspended from practice his or her registration certificate is deemed to be suspended, and the medical practitioner must immediately cease to practice until such time as the suspension of his or her registration is lifted.

[36] It goes without saying, that admission privileges may only be exercised by medical practitioner who is entitled to practice and that once the applicant was suspended and his registration was deemed to be cancelled who could not exercise admission privileges at the hospital.

[37] *Ms. Adhikari*, who appeared for the respondent, submitted that as a consequence, the contract which gave rise to the applicant's admission privileges were subject to a term, implied by law, that is to say implied by the provisions of the Act to which I have referred, to the effect that if the applicant was no longer able to practice, his admission privileges would terminate.

[38] *Mr. Kirk-Cohen*, who appeared together with *Ms. Murote* for the applicant, submitted in response thereto that this term would not be imported into the agreement in the event of a suspension from practice but would be imported

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[7] *Van Nieuwkerk v McCrae* 2007 (5) SA 21 (W).

into the agreement in the event that the applicant's name was permanently removed from the register.

[39] I do not agree. Admission privileges can only be exercised by medical practitioners who are entitled to practice. The fact that the applicant's entitlement to practice was temporarily suspended does not, in my view, mean that his admission privileges were similarly suspended until such time as he again entitled practice.

[40] There is nothing unjust, unreasonable or unfair in implying this term into the contract concluded between the applicant and the respondent. On the contrary, there is every justification for such a term to be imported into the contract having regard to the provisions of the Act to which I have referred. Similarly, there is nothing unreasonable or unfair in importing this term into the contract. The parties were free to agree that a suspension from practice would not result in the applicant losing his admission privileges and that they would merely be suspended. They did not so agree. They left the circumstances under which the admission privileges would terminate to their unarticulated understanding. There was no suggestion that this unarticulated understanding incorporated a term that that the applicant's privileges would only be suspended in the event of his suspension from practice. Finally, there is no suggestion that the failure to agree such a term was due to any bad faith on the part of the respondent.

[41] I accordingly find that the applicant's admission privileges were terminated by operation of law upon his suspension from practice.

[42] *Mr. Kirk-Cohen* fairly conceded that if I were to find that the applicant's admission privileges were terminated by operation of law there would be no decision which would be capable of being reviewed under the provisions of PAJA.

[43] For the sake of completeness, however, and on the assumption that there was a decision by the respondent to terminate the admission privileges I am of the view that such a decision was not of an administrative nature. It was not performed as part of the daily functions of the government bureaucracy nor was it the application of policy translated into law. Simply stated, such a decision would not have been taken by the respondent in the exercise of a public power or the performance of a public function as is required by section 1(i)(b) of PAJA in order for it to be regarded as administrative action.

[44] As I intend to dismiss the application there is no reason why costs should not follow the result. The matter was not without some complexity and the outcome is of significant importance to both parties. I accordingly intend to direct that the fees of the respondent's counsel are to be taxed according to scale C.

[54] I accordingly make the following order:

The application is dismissed with costs, such costs to include the costs of counsel to be taxed according to scale C.

B J MANCA, AJ

Appearances:

Applicants' Counsel: Advocate M. Adhikari

Instructed by: Motsoeneng Bill Attorneys Inc

Respondent's Counsel: Advocates S. Kirk-Cohen and D. Murote

Instructed by: Mcaciso Stansfield Inc