

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁶⁰⁴ OF 2002 ✓

BETWEEN: DR. SANJIB K. MOHANTY

PLAINTIFF

AND: THE HEALTH PRACTITIONERS' BOARD

DEFENDANT

EX-PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To: The Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and Description of Applicant

Dr. Sanjib K. Mohanty
Medical Practitioner,
C/o Chrissie Tomlinson Hospital,
George Town, Grand Cayman

Judgment, order, decision or other proceeding in respect of which relief is sought

The second decision of The Health Practitioners' Board dated the 13th May 2002 again refusing to register the Plaintiff as a Urologist.

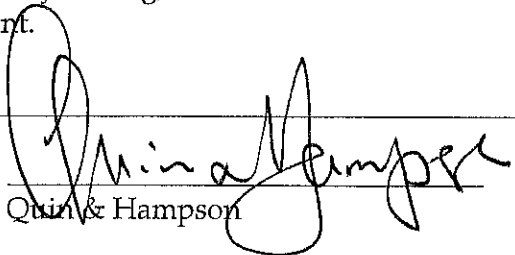
Relief Sought

1. An Order for Certiorari to remove into this Honourable Court and quash the decision of the Health Practitioners' Board dated the 13th May 2002 whereby it refused, for the second time, to register Dr. Sanjib Mohanty, the Plaintiff herein, as a Urologist.
2. A Declaration that the said Dr. Sanjib Mohanty is entitled to be registered by the Health Practitioners' Board as a Urologist.
3. An Order directed to the Health Practitioners Board requiring them to give effect to the Declaration and to register Dr. Sanjib Mohanty as a Urologist.
4. Damages
5. Costs

Name and address of Applicant's attorney, or, if no attorneys acting, the address for service of the applicant.

Quin & Hampson
Attorneys-at-Law
3rd Floor, Harbour Centre,
P.O. Box 1348 GT,
Grand Cayman.

Signed:


Quin & Hampson

Dated: 9th August 2002

GROUND ON WHICH RELIEF IS SOUGHT

The factual background to this Application for Leave to Apply for Judicial Review is contained in the Affidavit of the said Dr. Sanjib Mohanty and the Exhibits thereto that is filed with this Application and in support of it and this Affidavit will be relied on in support of the Application on the following grounds:

1. The decision of the Health Practitioners' Board for the second time not to register the Applicant as a Urologist is unlawful and irrational, and unreasonable within the Wednesbury principles.
2. The decision is ultra vires the provisions of the Health Practitioners Law (1995 Revision).
3. The decision is without foundation in Law or fact and fails to properly consider and give legal effect to the decision of the Chief Justice dated the 19th November 2001 and the findings of fact contained therein by which the Health Practitioners' Board are bound.
4. In all the circumstances of this case, if the Health Practitioners' Board was minded to refuse Dr. Mohanty's application to be registered as a Urologist following the Judgment of the Chief Justice then the Board should have afforded him an opportunity to be heard and to make his comments on several aspects of this matter before arriving at the decision dated 13th May 2002 to refuse his application. The Board did not do so and therefore failed to act fairly and was guilty of procedural impropriety.
5. That as there are neither any changed circumstances nor any new material factors affecting this Application, there is nothing to validly distinguish the approach of the Board in arriving at its second decision from its approach in arriving at its first decision. The second decision is therefore as unreasonable, illogical, arbitrary and oppressive as the first decision and should be quashed for the same reasons that prompted the Chief Justice to set aside and quash the first decision of the Board.
6. That on a proper application of the Judgment of the Chief Justice the only conclusion properly open to the Health Practitioners' Board was to grant the application of Dr. Mohanty to be registered as a Urologist.
7. That this is a case in which it would be just and convenient for this Honourable Court to grant pursuant to the provisions of Order 53 Rule 1(2) a declaration that the Applicant is entitled as a matter of law to be registered by the Board as a Urologist.
8. That in all the circumstances, the decision of the Health Practitioners' Board to refuse Dr. Sanjib Mohanty's registration as a Urologist is oppressive, unjust, unfair and perverse.
9. That as a consequence of the decision of the Board and their unreasonable delay in dealing with the reference back to them by the Chief Justice, the Applicant has been injured in his reputation, has sustained an appreciable loss of income and he therefore claims damages against the board.

NOTE:

Pursuant to Order 53 R3(3) and in view of the tremendous adverse consequence for the Application of the Board's decision an oral hearing from Leading Counsel for the Applicant is requested before the application is considered and determined by this Honourable Court.