

Ibralta is an African Nation, which got its freedom in the 1950s. Ibralta is a common law country¹, where the judicial system adopted is similar to that of the Indian judicial system. Jataka is a state in the country of Ibralta.

In the country of Ibralta, professional degree in law, medicine and engineering is highly valued. Getting admitted into such a professional degree course is thought to be a sure shot route to success and money. The education sector is highly regulated in Ibralta, together by the union government, the state government and the professional bodies of the respective degree courses. There is limited number of seats sanctioned by the government for various professional degree courses. As a result, there is huge demand for limited seats and more often than not Ibraltan students travel to India, UK and other countries to obtain higher education.

Dr. Pinokio is a very well respected dental surgeon, known to be politically incorrect in airing his opinion about the policies of the Union Govt of Ibralta, especially his views on liberalizing the education sector and the vice like grip of State governments and professional bodies like Dental Council of Ibralta (DCI).

In 2004 Jataka state government issued Essentiality Certificate for starting a Bachelor of Dental Surgery (BDS) Dental College and based on which Dental Council of Ibralta/Government of Ibralta issued formal permission to Madelin Charitable Medical Educational and Cultural Trust to start M/s Madelin Dental College & Hospital [MDCH], Timbaktu on 23/06/2005 with an annual intake of 100 students. It is affiliated for the said course with Hakuna Matata University.

MDCH applied for Master of Dental Surgery (MDS) affiliation to Hakuna Matata University without essentiality certificate and the institute was asked by the University to submit the same vide letter dated 16/07/2009.

That on 26/04/2012, Department of Health & Family Welfare, Jataka state government issued essentiality certificate for intake in (i) Oral Pathology & Microbiology with 3 seats, (ii) Prosthodontics and Crown & Bridge with 3 seats, (iii) Conservative Dentistry and Endodontic with 3 seats, (iv) Periodontology with 3 seats, (v) Orthodontics & Dentofacial Orthopedics with 3 seats (vi) Oral & Maxillofacial Surgery with 3 seats.

That, Mrs Nancy CEO of Madelin Charitable Medical Educational and Cultural Trust and M/s Madelin Dental College & Hospital, Timbaktu, sometime in mid 2012 met with Dr Dolittle, the then Vice Chancellor of Hakuna Matata University to seek his cooperation and support in the matter of getting Letter of consent for Affiliation for starting MDS courses without mandatory requirement so as to enable MDCH to apply

¹ Laws of Ibralta are *pari materia* to laws in India

to Dental Council of Ibralta for starting MDS courses, with the promise that the mandatory requirements be met in due course of time.

Hakuna Matata University appointed 6 inspection teams for conducting inspection of 6 MDS courses. The teams conducted inspection on 08/05/2012, 09/05/2012 and 11/05/2012. Based on the inspection reports submitted by 6 teams, a note sheet was prepared by affiliation section of Hakuna Matata University incorporating all the deficiencies (viz. relating to infrastructure, human resources etc) reported and recommendations made by the teams and put-up to Vice Chancellor Dr Dolittle on 06/06/2012 to rectify the deficiencies pointed out by inspection team.

Dr Dolittle on 06/06/2012 ordered issuance of Letter of Consent (dated 08/06/2012) for Affiliation in four specialities viz (i) Oral Pathology & Microbiology, (ii) Prosthodontics and Crown & Bridge, (iii) Conservative Dentistry and Endodontic, (iv) Periodontology. In respect of (v) Orthodontics & Dentofacial Orthopedics (vi) Oral & Maxillofacial Surgery, he constituted two new inspection teams on 07/06/2012. The two teams conducted inspection on 08/06/2012 and 09/06/2012, and submitted their report on 10/06/2012.

In their report while pointing out several deficiencies including infrastructure and clinical materials, faculty members, non-teaching staff, one inspection team for (v) Orthodontics & Dentofacial Orthopedics course suggested that Letter of Consent for University affiliation may be issued subject to rectification of deficiencies within a stipulated period of time, while the other inspection team for (vi) Oral & Maxillofacial Surgery suggested that Letter of Consent for University affiliation should not be issued and it should be considered only after rectifying the deficiencies noted during inspection within a stipulated period of time. Dr Dolittle ordered to issue letter of Consent for affiliation to the two remaining MDS courses on 12/06/2012.

On receipt of letter of consent for affiliation from Hakuna Matata University in respect of 6 MDS courses, CEO Mrs Nancy, and Dr Rekha Managing Director MDCH applied to Ministry of Health & Family Welfare, Government of Ibralta on 11/07/2012 for starting MDS courses.

Meanwhile, in May 2012, Dr Rekha and Tom Administrative Officer MDCH and Barry, Trustee of Madelin Charitable Medical Educational and Cultural Trust and Mrs Nancy decided to contact Dr Pinokio requesting him to help in getting approval for starting MDS course from Dental Council of Ibralta. Dr Pinokio, Member Dental Council of Ibralta, visited ADMC in May 2012 and came to know about its application for seeking approval for MDS Courses.

Dr Louie, principal of MDCH resigned from his post on 30/06/2012. Dr. Sharon was appointed by Dr Rekha as Principal of MDCH w.e.f. 01/07/2012. On 17/07/2012, Dr. Sharon wrote an email to Dr. Pinokio making a comparative analysis of Income and

Expenditure Statement of PG programme by college and calculated a profit of Rs 2 crores and above from 2nd year of starting MDS courses.

On 31/07/2012 the ministry forwarded the application to Dental Council of Ibralta. The matter was discussed in the Executive Committee meeting of the Dental Council of Ibralta held on 27/09/2012. As per the minutes of the meeting, Agenda No. 16(51) the application of MDCH for starting 6 MDS specialty courses were considered for technical evaluation and recommendations for the academic session 2013-14. After discussion and deliberation, the Executive Committee decided to appoint an inspection team of two doctors to carry out the inspection for BDS courses as well as inspection for starting MDS courses in 6 specialties as mentioned above.

The inspection team was to inspect and report on standard and actual physical facilities made available and overall impression about the institution based on the Application of MDCH for starting MDS courses.

The inspection team conducted the inspection on 05/10/2012, noted several deficiencies. The inspection report was discussed in the meeting of Executive Committee of the Dental Council of Ibralta held on 01/11/2012. The Executive Committee considered the above Joint Inspection Report and after deliberation decided that the college authorities be asked to fulfill the deficiencies and furnish the compliance report to the council for further action.

DCI on 07/11/2012 informed the decision of Executive Committee to MDCH. A reminder letter was sent on 18/12/2012 by DCI.

Dr. Sharon the principal of MDCH sent compliance report dated 21/12/2012 to DCI, informing that deficiencies noted during the inspection have been addressed. The compliance report was sent along with the affidavit of Dr. Sharon, countersigned by Dr Rekha. The same was received by DCI on 31/12/2012.

On 17/12/2012 Dr Pinokio visited MDCH to give a lecture and had an exclusive luncheon with officials of MDCH including Dr. Sharon, Dr Rekha and Mrs Nancy.

Secret Information was received on 07/01/2013 at about 14:00 hrs at Ibralta Bureau of Investigation², Anti Corruption Branch (ACB), Sechelin to the effect that management of MDCH had deputed Tom to approach Dr Pinokio for getting approval from DCI for PG course and Dr Pinokio had demanded One crore rupiah³. Bargain of bribe amount was arrived at and a sum of Rupiah 25 lakhs was to be paid initially as advance on 07/01/2013 at about 18:30 hrs at his clinic i.e M/s Cranio Facial Clinic No., No.167 Lloyds Road, Sechelin 4.

² Ibralta Bureau of Investigation (IBI) is Ibralta's premier & specialized investigation agency, akin to Central Bureau of Investigation, India.

³ Currency of Ibralta

The above said information was registered in the General Diary No. 540143 dt. 07/01/2013 maintained at Office of the Superintendent of Police, IBI, ACB, Sechelin and per order of DIG, IBI, ACB, Sechelin, a team comprising of 7 officials including Mr. Harry, DSP, IBI as head of team along with independent witness T Remo, Sr TTE Railway Sechelin proceeded to the clinic of Dr Pinokio. On arrival at clinic, team took positions at suitable locations in and around the clinic.

At about 1800 hrs Barry and Simba arrived in front of the clinic independently and jointly entered into the clinic. Barry was having a carry bag (shopping). Both accused entered the cabin of Dr Pinokio. At around 18:30 hrs Tom arrived at the clinic and joined the other accused persons in the Cabin of Dr Pinokio.

At about 19:20 hrs Barry and Simba came out of the cabin of Dr Pinokio without the carry bag which was carried by Barry while entering. Immediately the IBI team along with the independent witness intercepted Simba and Barry and disclosed their identities and entered the cabin of Dr Pinokio. Tom and Dr Pinokio were found sitting inside the cabin. IBI team noticed a carry bag captioned "*Indian Silks*" was found on the table of Dr Pinokio.

On questioning Barry by IBI team, he stated that in the evening of 06.01.2013 on the instruction of Dr Rekha he was handed over Rupiah 25 lakhs and was instructed to hand over the said amount to Dr Pinokio at his clinic on 07.01.2013 at about 1800 hrs for purpose of influencing and getting DCI approval for PG Dental course at MDCH, without carrying out rectifications of deficiencies mentioned during pre-verification inspection conducted by DCI on 05.10.2012. For the said purpose he along with Tom and Simba had come over to the clinic of Dr Pinokio and handed over the cash of Rupiah 25 lakhs to Dr Pinokio. He also identified the carry bag captioned as "*Indian Silks*" as the one in which he had brought the cash of Rupiah 25 lakhs for making payment to Dr Pinokio.

The said carry bag was opened by the independent witness T Remo on instructions of Mr. Harry, DSP, IBI and counted the currency notes found inside the carry bag with assistance of other IBI team members. The bag contained 25 sections of Ibraltan currency. Each section was found containing 100 notes of Rupiah 1000/- denominations each. The total cash found inside the carry bag was Rupiah 25 lakhs.

A proceeding was drawn at the clinic of Dr Pinokio and the cash amount was seized for the purpose of investigation. The aforesaid proceeding is to be read as part and parcel of the FIR which was registered on 07.01.2013 at Sechelin against Dr. Pinokio, MDCH, Dr Rekha, Tom, Barry, Simba, Dr. Sharon and other unknown accused u/s 120B Ibralta Penal Code 1960 and s.7/12/13(2) r/w 13(1)(d) Prevention of Corruption Act 2003.

Investigation revealed that the CDRs of mobile phone numbers of Dr Pinokio, Dr Rekha, Tom, Dr. Sharon, Mrs Nancy, Barry proves the contact with each other. Investigation also revealed that amount of Rupiah 25 lakhs handed over by Barry to Dr Pinokio was delivered to Barry by Dr Rekha on 06.01.2013 at a funeral ceremony at Timbaktu.

Investigation of bank account statement of MDCH revealed Rupiah 25 lakhs were withdrawn as cash from the account on 05/01/2013.

Further, during investigation police seized mobile phone of Dr Pinokio, forensic analysis of which led to recovery of certain audio files, which were call recordings of the calls made from/to mobile phone number of Dr Pinokio. The call conversations (numbering over 100) between Dr Pinokio and Dr Rekha were among the several such audio files recovered.

Statement of Dr Louie was recorded by IBI, who stated *"I know Dr Pinokio who got acquaintance during Ibraltan Dental Association meeting held in Sechelin in year 2007 and I used to meet him during professional meeting, seminars etc. Dr Pinokio is also the Secretary of Dental Doctors Association and became member of Dental Council of Ibralta (DCI) in April 2012. Tom asked me to introduce him with Dr Pinokio. But I did not do so. I came to know that Tom introduced himself with Dr Pinokio through his known friends. I also came to know Dr Rekha also got introduced with Dr Pinokio.*

Dr Pinokio met me at MDCH in month of March 2010 where he visited our college to invite students to participate in All Ibralta Students Dental Conference. Thereafter he met me at college in month of May 2012, when he was invited by Tom to visit our college. At that time I informed Dr Pinokio that I am leaving the institute due to personal reasons. After someday Dr Pinokio suggested the name of his colleague Dr. Sharon to me, I informed Dr Rekha and she accepted to appoint Dr. Sharon on the basis of recommendation of Dr Pinokio as the principal of the Dental College.

MDCH did not meet requirements to start MDS courses when I was relieved from the college from the post of Principal. I identify signature of Dr Rekha in the account statements of MDCH and affidavit submitted by Dr. Sharon to DCI."

Statement of Mr. Michael was recorded by IBI, who stated *"I am only a trustee. The last meeting I attended was during November 2012. I think in the said meeting Dr Rekha was made as full Managing Director. Earlier Dr Rekha and her husband were the Managing Director(s)/Correspondents for the Dental College.*

Dr Pinokio alleges he had been framed at behest of political parties, who were not happy with him getting elected to post of Member DCI, as he would in due course have exposed the corruption and nexus of bureaucrats, politicians and officials of DCI.

Dr Rekha alleged that she has been made a scapegoat and she has not hatched any conspiracy to pay bribe to Dr Pinokio for obtaining DCI permission.

Chargesheet was filed against 13 persons including Dr. Pinokio, Dr Rekha, Tom, Barry, Simba, Dr. Sharon, Dr Dolittle, Mrs Nancy for commission of offences punishable u/s 120B r/w 420 Ibralta Penal Code 1960 and s.7, 8, 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 2003 and substantive offences thereof.

No sanction is required to prosecute Dr Pinokio, as he was removed from Dental Council of Ibralta. No sanction is required to prosecute Dr Dolittle as he had retired on 31.12.2012.

The trial court convicted Dr. Pinokio, Dr Rekha, Tom, Barry, Simba, Dr. Sharon, Dr Dolittle, Mrs Nancy u/s 120B r/w 420 Ibralta Penal Code 1960 and s.7, 8, 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act 2003. In appeal by accused persons the Jataka High Court upheld the trial court order.

Dr. Pinokio, Dr Rekha filed for special leave to appeal against the High Court order to the Supreme Court of Ibralta. The appeal is listed for final disposal/arguments. The status of appeal by other convicted persons is not known. The period of sentencing is not an issue.

The parties are “**free to raise and address any substantive legal issues**” that arise, including the following:

(a) Contention of the appellants that: ‘General Diary entry by IBI disclosed commission of cognizable offence, inspite of that, said General Diary entry not treated as FIR and CBI conducted proceedings at Clinic of Dr. Pinokio prior to registration of FIR, as a result the alleged investigation is void ab initio’

(b) Contention of the appellants that: ‘Audio files of call conversations recovered from mobile phone of Dr. Pinokio could not have been used as evidence, as the same is hit by the right to privacy and are inadmissible in light of s.65B of Ibralta Evidence Act, 1953’