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**(2006) 05 DEL CK 0084**

**In the Delhi High Court**

**Case No : Writ Petition (C) 2593 of 2006**

Dr. Ramjee Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 24-05-2006**

**Acts Referred:**

Homoeopathy Central Council (Election) Rules, 1975 — Rule 4  
Homoeopathy Central Council Act, 1973 — Section 3(1), 4, 7(1)  
Homoeopathy Central Council Regulations — Regulation 36, 37

**Citation : (2006) 130 DLT 485 : (2006) 90 DRJ 41**

**Hon'ble Judges : Vikramajit Sen, J**

**Bench : Single Bench**

**Advocate : Arun Kathpalia, for the Appellant; Monika Garg, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Vikramajit Sen, J.—Rule.

2. Learned Counsel for the Respondent presses for the disposal of the Petition since interim Orders are in force.

3. The Petitioner had previously filed Civil Writ Petition No. 1186/2006 challenging the appointment of an Administrator to the Central Council of Homeopathy (CCH) which was disposed of by the following Order dated 7.2.2006:

There is no need to reflect upon the finding or efficacy of the Report of the Enquiry Commission, which admittedly has not been signed by all the Members. After hearing arguments in some detail, learned Counsel for the Respondent on instructions from Dr. Alok Kumar, Deputy Advisor, Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy(Ayush), states that elections shall be conducted in accordance with Section 7(1) of the Homeopathy Central Council Act, 1973 within a period of four weeks from today. He further states that the impugned Order dated 18-1-2006 shall not be acted upon in these circumstances. Prima facie there appears to be no provision in the statute for the

appointment of an Administrator. This is manifestly clear from the Report of the Rajya Sabha pertaining to the proposed Homeopathy Central Council (Amendment) Bill, 2005. The Respondents had set up a case for the amendment to the Statute empowering the appointment of an Administrator. The Committee expressed the opinion that such a provision would not be democratic and in the interest of the Council. Inasmuch as the Administrator has been appointed, the impugned Order does not have the sanction of law. It is accordingly quashed.

The Writ Petition stands disposed of in these terms.

4. The Respondents have taken steps for holding Elections to the Office-Bearers of the Central Council. However, at that stage the Petitioner's name was not reflected in the List prepared by the Returning Officer. It is this action which has prompted the filing of the present Writ Petition. Pleadings have been completed. Pursuant to interim Orders passed on March 02, 2006 Elections to the post of President and Vice-President have also been conducted u/s 7(1) of the Homeopathy Central Council Act, 1973 (the said Act, for brevity).

5. The deletion of the Petitioner's name has been justified by learned Counsel for the Respondent on the ground that he had ceased to be an elected Member of the Council with effect from 4.12.1997 consequent upon his having been nominated u/s 3(1)(c) of the said Act. The Petitioner strongly refutes that this nomination was carried out at his instance or with his consent. It is his say that he did not resign from his status as an elected Member u/s 3(1)(a) of the Act. The Respondents are unable to produce the letter of resignation, even similar to the one demanded for in the case of Dr. J.K.Patel. Learned Counsel for the Petitioner has stressed on the statement made by Dr. Alok Kumar, Deputy Advisor in his letter dated 1.8.2004 to the effect that the tenure of Dr. J.K. Patel in the CCH would continue till a successor is duly elected by the State of Gujarat as per provisions of Section 7(1) of the said Act. Obviously, if this was the understanding of the Deputy Advisor, there would have been no necessity for the Petitioner to seek a change in his status.

6. Learned Counsel for the Respondent has produced for the Court's perusal a Register in which the Petitioner has signed against his name under a List of Members, prepared as per Clause 3(1)(c) of the Act. Learned Counsel for the Petitioner does not admit the correctness of this Register. It is also his submission that too much is being read into the signature assuming it to be correct, since it cannot be taken as an admission of the alleged nomination. It does not amount to an admission that the Petitioner had consented or acquiesced to his nomination in 1997. Instead, reliance has been placed on Regulation 36 of CCH which specifies that a member desiring to resign his seat on the Council shall send his resignation in writing to the President and his resignation shall take effect from the date specified by him in this behalf or from the date of receipt of his letter by the President whichever is later, after confirmation from the member concerned. It is evident that the correspondence pertaining to Dr. Patel was exchanged, keeping this Regulation in perspective.

7. Learned Counsel for the Respondent has also contended that the nomination of the Petitioner in 1997 was occasioned because of the Petitioner's aspirations to contest elections to the post of Vice-President of the Council.

8. So far as nomination issue is concerned I find merit in the submission of learned Counsel for the Petitioner that Regulation 37 ought to have been meticulously followed. Since the Petitioner was already an elected Member, he could not have continued simultaneously as a nominated Member and, Therefore, it was essential for him to have submitted his resignation. Learned Counsel for the Respondent is, Therefore, not correct in contending that too much is being read into the issue of resignation. If authority is required for the proposition that these Regulations cannot be ignored it can be found in the celebrated decision of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, of which reads as follows:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

In similar vein, in Babu Verghese and Others Vs. Bar Council of Kerala and Others, , the Apex Court was called upon to consider a case under the Advocates Act. While doing so it applied the same principles earlier enunciated in Taylor v. Taylor (1875) 1 Ch D 426 and in AIR 1936 253 (Privy Council) The Apex Court observed as follows:

It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor.

The expediency of this legal principle is clearly evident in the facts of the present case. Had the Respondents asked the Petitioner to submit his resignation in writing, as in the instance of Dr. Patel, the present controversy would not have arisen at all. Rules and Regulations are not empty formalities, but serve a vital

purpose if they are followed.

9. I cannot ignore the fact that although elections had become due so far as the State of Bihar is concerned in 1995, the other two Representatives, who were elected Along with the Petitioner, continue as Members of the Central Council. The names of Dr. Uma Shankar Choudhary and Dr. Mridul Kumar Sahni are featured in the List prepared by the Returning Officer. The name of all the three Representatives, that is, including the Petitioner, are mentioned in the List prepared by the Central Council. This is also the position obtaining so far as the Representatives from the State of Maharashtra are concerned. Since the Petitioner is continuing as a Member since 1990 along with two other Members, there appears to be no valid reason for him to have been privy to his nomination to the Central Council instead of continuing as an elected Member until fresh elections were conducted. Learned Counsel for the Respondent has also relied on Rule 4 of the Homeopathy Central Council (Election) Rules, 1975 to contend that until a fresh List is received from the State concerned, the names of all the three Representatives cannot be scored out. If this applies to the two other Representatives from the State of Bihar, it would apply in identical manner to the Petitioner.

10. In these circumstances it is made clear that there is no justification for removing the name of the Petitioner from the Electoral or Voters' List. If he had not wished to accept nomination, as has been held above, he would nevertheless remained entitled as on date to seek elections to the post of President, as per the Act and Rules.

11. The Elections have already been held. Learned Counsel for the Petitioner rightly submits that even if the Petitioner were to be declared elected to the post of President, his continuation would depend on his re-election as one of the Representatives from the State of Bihar. The responsibility to conduct Elections does not rest on in any of these Representatives but on the Respondents. It would commence with the appointment of a Returning Officer by the Central Government, which appointment has taken place four times previously. This question is dealt with by Section 4 of the Act read with Rules. The Court is not called upon to return a Finding on this issue. The fact remains that as and when Elections are held in the State of Bihar, if the Petitioner were to fail in getting re-elected as one of the Representatives, he would automatically cease to be a Member of the Central Council and would thereby be disqualified to hold the post of President. Seen in all its complexities, Therefore, the Petitioner cannot be blamed for the delay in completing the Elections in Bihar since he may not directly derive the benefit from continued delay. It is expected that the Central Government and the State Governments shall act in consort and hold elections in the State of Bihar as well as in the State of Maharashtra as early as possible.

12. The Writ Petition is allowed. The consequences would be that the Respondents shall declare the result of the recently conducted Elections to the post of President and Vice-President within ten days from today.

13. Parties to bear their respective costs.