
(2017) 01 JH CK 0065
In the Jharkhand High Court
Case No : W.P. (S) No. 2943 of 2016

Dr. Amitabh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Indian Medicine Central Council (Election) Rules, 1975 — Rule 23, Rule 24
Indian Medicine Central Council Act, 1970 — Section 3, Section 7

Citation : (2017) 1 JLJR 674

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : M/s. Rajiv Kumar, Rishikesh Giri and R.L. Yadav, Advocates, for the Petitioner; Mrs. Vibha Bakshi, Sr. CGC, for the Respondent No. 1; M/s Indrajit Sinha, Archana Pathak Dave, Salil Sitanshu and Krishanu Roy, Advocates, for the Respondent No. 2; Mrs. Indrani Sen Chaudhary, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.(C.A.V.) - In the instant writ application, the petitioner being aggrieved by the letter dated 04thth May, 2016 (Annexure-4), written by the Respondent No. 1 and the letter dated 24thth May, 2016 (Annexure-7), written by the Respondent No. 2 calls in question the legality and propriety of the aforesaid letters on the ground that no successor has been appointed in view of the fact that no election is directed in view of Rule 23 of the Indian Medicine Central Council Act, 1970.

2. The brief facts, as emanated in the writ application, is that the petitioner is the Principal of Suryamukhi Dinesh Ayurvedic Medical College, which is affiliated with the Vinoba Bhave University, Hazaribagh. The constitution of the Central Council of Indian Medicine (hereinafter in short referred to, as "CCIM") is governed under the provisions of Section 3 of the Indian Medicine Central Council Act, 1970 (hereinafter in short referred to, as "IMCC Act, 1970"). As per the aforesaid Act, there are three types of members, (i) elected members under

Section 3 (i) (a) of the IMCC Act, 1970 (ii) University Representatives under Section 3 (i) (b) of the IMCC Act, 1970 and (iii) nominated members under Section 3 (i) (c) of the IMCC Act, 1970. The members of the council i.e. CCIM elect office bearers viz. President, Vice-President amongst themselves. The tenure of the member, President, Vice-President is for five years, however they are permitted to continue till their successor are elected/nominated as per Section 7 (i) of the IMCC Act, 1970. The Central Government frames rules for election under Section clause (1) (a) and (1) (b) of Section 3 of the Indian Medicine Central Council (Election) Rules, 1975. Rule 22 makes a provision for notification of election. Rule 26 provides for observer for the election. The procedure subsequent to election is a notification to be issued under Rule 24 of the Rules, by Central Government. The Central Government has a Ministry of Ayush. AYUSH is an acronym for Ayurveda, Yoga and naturopathy, Unani, Siddha and Homoeopathy. The notification has been issued in the official Gazette of the Government of India vide Annexure-3 and 3/1 series of the writ petition. The Respondent No. 1 vide Annexure-4 to the writ petition wrote a letter interpreting the tenure to be calculated with effect from the date of election and the letter was sent by the respondent no. 1 to the respondent no. 4 regarding expiry of the petitioner's term as University representative of Vinoba Bhave University, as 04thth July, 2016 (i.e. the date of election), instead of calculating on the basis of 5 years terms with effect from the date of notification i.e. 20thth June, 2012 and the term as per the decision of the Hon''ble Apex Court would be 20thth June, 2017. It has been averred in the writ petition and as disclosed from Annexure-5, the election has not been notified under Rule 23 (a) of the Rule nor any observer has been appointed under Rule 26 of the Rule, even the tenure as a member is not over. Yet, the said letter has a side effect as the petitioner is also the Vice-President of the Council i.e. Central Council For Indian Medicine, New Delhi after being duly elected as is certified vide letter dated 21.03.2014 by the Returning Officer. It has further been submitted in the writ application that the matter of similar nature was in dispute, as regarding the terms of a member before the Hon''ble Bombay High Court in W.P. No. 1 of 2014 in the case of Dr. Sudhakar Pundalikrao Mohite v. Union of India and others, wherein, the Hon''ble Court was in the opinion that the life of a member of CCIM (Central Council of Indian Medicine), is to be counted with effect from the date of issuance of Gazette Notification and not with effect from the date of election as per Annexure-6 to the writ petition. The petitioner was also sent a letter by the Secretary, Central Council of Indian Medicine in the purported exercise of power under Rule 22 of the IMCC Act, 1970. It has further been averred that Annexure-7 of the writ application i.e. the letter dated 24.05.2016 discloses that the information was sought with regard to the process of nomination as a member of the faculty in the University on the pretext that period of membership in the faculty of Ayurveda of the University is different from the earlier notification in the gazette of India vide SO no. 1283 dated 27.07.2007 and that in the SO no. 1416, dated 20.06.2012.

3. Controverting the averments made in the writ application, a counter affidavit has been filed on behalf of the Respondent No. 2. In the counter affidavit, it has been, inter alia, stated that the notification dated 20.06.2012 clearly stated that the date from which the period of 5 years for the petitioner starts 05.07.2011 i.e. the date of election. The petitioner assumed the office and never challenged the said notification, meaning thereby that he submitted himself to the jurisdiction/ effect of the notification. After the letters were written on behalf of CCIM to the petitioner regarding the expiry of his term of 5 Years as a member, as an afterthought he has proceeded to file the present Writ Petition. The petitioner cannot sail in two boats at the same time i.e. once he has acted as per the notification dated 20.06.2012 and now as an afterthought cannot challenge the same to his own sweet will. It has been further averred that the then President of CCIM, Dr. Vanita Murlikumar, wrote to Government of India, letter dated 29.02.2016, mentioning 04.07.2016 as last date of membership of the petitioner at Vinoba Bhave University and requested that the Central Government may kindly issue a notice to Registrar of concerned University to hold an election for the same as per provision under Rule 22 (2) of the Indian Medicine Central Council (Election) Rules, 1975 under intimation to this council, as per Annexure-3 to the counter affidavit. The Government of India wrote to Registrar, Vinoba Bhave University, letter dated 04.05.2016 as per Election Rules intimating the University regarding expiry of tenure of membership of Petitioner from 04.07.2016 at Vinoba Bhave University, Hazaribag, Jharkhand and requested the Registrar to reconstitute the present Ayurveda faculty and send a notified copy of re-constituted faculty with tenure before further action is taken to conduct the election vide Annexure-4 to the Counter affidavit. The Central Council of Indian Medicine also wrote to University letters, dated 12.04.2016, 18.04.2016 and 25.04.2016, intimating the University regarding expiry of membership of the petitioner at Vinoba Bhave University and to conduct election of the member in Ayurved faculty. The President, CCIM also wrote to Dr. Gurdeep Singh, Vice-Chancellor, Vinoba Bhave University vide letter dated 21.04.2016 clarifying the expiry of membership of the petitioner as per Annexures-5, 6, 7 and 8 of the counter affidavit. The Central Council of Indian Medicine, Respondent No. 2 has written several letters to the petitioner intimating his last date of membership in Central Council of Indian Medicine as per Annexure-9 to 11 of the counter affidavit and the petitioner vide letter dated 07.05.2016 has accepted his membership date with effect from 05.07.2011. The Vinoba Bhave University has not provided the information sought by the Central Council regarding the re-constituted faculty with the tenure of Petitioner and unnecessary information has been supplied vide letter dated 28.04.2016 and 07.05.2016 hiding the core issue on which the information was sought, as evident from Annexure-12 to 14 of the counter affidavit. The date of the election was 05.07.2011 and this is the date from which the five years as a member has to be counted as per Section (7) (1) of the IMCC Act, 1970.

Section 7 (1) of the IMCC Act, 1970 reads as under : -

"7. Term of office of President, Vice-President and member of Central Council.-1) The President, a Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer ".

The procedure after a Member is duly elected is described under Rule 21 of the IMCC (Election) Rules, 1975.

Rule 21 of the IMCC Rules, 1975 reads as under : -

"21. Result of Election—The Returning Officer shall intimate the names of the elected candidates for the Central Government who shall take steps to publish the names of the elected persons in the Official Gazette."

The notification in the Official Gazette happens after the Returning Officer intimates the names of the elected candidates to the Central Government and that he can do only after he has all the requisite information from the University or the State Register as the case may be. The petitioner was duly elected in the election held from amongst constituted Indian system of Medicine (Ayurveda Faculty) on 05.07.2011 as a member under Clause (b) of sub section (1) of section 3 of IMCC Act, 1970. However, the details of the committee of members of the Faculty or department of the Vinoba Bhave University, Hazaribag, Jharkhand was never provided to the Returning Officer/Central Government/CCIM. Various communications in this regard were sent to the University i.e. Respondent No. 3 in the present matter. However, they neither provided the said information nor replied to any of the said communications. It was because of this reason that delay in the publication of the Official Gazette dated 20.06.2012 occurred. The extraordinary delay in the publication of the Official Gazette can be accorded only to the petitioner herein, who now wants to turn the table to his advantage when his term of five years as a member came to an end on 04.07.2016. For easy reference a detail list of members elected/nominated as on 22.08.2016 has been annexed as Annexure-15 to the counter affidavit. The detailed list of members gives the names of members along with the date of election/nomination, date of notification, date of expiry of membership, which clearly suggests that there never occurred a delay of more than few months in publication in the Official Gazette. Even if whatever delay occurs in the publication of notification, the period of 5 years is calculated from the date of election/nomination. It has further been stated in the counter affidavit, that if one reads the entire judgment rendered by the Hon''ble Apex Court in the case of K.B. Nagur, M.D. (Ayurvedic) v. Union of India reported in (2012) 4 SCC 483, it will be amply clear that the election of the President, Vice President and Members of the Council should be conducted as early as possible after the term of the above expires. It has been further averred in the counter affidavit that if at all the petitioner was aggrieved by the said notification dated 20.06.2012, he should have challenged the same under Section 4 (2) of the Indian Medicine Central Council Act, 1970, which reads as under :-

"4. (2) Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final"

Section 4 (ii) stipulates that where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final, therefore, as per the basic legal principles, whenever the Act prescribes an efficacious remedy then it is imperative that it has to be exhausted first and therefore, on this ground alone, the writ petition is liable to be dismissed.

4. In the above mentioned factual backdrop, following issues emerges for adjudication :-

(i) Whether Section 7 (i) of the Indian Medicine Central Council Act, 1970 provides that a member of the CCIM shall continue, till the expiry of his term or till a successor is nominated/elected, whichever is later?

(ii) Whether from the date of election or from the date of publication of Gazette Notification is the tenure of the member i.e. 5 years is to be computed ?

5. From the aforesaid provisions, it is quite apparent that the term of the elected member is co-terminus with the term of faculty member elected under Section 3 (1) (b) of the IMCC Act, 1970. Section 7 (2) of the IMCC Act, 1970 is the qualifying clause to determine the term of the faculty members. Under section 3 (1) b, a member elected to CCIM can continue in the office, as long as his faculty term is not expired. The election of the faculty member is totally independent of the election of CCIM under section 3 (1) b of the IMCC Act, 1970. The notification dated 02.08.2011 vide Annexure-R/1 to the counter affidavit of the respondent no. 1 indicates that the valid tenure of the petitioner's membership in Suryamukhi Dinesh Ayurvedic Medical College, which is affiliated with the Vinoba Bhawe University, Hazaribagh is 05.07.11 to 05.07.2016. The decision of the Hon"ble Apex Court rendered in the case of K.B. Nagur, M.D. (Ayurvedic) v. Union of India reported in (2012) 4 SCC 483 is not applicable in the case of the petitioner in the instant case in view of the provisions of Section 7 (2) of the IMCC Act, 1970. The present case does not pertain to the term of the member of the CCIM but the issue relates to faculty tenure of the petitioner, which is requisite qualification under the statute to continue as a member of the College under Section 3 (1) (b) of IMCC Act, 1970. Even after extension of the term of the faculty by virtue of election or otherwise, it will not automatically extend the term of the CCIM in view of the provisions of Section 7 of the IMCC Act, 1970 and once the membership of the petitioner expires, it will be followed by a fresh election in view of the deemed provisions. Therefore, the decisions cited by the petitioner is of no assistance to the petitioner.

Rule 24 of the Indian Medicine Central Council (Election) Rules, 1975 envisage with the heading:-

"Intimation of name elected person to the Central Government

The name of the person elected shall be intimated by the Registrar of the University to the Central Government, who shall take steps to publish the name of the elected person in the Official Gazette."

Therefore, the delay in publication of the Notification in the official Gazette will not render the operation of the provisions of IMCC Act, 1970, a nugatory.

6. In order to examine Section 7 (i) of the IMCC Act, 1970, which envisages the date of election of a member, who assumes office, the date of election is considered as the date of assumption of office by the member but the Notification mentions about the date from which the members shall be elected.

7. Viewed thus, since the term of the membership of the petitioner has come to an end on 04.07.2016 as per Annexure-4 of the writ application, no relief can be granted to the petitioner and accordingly, the writ petition sans merit is dismissed.