

(2011) 07 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 872 of 2011

Dr. Mohan Singh Sethi

APPELLANT

Vs

U.O.I. and Ors

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Indian Medicine Central Council (Election) Rules, 1975 — Rule 3

Citation : (2011) 07 J&K CK 0003

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, Judge

1. The following reliefs are sought in this writ petition:

i. Mandamus, commanding the respondent No. 3 to forebear from holding and conducting the elections of Ayurvedic & Unani System of

Medicines under and in terms of notification dated 31.05.2011 on the basis of un-updated State Register of Indian Medicine (Annexure-E to the

writ petition).

ii) Mandamus, commanding the respondent No. 3 to conduct the elections of Ayurvedic & Unani System of Medicines in lind and pace with the

provisions of the Indian Medicine Central Council Act, 1970 and the Indian Medical Central Council (Election) Rules, 1975.

iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also

passed in favour of the petitioner and against the respondents.

2. It is pleaded in the writ petition that the Indian Medicine Central Council Act, 1970 (for short the Act of 1970) provides for constitution of

Central Council of Indian Medicine. The Act of 1970 also provides for maintenance of Central Register of Indian Medicine and also for connected matters.

3. Petitioner claims to be enrolled on the State Register of Indian Medicine Practitioner (Unani) System of Medicine. The Hon'ble Supreme Court

vide its judgment and order dated 13.05.2011 passed in writ petition (C)No.33 of 2009 directed the election process in the State of Jammu and

Kashmir should be completed by 29th July, 2011. The direction of the Hon'ble Supreme Court was ordered to be brought to the notice of High

Court of Jammu and Kashmir, in as much as, a writ petition was pending before the Court bearing OWP No. 199/2011. The Court vide order

dated 19.05.2011 after taking notice of the contention of the learned counsel for the petitioner, that allegedly names of more than 400 ineligible and

non-existent members were put on the Electoral Roll, for which reason the writ petition was filed, gave liberty to the petitioner therein to provide

detailed information to the Registrar and Returning Officer within a week's time, indicating the deficiencies and shortcomings in the earlier voter list

so as to enable the Returning Officer to publish fresh voter list after making amendments wherever found necessary in the earlier voter list.

Direction was given for publication of the fresh voter list and conducting of elections in accordance with the provisions of the Act of 1970 and in

light of the directions passed by the Hon'ble Supreme Court.

4. Petitioner's grievance is that though the voter list has been published but ballot papers have been dispatched to some of the voters who are dead

or addresses have been given whereby a reasonable person cannot ascertain as to said voter is resident of which place. It is for these reasons that

this petition is filed seeking the aforementioned reliefs.

5. The Court after considering the matter on 20th July, 2011 passed the order, relevant part whereof is reproduced as under:

In view of the above submissions the case is made out.

Rule Nisi.

Notice as to why rule is not made absolute.

Dasti notice is also permissible.

List on 27th of July, 2011. Meanwhile, reply affidavit.

Notice.

In the meanwhile, the concerned authorities/respondents will ensure the compliance of the order of Hon'ble Supreme Court and this Court but while conducting the elections they must strictly adhere to the laws and norms and ensure that the persons, who are not entitled in terms of law and rules to cast their vote, do not cast their vote.

6. Objections have been filed by respondent No. 3.

7. Heard learned counsel for the parties. Considered the matter.

8. Learned counsel for the petitioner submitted that petitioner is not against the conducting of elections but seeks compliance with the provisions of

the Act of 1970 and the Indian Medical Central Council (Election) Rules, 1975 (for short the rules of 1975), more particularly rule 3 and 4

thereof. Learned counsel submitted that in view of the material placed on the record of the writ petition what emerges is that the voter list is not

prepared in accordance with mandate of statute as persons who are dead figure in the said list that is how the voter slips have been dispatched to

these persons. Learned counsel submitted that the petitioner prays that respondents be directed to comply with the mandate of the Act of 1970

and Rules of 1975.

9. Mr. A.M. Magray, Sr.AAG submitted that in terms of the judgment of Hon'ble Supreme Court aforementioned the elections are to be

completed by 29th July, 2011. Learned counsel submitted that in terms of the directions passed by this Court in OWP No. 199/2011, the exercise

was undertaken and a fresh voter list was published. Learned counsel submitted that after the interim orders passed by the Court in this case were

received by the respondents they immediately took up the matter with the Registrar so as to ensure that no bogus vote is cast. Learned counsel

assured the Court that all necessary steps in accordance with law will be taken to ensure that the election is conducted strictly in accordance with

the provisions of the Act of 1970 and Rules of 1975, and it is seen that no bogus vote is allowed to be cast.

10. In view of the respective stands taken by the learned counsel for the parties and in view of the relief sought for in the writ petition, the matter

now falls into the narrow compass. What is to be assured is that the respondents would conduct the elections strictly in compliance with the

directions of the Hon'ble Supreme Court and orders passed by this Court in OWP No. 199/2011 and in accordance with mandate contained in

the Act of 1970 and Rules of 1975.

11. Respondents are duty bound to comply with the orders of the Hon'ble Supreme Court and of this Court as also to faithfully obey the mandate

of law as contained in the Act of 1970 and Rules of 1975. Any attempt on part of the respondents to deviate from the commands issued by the

Hon'ble Supreme Court, this Court, and the provisions of the Act of 1970 and, rules of 1975, would vitiate the entire elections process. The

respondents are personally responsible to ensure compliance of the orders of the Court as also of the provisions of the Act of 1970 and Rules of

1975.

12. The respondents are creatures of the statute and are duty bound to follow the mandate of the Statute. Any action of theirs which infringes any

of the provisions of the Act of 1970 and statutory rules would render their actions illegal and non est. All the respondents in terms of the

constitutional scheme are duty bound to comply with the directions of the Court of law.

13. In view of the stand taken by learned counsel for the parties, this petition is disposed of in the following manner:

14. Respondents are directed to proceed and complete the election process by 29th July, 2011, as directed by the Hon'ble Supreme Court and

while doing so respondents to comply with the orders passed by this Court in OWP No. 199/2011 and ensure that no bogus vote is cast while

conducting elections to Central Council of Indian Medicine and it be ensured that non-existent voters are deleted from the list of published voter

list.

15. Liberty is reserved to the petitioner to re-agitate the matter in case he complains of breach of any of the directions at the hands of respondents.