
(2016) 07 UK CK 0015
In the Uttarakhand High Court
Case No : Special Appeal No. 644 of 2015

Dr. Vinod Kumar Chauhan	Vs	APPELLANT
Dr. Ved Prakash Tyagi		RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Uttarakhand High Court Rules — Rule 5

Citation : (2016) AIR(Uttaranchal) 117

Hon'ble Judges : Sudhanshu Dhulia and U.C. Dhyani, JJ.

Bench : Division Bench

Advocate : Mr. Huzefa Ahmadi and Mr. Hiren P. Rawal, Senior Advocates assisted by Mr. Pradeep Kumar Chauhan and Mr. Bhupesh Kandpal, Advocates, for the Appellants in SPA No. 644 of 2015 and SPA No. 79 of 2016; Mrs. Maninder Acharya, Senior Advocate assisted by Mr. P

Final Decision : Disposed Off

Judgement

Sudhanshu Dhulia, J.(Oral)—All these Special Appeals before this Court are against the order of a learned Single Judge dated 08.12.2015 passed in Writ Petition No. 1754 of 2013 (M/S) titled as Dr. Ved Prakash Tyagi v. Union of India & others, whereby the writ petition was allowed. The appellants were either parties in the writ petition, and the ones who were not, claim in any case to be aggrieved by the order and hence have appealed against it, seeking first a leave to appeal from this Court.

2. The question involved in the writ petition was - whether the cancellation of registration of Dr. Ved Prakash Tyagi with the Board of Indian Medicine, Uttarakhand was legal.

3. The writ petition was allowed holding that the petitioner (Dr. Ved Prakash Tyagi) is a validly registered member with the Board of Indian Medicine, Uttarakhand and his cancellation was illegal, and the learned Single Judge not only has quashed the orders under challenge but has also quashed "all consequential orders", issued pursuant to the impugned orders (dated

06.05.2013, 07.05.2013, 09.05.2013 and 19.07.2013 by the authorities in Uttarakhand and order dated 27.07.2013 passed by Government of India). Hence what these consequential orders would be and to what extent they can be quashed, or deemed to have been quashed, is also an aspect which to our mind needs to be clarified, apart from examining the validity of the impugned order itself.

4. There is a writ petition as well, (no. 629 of 2016 M/S), before us. This petition has been filed by Dr. Ved Prakash Tyagi himself seeking a writ of mandamus, which is as follows:

"Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.1 to forthwith issue orders on the representations of the petitioner by restraining the respondent no.2 to 4 by causing any interference, hindrance in functioning of the petitioner as President of Central Council for Indian Medicine as well as Member of Central Council for Indian Medicine and also not accept any of request or recommendations of the respondent no.3 and 4 which is contrary to the decision of the Hon"ble High Court"s order."

5. The above writ petition is filed as according to the petitioner (Dr. Ved Prakash Tyagi) in spite of the order of the learned Single Judge in his writ petition (of which we have referred above), he was not being allowed to function as the President of the Central Council of Indian Medicine (CCIM). The writ petition was initially filed as Misc. Single petition, but by orders of the Hon"ble Chief Justice, this petition has also been nominated before this Court, as are the Special Appeals referred above.

6. This case has a rather chequered history, and the facts of the case, though tediously complicated, must be stated first.

7. Dr. Ved Prakash Tyagi, who, is respondent no.1 in all the Special Appeals did his Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.) from Rajasthan. After completing his studies in Ayurvedic Medicines from Rajasthan he got himself registered as an Ayurvedic Doctor with the Board of Indian Medicine, Rajasthan and later joined Government services in Rajasthan in the year 1985. In February, 2009, he resigned from Government service and decided to settle down in Uttarakhand, which is his home State. He then applied before the Board of Indian Medicine, Rajasthan for a "No Objection Certificate" (NOC), to enable him to take membership with the Board of Indian Medicine, Uttarakhand. The Board of Indian Medicine, Rajasthan granted its NOC to Dr. Tyagi on 25.08.2009 which was effective for a period of one year. Later, vide letter dated 11.10.2010, the validity period of NOC dated 25.08.2009 was extended for another one year.

8. On 10.01.2011, Dr. Ved Prakash Tyagi moved an application before the Board of Indian Medicine, Uttarakhand for grant of provisional registration, which was granted the same day and was valid till 10.03.2016. In the certificate, however, the name of Dr. Tyagi and his village were not correctly stated and for corrections

he moved an application before the Board. These corrections were done, but apart from the said corrections, the validity of registration certificate of Dr. Tyagi was changed as it was predated to 11.10.2011, from 10.03.2016.

9. Dr. Tyagi did not notice this "anomaly" immediately, or so he claims.

10. After registration with the Board of Indian Medicine, Uttarakhand, Dr. Tyagi contested elections to the Central Council and was elected as a member of the Central Council of Indian Medicine (CCIM) from Uttarakhand State on 27.08.2011, and later as President of the CCIM on 05.07.2012 for a period of 5 years.

11. We will break the narrative at this stage and deal with certain provisions of the State Act known as "United Provinces Indian Medicine Act, 1939 (presently applicable in the State of Uttarakhand) and the Central Act known as "the Indian Medicine Central Council Act, 1970", as some of the provisions of these two Acts would be relevant, particularly the ones which deal with the registration and election to the CCIM and the President CCIM, etc., as what remains the sole concern of each of the private appellants and respondents, is not their right to practise Indian medicines, but their right to contest election for CCIM or at least their concern regarding the affairs of CCIM.

12. The Central Council of India Medicine (CCIM) is an extremely important body, which is vested with vital powers in relation to recognition as well as de-recognition of colleges, grant of new courses in Indian medicines in these colleges, etc. It appoints "visitors" and "inspectors", to inspect such colleges and the report of these inspectors, appointed by the Central Council and the recommendations of the Central Council is vital in recognition or de-recognition of these colleges. The series of tangled litigation's which have come up before this Court as well as the ones before other High Courts, some of which find mention in this judgment, are nothing but a struggle for the control of the Central Council of Indian Medicine, at the hands of these individuals.

13. The State Act is a pre-constitutional provincial legislation, which was enacted "to provide for the development of the Indian systems of medicine and to regulate its practise in the United Provinces"(*). As per Section 3 of the State Act, the State Government had to establish a Board, which is called as "the State Board of Indian Medicine in order to carry out the provisions of the State Act. The constitution of the Board has been given under Section 5, which is a body consisting of both nominated as well as elected members of the State, who are registered "Vaidys" and "Hakims" in the State. Section 25 provides that the Registrar, who is an official of the State Government, shall maintain a register of such "Vaidyas" and "Hakims", in a prescribed form, who are practising in the State. Section 50 prescribes that the Registrar shall prepare and keep a list called a "List of persons in practise belonging to the indigenous system", and the provision of sub-section (2) of Section 50 empowers the Registrar to enter the names of persons, who are in regular practise of Indian medicines in the State.

The Board has got powers to enter or to cancel the name of the persons in the register maintained by the State and, against an order of the Board, there is a remedy provided by way of an appeal before the State Government. There is also an overall control of the State Government on the Board under Section 47 of the Act.

(*) As the undivided State of Uttar Pradesh was known at that time.

14. In the year 1970, the Indian Medicine Central Council Act, 1970 was enacted by our Parliament. The statement of objects and reasons of the Central Act demonstrate that it was done primarily to lay down minimum standard for admission, duration of courses of training, details of curricula and syllabic in the Indian system of medicine and Homoeopathy. It was recognised that different States have their own State Boards or Councils which were constituted either by legislation or by executive orders for the purposes of registration of practitioners in various systems of Indian systems and Homoeopathy, yet there was no Central Legislation for the regulation of practise, or for setting minimum standards of training, and conduct of examination in these systems of medicines. Therefore, the necessity for establishment of a Central Council of Indian Medicine. The main function of this Council was to evolve a uniform standard of education and a registration of practicing of Indian systems of medicines and Homeopathy.

15. Section 2(1)(j) of the Central Act reads as follows:

"Section 2. Definitions. ? (1) In this Act, unless the context otherwise requires, -

(a)

(b)

(j) "State Register of Indian Medicine" means a register or registers maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian Medicine;"

16. The constitution of elected members of the Central Council is given in sub-section (1)(a) of Section 3. It was mandated that the Central Government shall by notification in the Official Gazette constitute a Central Council under Section 3 of the Central Act.

"Section 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 [Unani and Sowa-Rigpal] 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 [Unani or Sowa-Rigpal], as the case may be;

(b) One member for each of the Ayurveda, Siddha [Unani and Sowa-Rigpal] 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 [Unani and Sowa-Rigpal] system 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."

17. The constitution of Central Council is from three sources. Firstly, from the registered practitioners of Indian medicines from each State, who send their representative to the Central Council, secondly, those elected from the faculty of a University which imparts education in Ayurveda, Siddha [Unani and Sowa-Rigpal] systems of medicine and, thirdly, those who are nominated by the Central Government from amongst the persons having special knowledge or practical experience in respect of Indian medicine. Although a President of CCIM has to be elected from any of the members of the Central Council, we are presently concerned only with the first category who are representatives of their respective States as members in the Central Council.

18. In terms of sub-section (1)(a) of Section 3, a maximum number of 5 representatives can be elected from one State to the Central Council and their number depend upon the strength of registered doctors of Indian medicines in a State, which is given in the First Schedule of the Act. For example, if in a State the number exceeds 100 but does not exceed 10,000, then such State will have one seat in the Central Council and if it exceeds 10,000 but does not exceed 20,000 then it shall have two seats, and so on, with a maximum number of 5 seats for any State. The State of Uttarakhand admittedly has only one seat in the Central Council.

19. Section 4 of the Central Act provides the mode of election. The Central Council, which is to be constituted by the Central Government in accordance with the rules framed by the Government in that behalf. Section 5 imposes certain restrictions on membership. One of the restrictions is - he must be enrolled on any State register of the Indian Medicine and must reside in the concerned State. Section 7 gives the term of office of President, Vice-President and members of Central Council.

Section 7 of the Central Act reads as under:

"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.

(4) Members of the Central Council shall be eligible for re-election or re-nomination.

(5) Where the said term of five years is about to expire in respect of any member, a successor may be elected or nominated at any time within three months before the said term expires but he shall not assume office until the said term has expired."

20. We may also refer here to Section 27 of the Central Act, where sub-section (1) provides that if for any reason a person's name has been removed from the State register, his name shall also be removed from the Central register by order of CCIM.

Section 27 reads as under:

"Section 27. Removal of names from the Central Register of Indian Medicine. ?

(1) If the name of any person enrolled on a State Register of Indian Medicine is

removed therefrom in pursuance of any power conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State, the Central Council shall direct the removal of the name of such person from the Central Register of India Medicine.

(2) Where the name of any person has been removed from a State Register of Indian Medicine on any ground other than that he is not possessed of the requisite medical qualifications or where any application by the said person for restoration of his name to the State Register of Indian Medicine has been rejected, he may appeal in the prescribed manner and subject to such conditions, including conditions as to the payment of a fee, as may be prescribed, to the Central Government whose decision, which shall be given after consulting the Central Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Register of Indian Medicine."

21. Sub-section (2) of Section 27 of the Central Act, however, provides for an appeal before the Central Government against the order passed under sub-section (1).

22. Apart from the above relevant provisions of the Central Act which may revert to in a while, we had earlier mentioned in the preceding paragraphs, the powers and functions of the Central Council which make it an extremely powerful body. Chapter IIA and Chapter III of the Central Act elaborate the wide functions and powers of the Central Council. It may not be out of place to mention here that the Hon'ble Division Bench of Madras High Court as well as the Hon'ble Apex Court have expressed their concern at least on the lack of transparency in the constitution of CCIM. This has been done in a case, which is related to the controversy at hand i.e. Writ Petition No. 4713 of 2014 decided by the Madurai Bench of Madras High Court on 13.06.2014 and Civil Appeal No. 3573 of 2016 decided by the Hon'ble Apex Court on 7.4.2016. We will refer to these two judgments in a while.

23. Meanwhile, Dr. Tyagi on the strength of his registration with the Board of Indian Medicine in Uttarakhand was elected as member CCIM from Uttarakhand and thereafter as President CCIM. While he was functioning as President of CCIM, the Uttarakhand Board vide its order dated 06.05.2013 (amended by an order dated 07.05.2013) informed Dr. Tyagi about the decision of the Board not to renew his registration after 11.10.2011. On 08.05.2013, Dr. Tyagi moved an application seeking an explanation from the Board of Indian Medicine, Uttarakhand, as to the non-renewal of his registration, and the Board in turn vide order dated 09.05.2013 cancelled his registration on grounds that it was obtained by misrepresentation and fraud.

24. Feeling aggrieved by the order dated 06.05.2013 (as amended on 07.05.2013) and the order dated 09.05.2013, Dr. Tyagi filed an appeal under Section 43 of the United Provinces Indian Medicine Act, 1939 on 17.05.2013.

Vide order dated 20.05.2013, the Principal Secretary, Medical Health and Ayush, Government of Uttarakhand, who is the appellate authority under Section 43 of the Act, allowed the appeal and the order dated 09.05.2013 was set aside on the ground that no prior notice or personal hearing was given to Dr. Tyagi. The order dated 20.05.2013 was challenged before this Court by one Dr. Vinod Kumar Chauhan, (who is the appellant in SPA No.644/2015) in writ petition no. 1149 of 2013 (M/S), which was disposed of by learned Single Judge of this Court on 31.05.2013 by passing the following order:

"Without entering into other arguments advanced by the learned counsel for the parties, this Court is taking into account only this question, whether before passing the order dated 20.05.2013, the Principal Secretary, Medical Health and Ayush granted opportunity of hearing to the Bhartiya Chikitsa Parishad, Uttarakhand.

From perusal of the order impugned, it is clear that the Bhartiya Chikitsa Parishad, Uttarakhand was not heard.

Considering this fact alone, I set-aside the order dated 20.05.2013 passed by respondent no.1 and remand the matter for reconsideration. The Principal Secretary, Medical Health and Ayush, Govt. of Uttarakhand shall pass order afresh in the appeal, after hearing the Bhartiya Chikitsa Parishad, Uttarakhand also. Such order shall be passed within a period of two weeks from the date of production of a certified copy of this order. Till the disposal of the appeal, status-quo as on today shall be maintained.

This disposes of the writ petition."

25. On remand, the appellate authority (i.e. Principal Secretary, Department of Health & Ayush) heard the matter again, but, now dismissed the appeal of Dr. Tyagi, vide its order dated 19.07.2013. Consequently, Dr. Tyagi also ceased to be a member of the Central Council of Indian Medicine and President of CCIM in view of sub-section (2) of Section 7 of the Central Act, referred above, by which a member CCIM shall be deemed to have vacated his seat, inter alia, if he "ceases to be enrolled on the concerned State register of Indian medicine". Orders were also passed to this effect on 27.07.2013 by a Joint Secretary (Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy), Ministry of Health and Family Welfare, New Delhi on behalf of the Central Government.

26. All the above impugned orders including order dated 19.07.2013 and 27.07.2013, were ultimately challenged by Dr. Tyagi in a Writ Petition No. 1754 of 2013 (M/S), which was initially dismissed on 10.03.2014, by one of us (Sudhanshu Dhulia, J.), on grounds of alternative statutory remedy available to him under sub-section (2) of 27 of the Central Act (quoted in the preceding paragraphs).

27. The order dated 10.03.2014 was challenged by Dr. Ved Prakash Tyagi in

Special Appeal (No.70 of 2014) before a Division Bench of this Court, which was allowed on 13.05.2014 and the Court remanded the matter, holding that alternative remedy was not available to Dr. Tyagi.

28. On its remand, the matter was heard and the writ petition no.1754 of 2013 (M/S) was allowed on 08.12.2015. The operative portion of the order dated 08.12.2015 reads as under:

"In view of the above, present petition succeeds and is hereby allowed. Impugned orders are hereby quashed. It is held that petitioner is a validly registered member with the Board of Indian Medicine, Uttarakhand. It is further held that all the consequential orders issued pursuant to the impugned orders also stand quashed."

29. Consequent to the order of the learned Single Judge dated 08.12.2015, the authorities in the Central Government could not immediately make up their mind as to what would be the necessary implication of that part of the operative order whereby all consequential orders have also been quashed by the learned Single Judge. The order dated 08.12.2015 of the learned Single Judge was not merely a writ of certiorari quashing the impugned order, but has also quashed "all consequential orders", as well. In his order dated 08.12.2015, the learned Single Judge after quashing the orders impugned makes a general direction in the last sentence of the operative portion: "it is further held that all the consequential orders issued pursuant to the impugned orders also stand quashed". The impugned orders which were quashed were primarily order dated 19.07.2013 passed by the Appellate Authority holding the cancellation of Dr. Tyagi's registration of Uttarakhand Board to be correct, followed by the order 27.07.2013 where it was declared that in view of subsection (2) to Section 7 of the Central Act Dr. Tyagi's seat in CCIM is deemed to be vacated as he ceases to be enrolled in the State Register of Uttarakhand as a doctor.

30. Between 27.07.2013 and 08.12.2015, however, Dr. Vanitha Muralikumar had become the President of CCIM on 20.03.2014 and till her nomination as member CCIM was set aside by the Madurai Bench of Madras High Court on 13.06.2014, she was effectively its President. We are told by Ms. Maninder Acharya, Sr. Counsel for appellant Dr. Vanitha Murali Kumar that the Madras High Court's decision was stayed by the Hon'ble Apex Court and the stay effectively remained operative till 07.04.2016, when the appeal of Dr. Vanitha Murali Kumar was dismissed.

31. The arrival of Dr. Vanitha Murali Kumar as President CCIM and earlier the election of Dr. Shivani Tyagi as Member CCIM from Uttarakhand are the events which took place during this period between 27.07.2013 and 08.12.2015. Dr. Shivani Tyagi, who is none else but the daughter of Dr. Tyagi, was elected as member of CCIM on 27.09.2014, a position she held till 10.12.2015. On 10.12.2015 she resigned from her membership, i.e, only two days after the judgment was pronounced by the learned Single Judge of this Court on

08.12.2015 in favour of Dr. Ved Prakash Tyagi. The objective was clear, which was to clear the decks for Dr. Tyagi, who obviously believed that quashing of all consequential orders would mean that not only will he be now a member of CCIM, but also its President.

32. Frankly, the order dated 08.12.2015 required clarification from the learned Single Judge. All the same, since the learned Single Judge who had passed the orders in the writ petition, was not available for clarification, this could not be done. Ultimately, on the strength of an opinion given by the Assistant Solicitor General of Union of India in favour of Dr. Tyagi, the Government of India issued an office memorandum dated 15.03.2016, which reads as under:

"The undersigned is directed to refer to this Ministry's two letters No. A.11019/01/14-Election Cell dated 10.03.2016 on the above subject and to inform that the Hon'ble High Court of Uttarakhand vide its judgment dated 08.12.2015 has allowed writ petition restoring the registration of Dr. V.P. Tyagi and quashed all the consequential orders.

2. It is clarified that as per the judgment of Hon'ble High Court of Uttarakhand, the de-notification of Dr. V.P. Tyagi from membership of CCIM and subsequent CCIM elections held for the post of President electing Dr. Vanita Murlikumar also stands quashed, hence status of Dr. Ved Prakash Tyagi stands restored as a member of CCIM as well as President of CCIM."

(emphasis supplied)

33. Consequent to the above office memorandum dated 15.03.2016, Dr. Ved Prakash Tyagi staked his claim as President of CCIM and was given the charge of the office. He has since been functioning as the President of CCIM. Meanwhile, these special appeals have also come up for consideration before this Court.

34. One of the preliminary objections of Sri Ravi Kiran Jain, learned Senior Counsel appearing on behalf of Dr. Ved Prakash Tyagi is regarding the very maintainability of these Special Appeals. The provision of a Special Appeal is given in Chapter VIII Rule 5 of the High Court Rules, which reads as under:

"5. Special appeal. - An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award -

(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or

(b) of the Government or any officer or authority, made or purported to be made in the exercise of purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

[emphasis supplied]

35. The objection of Sri Jain would be that as the challenge before this Court in writ petition (of Dr. Ved Prakash Tyagi) was of an order dated 19.07.2013 which was passed in appeal by a statutory authority, hence the order in the writ petition dated 08.12.2015 cannot be challenged by way of a Special Appeal, since there is a bar under Rule 5 of Chapter VIII of the High Court Rules (referred above). We may just mention here, that these preliminary objections raised by Sri Jain had strong reactions from the other side. It was pointed out to us that these objections on the maintainability of the special appeal are coming from none other than a litigant who himself had availed the same remedy by filing special appeal against the order of a Single Judge, in the first round of litigation before this Court.

36. Be that as it may, the fact remains that such an objection was never raised in the earlier round of litigation in special appeal, or so it seems, and therefore we simply look at it as a legal question and will deal with it in the same manner.

37. Having heard learned counsel for the parties on these objections at some length, we reject the preliminary objections advanced by Sri Ravi Kiran Jain and agree with the submissions of Sri Ahmadi and Sri Rawal as to the maintainability of these special appeals, for the reasons that Dr. Ved Prakash Tyagi in his writ petition, inter alia, had also sought a writ of mandamus from this Court ? a relief which was over and above the quashing of the order dated 19.07.2013 passed by the appellate authority. By logic, therefore, the writ petitioner, i.e., Dr. Tyagi was not merely challenging an order passed by a statutory appellate authority but Dr. Tyagi was seeking other relief as well, which was indeed granted to the petitioner by the learned Single Judge. Hence in our considered opinion these special appeals would not come under the ambit of the bar imposed by Rule 5 of Chapter VIII of the Rules of Court.

38. We revert to the records of the writ petition. Dr. Ved Prakash Tyagi in writ petition no. 1754 (M/S) of 2013 sought the following prayers:

"(i) To Issue appropriate writs/orders or directions in the nature of certiorari quashing the impugned orders dated 19.7.2013 (Annexure No. 1 passed by respondent no.3), 06.5.2013, as amended vide order dated 07.5.2013, and 09.05.2013 (Annexure Nos. 2 to 4 of the writ petition) passed by respondent no. 4;

(ii) To Issue appropriate writs/orders or directions in the nature of mandamus declaring that the registration of the petitioner with the Bharatiya Chikitsa Parishad Uttarakhand is valid.

(iii) To Issue appropriate writs/orders/directions in the nature mandamus

directing the respondents to hold an enquiry as against the functioning of the Board in the matter through independent agency.

(iv) To pass any such other and further orders which this Hon"ble court may deem just and proper in the facts and circumstances of the case; and

(v) To award the costs in favour of the petitioner."

39. The relief being sought by Dr. Tyagi shows that he sought a writ of mandamus as well from the learned Single Judge, which was indeed granted to him.

40. The learned counsels for the appellants Mr. Ahmadi, Mr. Rawal as well as Ms. Acharya would also argue that the learned Single Judge has also granted a relief to the petitioner, which was never sought by the petitioner in his petition, but we are not presently dealing with that issue, though to be fair to the appellants, such arguments were also advanced by them at some length.

41. We, therefore, hold that the appeals of Dr. Vinod Kumar Chauhan is maintainable and is not barred by Chapter VIII Rule 5 of the High Court Rules.

42. We also deem it necessary to grant leave to appeal to Dr. Vanitha Muralikumar although she was not a party in the writ petition, but still we deem it necessary to hear her as well, as during the pendency of the writ petition before this Court, Dr. Vanitha Muralikumar was elected as the President CCIM and hence in our view, must be heard. We had heard her counsel Ms. Maninder Acharya, Sr. Advocate on previous occasion on the maintainability of her leave to appeal, and vide an order dated 04.04.2016 had expressed an opinion of agreeing with her on principles, as far as she being an aggrieved party is concerned.

43. Dr. Vanitha Muralikumar, who is the appellant in SPA No.56 of 2016, was also never a party before the learned Single Judge. She was nominated as a member under Section 3(1)(c) of the Indian Medicine Central Council Act, 1977. Later when the notification was issued on 04.03.2014 notifying the election for the post of President, CCIM. Dr. Vanitha Muralikumar contested elections for the post of President CCIM and was elected as its President on 12.07.2014. Meanwhile, her nomination under Section 3(1)(c) of the Central Act was challenged in a public interest litigation before Madurai Bench of the Madras High Court, which was allowed on 13.06.2014 by the Division Bench, and her nomination, as member of CCIM was set aside. The order of Madurai Bench was challenged before the Apex Court in Civil Appeal No. 3573 of 2016 (Arising out of SLP (C) No. 16777 of 2014), which initially granted stay to Dr. Vanitha Muralikumar but finally it upheld the order of Madurai Bench of Madras High Court on 07.04.2016.

44. Therefore, as far as Dr. Vanitha Muralikumar who is also an appellant before us is concerned, though she was heard, yet needless to say, cannot be granted any relief from this Court, in view of the developments stated above.

45. We also grant a leave to appeal to Dr. Amitabh Kumar and others in Special Appeal No.79 of 2016 who are the Vice Presidents of CCIM in Ayurvedic, Unani and Siddha systems, respectively. They were never a party before the learned Single Judge in the writ petition but purely in the interest of justice since they are also members of CCIM and seems to be affected by the impugned order, we decide to hear them as well. An order dated 12.07.2016 in the case of Dr. Vanitha Muralikumar has earlier been passed by us. We now grant them a leave to appeal.

46. At this stage, we must note our displeasure on the present conduct of CCIM before this Court. The CCIM has also filed a special appeal being Special Appeal No. 645 of 2015 before this Court, which is under consideration by this Court. Dr. Tyagi in his writ petition (WPMS No. 629 of 2016), which is also before this Court, inter alia, has also sought relief against some officials of CCIM. During the pendency of the appeal itself, since there has been a change in the fortune of Dr. Tyagi along with the change in the control of CCIM, which is obviously under control of Dr. Tyagi, an application has been filed by the CCIM praying that they may be permitted to withdraw the appeal as the appeal was filed earlier without the approval of the CCIM. We refrain to say anything further on this as that may divert our attention from the main issue, and it is purely in the interest of justice that we are allowing the withdrawal application. The Special Appeal No. 645 of 2015 shall be treated to be dismissed as withdrawn.

47. Another objection of Sri Ravi Kiran Jain would be that in all these appeals what is being presented and argued before this Court by the appellants, is actually not the validity of the order of the learned Single Judge, but its interpretation done by the authorities, particularly the Central Government, which cannot be looked into in a Special Appeal. We again do not agree with this submission of Sri Ravi Kiran Jain, as ultimately it is only on the strength of the order of the learned Single Judge dated 08.12.2015, which inter alia, sets aside "all consequential orders", that the petitioner was given the charge of the President of CCIM. So it is essentially a challenge to this order dated 08.12.2015 of the learned Single Judge in all these appeals. We would also rely on Order 41, Rule 33 CPC in order to make our point clear as to why we decide to hear these appeals. We are conscious that explanation to Section 141 CPC excludes proceedings under Article 226 from the Procedure of Civil Code, yet it is settled that we may always invoke its principles in appropriate cases, as the underlying principle of Order 41, Rule 33 CPC is to empower the Appellate Court to do complete justice, or at least to meet the ends of justice. We think it is both just and proper to deal with the merit of these cases. We shall now decide these appeals on their merit.

48. The cancellation of the registration of Dr. Ved Prakash Tyagi by Uttarakhand Board dated 09.05.2013 and the order in appeal dated 19.07.2013 are the main orders, under challenge as the order dated 27.07.2013 of the Central Government is only consequential to the above orders. According to the learned

Single Judge, the main reasons given ultimately by the authorities in Uttarakhand for cancellation of registration of Dr. Tyagi are three. These three reasons have been examined by the learned Single Judge and a finding has been given on these three aspects which we will also examine. Order dated 09.05.2013 and 19.07.2013 have been examined at length. We agree with the learned Single Judge that the cancellation of the registration of Dr. Ved Prakash Tyagi has been done for three reasons, as pointed out by the learned Single Judge, which are as follows:

(A) Whether Board of Indian Medicine, Rajasthan was competent to give "No Objection Certificate" to Dr. Ved Prakash Tyagi since there is no provision to issue such a certificate and coupled with this is the question whether simply on the strength of an NOC, the Board at Uttarakhand was competent to give registration to Dr. Ved Prakash Tyagi.

(B) Whether Dr. Ved Prakash Tyagi could have at all applied for registration with the Board at Uttarakhand, without getting his name struck off with the Board of Rajasthan, or to put it differently, can a doctor be registered with more than one State Board at one point of time?

(C) Whether Dr. Ved Prakash Tyagi commits an act of misrepresentation or fraud with the Board at Uttarakhand as he had not informed Uttarakhand Board about his pending litigation's against the Rajasthan Board, before the Rajasthan High Court.

49. Let us deal with the concealment part first, as this seems to be the main plank on which rests orders dated 09.05.2013 and 19.07.2013, by which Dr. Tyagi's registration has been cancelled. The learned Single Judge has come to the conclusion that while seeking his registration with the Board of Indian Medicine, Uttarakhand, there was actually no concealment on part of Dr. Ved Prakash Tyagi, which can justify orders dated 06.05.2013, 07.05.2013, 09.05.2013 as well as the order passed by the appellate authority on 19.07.2013, as all these orders primarily rest on an assumption that Dr. Ved Prakash Tyagi had procured registration in Uttarakhand due to misrepresentation and fraud. What is being held against Dr. Tyagi is that he did not disclose before the Uttarakhand Board that he is already in litigation regarding his registration with the Rajasthan Board in a writ petition before the Rajasthan High Court. The charge that Dr. Tyagi did not disclose his pending litigation with the Rajasthan Board, does not seem to be correct simply because the question asked in the application form was whether the applicant is in litigation with the "State Board". The application form is a printed proforma on which the details had to be submitted by Dr. Tyagi, along with an affidavit. The relevant undertaking which was printed in application form in Hindi if translated in English would read as "In relation to registration, I have no pending litigation with the Board in any court of law". Now, this is what was said on affidavit to the Registrar, "Bhartiya Chikitsa Parishad", Uttarakhand, Dehradun i.e. the Uttarakhand Board of Indian Medicine. Logically the undertaking asked was whether Dr. Tyagi is not in any litigation with

the Uttarakhand Board. The fact is that he was not, and that is what he had stated.

50. The objection of the learned counsel for the appellants throughout has been that at least fairness demanded that Dr. Tyagi should have disclosed his pending litigation with Rajasthan Board and by not doing that he has given a false affidavit and has committed an act of misrepresentation and fraud. The explanation given by Dr. Tyagi on this aspect is that what was being asked from him was whether he had a pending litigation with the Uttarakhand Board of Indian Medicine and since there was none with the Uttarakhand Board, he gave such an affidavit. At the same time, he had to furnish other details as to whether he was registered with any other State Board. On this column, the petitioner duly gave his permanent registration number and the name of the Board i.e. Board of Rajasthan, Bajaj Nagar, Jaipur, where he was registered. Certainly, he did not disclose in the application form about his pending litigation, which was the writ petition before the Rajasthan High Court, and there can be an interpretation that he was less than fair to the Uttarakhand Board. But we are strictly on technicality, and hence we find that as there was no specific question to Dr. Tyagi as to any litigation with any other Board, and the question asked was whether he was in litigation with the Uttarakhand Board only or at least that is what it meant, we would hold that this act in itself cannot be read in the category of misrepresentation, much less a fraud.

51. At this stage, we must mention that Dr. Tyagi had filed a writ petition, being Writ Petition No. 3875 of 2006, Ved Prakash Tyagi v. State of Rajasthan and others, before the Rajasthan High Court. The writ petition was filed by the petitioner as his registration with the Rajasthan Board of Indian Medicine was cancelled vide order dated 11.07.2006 and consequently order dated 13.07.2006 was also passed removing him from the Presidentship of CCIM. These orders were challenged by the petitioner in the above writ petition and the perusal of the judgment of the Rajasthan High Court dated 4.12.2013 show that during the pendency of the writ petition, there was an interim order in favour of the petitioner. The records of the writ petition show that the petitioner had been contesting elections to the Central Council since at least 1994. In the year 1994, he contested the election to the Central Council from Rajasthan and was elected as its Member. The case of the petitioner before the Rajasthan High Court was that he had taken some pro-active measures against some quacks, who were practicing in Rajasthan and as a consequence of which he invited their displeasure, who succeeded in cancelling his name from the rolls of Rajasthan Board and subsequently from the rolls of the Central Council. His writ petition before the Division Bench of Rajasthan High Court was ultimately allowed and the impugned orders were quashed. The operative portion of the judgment passed by the Division Bench of Rajasthan High Court dated 4.12.2013 reads as under:

"The net result of the above discussion is that the present writ petition deserves

acceptance and the same is accordingly allowed. The impugned notice Annex. 10, order Annex. 8 and Annex. 3 are quashed and set aside, and the petitioner is declared as registered Ayurvedic Chikitsak with the Board of Indian Medicine, Rajasthan till he was accorded registration with the State of Uttarakhand."

52. The Division Bench of Rajasthan High Court in its order dated 04.12.2013 has held that the membership of Dr. Ved Prakash Tyagi with the Board of Indian Medicine, Rajasthan is deemed to be valid till the date he was granted registration/membership by the Board of Indian Medicine, Uttarakhand.

53. It is true that at the time the petitioner Dr. Tyagi had applied for registration in Uttarakhand, he was technically registered with the Board at Rajasthan as well. However, we have perused the application form submitted by Dr. Tyagi in this regard and we find that he did mention the details of his registration with the Rajasthan Board in his application. There was no concealment here.

54. The question would be - as to whether Dr. Ved Prakash Tyagi could get a registration with the Board of Indian Medicine, Uttarakhand while his registration with the Board of Indian Medicine, Rajasthan was surviving. The learned Single Judge on this aspect has held that there is no specific bar on this. Mr. Huzefa Ahmadi, Senior Advocate for the appellant-Dr. Vinod Kumar Chauhan has, however, demonstrated before this Court various provisions of law particularly as contained in the Central Act on the basis of which he would argue that the scheme of the Act visualises that an Ayurvedic, Unani or Siddha Doctor can be registered only in the State where he is normally residing and practicing as a Doctor. In his submissions the provisions of the statute referred by Mr. Ahmadi are the ones we have already referred earlier in this order while discussing the relevant provisions of the State and the Central Act, particularly Section 25 of the State Act and Section 2(1)(j), Sections 3, 7 & 31 of the Central Act. On the strength of his registration with a State Board, he gets registered with the Central Council of Indian Medicine and a Doctor who is registered with one State Board has the liberty to practise anywhere in the country. This provision is given under Section 29 of the Central Act, which reads as under:

"Section 29. Privileges of persons who are enrolled on the Central Register of Indian Medicine-Subject to the conditions and restrictions laid down in this Act regarding practise of Indian medicine by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Central Register of Indian Medicine shall be entitled according to his qualification to practise Indian Medicine in any part of India and to recover in due course of law in respect of such practise any expenses, charges in respect of medicaments or other appliances or any fees to which he may be entitled."

(emphasis supplied)

55. The registration of a doctor has to be done with only one State Board. Logically it would also mean that a person cannot be registered with two or more different Boards at a time. We agree with these submissions, as the scheme of

the Act leaves no doubt in our mind that registration has to be done only with one State Board, though such registration can be transferred from one State Board to another, by a due process. This is for the reason that on the strength of his registration with a particular State Board, his name is automatically registered with the CCIM. This is necessary for the records so that the Central Council has a ready list available before it, and it has the knowledge as to how many registered practitioners of Indian medicines exist in a particular State, as the representation of a State in CCIM depends upon the number of registered practitioners of Indian medicine in that State. Therefore, if a person is registered with more than one Board at a time, this would cause an obvious anomaly, particularly in calculation of seats of members of a particular State in CCIM. We may assume that there would be other practical difficulties as well.

56. Having made the above determination, we find that in the case at hand Dr. Ved Prakash Tyagi was initially registered with the Board of Indian Medicine, Rajasthan and in order to obtain membership of the Board of Indian Medicine, Uttarakhand, he procured an NOC from the Rajasthan Board and only then was he registered at Uttarakhand. Even though Dr. Tyagi was registered with two Boards (i.e. Board of Indian Medicine, Uttarakhand and Rajasthan) at one point of time and that is not what the scheme of the Act visualises, can that in itself be the reason for cancellation of his registration with the Board of Uttarakhand! To our mind, if at all, this would only entail the cancellation of registration with the Board of Indian Medicine at Rajasthan, which was earlier in time. This should not result in his cancellation from the State Board of Uttarakhand, that too on the ground of fraud and misrepresentation, even if Dr. Tyagi was registered with two State Boards at one given time.

57. We are also of the opinion that although there is no specific provision of an NOC to be given by one State Board, yet we see no harm, nor any apparent illegality, if such a certificate is given. This certificate was duly presented before the Board at Uttarakhand informing that Dr. Tyagi was previously registered with the Rajasthan Board, which has given its NOC to him. If there was any confusion as to Dr. Tyagi's credentials at Rajasthan, this could have been duly verified by the authorities from Rajasthan.

58. The question, however, is what should be done or what is the penalty in an event where a Doctor is registered with two or more Boards at a time. The answer has to be seen under Section 31 of the Central Act, which reads as under:

"Section 31. Persons enrolled on Central Register of Indian Medicine to notify change of place of residence and practise - Every person registered in the Central Register of Indian Medicine shall notify any transfer of the place of his residence or practise to the Central Council and to the Board concerned, within ninety days of such transfer, failing which his right to participate in the election of members to the Central Council or a Board shall be liable to be forfeited by order of the Central Government either permanently or for such period as may be specified therein."

59. A perusal of the above provision shows that it is mandatory for every person who is registered in the Central register to notify the transfer of his place of residence or practise to the Central Council and to the Board concerned within 90 days of such transfer, failing which his right to participate in the election of members to the CCIM or a Board shall be liable to be forfeited by an order of the Central Government. On the query of the Court, the learned counsels for Dr. Tyagi tried to show that he had actually informed the Central Council about the change of his transfer of place of residence and practise, though without any conclusive proof. Learned counsel on behalf of the appellants have, however, denied this and it is admitted on the other hand that even at the time of the election of Dr. Tyagi to CCIM and to its President, his name continued to be shown as registered with the Board of Rajasthan! The stand of CCIM on this is ambiguous.

60. From the records which are presently available and from the rival pleadings and arguments, we are of the opinion that Dr. Tyagi has been less than fair in this respect, that is in informing the authorities of his change of residence and practise or in stating clearly the fact that he was indeed registered with two State Boards at one time. The crucial question would yet be, whether this itself would entail the cancellation of his registration from the Uttarakhand Board, which in turn would result in his vacating the membership of CCIM, and ultimately losing its Presidentship. A perusal of Section 31 of the Central Act shows that if a person does not notify the transfer of the place of residence and practise, his right to participate in the election of members of the Central Council or a Board is liable to be forfeited, but this can be done only by an order of the Central Government. There is no order of the Central Government on this under Section 31 of the Central Act. None that has been shown to us.

61. We are hence by and large in agreement with the findings of the learned Single Judge, that there was no misrepresentation. The learned Single Judge though has given another finding in favour of the petitioner Dr. Tyagi that there is no explicit restriction in law in registering with two Boards, to which we respectfully do not agree, as we are satisfied that the scheme of the Acts, i.e., the State Act and the Central Act, require single registration with one State Board at a time. All the same, we do not see any reason why on this fact alone a valid registration of a doctor can be cancelled, that too so casually, where the result would be his cancellation of membership with CCIM as well as the Presidentship of CCIM.

62. Again we cannot lose sight of the fact that Division Bench of Rajasthan High Court has already held that Dr. Tyagi's registration with the Rajasthan Board will be valid till he was registered with the Uttarakhand Board. Any other view on this aspect will be also in conflict with the findings of the Division Bench of Rajasthan High Court, and would only complicate matters, which we seek to resolve.

63. For the reasons as given above, we conclude having considered all aspects of the matter, that the order of cancelling the registration of Dr. Tyagi's name from

the rolls of Uttarakhand Board was illegal and to that extent has been rightly quashed by the learned Single Judge.

64. We also hold that reducing the validity period of Dr. Tyagi's registration from 10.03.2016 to 11.10.2011 by the Uttarakhand Board without affording any opportunity of hearing to the petitioner is absolutely unjustified and whatever hearing was given to Dr. Tyagi was post decisional, given only by the appellate authority and consequently its validity shall remain the same as it was earlier i.e. till 10.03.2016. He shall be deemed to be continuing on the register of the Board of Indian Medicine, Uttarakhand till the Uttarakhand Board takes a fresh decision on the renewal of his registration. The renewal of his registration shall be done keeping in mind the finding of this Court as early as possible but definitely within a period of four weeks from the date of production of certified copy of this order before the registration authority.

65. The crucial question which remains is whether we should accept the operative part of the order, which is a blanket order, holding that all consequential orders are also hereby set aside. If this order is interpreted, in the manner in which it has been interpreted by the Central Government, on the strength of the opinion of Asstt. Solicitor General, it would create more problems than the one it seeks to solve. This is so because between the period i.e. order dated 27.07.2013 passed by Central Government and the order of the learned Single Judge setting aside, inter alia, this order on 8.12.2015, events have taken place, which cannot be undone by the sweep of the order dated 08.12.2015 of the learned Single Judge. We may also put it differently and say that such was never intended by the learned Single Judge, as there is no discussion in the order as to what exactly are such consequential orders!

66. We have examined the relevant provisions of law as well as the conduct of Dr. Tyagi in getting his NOC from Rajasthan and getting registration in Uttarakhand. All this has been done with the sole motive to contest elections for CCIM from Uttarakhand, as due to his litigation in Rajasthan, he had already hit rough weather in that State. We have given a finding nevertheless, that the petitioner has not committed any act of misrepresentation or fraud. We must, all the same, state here that this is on a strict technicality and our interpretation was by the cold logic of law, rather than on any standard of morality, righteousness, or even equity. We have no option therefore now to interpret the reach of the order of the learned Single Judge, with the same standards and see whether it can take the clock back or even unsettle events, which have taken place during this period, which have already created vested rights on certain individuals, as Member of CCIM or as President CCIM, particularly when no arguments were advanced on this aspect by Dr. Tyagi before the learned Single Judge. Further, such persons who are affected by the order or the interpretation of the order were never a party before the learned Single Judge. Even if we hold that such an order could be passed, we do not think the order would in any case cover the election of Dr. Shivani Tyagi as well as the election of Dr. Vanitha

Muralikumar so much so as to ignore these elections, without even giving an opportunity of hearing to them in whose favour rights were created. At least in case of Dr. Vanitha Muralikumar, it was required, as we are told that though her nomination as a member in CCIM was quashed by the Madras High Court she continued to function as its President on the strength of the interim order of the Hon''ble Apex Court. All the same, since her candidature as member CCIM has itself been held to be illegal, by a Division Bench of Madras High Court and also upheld by the Hon''ble Apex Court, she has no claim on the post, yet in our opinion, this would not ipso facto work in favour of Dr. Tyagi. First and foremost, on account of vacancy of member in the CCIM from Uttarakhand State, fresh elections were held under Section 3(1)(a) of the Central Act and Dr. Shivani Tyagi was duly elected, and though Dr. Shivani Tyagi promptly resigned from her seat on 10.12.2015 immediately after the order of the learned Single Judge dated 08.12.2015 was passed, that would still remain a vacancy, till it is duly filled.

67. These vacancies can only be filled as per the procedure prescribed by the law. The two vacancies i.e. of member CCIM and its Presidentship occurred due to the cancellation of the registration of Dr. Tyagi. It would have been quite a different matter, had these vacancies remained as they were during the pendency of the litigation. But that is not the case. The vacancy of member CCIM as well as that of President CCIM were filled by a valid election during this period. It is true that technically both are now vacant, yet there cannot be an automatic or deemed occupation on these seats by Dr. Tyagi.

68. Mr. Ravi Kiran Jain, learned Senior Counsel as well as Ms. Aishwarya Bhati, Advocate for the petitioner Dr. Tyagi, would contend, all the same, that since all the impugned orders were set aside by the learned Single Judge, it was only just and proper that all such orders restricting their implementation be also set aside and therefore the order of the learned Single Judge is correct and in fact it could be the only order which could have been passed. In support of this contention, they have relied upon a decision of the Hon''ble Apex Court in the case of Baby Samuel v. Tukaram Laxman Sable and others reported in 1995 Supp (4) SCC 215, where the Hon''ble Apex Court had directed that the appellant be restored forthwith to the office of Councillor of a Municipality as well as to the office of the President of the said Municipality and that the other party had no right to continue in that office. There is, however, a crucial difference as regarding the facts of the above case, as pointed out by the learned Senior Counsel Mr. Huzefa Ahmadi for the other side, which is that in the above cited case directions were given by the Hon''ble Apex Court only as an interim arrangement, as the validity of the election was still pending before the Bombay High Court. Such is not the case at hand. We may just state the facts of Baby Samuel case first.

69. In the case of Baby Samuel (supra), both the appellant as well as the contesting respondent Sri Sable were elected as Councillors for a Municipal Council in Maharashtra in December, 1991. The appellant (Sri Baby Samuel), was later elected as the President of the Municipality. Prior to his being the President,

Sri Samuel was the Chairman of the Committee as a Councillor, which was in charge of awarding contracts, and there were complaints against him in which he was given a notice by the Collector and after hearing his reply the appellant Sri Samuel was disqualified as a member of the Municipal Council and also as a Chairman vide order dated 5.10.1994. Against the order of his removal/disqualification, the appellant Sri Samuel filed a statutory appeal before the Government along with an application for stay, but since no order on the stay application was passed, he filed a writ petition before the Bombay High Court and the High Court directed the Government to dispose of the stay application within one week and the appeal within three months from the date of the order. In spite of the orders of the High Court, the State Government did not pass any orders on the stay application. Meanwhile, due to the vacancy in the office of the President, the Collector conveyed a meeting on 8.11.1994 in which Sri Sable was elected as the President. On 7.1.1995, the Government finally allowed the appeal of Sri Baby Samuel and set aside the order of the Collector dated 4.10.1994. The order of the State Government was challenged by Sri Sable in a writ petition and since there was no effective enforcement of the Government's order as Sri Samuel was not being given the charge of the President of the Council, he too moved a writ petition before the Bombay High Court to reinstate him as President of the Municipality. In both the writ petitions, the interlocutory application came up for hearing before the Division Bench on 20.3.1995 and the Division Bench granted stay on the operation of the Government's order dated 7.1.1995, as prayed by Sri Sable and rejected the application of Sri Baby Samuel to reinstate him as the President of the Municipality. Both these orders, which were on an interim relief application, were under challenge before the Hon"ble Apex Court. It was hence held by the Hon"ble Apex Court that in spite of the directions of the High Court to dispose of the stay application of Sri Baby Samuel, it was not done and it was due to the inaction of the State Government that the elections on the vacancy took place on which Sri Sable was elected. His election was on the basis of a disqualification of Sri Baby Samuel and now since the Government in appeal has removed the disqualification of Baby Samuel and the order of the Collector has been set aside, the appellant was entitled to be put back in the same position in which he was, before he was removed. Under these circumstances, it was held that Sri Sable must yield ground to the appellant. There was an objection from the side of Sri Sable that the orders under challenge before the Hon"ble Apex Court were only interlocutory in nature but since it was brought to the notice of the Hon"ble Apex Court that the term of the office of the President will come to an end the next year and there is no real possibility of the writ petition being heard in the near future, denial of relief to the appellant would cause grave prejudice to him and would in fact amount to a dismissal of appellant's writ petition and allowing the writ petition of Sri Sable. It was on these facts that it was held by the Hon"ble Apex Court as follows:

"8.....We are of the opinion that in the facts and circumstances of this case and keeping in mind the respective rights of the parties, this is a proper case where

we should interfere under Article 136. It is also admitted that as on today, no fresh or other proceedings have been initiated for removal/disqualification of the appellant for any alleged irregularities. In the circumstances, denying him the office of the President would amount to punishing him for no fault of his. It cannot be that he is not guilty and yet he is removed from the offices held by him. Shri Sable's writ petition is yet to be decided. Accordingly the appeals are allowed and the interim orders dated 20-3-1995 made in Writ Petition (C) No. 675 of 1995 and Writ Petition (C) No. 1124 of 1995 on 20-3-1995, impugned herein, are set aside. The appellant shall be restored forthwith to the office of the Councillor of Khopoli Municipality as well as to the office of the President of the said Municipality. Shri Sable shall have no right to continue in the said office with effect from this date. There shall be no order as to costs.

9. The Bombay High Court may consider the expeditious disposal of the aforesaid writ petitions."

70. In the present case, the petitions are not against the interlocutory orders. There is no writ petition pending on the matter on the same issue. Nor is it a case where any grave prejudice would be caused to Dr. Tyagi, particularly considering the fact that in any case his term as President of CCIM is to come to an end on 26.08.2016. What was held by the Hon"ble Apex Court in the case of Babu Samuel (supra) was under a given circumstances of that case, which are not available in favour of Dr. Tyagi here.

71. Section 7 of the Central Act prescribes, inter alia, the term of office of President CCIM, which is for a period of five years from the date of his election (or nomination), or till his next successor is elected or nominated whichever is longer. Dr. Ved Prakash Tyagi was elected as a member of CCIM on 27.08.2011. Therefore, his term can only last in any case till 26.08.2016.

72. Under Section 36 of the Central Act where the CCIM the CCIM has empowered to make regulations, inter alia, to provide for the manner of election of the President or the Vice Presidents of the Central Council.

73. The Council has made these Regulations in the Year 1976, known as the Central Council of Indian Medicine (General) Regulations, 1976. Regulation 5 of said Regulations reads as under:

"Regulation 5. Vice Presidents

(1) The Vice-Presidents shall exercise such powers and perform such duties as may be assigned to him by or under the provisions of the Act and the rules and regulations made thereunder.

(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.

The order of the rotation shall be as below:

(a) Vice-President -

Ayurveda

(b) Vice-President -

Unani

(c) Vice-President -

Siddha

(emphasis supplied)

74. Regulation 5 (2) states that 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.

75. In view of the above provision, we hold therefore that the charge of the President should now be given to such Vice President as given above, in accordance with the above provisions of law, for the functioning of CCIM till a duly elected President takes charge.

76. Let the entire process be done as early as possible.

77. Mr. Sanjay Bhatt, learned Standing Counsel (Central Government) and Mr. Vipul Sharma, learned counsel for the CCIM undertake to communicate this order to their respective institutions.

78. All the aforesaid Special Appeals (barring Special Appeal No. 645 of 2015, which has been dismissed as withdrawn) stand partly allowed. The part of the order of the learned Single Judge quashing the impugned order is held to be correct and we uphold the same. Dr. Ved Prakash Tyagi is a validly registered member with the Board of Indian Medicine, Uttarakhand and his cancellation from the State Register was illegal as held by the learned Single Judge and it needs no interference. All the same, we do not agree with the blanket quashing of "all consequential orders", for the reason we have already given above, and only to that extent we set aside that part of the order dated 08.12.2015. In our view, Dr. Tyagi in spite of the order dated 8.12.2015 cannot automatically become President CCIM as firstly he will have to be elected as Member, CCIM or be nominated to CCIM, as the case may be, under the provisions of Section 3 of the Central Act. In short, the order of the learned Single Judge as well as our order makes him eligible to contest for CCIM or be a candidate for nomination to CCIM in case he is so eligible, as per Section 3 of the Central Act, but that he be automatically made the President CCIM by the strength of order dated 08.12.2015 has been wrong and is on an incorrect interpretation of the order dated 08.12.2015.

79. In view of the above findings and orders, we do not find any need to pass separate orders in Writ Petition No.629 of 2016 (M/S). The writ petition stands disposed in light of the orders in the present special appeals.