
(2016) 12 DEL CK 0062

In the Delhi High Court

Case No : W.P.(C) 11566 of 2016 and CM APPL.45584-88 of 2016

Ramjee Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Homoeopathy Central Council Act, 1973 — Section 3, Section 7
Indian Medicine Central Council Act, 1970 — Section 7

Citation : (2017) 236 DLT 18

Hon'ble Judges : Ms. Hima Kohli, J.

Bench : Single Bench

Advocate : Mr. Rakesh Kumar, CGSC with Mr. A.K. Panigrahi, Advocate and Mr. Franklin L. Khobung, Director, for the Respondent Nos. 1 and 2; Mr. Sudhir Nandrajog, Sr. Advocate with Dr. Rakesh Gosain, Mr. Indranil Ghosh, Mr. Sumeet Kumar Singh and Mr. Kunal Singh, Adv

Final Decision : Allowed

Judgement

Ms. Hima Kohli, J. - The present petition has been filed by the petitioner praying inter alia for setting aside the notice dated 30.11.2016, issued by the respondent No.1/Ministry of Ayurveda, Yoga, Naturopathy and Unani, Sidha and Homeopathy (AYUSH), Government of India, proposing to hold the election to the post of President of the Central Council of Homoeopathy (hereinafter referred to as "the Council") on 09.12.2016, and further for issuing directions to the respondents to take immediate steps to conduct the election to the post of Members of the Central Council of Homoeopathy, in terms of Section 3 of the Homoeopathy Central Council Act, 1973 (hereinafter referred to as "the Act").

2. Mr. Sudhir Nandrajog, Senior Advocate appearing for the petitioner states that the petitioner was elected as a Member of the Central Council on 20.02.2011, in terms of the Notification dated 02.08.2011 and the tenure of Members of the Central Council is five years from the date of election or nomination, as the case may be, or until a successor is duly elected, whichever is longer, as per Section 7

of the Act. He states that though the petitioner's term of office as a Member of the Council had expired on 01.08.2016, he was elected as a President of the Council in terms of Section 3(2) of the Act, with effect from 27.11.2014 and as prescribed in Section 7 of the Act, the period of five years reckoned from the said date, shall expire only on 26.11.2019. It is therefore canvassed that the impugned notice dated 30.11.2016, proposing to hold the election to the post of President of the Council is liable to be quashed for the reason that even if it is assumed that the term of office of the petitioner as a Member of the Council had expired in the end of February, 2016, he shall continue holding the said office, until his successor is duly elected. It is stated that till date, no steps have been taken by the respondents to start the process of conducting elections to the post of Members of the Council that have fallen vacant. Given the rule position, the petitioner who was elected as a Member of the Council from the State of Bihar w.e.f. 20.02.2011, in terms of the Notification dated 02.08.2011, claims that having been elected later on as a President of the Council on 27.11.2014, even if his term as a Member of the Council is deemed to have been curtailed and come to an end in February, 2016, by applying the provision of Section 7 of the Act, he shall continue holding the office of President until his successor is elected or nominated, whichever is longer.

3. When the present petition was listed for admission yesterday, Mr. Rakesh Kumar, learned counsel for the respondents had appeared on advance notice and sought time to obtain instructions from the Department.

4. Today, learned counsel for the respondents states that the provisions of the Act are para materia with the provisions of Indian Medicine Central Council Act, 1970, which statute was enacted three years prior to the enactment of the Homeopathy Central Council Act, 1973. Some provisions of the Indian Medicine Central Council Act, 1970 had come up for interpretation before the Supreme Court in the case of K.B. Nagur, M.D. (Ayurvedic) v. UOI, reported as (2012) 4 SCC 483. Amongst other points that were argued in the said case, challenge was also laid to Section 7 of the Indian Medicine Central Council Act on the ground that the said provision is unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

5. Pertinently, Section 7 of the Indian Medicine Central Council Act, 1970, which prescribes the term of office of the President, Vice President and members of Central Council, is by and large quite similar to Section 7 of the Homoeopathy Central Council Act, 1973. The said provisions in both the statutes are reproduced below for ready reference:-

"The Indian Medicine Central Council Act, 1970

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.

Homoeopathy Central Council Act, 1973

Term of office of President, Vice President and members of Central Council

7. (1) The President, 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) A person who hold or who has held office as President or Vice-President of the Central Council, shall eligible for re-election to that office once, but only once.

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

(4) 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 Homoeopathy, 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 Homoeopathy of the University concerned.

(5) 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.

(6) 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."

6. The challenge laid to the constitutionality of Section 7 of the Act in the case of K.B. Nagur (*supra*) was repelled by the Supreme Court and said provision was upheld. Further, it was observed as below:-

37. As already referred above, the provisions of Section 3 are concerned with the constitution of the Central Council by election and nomination. Section 4 requires the Central Government to conduct elections in accordance with the Rules. Section 7 provides the term of office. Once these provisions are read together, it is clear that the legislative intent is that election to the Central Council should be held within the period of five years which is the term of office prescribed for the elected and/or nominated members. However, if for any reason, the elections are not held and newly elected members do not join their office immediately after expiry of five years, then the latter part of Section 7 comes into play.

38. This is an extra-ordinary situation that the elected members continue beyond their prescribed term because the elections had not been held and newly elected members cannot join the Central Council. Though, no outer limit has been specified by the Legislature for which such previously elected members can continue in office, but this certainly cannot be for indefinite period. For whatever reason, once recourse to this exceptional situation becomes necessary, then the concept of reasonable time would come into play. It is a settled rule of statutory interpretation that wherever no specific time limit is prescribed, the concept of reasonable time shall hold the field for completing such an action. The courts in the process of interpretation can supply the lacuna, which would help to achieve the object of the Act and the legislative intent and make the provisions effective and operative.

39. Neither the Government, nor the Central Council can abjure their obligation to complete the election process within five years, or in any case, within a reasonable time thereafter. Thus, in our considered opinion, a period of three months would be more than sufficient for completing the election process in accordance with law. This time limit shall operate only and as and when the Central Government and the Central Council jointly and severally are not able to hold the fresh elections within the term of office of the previously elected members, i.e., five years from the date on which the members first assumed office.

40. The words of Section 7 of the Act are intended to operate in an extra-ordinary situation, as the normal course should be that the Central Government hold the elections within a period of five years from the date of notification of the

elected candidates for the previous tenure. Even where recourse to this exceptional situation becomes necessary, even there, the concept of reasonable time would come into play, in a situation where no definite period has been prescribed by the Legislature itself. The courts can always supply such lacuna in the interpretation of provisions of a law so as to achieve the object of the Act particularly when such interpretation would be in consonance with the legislative object of the statute. Thus, in our considered opinion, a period of three months would be more than sufficient time for completing the election process, in the event of exceptional circumstances and if the elections had not been commenced and completed within the period of previous tenure of five years, as is the requirement of law, and the Government cannot abjure its obligation to do so within a maximum period of three months.

41. For the reasons afore-recorded, we partially allow this Public Interest Litigation, with the above observations and the following directions:-

(a) Section 7 of the Indian Medicine Central Council Act, 1970 or any part thereof is neither ultra vires nor violative of Articles 14 and/or 16 of the Constitution of India.

(b) We hereby mandate that the Central Government shall discharge all its duties and functions as contemplated under Sections 3, 4 and 7 of the Indian Medicine Central Council Act, 1970, without default, delay and within the required intervals. We make it clear that it is the obligation of the Central Government to hold election to the Central Council within the period of five years i.e., before expiry of, the term of office of the President/Vice-President and Member of the Central Council, as provided under-Section 7 of the Act.

(c) In the eventuality of exceptional circumstances, if the Central Government is not able to hold elections within the period of the prescribed term, it shall complete the process within a reasonable time thereafter and in no case, exceeding three months from the date on which the term of the members in office expires.

(d) 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.

(e) We direct the Secretary, Ministry of Health and Family Welfare and the President of the Central Council to circulate copies of this judgment, for strict compliance by all concerned."

7. Learned counsel for the respondents states that for holding elections to the post of President, Vice President and Members of the Central Council for Homoeopathy, the respondents have on their own decided to follow the directions issued by the Supreme Court in the case of K.B. Nagur (supra) and having regard to the fact that the term of the membership of the petitioner herein has come to an end on 19.02.2016, as per the Notification dated 02.08.2011

(Annexure P-2) and those of eight other members of the Council (from out of a total of 57 members) have also expired in the years 2015-2016, steps are being taken to conduct the elections to the said posts at the earliest.

8. This Court is of the opinion that if the respondents were sincere in implementing the directions that were issued by the Supreme Court in the case of K.B. Nagur (supra), as long back as in the year 2012, then by now they would have initiated and completed the process of conducting the election to the post of Members whose terms had expired in the year 2015- 16. But that has not been done. Admittedly, as of date, there are eight members, whose terms of office had expired in the year 2015 but, no steps have been taken till date to fill up the said vacancies. This is not to say that the aforesaid delay/default on the part of the respondents can give a handle to the petitioner to contend that he shall continue acting as a President of the Council till 26.11.2019. In any event, as of now, the petitioner is stated to be in police custody since 22.10.2016, in a case registered against him under Section 120(B) IPC and Section 7,12 and 13 read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

9. Now that the respondents have woken up to the fact that the elections to the post of President of the Council are overdue and ought to be conducted in terms of the guidelines laid down in the case of K.B. Nagur (supra) and the impugned notice dated 30.11.2016, has been issued as a step in the said direction, this Court does not see any reason to restrain the respondents from conducting the said elections or for staying the said notice. The relief prayed for by the petitioner in prayer clause (a) of the petition is therefore turned down as devoid of merits.

10. As for the second relief, which is for issuing directions to the respondents to conduct the elections to the post of Members of the Council in accordance with Section 3 of the Act, learned counsel for the respondents assures the Court that necessary steps in this regard have been initiated and shall be taken to its logical conclusion at the earliest.

11. The respondents are cautioned that if they are serious about implementing the decision of the Supreme Court in the case of K.B. Nagur (supra), by applying the same to the Central Council of Homoeopathy as has been stated before this Court, then appropriate steps ought to have been taken by the Department much earlier, which they have apparently failed to do. As it has been submitted by learned counsel for the respondents in the course of arguments that the respondents have been simultaneously taking steps to amend the Statute itself and the said proposal is being examined by the Select Committee of the Parliament and without awaiting approval of the said amendments, they have decided to give effect to the judgment in K.B. Nagur (supra), in respect of the Central Council of Homoeopathy, it is directed that necessary steps shall be taken by the respondents forthwith to ensure that prompt and time bound measures are taken to fill up such of the posts of Members of the Council that have already fallen vacant and those posts that are going to fall vacant upto 31.03.2017 and

so on so forth, in accordance with the directions issued in the captioned case.

12. The petition is partly allowed and disposed of in limine along with the pending applications in terms of the orders passed above.