
(2017) 04 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1238 Of 2017

MIRDUL KUMAR SAHANI

APPELLANT

Vs

UNION OF INDIA & ORS.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Homoeopathy Central Council Act, 1973 — Section 3, 7(1)
Indian Medicine Central Council Act, 1970 — Section 7

Citation : AIR 2017 Pat 180 : (2017) 3 PLJR 846

Hon'ble Judges : Ahsanuddin Amanullah

Bench : SINGLE BENCH

Advocate : Shashi Nath Jha, Pankaj Kumar, Santosh Kumar Singh, S D Sanjay, Ravinder Kumar Sharma, Amrendra Kumar Sinha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner, Mr. S. D. Sanjay, learned Additional Solicitor General, assisted by Mr. Ravinder Kumar Sharma, learned counsel for the Union of India, learned counsel for the State and learned counsel for the respondent no. 4.

2. The petitioner has moved the Court for the following reliefs: "(i) Directing the Respondents-authorities to allow the petitioner to continue as Member of the Homoeopathy Central Council in terms of Section 7 (1) of the Homoeopathy Central Council Act, 1973 (hereinafter referred to as the Act) until the Central Council is constituted in accordance with Section 3 of the said Act, and/or the successor of the petitioner is duly elected.

(ii) Directing the Respondents-authorities to permit the petitioner to discharge his all duties as Member of the Council till his successor is elected/nominated to his post.

(iii) Directing the Respondents-authorities to permit the petitioner to cast his

vote and to perform all functions associated with the post, as he is still the eligible member to participate in all the meetings of the Central Council.

(iv) Holding and declaring that the petitioner would continue to be the Member of the Central Council till his successor is not appointed/elected on his post.

(v) Restraining the respondents-authorities from representing the petitioner from the State of Bihar in the central council of Homoeopathy.

(vi) Granting any other relief/reliefs for which the petitioner may be found entitled to."

3. Earlier, by order dated 06.03.2017, the Court, by way of an interim measure, had directed that if the vacancy of the petitioner has not been filled up in accordance with the statutory provisions, he shall continue to be a Member of the Central Council of Homoeopathy and shall be entitled to perform all functions associated with the said post, till his successor takes charge of the office. It is not in dispute that the term of the petitioner as a Member of Central Council of Homoeopathy came to an end on 01.08.2016, i.e., after completion of five years from the gazette notification dated 02.08.2011 in terms of Section 7 (1) of the Homoeopathy Central Council Act, 1973 (hereinafter referred to as the "Act").

4. Mr. S. D. Sanjay, learned Additional Solicitor General pointed out that the Court could not be assisted with regard to the fact that the Hon'ble Supreme Court in the case of K. B. Nagur, M.D. (Ayu.) v. Union of India, 2012 AIR(SC) 1774 has categorically held that no elected Member, under any of the three systems of medicine, Ayurveda, Unani or Siddha shall hold the office of the President, Vice President or Member, beyond a period of three months from the expiry of their term. He submitted that the judgment was with regard to Section 7 of the Indian Medicine Central Council Act, 1970 and the prayer was to strike down and quash the said clause of Section 7 of the Act reading as "or until his successor shall have been duly elected or nominated, whichever is longer" as contrary to the very Act, unconstitutional and undemocratic and violative of Articles 14 and 16 of the Constitution of India. Learned counsel drew the attention of the Court to Section 7 (1) of the Act which also has *pari materia* provisions. It was, thus, submitted that once the Hon'ble Supreme Court has decided the issue relating to the same very provisions, though with regard to a different Central Act, which along with the present Act having been regulated by the common Ministry of AYUSH of the Central Government, the ratio of the aforesaid judgment of the Hon'ble Supreme Court squarely applies to the present case also and thus, the petitioner cannot be allowed to continue beyond 01.11.2016.

5. Learned counsel for the petitioner submitted that in the case before the Hon'ble Supreme Court, they were not heard and, thus, the same is not binding on the petitioner as he is governed by the Act and also for the reason that paragraph no. 25 (D) of the decision is with regard to three systems of medicine namely Ayurveda, Unani and Siddha but not with regard to Homoeopathy.

6. Such stand has also been supported and reiterated by learned counsel for the respondent no. 4.

7. Mr. S. D. Sanjay, learned Additional Solicitor General submitted that the respondent no. 4 cannot take such a stand as under the Act itself it is bound by the decision of the Central Government and once the Central Government has instructed him and has taken the stand that the principle of K. B. Nagur, M.D. (Ayu.) is also applicable in the present case, the respondent no. 4 cannot take a contrary stand.

8. Be that as it may, the Court would not involve itself as to whether the stand taken by the respondent no. 4 before this Court in the present case could have been taken by it.

9. Having considered the rival contentions, the Court finds no merit in the writ petition. The Court is not required to go into the merits once the Hon''ble Supreme Court has already considered the issue on its merits in the aforesaid case of K. B. Nagur, M.D. (Ayu.) . The contention of learned counsel for the petitioner and respondent no. 4 that the said judgment does not cover the present issue because the Act was not considered in the aforesaid case, is noticed only for the sake of rejecting the same. It would suffice to say that just because a specific Act is not the subject matter of a decision, the principle laid down in such decision shall not apply in any other case. In the present case, the fact is that the provision which was under consideration by the Hon''ble Supreme Court in the case of K. B. Nagur, M.D. (Ayu.) is *pari materia* to the issue involved in the present case as the language of Section 7 of the Indian Medicine Central Council Act, 1970, which was being considered by the Hon''ble Supreme Court is *pari materia* with Section 7 (1) of the present Act.

10. That being the position, the principle of law having been laid down that no elected member shall hold office of the President, Vice President or Member beyond a period of three months from the expiry of their term, shall govern the issue involved in the present case also.

11. For the reasons aforesaid, the petitioner cannot continue as a Member of the Central Council of Homoeopathy beyond 01.11.2016.

12. Accordingly, the writ petition stands dismissed.

13. It goes without saying that whatever cooperation or action is required for election of Members to the Central Council of Homoeopathy from the State of Bihar, by the State authorities, the same shall be complied with expeditiously.

14. The interim order dated 06.03.2017 stands vacated.