

2011

No. 407/ SA

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

In the matter of the Medical Practitioners Act, No. 16 of 1991.

-and-

In the matter of an Appeal to a Judge in Chambers pursuant to Section 19 of the said Act against a refusal of the Medical Council of Guyana to register the Applicant, Dr. Muhammad M. Hafiz to practice medicine in Guyana and/ or to consider his application.

BETWEEN:

DR. MUHAMMAD M. HAFIZ also known as Dr. Muhammed Mustapha Hafiz Khan by his attorney, Sultan Hafiz agreeably with Power of Attorney No. 550/2011 (Berbice).

Applicant

-and-

The Medical Council of Guyana, a body corporate, established under Section 3 of the Medical Practitioners Act, No. 16 of 1991.

Respondent

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Bernard DeSantos S.C. for the Applicant

Mr. Kamal Ramkarran for the Respondent

Delivered February 15th 2016

RULING

BACKGROUND

In January 2006 the Applicant applied to the Medical Council of Guyana, the Respondent, to be registered as a medical practitioner in Guyana, the Respondent being the statutory body charged with the responsibility for the registration of all medical practitioners in Guyana by virtue of and in accordance with The Medical Practitioners Act, CAP 32:02 of the Laws of Guyana.

On February 9, 2006, the Respondent informed the Applicant in writing that his application was refused because he did not satisfy the legal requirements for registration as prescribed under section 6(1) of The Medical Practitioners Act. At the insistence of the Applicant, the Respondent reconsidered his application and allowed him to personally address them and on February 9, 2007, the Respondent informed the Applicant of their final decision to refuse his application.

As a result, on February 14, 2008, the Applicant applied to the High Court of the Supreme Court of Judicature of Guyana by way of Motion seeking prerogative writs, quashing the decision of the Respondent and also compelling the Respondent to grant his application. A High Court judge granted the prerogative writs prayed for and the Respondent appealed to the Court of Appeals. The Court of Appeals found that the judge erred in as much as the judge went in to the merits of the Applicant's application and not whether the decision of the Respondent was unfair, unreasonable, wrong in law or unlawful which was what was required in determining the Motion that was before the Court.

In those circumstances the Court of Appeals reversed and set aside the decision of the High Court judge on March 31, 2010. In fact the full decision of the Court of Appeals can be found at [2010] 77 WIR 277.

On January 3, 2011 the Applicant again applied to the Respondent to be registered as a medical practitioner in Guyana. It appears that the Respondent did not respond to this application.

As a result this application, by way of Originating Summons was filed on July 13, 2011. This application seeks to appeal the “refusal” of the Respondent to register the Applicant under the provisions of section 19 of The Medical Practitioners Act.

For various reasons, which do not merit investigation at this stage, this matter engaged the attention of the High Court and the Court of Appeals. The Court of Appeals ordered that the matter be heard *de novo* by the High Court and the matter was assigned to this Court on December 30, 2015.

The Respondent argues that the matter is *res judicata* in that this issue was raised and determined by the Court of Appeals in the case hereinbefore referred to.

ISSUE 1

Are the issues raised by the Applicant *res judicata*?

FACTS

The facts are as stated in the Background, above.

LAW

The law regarding *res judicator* is sufficiently laid out in Garraway v Williams [2011] CCJ 12 (AJ) per Anderson J.;

“The principle of res judicata is intended to give finality to judicial decisions. Literally, the term means that a matter has already been finally settled by judicial decision and is not subject to further appeal. In order for the doctrine to be applicable three essential conditions must be satisfied: there must be an earlier decision covering the issue; there must be a final decision on the merits of that issue; and the earlier suit must involve the same parties or parties in privity with the original parties. Once satisfied the principle bars the same parties from litigating on the same claim or any other claim arising from the same transaction or subject matter that was or could have been raised in the first suit.”

ANALYSIS

The application currently before the Court is to review the merits of the decision of the Respondent to refuse to register the Applicant as a medical practitioner in Guyana.

The previous application adjudicated upon by the Court of Appeals on March 31, 2010 sought review of the decision making process of the Respondent.

CONCLUSION

As can be seen the merits of the decision of the Respondent in refusing to register the Applicant as a medical practitioner in Guyana has never been adjudicated upon by a Court of competent jurisdiction.

A perusal of the decision in the previous case reveals that any reference to the decision of the Respondent not to register the Applicant as a medical practitioner in Guyana was merely to examine the decision making process and not whether such decision was meritorious or not.

It follows, therefore, that the issues raised in this application are not *res judicata*.

ISSUE 2

Whether this Court has jurisdiction to deal with this application.

FACTS

The Applicant has treated the failure of the Respondent to respond to his application dated January 3, 2011 as a refusal to register him as a medical practitioner in Guyana and this action purports to be an appeal against such refusal under the provisions of section 19 of The Medical Practitioners Act.

LAW

Section 19 of The Medical Practitioners Act provides, in relevant part:

“Any person who is aggrieved by the refusal of the Council to register him under this Act ... may within six weeks of the communication to him of the decision of the Council appeal to a Judge of the High Court in Chambers, who shall give such directions in the matter as he may think proper, including a direction as to the costs of the appeal.”

ANALYSIS

Clearly from the Applicant's own case, the Council has never communicated to him a refusal to register him as a medical practitioner in Guyana as is required by section 19 and therefore the Applicant has failed to satisfy the statutory pre-requisite to invoke the jurisdiction of this Court.

Once again the Applicant has gotten his application wrong. The Applicant's redress, having not received any response from the Respondent with respect to his application dated January 3, 2011, would have been to apply to the High Court for a prerogative writ of mandamus.

The Applicant cannot apply to the Court under section 19 for an order compelling the Respondent to consider his application, or as he termed it, appeal against the Respondent's refusal to consider his application. Section 19 provides for appeals to a Judge in Chambers against specific acts of the Medical Council.

To state the obvious, an appeal of the Council's refusal of the Applicant's application of January 2006 would be out of time. In fact such an appeal would have been out of time even at the time of his Motion for prerogative writs in February 2008, one year having elapsed since the final refusal of that application.

Of course, obiter, whether such an application would be successful is questionable since based on the documents exhibited, the application made January 2011 is not materially different from the application made in January 2006, so there appears to be no good reason to compel the Medical Council to basically reconsider the application made in January 2006.

CONCLUSION

This Court has no jurisdiction to hear this matter since there is no decision from which to appeal. This action is misconceived in law.

In consequence of the foregoing, this action is dismissed with costs in the sum of \$250 000 to the Respondent. It is further ordered that the Applicant shall not institute any further Court proceedings concerning this subject matter save and except to appeal this order without first paying the costs awarded in this matter in full. Proof of such payment to be endorsed on the papers instituting such proceedings.

Justice N. A. Singh