

(2017) 01 MAD CK 0153

In the Madras High Court

Case No : W.P. (MD) No. 16158 of 2016 & W.M.P.(MD) Nos. 11817, 11818 & 12252 of 2016

Dr. K. Senthil

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Medical Registration Act, 1914 — Section 24(i), Section 8

Citation : (2017) 2 MLJ 244

Hon'ble Judges : Dr. S. Vimala, J.

Bench : Single Bench

Advocate : Mr. Issac Mohanlal, for Mr. T. Cibi Chakraborty, Advocates, for the Petitioner; Mr. Veera Kathiravan, Sr. Counsel, for, M/s. Veera Associates, for the R-2 & R-3; Mr. M. Alagudevan, Spl.G.P, for the R-1; Mr. K.K. Senthil, Advocate, for the R-4; Mr. N. Satheesh Kumar, Advocate, for the R-5

Final Decision : Allowed

Judgement

Dr. S. Vimala, J. - The minutes of the Executive Committee Meeting of the Tamil Nadu Medical Council, Chennai, dated 17.08.2016, reads as under:- The Executive Committee Meeting of the Tamil Nadu Medical Council resolves to accept the resignation of Dr. K. Senthil, President, Tamil Nadu Medical Council, submitted on 12.08.2016 and Dr. A. Jayalal, Vice- President, to continue as President In-charge of the Tamil Nadu Medical Council.

1.1. This impugned resolution, dated 17.08.2016, of the Executive Committee of the Tamil Nadu Medical Council, Chennai, (second respondent) allegedly accepting the alleged resignation of the President, Dr. K. Senthil, and the consequential communication of the same by the Registrar (third respondent), dated 17.08.2016 to the Principal Secretary to the Government are under challenge, in this writ petition, on the ground that those Resolution / proceedings are null and void.

2. Brief facts leading to the filing of the writ petition:-

The petitioner joined the Tamil Nadu Medical Services on 21.11.1993, through the Tamil Nadu Public Service Commission as Assistant Surgeon. After working in various places, the petitioner was serving as Professor in the Department of Diabetology at the Madurai Medical College, at the time of filing this writ petition. The petitioner is the person interested in the welfare of Doctors, Patients and Public and as such, he has held several offices in various organisations.

2.1. The petitioner is the President of the Tamil Nadu Medical Council, having been elected so, on 15.02.2016, for a period of two years. The Tamil Nadu Medical Council is a statutory body, established under the provisions of the Tamil Nadu Medical Registration Act, 1914 (hereinafter referred to as "the Act"). It is the state body of the Medical Council of India.

2.2. The Council is run by the President, assisted by the Vice-President, the Registrar and the Executive Committee Members. The Council has seven elected members and three other members nominated by State Government. The President, Vice President and the Executive Committee Members are elected amongst these ten members, as per the Act.

2.3. Owing to certain misunderstandings among few members of the Council, the petitioner handed over an undated letter, to one of the Executive Committee Member, namely, Dr. M.S. Ashraf (fifth respondent) stating that the petitioner tendered his resignation from the post of President of the Tamil Nadu Medical Council. Later, on account of failure in the understanding, the petitioner decided to withdraw the proposed resignation letter. The fifth respondent was delaying to return the undated letter.

2.4. The petitioner sent a representation to respondents 1, 3 and 4 through e-mail as well as by speed post on 13.08.2016, requesting them not to accept the resignation letter. The said letter was acknowledged by the third respondent, through his reply email, on 16.08.2016.

2.5. The Principal Secretary/the first respondent has also forwarded the petitioner's representation, dated 13.08.2016, to the third respondent, calling for his remarks. Thereafter, on 17.08.2016, the resolution has been passed to the effect that the petitioner's resignation has been accepted.

3. The status of the petitioner as Elected President of the Council on 15.02.2016 is an accepted fact. The fact that the petitioner submitted an undated letter of resignation is also an accepted fact. But the petitioner claims that, as his letter of resignation, dated 12.08.2016, was revoked through his letter dated 13.08.2016, there is no offer of resignation at all for the respondents to accept the same and therefore, his status as President continues.

4. The contention of the respondents is that it is not necessary for the respondents to accept the resignation and the mere sending of the resignation itself is sufficient to put an end to the tenure of the post and the petitioner,

having accepted to have sent the resignation letter, the resignation is brought into force as soon as it is sent and therefore, the petitioner has no locus standi to claim himself as President of the Council.

5. The main contention of the learned counsel for the petitioner with regard to the resolution pertaining to the acceptance of petitioner's undated letter of resignation is as under:-

(i) The undated letter of resignation was revoked by the letter dated 13.08.2016 before its acceptance and therefore, the acceptance is not valid.

(ii) The letter of revocation of resignation was not even placed before the Council Meeting on 17.08.2016.

(iii) The impugned resolution is illegal as the meeting was held contravening the minimum notice period of eight days and other procedural formalities.

(iv) No notice was issued to the petitioner as a Council Member.

6. It is pointed out by the learned counsel for the petitioner that there are rules framed under Section 24 of the Act, and the resolution passed was not in conformity with the Rules and therefore, the resolution is not binding.

6.1. The following violations are brought to the focus of the Court:-

(i) Eight days advance notice is mandatory for convening any Executive Committee Meeting, as per Rule 29 under clause (vi) of sub-section (1) of Section 24, and no such notice was given to any one of the Executive Committee Member.

(ii) Under Rule 29, the President may summon a meeting of the Executive Committee, at any time, by giving eight days notice, and shall summon a meeting, on a written requisition, signed by not less than three members of the Executive Committee. The requisition given by the three members of the Executive Committee is not placed before the Court.

(iii) As per Rule 30, under clause (vi) of sub-section (1) of Section 24, the notice of the meeting shall be addressed to each member by the Registrar stating the time and place of the meeting; no such notice intimating the time and place of the meeting was issued by the Registrar.

(iv) As per Rule 31 under clause (vi) of sub-section (1) of Section 24, the Provisional Programme of Business was not furnished to any of the Executive Committee Members nor the papers and documents were forwarded to any of the members.

(v) The petitioner is also entitled to notice inasmuch as he would continue to be the member, even assuming that the passing of resolution, dated 17.08.2016, is valid.

7. It is the contention of the learned counsel for the petitioner that the language

employed under Section 8 of the Act, pin-pointing only the Member of the Council, with respect to sending of resignation would be applicable only in respect of resignation sent by the Member of the Council and not to the President of the Council, in view of the specificity in the language employed and the applicability only to Member of the Council. The learned counsel for the petitioner also pointed out that Section 8 of the Act neither used the phrase "President" nor employed the word "office", instead, has used the word "seat".

7.1. Section 8 of the Act reads as under:-

"8. A Member of the Council shall be deemed to have vacated his seat-

(1) on sending his resignation in writing to the President or Registrar,...."

7.2. This contention of the learned counsel for the petitioner is acceptable, as obviously, the words used are plain and not ambiguous and even if it is contextually construed, it will lead to the only conclusion that it would be applicable only to the Member of the Council and not to the President, as the President cannot send his own resignation to himself. Therefore, from the language employed, it is clear that it applies only to the Member of the Council and not to the President.

8. The learned counsel for the respondents relied upon Rules 1 (1) and (2) of the Rules For The Election of President of the Madras Medical Council, G.O.Ms. No. 1674, P.H., dated 14th June 1944, which reads as under:-

1 (1) The President shall hold office as such, unless he sooner resigns, for a term of two years from the date of his election.

(2) Subject to the provision of sub-rule (1), the President shall be deemed to have vacated his office as such on the expiry of his term as member or on his otherwise ceasing to be a member."

8.1. From the above Rules, it is clear that the tenure of President is two years unless either he resigns or otherwise cease to be the Member of the Council. There are rules prescribed with reference to the acceptance of resignation of the President, if it is tendered.

9. The next contention of the learned counsel for the petitioner is that the Executive Committee Meeting convened on 17.08.2016 was not valid, the letter of revocation of resignation was not placed before the committee and therefore, the resolution, accepting the resignation, is an outcome of non-application of mind and therefore, it is not valid.

9.1. The next contention is that there could not have been any meeting on 17.08.2016, as, if really had there been a meeting, the letter of revocation of resignation by the petitioner also would have been placed in the same meeting, along with the undated letter of resignation.

9.2. Yet another contention of the learned counsel for the petitioner is that even

assuming that the meeting dated 17.08.2016 is valid, still the alleged acceptance of the resignation is not valid, as the letter of resignation was not considered, along with letter for revocation of resignation, (which was not at all placed before the Committee) the acceptance is camouflaged. In support of the contentions, the following decisions are relied upon:-

(i) (2007) 4 SCC 492 (Secretary, Technical Education, U.P. and others v. Lalit Mohan Upadhyay and another):-

"17. The general principle is that a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, gives up his service/or office normally the tender of resignation becomes effective and his service/or office tenure gets terminated when it is accepted by the competent authority. Thus, having regard to the letter of resignation (Annexure P-2), in the present case, there can be no doubt that Shri. L.M. Upadhyay had in his letter dated 06.09.1993, indicated his unequivocal intention to resign in the clearest possible terms with immediate effect. The resignation was tendered by Shri. Upadhyay voluntarily without any pressure or coercion from the Principal of the College as recorded by all the Inquiry Officers in their respective fact finding reports and the counter allegation of Shri. Upadhyay against the Principal was found unwarranted and unfounded. The Principal in fact, had protected the reputation, saved the future career and unnecessary humiliation and embellishment of Shri. Upadhyay from the students, staff members and teachers of the College by permitting him to leave the College immediately before his letter of resignation was forwarded to the competent authority for its acceptance."

(ii) AIR 1969 Supreme Court 180 (Raj Kumar v. Union of India):-

"...But when a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation, is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentia but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by (1) A. T. R, 1966 S, C. R. 1313, the Government of India..."

(iii) 1924 Madras 396 (A. Sudarsana Rao v. J.A. Christian Pillai and Others):-

"2. ...Paine on Elections, page 201 shows that without acceptance, resignation amounts to nothing and the person resigning remains in office. To resign is not a matter of right. This is not inconsistent with the passage from Rogers on

Elections, Volume II, page 27, 28-29 where it was said that there must be substantial renunciation. In the case cited at page 29 (Lanarkshire, 2 Doyl. 367) it is clear that the resignation was accepted though informally before the Election. In the other case cited at pp. 28-29 (Aberbrothok) the facts are not fully stated and there is nothing to show that the resignation was not accepted before the Election....."

9.3. The learned counsel for the respondents relied upon a decision reported in Dr. V.S. Dorairajan v. The Tamil Nadu Medical Council and seven others, in W.P.No.27348 of 2015, dated 02.06.2016, where-under in paragraph 27 it has been held as follows:-

"27. In this case, the petitioner challenges the resolution dated 24.08.2015 electing the second respondent as the President of the first respondent council on the ground that there is no agenda and no valid notice was issued. It is seen from the minutes of the meeting dated 24.08.2015 that there was an agenda and it relates to election of a new President meaning thereby the post of President is vacant. According to the respondents, the petitioner was removed from the post of President not only on the basis of his letter of resignation but on the basis of the No Confidence Motion moved against him. Now, the second respondent has tendered his resignation on 15.02.2016 and the post of President of the first respondent council is presently occupied by the sixth respondent. While so, I hold that there is nothing survives for adjudication in this writ petition."

9.4. The said case will not apply to the facts of the case on hand, (in which the petitioner herein is also one of the party) because, in the reported decision, : (i) apart from the resignation, President was removed by no-confidence motion; (ii) there was a validly convened meeting in which the letter of resignation was accepted; and (iii) there had been subsequently elected Presidents, who occupied that post and discharged their responsibilities. In other words, much water had flown under the bridge and the status remained altered.

9.5. However, from the perusal of the decisions, cited supra, on the side of the petitioner, it is clear that (i.e., the general principle is that), when a functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, gives up his service/or office, normally the tender of resignation becomes effective and his service/or office tenure gets terminated only when it is accepted by the competent authority.

9.6. In other words, only after the acceptance of the resignation, an officer would not be entitled to withdraw the resignation. Before acceptance, the offer for resignation can be withdrawn.

10. Whether this principle has to be extended to the office of the President of the Tamil Nadu Medical Council is the issue to be considered, in this writ petition.

11. The Tamil Nadu Medical Council, as stated earlier, is a statutory body,

established under the provisions of the Tamil Nadu Medical Registration Act, 1914. It is also a State Body of Medical Council of India. Basic Membership is open to only a Medical Practitioner. The office of the President is attached with responsibilities enjoined under the Act. Therefore, there cannot be an option left open to the President himself to determine his post by his own volition without the necessity of the resignation being accepted by the Executive Committee. Permitting the President to tender the resignation, without accountability, would not be in the interest of the organization also. Therefore, the general principles, stated supra, are applicable to the facts of this case/applicable to the post of the President in this case also.

11.1. It is apparent on the face of the record that the Registrar has communicated to the President that the letter of revocation of President has been received by the Registrar on 16.08.2016 itself. The natural conduct of the Registrar would be to have placed this letter before the Committee on 17.08.2016 along with the letter of resignation. If really, this letter had been placed before the Committee, the Committee should have said that the letter of revocation of resignation cannot be considered, as mere sending of the resignation letter (as per Section 8 of the Act) is good enough and there is no need to accept the resignation and therefore, the revocation letter is not valid. When such a resolution had not been passed, the implication is that there had been no meeting on 17.08.2016 in which the resignation letter would have been accepted. Moreover, even assuming that the letter of resignation was placed before the committee, the resolution passed without considering the letter of revocation is without application of mind and therefore, it is not valid.

11.2. Before the resignation is accepted, it is open to the petitioner to revoke the resolution. Only after the acceptance of the resignation, it is not open to the petitioner to seek revocation. Evidence available in this case would go to show that before the letter of resignation was placed for acceptance, letter of revocation has reached the hands of the concerned authorities. Therefore, when both the letters have not been considered together, the alleged acceptance, even assuming it to be true is not valid.

11.3. When the respondents have chosen to claim that there is a resolution accepting the resignation, the contention that mere sending of resignation itself is sufficient and that it would amount to termination of the post of the President is far-fetched and in fact, the respondents are estopped from raising such a contention in view of the nature and content of the resolution passed.

12. From the records placed before the Court, there is no proof to show that the Executive Committee Meeting has been validly convened by following Rules 29 to 31 under clause (vi) of sub-section (1) of Section 24. Hence, it is a case where the impugned resolution dated 17.08.2016 and the consequential communication dated 17.08.2016 are liable to be quashed and they are quashed accordingly.

13. The writ petition stands allowed. No costs. Consequently, the connected

WMPs are closed.