

(2018) 03 DEL CK 0140

In the Delhi High Court

Case No : W.P.(C) 2296 Of 2018 & C.M. No.9533 Of 2018

Dr Vanitha R

APPELLANT

Vs

Ministry Of Ayush & Anr

RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Indian Medicine Central Council Act, 1970 — Section 7(1), 7(3), 2, 3, 7, 36, 3(1), 3(2), 3(3)

Citation : (2018) 03 DEL CK 0140

Hon'ble Judges : REKHA PALLI

Bench : Single Bench

Advocate : Mr.V.P. Singh, Mr.Vinay Bhasin, Mr.Arjun Pant, Mr.Sandeep Sethi, Mr.Kirtiman Singh, Mr.Waize Ali Noor, Mr.Prateek Dhanda, Mr.Saeed Qadri, Ms.Tasneem Ahmadi, Ms.Mahima Rathi, Mr.T.K. Joseph

Final Decision : Dismissed

Judgement

1.Vide the present petition under Articles 226 and 227 of the Constitution of India, the Petitioner, a practitioner of Ayurvedic Medicine, is seeking

quashing of letter dated 08.03.2018 issued by Respondent No.1 (hereinafter referred to as the "Impugned Letter"), whereby it has been held that

her tenure as President of Respondent No. 2/Central Council of Indian Medicine (hereinafter referred to as "CCIM") had expired on 04.07.2017

and, therefore, she was required to immediately vacate the said office. The Petitioner also challenges the other letters issued and actions taken on

09.03.2018, as a consequence of the Impugned Letter, particularly the notice dated 09.03.2018 issued by Respondent No.2, whereby fresh elections to

the post of President have been scheduled for 23.03.2018.

2.The facts, as relevant for adjudicating the present petition, are that one Dr.

Ved Prakash Tyagi had been elected as the President of Respondent

No. 2 and remained its President till 27.08.2016. Since Dr. V.P. Tyagi was defeated in the CCIM elections in 2016 and had, therefore, ceased to be a

member of the Respondent No. 2, the Supreme Court, vide its order dated 22.08.2016, directed him to discontinue as the President of Respondent No.

2.

3. After Dr. V.P. Tyagi ceased to be the President of Respondent No. 2, one Dr. V. Arunachalam, being the Vice President, was handed over charge

of the post of President in accordance with Regulation 5(2) of the Central Council of Indian Medicine (General) Regulations, 1976 (hereinafter

referred to as the "1976 Regulations"). On 27.02.2017, the Executive Committee of the Respondent No.2 resolved to hold fresh elections for

the post of President on 14.03.2017. Accordingly, Respondent No.2 issued a notice under Section 7(1) of the Indian Medicine Central Council Act,

1970 (hereinafter referred to as "the Act"), calling for elections to the post of the President of Respondent No.2. In the elections held

on 14.03.2017, the Petitioner was elected as the President of the Respondent No.2.

4. The Petitioner claims that, ever since her appointment as President, she has been taking steps to improve the working of Respondent No.2,

including digitization of all college attendance and records, leaving no room for manipulation of inspection records and corruption, due to which she has

been facing opposition from various interested factions. It is contended that one Mr. Vd. Raghunandan Sharma had raised objections to the Petitioner's

election under Sections 7(1) and 7(3) of the Act and in response thereto, the Respondent No.1 had, vide its letter dated 24.08.2017, while rejecting the

representation, specifically stated that the elections to the posts of President and Vice-President are conducted under Section 7(1) of the Act, whereas

Section 7(3) of the Act, dealing with filling up of casual vacancies, was applicable only to the other members of the Respondent No.2.

5. The Petitioner's further claim is that, while she had been working most diligently as the President of Respondent No.2, the Respondent No.1 issued

the Impugned Letter informing her that Section 7(3) of the Act was applicable to the election of the President and, accordingly, her term was only

valid till 04.07.2017, i.e., for the remaining period of the previous President's

term. The Impugned Letter also directed the Petitioner to vacate the post of President with immediate effect and further directed the Secretary of Respondent No.2 to conduct fresh elections for the said post.

6. Immediately, upon receiving the Impugned Letter, the Petitioner approached Respondent No.1 with a request to withdraw the same, but the

Respondent No.1, instead of taking steps to redress the Petitioner's grievances, directed the Secretary of Respondent No.2 to conduct the elections

for the post of President on or before 25.03.2018. On the same day, i.e., 09.03.2018, office memorandums were issued by Respondent No.1 to the

DG CCRS, DG CCRUM and DG CCRH, asking them to ensure that the Petitioner vacates her office by 5:00 p.m. on that day itself. The Petitioner

has also placed reliance on the letter dated 10.03.2018 by the Secretary of Respondent No.2, to contend that he was forced to sign and issue a notice

for election after 8:00 pm on 09.03.2018, and that too from the office of Respondent No.1 itself.

7. In these circumstances, the Petitioner has filed the present petition, seeking quashing of the Impugned Letter and all the consequential actions of

Respondent No.1, including the election notice dated 09.03.2018. The Petitioner has also filed an interim application for staying the Impugned Letter

and all the actions taken by the Respondent No.1 pursuant thereto, including the steps taken towards conducting the elections scheduled on

25.03.2018.

8. Mr. V.P. Singh, learned Senior Counsel for the Petitioner, while challenging the action of Respondent No.1, contends that the action of the

Respondents is wholly mala fide and in contravention of the provisions of the Act. He draws my attention to Sections 2, 3, 7 & 36 of the Act and also

to paragraphs 2, 4 & 5 of the 1976 Regulations to contend that the action of the Respondent No. 1 in issuing the Impugned Letter and taking further

consequential steps has been challenged on three basic grounds.

9. The first and foremost plea raised by the learned Senior Counsel for the Petitioner is that there is a basic fallacy in the Impugned Letter insofar as it

proceeds on the basis that the Petitioner had been elected against a casual vacancy for the post of President under section 7(3) of the Act. He

contends that, as per the scheme of the Act, the elections to the post of President can take place only against a regular vacancy and the Act does not

envisage filling up of a casual vacancy of the post of President by way of election. He further submits that, in cases where there is a casual vacancy

of a President, the same is filled up only as per Regulation 5(2) of the 1976 Regulations, which are framed under Section 36 of the Act. Regulation

5(2) provides that, in case there is a casual vacancy in the post of President, the Vice-Presidents of each of the three branches - Ayurvedic, Siddha

and Unani - are to hold the said post by rotation.

10.He, thus, contends that once the Petitioner was elected to the post of the President in accordance with Section 7(1) of the Act, her tenure was

fixed for a period of five years and the same could not be cut short by resorting to Section 7(3) of the Act, which according to him is not at all

applicable to the post of President. He places reliance on the decision of the Supreme Court in the case of Nazir Ahmad v. King-Emperor [1936 law

suit 24 (PC)] to contend that, where power is given to do a certain thing in a certain way, the thing must be done in that way alone. Therefore, he

urges that the Petitioner's term as a President was governed only by Section 7(1) of the Act and the same could not be curtailed by resorting to

Section 7(3) of the Act.

11.The second submission raised by the learned Senior Counsel for the Petitioner is that, once there is a specific provision in the Act that the election

of a President is for a period of five years or till his successor assumes the said office, which clearly shows that a vacancy in the presidential post in

only a regular vacancy, the Respondents cannot ignore the said statutory provisions and try to label the vacancy of the President, against which the

Petitioner was elected, as a casual vacancy. He places reliance on the decision of the Supreme Court in Jagan Nath v. Jaswant Singh [AIR 1954 SC

2010] to contend that statutory requirements of election law must be strictly observed. Mr. Singh also relies on the decision of the Supreme Court in

Kamong Dolo Vs. Atum Welly [(2017) 7 SCC 512], to contend that an election contest is not an action at law or a suit in equity but is purely a

statutory proceeding unknown to common law.

12.Mr. Singh also places reliance on the Respondent No.1's specific stand, in their counter affidavit filed in W.P.(C) No.6867/2013, to the effect that

the Act as well as the 1976 Regulations do not provide for a re-election to the post of President or Vice-President and that Section 7(3) of the Act,

dealing with the casual vacancies, applies only to the re-election of an ordinary member. He, therefore, contends that the Respondent No.1 is estopped from taking a contrary stand in the present petition.

13.Mr. Singh finally contends that the action of the Respondents was not at all bona fide as they have in an unusual hush-hush manner issued the

Impugned Letter, which not only retrospectively curtails the Petitioner's tenure as president but also asks to immediately vacate the said office without

even following the basic principles of natural justice. By drawing attention to the letter dated 10.03.2010, written by the Secretary of the Respondent

No.2, Mr. Singh contends that the Secretary was compelled to issue the election notice from the office of the Respondent No.1 itself without even

putting the proposal to the Executive Committee of Respondent No.2, as required under the 1976 Regulations.

14.On the other hand, Mr. Sandeep Sethi, the learned ASG appearing on advance notice, while opposing the present Petition, submits at the outset

that, in view of the admitted position that the election process has already commenced, this Court ought not to interfere with the election process at

this stage. He places reliance on the decision of the Supreme Court in the case of Shaji K. Joseph v. V. Viswanath and Ors. [(2016) 4 SCC 429], to

contend that it is a settled legal position, that the Courts should not interfere once the election process has already commenced.

15.Without prejudice to his preliminary submission, that the present petition is not maintainable at this stage, the learned ASG contends that the

vacancy against which the Petitioner was elected as a President, was a casual vacancy, which had arisen after Dr. V.P. Tyagi, the erstwhile

President, had vacated his post pursuant to the order dated 22.08.2016 passed by the Supreme Court in SLP No. (C) 19476-77/2016. He submits that

after Dr. V.P. Tyagi had vacated the said post, initially the Vice President of Siddha Branch had been asked to take charge of the same in terms of

Regulation 5(2) of the 1976 Regulations. However, pursuant to a decision taken by the Executive Committee of Respondent No.2 in its meeting held

on 27.02.2017, elections for the post of President were held on 14.03.2017, in which the Petitioner was elected as the President of Respondent No.2.

He submits that, since the said elections were only against a casual vacancy of a President, the Petitioner could hold the post of president only for the

remainder term of the erstwhile President. By placing reliance on Section 3 of the Act, Mr. Sethi submits that the President is admittedly a member of the Central Council. Therefore, he submits, it cannot be contended that Section 7(3), which deals with the filling up of a casual vacancy of a member of the Central Council, would not be applicable to the post of President. He, thus, contends that the casual vacancy of a President has to be filled up in the same manner as that of any other member of the Central Council.

16. Mr. Sethi further submits that the rationale for filling casual vacancies of all posts only for the remainder term permeates through all the Election statutes and contends that, in case it were to be held that any casual member elected against a casual vacancy of a President is entitled to a tenure of 5 years, the same would lead to absurd results and would be completely abhorrent to the very governance of the Central Council, which itself is reconstituted by elections/nomination after every 5 years. In support of his plea, he has placed reliance on an unreported decision of this Court in the case of Rashiddullah Khan v. Ministry of Health and Family Welfare and Ors. [WP(C) No. 9082/2011], as also the decision of the High Court of Calcutta in Pemba Tshering v. The State of West Bengal and Ors. [WP No. 2349 (W)/2008] and a decision of the High Court of Punjab and Haryana in Sukhdip Singh v. The State of Punjab and Ors. [AIR 2009 P&H 22].

17. The learned ASG also contends that, in view of the decision of the Supreme Court in K.B. Nagar M.D. (Ayu.) v. Union of India [WP(C) No. 33/2009], it was incumbent upon the Central Government to ensure that timely and fair elections for all members, including President and Vice President of the Respondent No. 2, are held. He submits that the issuance of the Impugned Letter was a part of the duties which the Central Government was expected to discharge. He submits that in view of the decision of the Supreme Court in the case of K.B. Nagar M.D. (supra), it was incumbent upon Respondent No. 1 to ensure that no elected member of the Respondent No. 2, including the President or Vice-President, shall hold office beyond three months from the expiry of their respective terms. He, therefore, submits that the decision of the Respondent No. 1 to hold fresh elections, wherein the Petitioner would also be entitled to participate, cannot be faulted.

18. While rebutting the plea raised by the learned senior counsel for the

Petitioner, that the Respondent No.1 is estopped from contending that the vacancy against which the Petitioner was elected was a casual vacancy in view of its specific stand in its counter affidavit in WP(C) 6867/2013, the learned ASG submits that there can be no estoppel against the law and a state or statutory authority is not bound by its previous erroneous understanding and no statutory authority can be asked to act in contravention of law. He submits that, once the provisions of the Act make it clear that the Petitioner was elected only against a casual vacancy of the President, her tenure as a President could not extend beyond the remainder of the erstwhile President's term and the statement made by the Respondent No. 1 in the aforesaid counter-affidavit cannot be read by ignoring the specific provisions of the Act. He places reliance on the decision of the Supreme Court in *State of Manipur and Ors v. Chandam Manihar Singh* [(1999) 7 SCC 503] in support of his aforesaid contention.

19. Having heard the learned Senior Counsel for the parties at great length at the admission stage itself, I find that, besides the question of the maintainability of the petition at this stage, when the election process has already commenced, the only short issue arising in the facts of the present case is whether the Petitioner was appointed against a casual vacancy or a regular vacancy of the President of the Respondent No.2. The admitted position is that, if the election was against a casual vacancy, it had to be only for the remainder of the term of the earlier occupant's tenure as President. It has been vehemently urged by both the learned Senior Counsels for the Petitioner that the vacancy of President, against which the Petitioner was elected on 14.03.2017, was a regular vacancy, thereby giving her a right to have a tenure of five full years. On the contrary, it is the specific stand of the Respondents that the said vacancy was only a casual vacancy and, therefore, the Petitioner could only hold the said post for the remainder of Dr. V.P. Tyagi's term, i.e, till 04.07.2017.

20. Before I deal with the rival contentions of the parties, it would be useful to refer to some of the relevant provisions of the Act which are being reproduced hereinbelow:-

2. Definitions

(1) In this Act, unless the context otherwise requires, xxx xxx xxx

(c) "Central Council" means the Central Council of Indian Medicine constituted under section 3;

(i) "regulation" means a regulation made under section 36;

3. Constitution of Central Council

(1) The Central Government shall, by notification in the Official Gazette constitute for the purposes of this Act a Central Council consisting of the

following members, namely:-

(a) such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First

Schedule for each of the Ayurveda, Siddha and Unani systems of medicine from each State in which a State Register of Indian Medicine is

maintained, to be elected from amongst themselves by persons enrolled on that Register as practitioners of Ayurveda, Siddha or Unani, as the case

may be;

(b) one member for each of the Ayurveda, Siddha and Unani systems of medicine from each University to be elected from amongst themselves by the

members of the Faculty or Department (by whatever name called) of the respective system of medicine of that University;

(c) such number of members, not exceeding thirty per cent of the total number of members elected under clauses (a) and (b), as may be nominated by

the Central Government, from amongst persons having special knowledge or practical experience in respect of Indian medicine:

Provided that until members are elected under clause (a) or clause (b) in accordance with the provisions of this Act and the rules made thereunder,

the Central Government shall nominate such number of members, being persons qualified to be chosen as such under the said clause (a) or clause (b),

as the case may be, as that Government thinks fit; and references to elected members in this Act shall be construed as including references to

members so nominated.

(2) The President of the Central Council shall be elected by the members of the Central Council from amongst themselves in such manner as may be

prescribed.

(3) There shall be a Vice-President for each of the Ayurveda, Siddha and Unani systems of medicine who shall be elected from amongst themselves

by members representing that system of medicine, elected under clause

(a) or clause (b) of sub-section (1) or nominated under clause (c) of that sub-section.

7. Term of office of President, Vice-President and members 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.

(2) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central

Council, from three consecutive ordinary meetings of the Central Council or, in the case of a member elected under clause (a) of sub-section (1) of

Section 3, if he ceases to be enrolled on the concerned State Register of Indian Medicine, or in the case of a member elected under clause (b) of that

sub-section, if he ceases to be a member of the faculty or Department (by whatever name called) of Indian Medicine of the University concerned.

(3) A casual vacancy in the Central Council shall be filled by election or nomination, as the case may be, and the person elected or nominated to fill

the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

36. Power to make regulations-

[(1) The Central Council, may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations

generally to carry out the purposes of this Act, and, without prejudice to the generally of this power, such regulations may provide for-

(a) the manner of election of the President and the Vice-Presidents of the Central Council;â??

21. At this stage, it may also be appropriate to refer to Regulations 2(e), 4 and 5(2) of the 1976 Regulations which read as under:-

â??2. Definitions:

In these regulations, unless the context otherwise requires:-

(e) â??Presidentâ?? means the President of the Central Council elected under sub-section (2) of section 3 of the Act.

4. President

The President shall exercise such powers and perform duties as may be assigned to him by or under the provisions of the Act and the rules and regulations made thereunder.

5(1)â?!

(2) If the office of the President is vacant or if the President for any reason is unable to exercise the powers or discharge the functions of his office,

the Vice-Presidents, in rotation, for one year at a time shall act in his place and shall exercise the powers and discharge the functions of the

President.â??

22. In my considered opinion, a cogent reading of the different sub-sections of Section 3 of the Act makes it abundantly clear that, under the scheme of

the Act, the constitution of the Respondent No.2/CCIM is prescribed under three categories of memberships. The three categories are, namely (i) a

practitioner (of Ayurveda, Siddha or Unani/Sowa-Rigpa) elected from a State (ii) an elected member from amongst the members of the faculty of a

University (iii) a member, having special knowledge or practical experience in respect of Indian Medicine, nominated by the Central Government.

Section 3(2) of the Act prescribes that the President of the Respondent No.2 shall be elected from amongst the members of the Respondent No.2.

Furthermore, as per Section 3(3) of the Act, the Vice-President from each system of Medicine is elected from amongst the Members of the

Respondent No.2 under Section 3(1).

23. I may now move to Section 7 of the Act, which in my view, lies at the centre of the controversy between the parties. Having carefully considered

the provisions of Section 7(1) viz-a-viz that of Section 7(3), I find that even though the reference made to a casual vacancy in Section 7(3) is only to a

member of the Central Council, without there being any specific reference to the post of a President (which finds mention in Section 7(1) of the Act

alone), I cannot lose sight of the fundamental fact that a President is also a member of the Central Council, which is apparent from a bare reading of

Section 3 of the Act. Once the term â??Member? is found to include the post of President, there is no reason as to why Section 7(3),

which deals with elections to fill casual vacancies of members, would not apply to the post of President, who is equally a member of the Council.

24. There is yet another reason why, in my view, the election of the Petitioner

has to be treated as against a casual vacancy, the term whereof had to come to an end with the remainder term of Dr. V.P. Tyagi. Since the tenure of the members of the Central Council itself is for five years, the newly elected/nominated members of the Council would not only have the right but also the responsibility to elect their President and, therefore, there is absolutely no merit in the plea of the learned senior counsel for the Petitioner that every person elected as a "President", irrespective of the nature of the vacancy, would be entitled to continue for a period of five years. In my considered opinion, such an interpretation, as is sought to be contended by the learned senior counsel for the Petitioner, would lead to a wholly absurd situation and cannot be permitted. Thus, in my considered view, even though Section 7(3) of the Act refers to filling up of a casual vacancy of a member and does not specifically refer to the President, the provisions of Section 7(3) would be equally applicable to the President, who is also very much a member of the Central Council. In view of my aforesaid conclusion, I find that the decisions relied upon by the learned senior counsel for the Petitioner are not applicable to the facts of the present case.

25. In my view, the reliance placed on Regulation 5(2) of the 1976 Regulations, by the learned senior counsel for the Petitioner, is wholly misplaced, since the said regulation is meant to cater to a stop gap situation, where a Vice-President can be asked to discharge the functions of the President. A bare perusal of Regulation 5(2) shows that it is applicable in situations where the post of the President is vacant or, for any reason, the elected President is unable to exercise the power or discharge the functions of his office. Regulation 5(2) does not at all deal with either the election of the President or of his term.

26. The submission of the learned senior counsel for the Petitioner, that the Respondents are estopped from taking a view contrary to their stand in their counter affidavit filed in WP (C) No. 6867/2013, wherein the Respondent No.1 had categorically stated that Section 7(3) of the Act does not apply to the post of a President, needs to be rejected as in view of the settled legal position that there can be no estoppel against the law. Reference may be made to paragraph 34 of the decision of the Supreme Court in Rajasthan State Industrial Development and Investment Corporation [(2013) 5 SCC 427], which reads as under:-

34. Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law.

13. The statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do.

[Ed.: Halsbury's Laws of England, 3rd Edn., Vol. 15, pp. 226-27, para 427.]

Even an offer or concession made by the public authority can always be withdrawn in public interest. [Vide State of Madras v. K.M. Rajagopalan

[AIR 1955SC 817], Badri Prasad v. Nagarmal [AIR 1959SC 559] and H.S. Rikhy v. New Delhi Municipal Committee [AIR 1962 SC 554] (AIR p.

562, para 13).] In Surajmull Nagoremull v. Triton Insurance Co. Ltd. [(1924-25) 52 IA 126 : AIR 1925 PC 83] , it was held as under: (IA pp. 128-29)

No court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a

thing from which a court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset.

A similar view was reiterated by the Privy Council in Shiba Prasad Singh v. Srish Chandra Nandi [(1948-49) 76 IA 244

: (1949) 62 LW 786 : AIR 1949 PC 297] .

27. However, before I conclude, I must add that there is merit in the submission of the learned senior counsels for the Petitioner that the action of the

Respondent No.1, in issuing the Impugned Letter on 08.03.2018 and hurriedly announcing the commencement of the election process on 09.03.2018

itself, and that too at around 8:00 p.m., was most uncalled for and not expected of a statutory authority. However, in view of my conclusion that the

Petitioner's term as President had already expired on 04.07.2017 and that the Respondents, particularly Respondent No.1, were duty bound to ensure

that timely and fair elections are held, the action of the Respondents directing fresh elections, to the post of President as also the post of two Vice

Presidents, cannot be faulted. Nonetheless, in light of the facts and circumstances of the present case, I find it appropriate to direct the Respondents

to allow the Petitioner, should she so desire, to contest the elections for the post

of President scheduled for 23.03.2018.

28.In view of my aforesaid conclusions, whereby I have found no merit in the claim of the Petitioner, I have refrained from delving into the preliminary

objection raised by the learned Additional Solicitor General that, since the election process has already commenced, the writ petition is not

maintainable at this stage.

29.The writ petition, being devoid of merit, is dismissed along with the pending application, with no order as to costs.

C.M. No.10250/2018

30.In view of the fact that the writ petition is being dismissed as meritless, the present application seeking intervention is dismissed as infructuous.