

(2012) 01 AP CK 0049

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32336 of 2011

M.V.V. Satyanarayana

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Andhra Pradesh Pharmacy Rules, 1955 — Rule 110, 111, 140
Pharmacy Act, 1948 — Section 19, 2, 20, 26, 27

Citation : (2012) 2 ALT 262

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : P. Gangiah Naidu, for Mr. N. Bharat Babu, for the Appellant; Ch. Dhanmjay, Counsel for Respondent No. 2 and Mr. Ravindranath Reddy, for Mr. G. Madhusudhan Reddy, Counsel for Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah, J.—Heard Senior Counsel Sri P. Gangaiah Naidu for the petitioner, Additional Advocate General and Government Pleader for Medical and Health for respondent No. 1 and Sri Ch. Dhanamjay for 2nd respondent and Sri Ravindranath Reddy for 3rd respondent. The petitioner worked as Deputy Secretary to Government in Health, Medical and Family Welfare Department and retired from service. Before his retirement, he made a representation dated 31.1.2011, to appoint him as Registrar of A.P. Pharmacy Council (for short "the Council"). Based on his representation and also consequent to the resignation of one Sri B. Yethirajam, who was working as Registrar of the Council, by G.O. Rt. No. 359, Health Medical and Family Welfare (L.2) Department, dated 17.02.2011, the Government appointed the petitioner as Registrar of the Council for a period of six months with effect from the date of issue of the order. The said term, as per the G.O., came to be expired on 16.8.2011. The case of the petitioner is that elections were conducted by the Council and State Council has been formed vide G.O.Ms. No. 8 HM & W Dept dated 10.1.2011. The said Council, elected one Annapareddy Vijay Bhaskar Reddy as President and also other office bearers

such as Vice-President and Members and the same was informed to the 1st respondent - Government by letter dated 6.4.2011. As the term of the petitioner was expiring by 16.8.2011, the State Council passed a resolution on 23.7.2011 to extend his tenure by another six months as Registrar of the Council from 17.8.2011 to 17.2.2012. The extension was made, in exercise of the power conferred under Rule 110 of A.P. Pharmacy Rules, 1955 (for short "the Rules") and the same was informed to the 1st respondent -Government, by letter dated 1.9.2011 and the same is impliedly accepted by the Government and as such, he is continuing as Registrar as on the date of the filing of the writ petition. While so, the Government issued G.O.Ms. No. 2010 HM & W Department dated 3.12.2011, appointing the 3rd respondent, who is working as Assistant Director, Drugs, Control Admn., as In-Charge Registrar of the Council. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed on behalf of the 1st respondent, stating that the petitioner was appointed as Registrar vide G.O. Rt. No. 359 dated 17.2.2011 for a period of six months up to 16.8.2011. In is counter affidavit, the Government has disputed the election of one A. Vijaya Bhaska Reddy -2nd respondent, as President of the State Council and also made allegations against the petitioner. It is stated that the elections were conducted by the Pharmacy Council and six members were declared by G.O.Ms. No. 8 dated 10.1.2011 and four ex-officio members were nominated and the Government has also nominated another five members and the council with 15 members was properly constituted. To conduct elections of President and Vice President, the Government issued notification vide Memo No. 17716/L2/10 dated 28.01.2011 and when the then Returning Officer called for a meeting vide reference No. ELEC/APPC/2010 dated 28.01.2011, to conduct elections of President and Vice President and Members of the Executive Committee, one Sri M. Venkat Reddy, who was earlier President, filed writ petition in W.P. No. 1720/2011 and by order dated 31.1.2011, this court granted stay of the said elections and accordingly, the Government also stayed the elections of the President and Vice-President of the Pharmacy Council by memo dated 31.1.2011. Therefore, elections were not conducted for President and Vice President till today. But one Mr. Annapareddy Vijaya Bhaskar Reddy, claiming to be elected as President, in spite of stay of this Court, has assumed charge on 6.4.2011. With these averments, and further stating that the 3rd respondent was appointed as In-charge Registrar and he assumed the office and the request of the petitioner was rejected and that the Executive Committee, has not passed any resolution dated 23.7.2011 and that it has no power to extend the tenure of the Registrar and further making allegations, against the petitioner and the alleged President, who is the 2nd respondent, writ petition was sought to be dismissed.

3. The petitioner filed reply affidavit reiterating the averments made in the writ petition and denying the allegations made against him in the counter affidavit.

4. The learned senior counsel for the petitioner has mainly argued on the aspect

of jurisdiction of the Government in appointing the 3rd respondent as In-charge Registrar. He submitted that the State Council u/s 26 of the Pharmacy Act, 1948 (8 of 1948) (for short "the Act") is empowered to make appointment of a Registrar, with the previous sanction of the Government. In the present case, the Government by G.O. Rt. No. 2010 dated 3.12.2011, has appointed the 3rd respondent as In-charge Registrar. He submitted that only the State Council has power u/s 26 to make appointment of Registrar, with the previous sanction of the Government. The State council has not sought for appointment of the 3rd respondent, as envisaged u/s 26 of the Act and, therefore, the Government cannot make the 3rd respondent as In-charge Registrar and hence the appointment is in contravention of Section 26 of the Act. He stated that the petitioner was appointed as Registrar vide G.O. Rt. No. 359 dated 17.2.2011 for a period of six months. The State Council, which is notified in terms of G.O.Ms. No. 8, and which is empowered to make appointment of the Registrar in terms of Section 26, passed the resolution dated 23.7.2011, to extend the tenure of the petitioner for a period of six months from 17.8.2011 and the same was pending with the Government for ratification. Without ratifying the same or passing any orders, the Government, appointed the 3rd respondent as In-charge Registrar and the same is, illegal and contrary to Section 26 of the Act. Therefore, the Senior Counsel sought to set aside the G.O. Rt. No. 2010 appointing the 3rd respondent. He submitted that after filing of the present writ petition the Government passed orders dated 9.12.2011 rejecting the request of the petitioner for further extension. This action of the respondent No. 1 in rejecting the case of the petitioner, for extension, in spite of the resolution dated 23.7.2011 passed by the State Council, and during the pendency of the writ petition, is arbitrary and cannot be sustained. He submitted that the allegations made against the petitioner are without any basis and no notice or procedure contemplated under the Act, has been followed and hence the allegations made behind the back of the petitioner, cannot be taken into consideration. He submitted that when the Government directed the Project Director, A.P. State AIDS Control Society, Hyderabad to take charge of the affairs of the Council, by dislodging the duly elected body of the Council, without notice, the elected President, Annapareddy Vijaya Bhaskar Reddy filed writ petition before this court in W.P. No. 27438 of 2011 and this court granted status quo on 29.11.2011 and the same is in force and hence A. Vijaya Bhasker Reddy is continuing as President. He further contended that when the status quo order is in force, the Government ought not have appointed the 3rd respondent as In-charge Registrar and the same is in violation of the interim orders of this court. With these averments, he sought to allow the writ petition by setting aside the appointment of 3rd respondent and continuing the petitioner as Registrar as per the resolution dated 23.7.2011 passed by the State Council.

5. The learned Additional Advocate General while reiterating the averments made in the counter affidavit, submitted that the State Council has no jurisdiction under Rule 110 to extend the tenure of the petitioner and disputed that the State

Council passed any resolution dated 23.7.2011 extending the tenure of the petitioner. He submitted that the though State Council is formed under G.O.Ms. No. 8, no Executive Committee as envisaged u/s 27, was constituted and no elections to the post of President and Vice President, were held, due to the stay granted by this court in different writ petitions, and one Vijay Bhasker Reddy, claiming to be the elected President, in spite of the stay order of this court in W.P. No. 1720 of 2011 dated 31.1.2011, assumed charge on 6.4.2011. He stated that there are number of allegations against the petitioner and he, in collusion with the self claimed president, have fabricated the records and siphoned out the money of the Council. As per G.O. Rt. No. 2010, the 3rd respondent has assumed charge on 7.12.2011 and the term of the petitioner expired long back and the Government vide letter dated 9.12.2011, has rejected the request of the petitioner for further extension. He submitted that under Rule 140 of the Rules, the Government has power to appoint the In-charge Registrar and the petitioner was also in fact appointed by the Government and now he cannot contend that Government has no jurisdiction to make appointment of the Registrar.

6. The learned counsel appearing for the 2nd respondent referring the facts, denying the allegations made against the 2nd respondent and further bringing to the notice of this court with regard to the status quo order passed by this court in W.P. No. 27438 of 2011 dated 29.11.2011, whereunder the 2nd respondent challenged the action of the Government in directing the Project Director, A.P. State AIDS Control Society, to take charge of the affairs of the Council by dislodging the duly elected body of the Council, on the ground of violation of the principles of natural justice, submitted that the 2nd respondent is the President of the Council and sought for passing of appropriate orders.

7. The learned counsel appearing for the 3rd respondent also made contentions, similar to that of the learned Additional Advocate General for 1st respondent and further contended that since the request of the petitioner for extension, has been rejected by the Government, the petitioner has no locus standi and the writ petition itself has become infructuous. He further contended that the appointment of the 3rd respondent as In-charge Registrar, cannot be questioned by the petitioner and if the same is sought to be questioned, by way of public interest, the same has to be heard by way of public interest litigation by the Division Bench. He further submitted that the alleged proposal sent to the Government for extension of the term of the petitioner was by the Executive Committee and not the Council and hence as per Section 26, the Executive Committee has no jurisdiction to send the proposal and, therefore, he submitted that in any event, there are no merits in the writ petition and the same is liable to be dismissed. Counter affidavit is also filed by the 3rd respondent with similar averments made in the counter affidavit filed by the 1st respondent.

8. In view of the above rival contentions, the point that arises for my consideration is, whether the Government has power to make appointment of the 3rd respondent as In-charge Registrar and whether the petitioner has made out

any case for interference?

9. In order to consider the above rival contentions, it is necessary to note few admitted facts on record.

10. The petitioner worked as Deputy Secretary to Government in Health, Medical and Family Welfare Department and before his retirement, he made a representation to the Government, for appointing him to the post of Registrar of the Council. At that time, one Sri B. Yethirajam, who was working as Registrar of the Council submitted his resignation dated 11.10.2010. In those circumstances, the Government vide G.O. Rt. No. 359 dated 17.2.2011, appointed the petitioner as Registrar for a period of six months with effect from the date of issue of the order. Accordingly, the petitioner joined and period of six months came to be expired on 16.8.2011. Thereafter, there is no material on record to show that the Government has extended the term of the petitioner.

11. The case of the petitioner is that the State Council, as defined under subsection (j) of Section 2 of the Act, with its prescribed members, as notified under G.O. Ms. No. 8, HM & W Department dated 10.1.2011, elected one A. Vijay Bhasker Reddy, as President and other officer bearers such as Vice-President and Members and informed to the 1st respondent - Government by letter dated 6.4.2011. The said Council passed a resolution on 23.7.2011, to extend his tenure by another six months as Registrar from 17.8.2011, in terms of Rule 110 of the Rules and the same was informed to the Government by letter dated 1.9.2011 and by virtue of the said resolution, he is continuing as on the date of the filing of the writ petition. His further case is that when the resolution passed by the State Council dated 23.7.2011, is pending with the Government for ratification, without ratifying the same, appointed the 3rd respondent as In-charge Registrar, is without any jurisdiction.

12. In the counter filed by the 1st respondent, though formation of the State Council vide G.O. Ms. No. 8, is admitted, it is stated that when the notification for election of President and Vice President was issued vide Memo No. 17716/L2/10 dated 28.01.2011, one Sri M. Venkat Reddy, who was the earlier President, filed a writ petition before this court in W.P. No. 1726/ 2011 and by interim order dated 31.1.2011, this court granted stay and accordingly Government vide memo dated 31.1.2011, stayed the elections and hence as on today, no elections were conducted to the post of President and Vice President and one Annapareddy Vijaya Bhaskar Reddy claiming to be elected as President, in spite of stay of this court, assumed office on 6.4.2011. In the counter several allegations against the petitioner and the alleged President - Annapareddy Vijaya Bhaskar Reddy, are made, but the same are not being referred to, since they are not necessary for resolving the dispute in the present writ petition. It is further stated that the petitioner was appointed only for a period of six months from the date of issue of the G.O. Rt. No. 359 and the alleged President has no power to extend the term of the petitioner and that no minutes of the meeting are filed and the minutes of the meeting of the executive committee of A.P. Pharmacy Council dated

23.7.2011 produced by the petitioner before this court are fabricated and no such meeting was conducted. It is stated that the A. Vijaya Bhaskar Reddy was never elected as President and the petitioner has informed by letter dated 6.4.2011 that the said A. Vijaya Bhaskar Reddy has been elected as President and the same is false. Though the said Vijaya Bhaskar Reddy filed W.P. No. 24835 of 2011 regarding his appointment as President, the same is in no way connected with the present writ petition. The Government vide G.O.Rt. No. 2010 appointed 3rd respondent as In-charge Registrar and he had taken charge on 7.12.2011, but the petitioner without handing over the charge, had deliberately gone on leave from 7.12.2011. The Government by letter No. 128/L.2/2011 dated 9.12.2011 rejected the request of the petitioner for further extension of the term and also informed that the In-charge Registrar has been appointed.

13. In view of the above averments made in the counter affidavit, there is any amount of dispute with regard to the Executive Committee passing a resolution dated 23.7.2011, extending the tenure of the petitioner for a further period. Further this court granted interim stay of election to the post of President and Vice President in W.P. No. 1726/2011 by order dated 31.1.2011 and the Government in compliance of the orders of this court, issued memo dated 31.1.2011. Writ petitions in W.P. Nos. 24835, 1726 and 27438 of 2011 with regard to election of the President and the connected issues are pending before this court. Therefore, there is also dispute with regard to the election of A. Vijaya Bhaskar Reddy, as President.

14. Further, as per the averments made in the counter affidavit, the Government by letter No. 128/L.2/2011 dated 09.12.2011 has rejected the request of the petitioner for further extension of the term. The In-charge Registrar, who was appointed vide G.O. Rt. No. 2010 Health, Medical and Family Welfare/L.2 dated 3.12.2011, has assumed the office on 7.12.2011.

15. The main contention of the counsel for the petitioner, that the Government has no jurisdiction to make appointment of In-charge Registrar in terms of Section 26 of the Act and it is for the State Council to make such appointment with the previous sanction of the Government.

16. In this regard it is necessary to note relevant provisions under Sections 2(da) and (i) and 19, 26, 27 and 46, of the Act, and also Rules 110 and 140 of the Rules, which are framed in terms of Section 46 of the Act. They are extracted as under for better appreciation:

2. Interpretation - In this Act, unless there is anything repugnant in the subject or context.-

(da) "Executive Committee" means the Executive Committee of the Central Council or of the State Council, as the context may require;

(j) "State Council" means a State Council of Pharmacy constituted u/s 19, and includes a Joint State Council or Pharmacy constituted in accordance with an

agreement u/s 20;

19. Constitution and Composition of State Councils.- Except where a joint State Council is constituted in accordance with the Agreement made u/s 20, the State Government shall constitute a State Council consisting of the following members; namely:-

26. Staff, remuneration and allowances.- The State Council may, with the previous sanction of the State Government,-

(a) appoint a Registrar who shall also act as Secretary and, if so decided by the State Council, Treasurer, of the State Council;

(b) appoint such other officers and servants as may be required to enable the State Council to carry out its functions under this Act;

(c) fix the rates of allowances and other conditions of services of the Secretary and other officers and servants of the State Council;

(d) fix the rates of allowances payable to members of the State Council

Provided that for the first four years from the first constitution of the State Council, the Registrar shall be a person appointed by the State Government, who shall hold office during the pleasure of the State Government.

27. The Executive Committee.-

(1) The State Council shall, as soon as may be, constitute an Executive Committee consisting of the President (who shall be Chairman of the Executive Committee) and Vice-President, ex officio and such number of other members elected by the State Council from amongst themselves as may be prescribed.

(2) A member of the Executive Committee shall hold office as such until the expiry of his term of office as members of the State Council, but, subject to his being a member of the State Council, he shall be eligible for re-election.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Executive Committee shall exercise and discharge such powers and duties as may be prescribed.

46. Power to make rules.-

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of Chapters III, IV and V.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for-

.....

(f) the qualifications, the term of office and the powers and duties of the Registrar and other officers and servants of the State Council including the

amount and nature of the security to be given by the Treasurers;

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Rule 110. The qualifications and the scale of pay for the post of Registrar shall be fixed by the Council with the previous approval of the Government. In respect of grant of allowances other than travelling allowance to the Registrar, the Council shall generally be guided by the principles laid down in the Fundamental Rules.

Rule 111. The term of office of the Registrar shall be such number of years not exceeding five, as the Government may fix but a retiring incumbent may with the approval of the Government be re-appointed for a further term or terms. Retired Government servants will also be eligible for appointments as Registrar.

Rule 140 The decision of the Government on any question that may arise as to the intention, construction or application of these rules shall be final.

17. Section 2 (da) and (j) defines "Executive Committee" and "State Council" and Section 19 deals with Constitution and Composition of State Council. In the present case, there is no dispute with regard to formation of State Council in view of G.O. Ms. No. 8 dated 10.1.2011. The State Council u/s 26 may with the previous sanction of the State Government, appoint a Registrar, who shall also act as Secretary. Section 27 provides for constitution of Executive Committee consisting of the President and Vice President and other members, who shall be elected by the State Council from among its members as may be prescribed. Section 46 empowers the State Government to make rules to carry out the purposes of Chapters III, IV and V and under clause (f) of sub-section 2 of Section 46, the State Government may make rules with regard to qualifications, the term of office and the powers and duties of the Registrar and other officers and staff of the State Council. In exercise of the powers u/s 46 of the Act, the A.P. Pharmacy Rules, 1955, have been framed and per Rule 110, the qualifications and the scale of pay for the post of Registrar shall be fixed by the Council with the previous approval of the Government. Under Rule 111, the term of office of the Registrar shall be such number of years not exceeding five, as the Government may fix and retired Government officials are also enabled under this rule for reappointment for a further term or terms with the approval of the Government. Rule 140 stipulates that the decision of the Government on any question that may arise as to the intention, construction or application of these rules shall be final.

18. In the present case, though there is no dispute with regard to formation of the State Council with its composition as envisaged u/s 19, in view of G.O. Ms. No. 8 dated 10.1.2011, there is any amount of dispute with regard to election of the President, Vice President and other office bearers by the members of the State Council. There is also dispute with regard to passing of the resolution dated 23.7.2011 by the Executive Committee. In the writ affidavit, the petitioner has stated that the State Council passed a resolution on 23.7.2011 for extension of his tenure. But in the annexure to the writ petition, reference is made with

regard to passing of the resolution dated 23.7.2011 by the Executive Committee. Further, the Executive Committee shall consist of President, Vice President and other officers, who shall be elected from among the members of the State Council. In the present case, in the writ affidavit it is stated that A. Vijaya Bhasker Reddy was elected as President and the same was informed to the Government on 6.4.2011. As already noted, in the counter affidavit, the same was disputed and it is stated that in view of the interim orders passed by this court, there is stay for elections to the post of President. In view of these circumstances, the resolution dated 23.7.2011, relied on by the petitioner to show that the Executive Committee has extended his tenure, cannot be taken into consideration.

19. The case of the petitioner in the writ affidavit is that the State Council in exercise of its power under Rule 110 of the Rules, has passed resolution to extend his tenure and the same was intimated to the Government. Rule 110, which is extracted above, deals with qualification and scale of pay for the post of Registrar. It does not deal with extension of the tenure of a Registrar and under Rule 111, the term of office of the Registrar, shall be such number of years, not exceeding five as the Government may fix and it further envisages that a retiring incumbent may with the approval of the Government be reappointed for a further term or terms and that the Retired Government servants will also be eligible for appointment as Registrar. A reading of the Rule 111 makes it clear that term of office of the Registrar, shall be fixed by the Government, which shall not exceed five years. As already noticed above, Section 46 of the Act deals with the power of the State Government to make Rules. Sub-section (1) of Section 46 states that the Government may by notification in the Official Gazette, make rules to carry out the purposes of Chapters III, IV and V. Chapter III of the Act deals with State Pharmacy Councils and under this Chapter Section 26, deals with Staff, Remuneration and allowances and the State Council is given enabling power to make appointment of a Registrar, with the previous sanction of the State Government. As per proviso to Section 26, for the first four years from the first constitution of the State Council, the Registrar, shall be a person appointed by the State Government, who shall hold office during the pleasure of the State Government. Further sub-section 2(f) of Section 46 deals with the qualification, the terms of office and the powers and duties of the Registrar. By virtue of Section 46, Rules have been framed and Rule 111, empowers the Government, to fix the term of the Office of the Registrar. Under Rule 140, the decision of the Government on any question that may arise as to the intention, construction or application of these rules shall be final.

20. Therefore, a combined reading of the above provisions under the Act and the Rules, the power of the Government to make appointment of Registrar and in the present case, In-charge Registrar, cannot be questioned and the 1st respondent is within his jurisdiction in making appointment of 3rd respondent as In-charge Registrar.

21. Coming to the facts of the present case, at the cost of repetition, it is to be noticed that the term of the petitioner expired long back and there are no interim orders from this court restraining the Government from making appointment of In-charge Registrar or for continuing the petitioner. The Government has appointed the 3rd respondent as In-charge Registrar, who has taken charge and the Government by letter No. 128/L.2/2011 dated 9.12.2011, has rejected the request of the petitioner for further extension and the State Council, as per the case of the petitioner in the writ affidavit, which passed the resolution dated 23.7.2011, has no jurisdiction to extend the term of the petitioner in terms of Rules 110 of the Rules and the issue with regard to election of President to the Council and the connected issues, are pending before this court in W.P. Nos. 24835, 1726 and 27438 of 2011. For the foregoing reasons, I do not find any merit in the writ petition and the same is dismissed with costs.