IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Judicial Review No. HBJ 03 of 2018

IN THE MATTER of an application by Dr. Vikash Singh for Leave to apply for Judicial Review (Order 53 r3)

AND

IN THE MATTER of an application by Dr. Vikash Singh or a Judicial Review and with pother reliefs including an order of Certiorari to quash the Notice of Complaint and Allegations filed by the Registrar and Chief Executive Officer of the Fiji Medical and Dental Secretariate purportedly made on behalf of the Fiji Dental Council and filed in the High Court of Fiji on 9 May 2018 ('Complaint') and an Order of Prohibition to prohibit the Fiji Medical and Dental Professional Conduct Tribunal from hearing and determining the Complaint and other reliefs as contained herein.

BETWEEN: **DR. VIKASH SINGH** of Steward Street Dental Practice, Dental Practitioner, Suva

APPLICANT

AND: **THE FIJI DENTAL COUNCIL** A corporate body established pursuant to Part 3, Section 8 of the Medical and Dental Practitioner Act 2010, with its registered location at 1 Brown Street, Suva.

1st RESPONDENT

AND: **THE REGISTRAR AND CHIEF EXECUTIVE OFFICER OF THE FIJI MEDICAL AND DENTAL SECRETARIAT** an appointment established pursuant section 26 of the Medical and Dental Practitioner Act 2010, of 1 Brown Street, Suva.

2nd RESPONDENT

Before: Hon. Justice Mr. Justice Deepthi Amaratunga

Counsel: Ms. L. Prasad for the Petitioner (Applicant)

Date of Judgment: 17.09.2025

JUDGMENT

INTRODUCTION

[1] The Applicant (Petitioner) is a Registered Dental Practitioner, seeking judicial review having obtained leave and also interim stay of proceedings before Medical and Dental Professional Conduct Tribunal (The Tribunal) He is seeking judicial review to quash the complaint filed by second Respondent, to the Tribunal, and also to issue and order for prohibition against the Tribunal from hearing and making a determination on the said complaint dated 9.5.2018.

[2] Second Respondent purportedly, in terms of Section 56(1)(c) of Medical and Dental Practitioners Act 2010 (MDPA), on behalf of the Fiji Dental Council (FDC) made a complaint to Deputy Registrar of Fiji Medical and Dental Secretariat. I used the word purportedly as Section 56(1)(c) of MDPA required such complaint of '*the Registrar on behalf of the Secretariat'* to be made to '*Professional Conduct Committee'*.(Annexed 2 to affidavit of Deputy Registrar on 12.6.2018). This was not only violation of procedural fairness , but also denial of natural justice. Deputy Registrar is subordinate officer to second Respondent.

[3] This complaint was regarding failure to provide '*required information', relating* to *indemnity insurance* by Applicant for renewal of licence for dental practice and non renewal of the licence and Applicant engaged in dental practice without licence. There is another complaint by a third party regarding dental practice without licence.

[4] There is no dispute Applicant had obtained a group Malpractice Liability Insurance through Fiji Dental Association (FDA) for Professional Business of '*Dentistry or other Dentistry Occupations.'* Up to 31.3.2018 and there was no disqualification for him to obtain the licence other than issue of submission of Insurance Certificate.

[5] The practice of FDA members were to obtain a group Malpractice Liability Insurance , which was paid by FDA and the point of contact for FDC in order to obtain status of the Liability Insurance was provided by its member represented in FDC in terms of MDPA. This policy was changed by second Respondent without consultation and unlawfully as FDC is the authority to approve the manner and extend of the professional liability insurance.

[6] It is a statutory requirement that a member of FDA is represented in FDC . FDA is a corporate body in terms of Section 108 (1) of MDPA and its objectives are also stated in it.

[7] In terms of Section 52(1) of MDPA require FDC to lay down the *manner and extent* of the cover of the indemnity insurance.

[8] Applicant was the President of FDA since 2010 and had refused to submit individual indemnity cover as requested by Second Respondent . In terms of Section 45(6)(c) read with Section 52(1) of MDPA the manner and extent of the indemnity insurance should be approved by FDC, and there was no such evidence

[9] The evidence of insurance by way of 'Malpractice Liability Insurance Certificate of Currency ' covering period of insurance from 31.3.2017 to 31.3.2018 was forwarded to Deputy Secretary of Fiji Medical and Dental Secretariat by Applicant , later but he was not issued a licence for the year commencing from 31.3.2017 to 31.3.2018. The delay of such submission was FDA's objection to the change of practice by second Respondent for individual insurance certificates, and the Applicant as its president refusing to submit individual insurance policy.

[10] There is no evidence of FDC making a determination under Section 52(1) of MDPA, relating to the '*manner and extent'* of indemnity cover of dental practitioners. In such a situation second Respondent cannot decide the manner in which such evidence required for the licence.

[11] The Applicant is challenging the actions of second respondent on the basis of *ultra vires* and bias and also prohibition against proceedings.

FACTS

[12] Applicant is a dental practitioner was elected the President of the FDA in 2010 and have served continuously in that office over 8 years at the time of this application.

[13] Respondents have laid a complaint against Applicant alleging that he practiced without a valid license from 1.4. 2017 to date pursuant to section 92(1) of the MDPA. He had applied for a practicing licence on 31 .1. 2017 and paid the prescribed fee and awaited for the licence to be issued.

[14] Applicant in his application answered in affirmative to the question whether he was having a professional indemnity cover. It further required details and evidence of such cover and this was kept empty and there were correspondence to that and finally he submitted evidence.

[15] The issues surrounding the refusal to issue his practicing license by FDC, was to failure to provide evidence of having an Indemnity Insurance Cover in terms of the application provided by second Respondent.

[16] Applicant had a valid Certificate of Cover from 31.3. 2017 to 31.3. 2018, Applicant's contention with the FDC was that a Certificate of Cover was not proper evidence of Indemnity Insurance Cover .

[17] According to Applicant individual indemnity cover were available but at astronomical costs. To keep costs to individual members down, the insurers prefer group covers, where they impose conditions like minimum numbers, whom to exclude from the group based on risk, etc . The broker and insurance company preferred to deal with a FDA representative in liaising with all matters relating to the scheme, and not individual members in the adopted group aggregate cover.

[18] The refusal of the FDC the practicing license was a result of correspondence Applicant had on behalf of members of FDA , single handedly taken the cause, and refused to submit individual insurance cover. This resulted disagreement with the FDC regarding evidence of what constitutes a valid Certificate of Cover which resulted in the lodging of the Complaint against him,

[19] FDA has been voluntarily organizing and administering an indemnity cover scheme for its members since 2011 which enabled its members to obtain a practicing license for its members , in private practices. It had a cover from the scheme until 30.4. 2018. This fact was known to Respondents through prior communications by its members and also through Applicant when he represented FDA in FDC.

[20] The payment for group insurance cover was through FDA and relevant amounts were later recovered from the members covered. Applicant also acted as main liaison officer for FDA for insurance cover.

[21] It was FDA representative in FDC that submitted a list of names of members who were covered under the scheme to the FDC in 2011 and 2012. Based on this information, the FDC issued practicing licences to FDA members in the scheme.

[22] No individual Insurance Certificate of Cover was shown to the FDC by members practitioner, during this time . This continued for more than five years before sudden change in 2016.

[23] In 2016 , part 10 of the license re-certification form from the FDC, stated to "*provide details and evidence of indemnity cover*".

[24] Applicant wrote in that part *"consult FDA rep in the Dental FDC who has further details."*

[25] Applicant as well as FDA members, were able to obtain a practicing license without submitting any Certificate of Cover to the FDC in 2016 and there was no issue.

[26] Applicant also raised non representation of its member in FDC in terms of Section 9(1)(d) of MDPA, also as a reason for this unreasonable action which had affected its members including Applicant in this issue.

[27] As applicant was FDA representative in FDC , its members including Applicant were not consulted when the existed practice changed .

[28] On 27 .7. 2017, Applicant received a letter from the Deputy Registrar of the Fiji Medical and Dental Secretariat informing, that a complaint had been laid against him .

[29] A time period of thirty days given to response and stated that his response would be forwarded to Dental Professional Conduct Committee (DPCC). It further stated even if there was no response the DPCC , '*may still proceed with this matter and, notwithstanding the absence of response from you, may even refer the complaint to the Dental Professional Conduct Tribunal'.*

[30] Applicant did not respond to the letter of 27.7.2017.

[31] On 13.4. 2018, Deputy Registrar of Fiji Medical and Dental Secretariat, informed Applicant that complaints regarding Applicant made by Second Respondent and another person were referred to DPCC.

[32] Applicant was not informed to appear before DPCC .He had no communication from DPCC and or any determination it had made relating to complaints against him.

[33] On 1.5.2018, Applicant was served with the Notice of Complaint, Allegations and Disclosure Certificate Vol 1 which was filed by the Respondents on 09 .5. 2018 to the Tribunal.

Analysis

[34] Applicant is seeking judicial review , to quash the notice issued by second Respondent on behalf of first Respondent on 9.5.2018. This was due to Applicant's refusal to submit insurance cover,

[35] The non submission of individual indemnity cover for professional conduct was due to a long policy dispute regarding the compliance of Sections 45(6) and 52(1) of MDPA and FDA which is recognized as legal person under MDPA.

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[36] There were numerous emails that had exchanged between the Applicant as President of FDA and also relevant authorities including permanent secretary to the Ministry of Health, regarding this issue and also FDA not being represented in FDC for few years and it seemed this issue , though separate had also affected FDA members regarding evidence of the professional insurance for dental practice. The practice was to provide the evidence of status of indemnity insurance for professional practice was provided to FDC by FDA representative in FDC.

[37] Failure to resolve the issue of individual indemnity certificate of members of FDA had resulted Applicant not being issued with a practicing certificate from March, 2017. Respondents had laid a complaint against the Applicant to the Tribunal. The Applicant is seeking leave for judicial review the complaint and or a declaration that said complaint is null and void. The Applicant is also seeking prohibition against the Tribunal for stay of the proceedings before the Tribunal.

[38] Respondents objected to this application and stated that any issue of law or procedural matters need to be referred to the Tribunal as the tribunal is empowered to deal with such issues in terms of Section 75(1) of the MDPA, 2010.

[39] Tribunal being a creature of statute, cannot confer jurisdiction other than what was expressly granted in Section 74 of MDPA, In my judgment the Applicant is not precluded from seeking judicial review considering the circumstances of this case, which requires interpretation of statutory provision contained in MDPA and fairness of decision-making process of FDC including process of policy making , which is clearly outside the scope of the Tribunal.

[40] The Respondents had also reiterated the issue of Respondents not being public office , though this was dealt at the stage of granting leave for judicial review for the Applicant.

[41] At hearing Respondents relied on Section 27 of MDPA which reads,

> **"(2)** The staff of the Secretariat may, but need not, include—
> (a) one or more Deputy Registrars or senior administrative officers;
> (b) persons responsible for communications with the public, including publications in the Gazette, websites, receiving enquiries and notifications about registered persons;
> (c) a receptionist, data entry or clerical support staff.
>
> **(3)** A member of the staff of the Secretariat is not, as such, a member of the civil service, but the Board may employ a person who is on

leave from employment in the civil service or with an instrumentality or agency of the Government.
[subs (3) am Act 2 of 2016 s 20, effective 16 February 2016]"

[42] The above provision does not affect jurisdiction of judicial review of the court of the decisions taken by Respondents . It is irrelevant whether the individual persons who took decisions were in 'civil service' or not. Judicial Review can be invoked when there are statutory underpinnings (see Court of Appeal decision ***Proline Boating Co. Ltd vs Director of Lands etal*** (ABU 20 of 2013)(decision on 25.9.2014)

[43] Halsbury's Laws of England [1] under "Judicial Review" states,

> "Where it is alleged that in reaching a decision under an enactment a person has failed to comply with the duty to observe legality, rationality, or procedural propriety any person interested may apply for the remedy of judicial review'

[44] Without prejudice , to above State Services Act, 2009 Section 2(h) defines the "*Public Office*" as '*an office established by a written law'*.

[45] It is also clear that FDC is not covered under Section 27, as it applies only to the '*staff of secretariat'* and hence Respondents are subject to judicial review. So the preliminary issue raised by Respondents rejected.

[46] Court of Appeal in ***Proline Boating Co. Ltd vs Director of Lands etal*** (ABU 20 of 2013)(decision on 25.9.2014) stated

> *'...if an authority does the right thing in wrong way then it would amount to procedural ultra vires or procedural impropriety'. Ultra Vires*

[38] According to the application filed in the Tribunal on 9.5.2018, it was filed in terms of Section 74(1)(c), 61(3)[2] and 76 of MDPA.

[39] Section 74(1)(c) of MDPA states,

> "(c) a complaint laid by a Council on election by a respondent under section 61(3)"

[40] Section 74(1)(c) read with Section 61(3) of MDPA and Section 61(3) of MDPA states,

"(3) If the Committee decides to conduct a disciplinary hearing—

[1] 368. Judicial review Statutes and Legislative Process (Volume 96 (2024))

[2] This was erroneously stated as Section 62(3) of MDPA. But there was no prejudice to any party as the Section 61(3) was quoted in full under 'jurisdiction' of the application filed before the Tribunal

(a) the Committee **must give the respondent an opportunity** to elect to have the matter dealt with by the Tribunal; and
(b) if the respondent so elects, the Committee must recommend to the relevant Council to lay a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint."

[41] In terms of Section 61(3) of MDPA, it is mandatory for DPCC to 'give' the Applicant *'an opportunity to elect to have the matter dealt by the Tribunal'* and there is no evidence of such an opportunity being communicated to Applicant.

[42] So the option to refer the complaint to Tribunal was with Applicant and for that he should be informed about this option by DPCC

[43] It is proceedings before DPCC which is mandatory in terms of Section 61(3)(a) of MDPA and also under rules of natural justice. So the purported decision of DPCC to refer the complaint against is *ultra vires* .

[44] Procedure ultra vires or procedural impropriety is a ground for Judicial Review as stated in Court of Appeal in *Proline (*supra). (See *CCU v Minister of Civil Services* [1985] AC 375).

Respondent's Alternative position.

[45] After granting leave for judicial review, Plaintiff filed a supplementary affidavit Respondent states that their complaint was laid in terms of Section74(1)(d) of MDPA which reads;

> "(d) a complaint laid by a Council on the recommendation of a Professional Conduct Committee under section 61(4)"

[46] Section 74(1)(d) of MDPA required the complaint before the Tribunal by FDC *'on recommendation of* ' of DPCC, in terms of Section 61(4) of MDPA which reads;

[47]

> **"(4)** If, In the course of conducting a hearing under this section, a Committee considers—
>
> (a) that the allegations or evidence against the respondent are sufficiently serious; or

(b) that it is otherwise appropriate to do so, the Committee may terminate the proceedings under this section and recommend to the Council to lay a complaint against the respondent before the Tribunal in relation to those allegations or that evidence."

[48] In terms of Section 61(4) of MDPA , there should be a *hearing* where evidence that *'in the course of conducting a hearing'* that DPCC had considered that the situations under Section 61(4)(a) or (b) and must take a decision to *terminate the proceedings*.

[49] In order to have a '*hearing' ,* rules of natural justice must be observed , and accordingly Applicant must be informed about the *hearing* and allowed to submit any material relevant before such a determination is made as the determination by DPCC must base on evidence.

[50] Section 61(4)(a) of MDPA requires that the evidence or allegation against Applicant are *'sufficiently serious,* in order for DPCC to terminate the proceedings before it and recommend CDC to make the complaint before the Tribunal.

[51] First , there should be a 'hearing' before DPCC and if so when did DPCC *hear* the complaints and how was it conducted. If there was a hearing Applicant should be informed about the hearing and or the decision taken by DPCC to terminate the proceedings. These are vital for the '*hearing*' to be transparent and avoid any mistrust or suspicion regarding decision making procedure.

[52] How did DPCC conducted proceedings without Applicant being informed about a hearing? Why it did not inform even the decision to *terminate the proceeding* to Applicant and its recommendation to lay the complaint before the Tribunal.

[53] In terms of Section 61(4)(b) of MDPA , DPCC can decide to recommend FDC to lay the complaint before the Tribunal, '*otherwise appropriate to do'*. So the reasons should be given why DPCC decided that it was '*appropriate to do so'*. DPCC cannot arbitrarily decide to terminate proceeding before it and recommend to FDC to lay the complaint , without 'hearing' . It is also important to provide reasons for such recommendation, even briefly to show that it had considered the requirements under Section 61(4) of MDPA, before termination of the proceedings.

[54] So there is violation of Section 74(1)(d) read with Section 61(4) of MDPA and sufficient to quash the complaint which is found wanting in more than one way. They are

i. No notification to Applicant from DPCC of *proceedings* against him.

ii. No evidence of consideration by DPCC to *terminate the proceedings* in terms of Section 61(4) and
iii. No reasons given for termination of the proceedings,
iv. No notification of 'hearing' before DPCC and or determination made by DPCC to terminate proceedings to Applicant

[55] For one or more of the above-mentioned irregularities the complaint made to the Tribunal made on behalf of first Respondent by second Respondent, was *ultra vires* and quashed.

[56] Section 12 of MDPA established DPCC and it states;

> "12 (1) Each Council must establish a Professional Conduct Committee consisting of 5 members of whom-
>
> a) 3 must be registered medical or dental practitioners, as the case may be; and
> b) 2 must be persons who are not registered medical or dental practitioners. "

[57] DPCC 's functions are stated in Section 12(7) of MDPA

> "(7) The functions of a Professional Conduct Committee are to—
> (a) receive notifications and complaints concerning registered persons;
> (b) initiate and monitor assessments of the health of registered persons where appropriate;
> (c) negotiate agreements with practitioners, whose capacity to provide certain treatments is impaired, to practice within appropriate limitations;
> (d) refer cases to the respective Council for imposition of conditions if a negotiated agreement cannot be reached;
> (e) monitor compliance with conditions agreed or imposed by the Council;
> (f) conduct investigations in accordance with Part 9 to determine whether any prima facie case of unprofessional conduct exists;
> (g) recommend to the Council disciplinary action or reference to the Tribunal in the case of a finding of unprofessional conduct in accordance with Part 9;
> (h) perform any other appropriate function assigned to the Committee by the relevant Council from time to time."

[58] If DPCC decide to terminate proceedings before it , should state the reasons and this can be done after '*hearing*' where Applicant was notified abut the hearing and also decision to *terminate proceedings* with reasons for doing so.

DPCC cannot arbitrarily decide to terminate proceedings when it was given wide powers and functions in terms of Section 12(7) of MDPA.

[59] Respondent had also relied on Section 58(4) of MDPA which was does not support its contention.

[60] Section 58(4) of MDPA states;

> "(4) A Council may delegate to its Professional Conduct Committee the power to appoint investigators under this section."

[61] In terms of Section 58(4) of MDPA , FDC could delegate its power of appointment of investigation officers to DPCC and this cannot substitute the powers of DPCC. This is for assistance of DPCC and not to substitute DPCC by investigator.

[62] The issue before DPCC was more than technical violation that relate to professional conduct of private practitioners and can even have an effect , to patients due to the impact on the cost of insurance which may be passed to patients. The commencement of proceeding before the Tribunal was due to policy decision and change of the 'manner 'required for the licence.

[63] Second Respondent cannot determine this policy issue . Second Respondent can request information, from dental practitioners, '*the manner and to an extent approved by '* FDC .

Determination of Policy , the manner and to extent by FDC

[64] Section 52(1) of MDPA states,

> "**52** (1) A registered person or health services provider must nat, unless exempted by the relevant Council, provide medical or dental treatment unless insured or indemnified in a manner and to an extent approved by that Council against civil liabilities that might be incurred by the registered person or medical or dental services provider, as the case may be, in connection with the provision of any such treatment."

[65] The requirement to indemnify '*in a manner and to an extent approved by*' FDC is mandatory for '*registered person'*. Petitioner is one such registered person who had also provided '*dental treatment'* for patients for more than twenty five years at the time of his application to seek licence.

[66] Applicant was also President of FDA , which statutorily recognised and also conferred legal personality under MDPA.(See section 108(1) of MDPA)

[67] Objects in terms of Section 110(1) of FDA are as follows,

“

[MDP 110] Objects of the Association

110 (1) The objects of the Fiji Dental Association are—

(a) to maintain and improve the standards of conduct and expertise of the dental profession in Fiji;
(b) to promote the welfare and to preserve and maintain the integrity and status of the dental profession;
(c) to represent the views, interests and wishes of the dental profession;
(d) to represent, protect and assist members of the dental profession in Fiji as regards conditions of practice and otherwise;
(e) to represent, protect and assist members of the dental profession in Fiji as regards conditions of employment with the Government;
(f) to settle points of practice and to provide means for the amicable settlement of professional differences;
(g) to protect and assist the public and the dental profession in all matters touching, ancillary or incidental to dental practice;
(h) to assist needy members and former members of the Association or their relatives and the relatives of deceased members;
(i) to cultivate a generous professional spirit among dental practitioners by encouraging meetings of members of the Association and persons connected with matters of dental interest;
(j) generally, to promote excellence in dental practice in any manner which the Association thinks fit in the interests of the profession and of the country.”

[68] So MDPA had recognized the importance of FDA as professional body and for that purpose a representative from FDA was included in FDC. This shows that FDA was recognized statutorily as an stake holder. So it is important to consult FDA in the policy formulation. Depriving FDA of its seat in FDC and taking or implementing change of policy that have an effect on FDA members is unreasonable, to say the least.

[69] It is a requirement for dental practitioners to obtain licence annually in terms of Section 45 (1) of MDPA. It reads;

> “45 (1) Every registered medical or dental practitioner who engages in medical or dental practice must hold a valid and current medical or dental practice licence, as the case may be.”

[70] Section 45(5) and (6) of MDPA states,

"(5) Application for a licence or for renewal of a licence must be made to the Registrar in the approved farm, and must be accompanied by the prescribed fee and by the documents set out in subsection (6).

(6) The documents mentioned in subsection (5) are—

(a) evidence of satisfactory participation in an approved programme of continuing professional development relevant to the person's vocational category;

(b) evidence that the person is entitled to work as a registered person in Fiji in terms of the

business licensing law (and Immigration law if appropriate);

(c) evidence that the person has indemnity insurance as required by the relevant Council under section 52(1), unless exempted under that section;

(d) a return, in the approved farm, containing appropriate information relating to—

(i) the provision by the person of medical or dental treatment, as the case may be, during the preceding year; and

(ii) any other matter relevant to the person's eligibility for a practice licence under this Act.

[subs {6) a m Decree 13 of 201 4 s 3. effective 8 April 2014]"

[71] Section 45(6) of MDPA must be read with Section 52(1) of MDPA. So the administrative or the operational function is carried out by second Respondent and it cannot take policy decision as to the '*manner and to an extent*' of professional insurance must be approved by first Respondent, which is an executive body created by MDPA.

[72] Section 45(6) of MDPA also reintegrate that a person who applies for licence should provide '*evidence that the person has indemnity insurance as required by the relevant Council.* ' So it is clear that the requirement must be laid down by first Respondent and not second Respondent which provides secretarial services.

[73] So the requirements for professional insurance must be set by first Respondent. Second Respondent is precluded from being a member of first Respondent, in terms of Section 26(1) MDPA. Section 26(3) of MDPA, 2010 states that he Registrar is the Chief Executive Officer of the Secretariat. So the functions of the second Respondent are mainly operational and administrative.

[74] In the affidavit filed by Deputy Registrar he had not annexed any such determination by first Respondent to change the policy that existed in relating

to FDA members relating to evidence of insurance cover for professional practice.

[75] In the absence of such determination the existed policy of allowing group professional liability insurance must continue as it had continued even after enactment of MDPA for a long period and there was no evidence of any issue that required change to existed policy.

[76] So the existed policy till 2016 , for professional conduct indemnity insurance for FDA members , should be allowed to continue till first Respondent approves the manner and extent of such professional indemnity insurance for dental practitioners , with proper consultation with all stake holders. This is a change of policy as MDPA had operated for number of years , and Applicant as well as members of FDA had obtained professional indemnity insurance to minimize the cost .

[77] First Respondent is statutorily created professional authority and must act fairly when a policy decision is taken. This is more important when existing policy is changed.

[78] United Kingdom Supreme Court decision *Moseley, R (on the application of) v London Borough of Haringey [*2014] UKSC 56 (29 October 2014) discussed a duty of statutory authority to consult the interested parties before taking a decision. This is applicable to FDC when it determines 'the manner' and 'extent' of the professional indemnity insurance.

[79] FDC must act fairly in its conduct towards all stake holders and FDA is one vital stake holder, recognized under MDPA .

[80] It is not the number of members of FDA , that matter but the impact and its importance to the decision is vital. Respondent stated that their membership was in minority. That is a reason that support consultation than ignoring such minority group who are affected by a decision.

[81] The purpose of the consolation is to allow views of stake holders so that decision maker takes well informed decision . It also gives satisfaction to the stake holders that their views are aired in transparent manner. So the likelihood of policy decision of FDC, being arbitrary or bias , is reduced. It is important that FDC which is statutorily authorized to take all pragmatic measures in the formulation of its policy decisions in order to act fairly.

[82] UK Supreme Court decision *R (on the application of Moseley) v Haringey London Borough Council* [2014] UKSC 56; [2015] 1 All ER 495; [2014] 1 WLR 3947; [2014] LGR 823; [2014] PTSR 1317; [2015] RVR 93; 164 NLJ 7632; (2014) Times, 05 November; [2014] All ER (D) 332 (Oct) held,

23. A public authority's duty to consult those interested before taking a decision can arise in a variety of ways. Most commonly, as here, the duty is generated by statute. Not infrequently, however, it is generated by the duty cast by the common law upon a public **authority to act fairly**. The search for the demands of fairness in this context is often illumined by the doctrine of legitimate expectation; such was the source, for example, of its duty to consult the residents of a care home for the elderly before deciding whether to close it in *R v Devon County Council, ex parte Baker* [1995] 1 All ER 73. But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted.

24. Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be **linked to the purposes of consultation**. In *R (Osborn) v Parole Board* [2013] UKSC 61, [2013] 3 WLR 1020, this court addressed the **common law duty of procedural fairness** in the determination of a person's legal rights. Nevertheless the first two of the purposes of procedural fairness in that somewhat different context, identified by Lord Reed in paras 67 and 68 of his judgment, equally underlie the requirement that a consultation should be fair. First, the requirement "is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested" (para 67). Second, it avoids "the sense of injustice which the person who is the subject of the decision will otherwise feel" (para 68). Such are two valuable practical consequences of fair consultation. But underlying it is also a third purpose, reflective of the democratic principle at the heart of our society. This third purpose is particularly relevant in a case like the present, in which the question was not "Yes or no, should we close this particular care home, this particular school etc?" It was "Required, as we are, to make a taxation-related scheme for application to all the inhabitants of our Borough, should we make one in the terms which we here propose?"

25. In *R v Brent London Borough Council, ex p Gunning,* (1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said at p 189:

> "Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. **First**, that consultation must be **at a time when proposals are still at a formative** stage. **Second**, that the proposer must give **sufficient reasons for any proposal** to permit of intelligent consideration and response. **Third,**… that **adequate time must be given** for consideration and

response and, finally, **fourth,** that the product **of consultation must be conscientiously taken** into account in finalising any statutory proposals."

Clearly Hodgson J accepted Mr Sedley's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved. The Court of Appeal expressly endorsed them, first in the *Baker* case, cited above (see pp 91 and 87), and then in *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 at para 108. In the *Coughlan* case, which concerned the closure of a home for the disabled, the Court of Appeal, in a judgment delivered by Lord Woolf MR, elaborated at para 112:

> "It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this."

The time has come for this court also to endorse the Sedley criteria. They are, as the Court of Appeal said in *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472, 126 BMLR 134, at para 9, "a prescription for fairness".

26. Two further general points emerge from the authorities. First, the **degree of specificity with which, in fairness,** the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. Thus, for example, local authorities who were consulted about the government's proposed designation of Stevenage as a "new town" (*Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496 at p 501) would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged. Second, in the words of Simon Brown LJ in the *Baker* case, at p 91, "the demands of fairness are likely to be somewhat higher when an **authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit".**

27. Sometimes, particularly when statute does not limit the subject of the requisite consultation to the preferred option, fairness will

require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options. For example, in *R (Medway Council and others) v Secretary of State for Transport* [2002] EWHC 2516 (Admin), [2003] JPL 583, the court held that, in consulting about an increase in airport capacity in South East England, the government had acted unlawfully in consulting upon possible development only at Heathrow, Stansted and the Thames estuary and not also at Gatwick; and see also *R (Montpeliers and Trevors Association) v Westminster City Council* [2005] EWHC 16 (Admin), [2006] LGR 304, at para 29."(emphasis added)

[83] FDA had enjoyed group insurance cover for its members and this was the practice for number of years before second Respondent had decided to change it .

[84] There was no evidence that first Defendant had made a determination to change the existed policy and communicated the same to FDA which was directly affected by such change in policy.

[85] It is not disputed that members of FDA were under group professional liability insurance till 31.3.2018. And this group insurance was accepted adequate by Respondents prior to 2016. The fact that Applicant was granted a licence without submission of individual insurance certificate was also fact that support that Respondents had decided to change existed practice or policy without informing the members of FDA .

[86] "This *demands of fairness are likely to be somewhat higher when an* ***authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit***[3]. There is no evidence of such consultation or determination by FDC which is statutorily required to do so.

[87] It should also noted that more than the *manner* the *extent* of the insurance is important but no evidence of such requirements sought and or determined by first Defendant for more than eight years from operation of MDPA[4].

[3] *R (on the application of Moseley) v Haringey London Borough Council* [2014] UKSC 56; [2015] 1 All ER 495; [2014] 1 WLR 3947; [2014] LGR 823; [2014] PTSR 1317; [2015] RVR 93; 164 NLJ 7632; (2014) Times, 05 November; [2014] All ER (D) 332 (Oct)

[4] MDPA operational from 1.3.2010

CONCLUSION

[88] Second Respondent is the authority that is entrusted with the issuance of licence or renewal of licence for a practitioner under MDPA .The issue relate to requirement stated in Section 45(6)(c) MDPA.

[89] FDC is required to approve , what is the proper evidence that an applicant needs to submit in relation to indemnity in terms of Section 52(1) of MDPA

[90] These are matters of policy that needs consultation with stake holders , by FDC before deliberating in terms of recommending evidence of indemnity cover and its 'manner and extent'.

[91] There is no evidence of such deliberation and or decision by FDC in terms of Sections 52 (1) and 45(6)(c) under MDPA, 2010 for the 2nd Respondent to act in terms of Section 46 of MDPA, 2010 in the issuance of licence.

[92] Second Defendant cannot insist on Applicant from an individual professional indemnity insurance cover until the manner and extent of such cover is determined by first Respondent with consultation with stake holders including FDA.

[93] Such consultation must be firstly be done ' *First, (that consultation must be) at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third,… that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."*[5]

[94] The decision to recommend complaint of Applicant is quashed for non compliance of procedure stated earlier in the judgment .(I.e Section 74(1)(d) read with Section 61(4) of MDPA).

[95] Respondents had also failed to comply with Section 74(1)(c) of MDPA which was relied during the hearing for leave but jettisoned at hearing after granting leave for judicial review. So both positions are untenable .

[96] Apart from that Respondents have not acted fairly in the change of position regarding FDA members as to evidence of insurance cover for licence for the dental practice.

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[5] [5] *R (on the application of Moseley) v Haringey London Borough Council* [2014] UKSC 56; [2015] 1 All ER 495; [2014] 1 WLR 3947; [2014] LGR 823; [2014] PTSR 1317; [2015] RVR 93; 164 NLJ 7632; (2014) Times, 05 November; [2014] All ER (D) 332 (Oct)

[97] The complaint to the Tribunal dated 9.5.2018 against Applicant, is quashed and a prohibition order issued preventing the Tribunal from hearing the said complaint against Applicant. No order as to the cost considering circumstances.

FINAL ORDERS;

1. The decision of Respondents, to refer the complaint against Petitioner (Applicant) to Fiji Medical and Dental Professional Conduct Tribunal is quashed and accordingly complaints filed by the second Respondent to the Fiji Medical and Dental Professional Conduct Tribunal on 9.5.2018 quashed.
2. Prohibition is issued for Fiji Medical and Dental Professional Conduct Tribunal from hearing and degerming the complaint made by second Respondent against Applicant.
3. The cost of this application to be borne by parties.

Deepthi Amaratunga
Judge

At Suva this 17th day of September 2025.