
(2014) 06 MAD CK 0252

In the Madras High Court

Case No : Writ Petition (MD) No. 4713 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

T. Retnapandian

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3(q)
Central Vigilance Commission Act, 2003 — Section 4(1)
Constitution of India, 1950 — Article 14, 16(1), 219, 226, 318
Indian Medicine Central Council Act, 1970 — Section 13-C, 14(2), 18, 19(1), 20(1)

Citation : (2014) 06 MAD CK 0252

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—This writ petition, filed by way of public interest litigation, is for a declaration that the nomination of the 4th respondent herein as a Member of the Central Council of Indian Medicine, by a Notification issued by the Government of Tamil Nadu on 03.03.2014 is illegal and for a consequential order restraining the 4th respondent from functioning as a Member of the Central Council of Indian Medicine.

2. We have heard Mr. V. Selvaraj, learned counsel appearing for the petitioner, Mr. P. Wilson, learned Additional Solicitor General for the 1st respondent, Mr. V.T. Gopalan, learned senior counsel appearing for the 2nd respondent, Mr. C. Karthik, learned counsel for the 3rd respondent and Mr. T.K. Gopalan, learned Counsel appearing for the 4th respondent.

3. The practice of traditional Indian Medicine, such as Ayurveda, Yoga, Unani, Naturopathy, Siddha and Homeopathy, is today governed by a Parliamentary enactment, namely, the Indian Medicine Central Council Act, 1970 (in short "the Act"). The object of the Act is primarily to provide for the constitution of a

Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine. Section 3(1) of the Act requires the Central Government, by Notification in the Official Gazette, to constitute a Central Council, comprising of (i) such number of Members, not exceeding five, for each of the Ayurveda, Siddha and Unani Systems of Medicine, from each State in which a State Register of Indian Medicine is maintained; (ii) One member for each of the Ayurveda, Siddha and Unani Systems from each University to be elected from amongst themselves by the members of the faculty or department of the respective system of medicine of that University; and (iii) such number of Members, not exceeding 30% of the total number of Members elected under (i) and (ii) above, as may be nominated by the Central Government from amongst the persons having special knowledge or practical experience in respect of Indian Medicine.

4. In other words, the Central Council to be constituted by the Central Government should comprise of three different types of members. The first set of members are those elected from amongst persons enrolled in the State Registers of Indian Medicine as practitioners of Ayurveda, Siddha or Unani. The second type of members are those elected from amongst the members of the faculty of each University for each of the Ayurveda, Siddha and Unani Systems of Medicine. The third category of members are those who are nominated by the Central Government from amongst persons having special knowledge or practical experience in respect of Indian Medicine. To put it precisely, the Council would comprise of (i) persons elected from among the practitioners of each of the three systems of medicine, (ii) persons elected by the teaching faculty of each of the three systems of medicine from each University and (iii) those nominated by the Central Government.

5. u/s 3(2) of the Act, the President of the Central Council should be elected by the members of the Central Council as constituted from the three streams mentioned in Section 3(1). Section 3(3) requires three Vice-Presidents to be elected, one each from the three different system of medicine.

6. Though Section 4(1) of the Act stipulates that the election of members from the first two categories, namely, those from amongst the practitioners and those from amongst the teachers in Universities, to be conducted in accordance with Rules made in this behalf, the Act is conspicuously silent about the procedure to be adopted by the Central Government to nominate persons under the third category. Similarly, Section 5(1) stipulates that no person shall be eligible for election to the Central Council unless he possesses any of the medical qualifications, included in the Schedules II, III or IV and is also enrolled on any State Register of Indian Medicine. This prescription is also silent about the eligibility criteria of persons to be nominated by the Central Government in respect of the third category.

7. The Central Council, by virtue of Section 6, is to be a body corporate, having perpetual succession and common seal. The President, Vice-Presidents and Members elected or nominated to the Council have a tenure of office for five

years.

8. The Central Council is vested with enormous powers, the crucial one of which, is the power to scrutinise a claim submitted to the Central Government by any person proposing to establish a medical college or open a new or higher course of study or training, including a Post Graduate Course of Study or Training. The assessment by the Central Council, of any scheme for establishing a new medical college, plays a crucial role, since the opinion formed by the Central Government either to grant or reject approval, predominantly depends on the opinion formed by the Council. The Council also has the power to advise the Central Government u/s 14(2), whenever an institution applies for inclusion of their name in the Second Schedule, so as to have the medical qualification offered by them recognised. The Central Council has power u/s 18 to require any information from any University, Board or Medical Institution. u/s 19(1), the Central Council has the power to appoint such number of Medical Inspectors to inspect any medical college or hospital where education is provided or to attend any examination held by any University. The Council also has the power to appoint Visitors u/s 20(1) to inspect any medical college or to attend any examination for the purpose of granting recognized medical qualification. If, upon a report by the Inspector or Visitor, the Central Council is of the opinion that the University or Institution has deficiencies, the Central Council can take up the same with the Central Government u/s 21. Apart from all these, the minimum standards of education in Indian Medicine are to be prescribed only by the Central Council u/s 22. The Central Council is empowered u/s 26(1) also to prescribe standards of professional conduct and etiquette and code of ethics for practitioners of Indian Medicine. As a matter of fact, the Regulations made by the Central Council, prescribing standards of professional conduct, shall have effect by virtue of Section 26(2), notwithstanding anything contained in any law for the time being in force. The central Council also has the power to issue Regulations u/s 36, in respect of the matters specified therein.

9. Thus, the broad scheme of the Indian Medicine Central Council Act, 1970, is to create a Council, vested with the powers (i) to prescribe standards of medical education; (ii) to prescribe standards of professional conduct for the practitioners; and (iii) to advise the Central Government on the question of grant of approval either for establishing a new college or for introducing a new course of study in an existing institution. Hence, the Central Government has a great responsibility in ensuring that the constitution of the Central Council is made in a proper manner, so that neither the standards of medical education nor the standards of professional conduct of the practitioners of Indian Medicine falls to the ground. Keeping these fundamental aspects in mind, let us now come to the facts of the case and the issues arising therefrom.

10. The 4th respondent in this writ petition (i) passed B.A.M.S., Degree Course in 1998; (ii) joined a college by name Sairam Ayurveda Medical College as a Lecturer on 02.08.1999; (iii) got registered as a Practitioner with the Tamil Nadu

Board of Indian Medicine on 30.08.1999; (iv) got admission to M.D. Course in a particular branch of Ayurveda in an Ayurveda College at Karnataka in the year 2001 and underwent a three year post-graduate degree course in Ayurveda from 2001 to 2004 and (v) re-joined the college on 01.10.2004 and was declared to have successfully completed the post-graduate course in September 2005.

11. As pointed out earlier, the Central Council of Indian Medicine is to comprise of three types of members. The second category of membership consists of persons elected from among the faculties of each University in each of the three branches of medicine. It appears that one Dr. M.P. Ponnammam, a faculty of the Tamil Nadu Dr. M.G.R. Medical University, which is the third respondent in the writ petition, resigned, thereby creating a vacancy in the Council under the second category for the said University. Since that vacancy need not be filled-up by election but could be filled-up by nomination for the residuary period, the third respondent University nominated the 4th respondent as a Member of the Central Council for the period from 15.09.2009 to 18.03.2010.

12. Subsequently, the 4th respondent was elected as a member of the Central Council under the second category, namely, the member of the faculty of the University, in terms of Section 3(1)(b) of the Act. Consequently, the Central Government notified in the Gazette on 11.11.2009 that the 4th respondent was an elected member under the second category, representing the 3rd respondent University for the period from 16.09.2009 to 15.09.2014. Thereafter, she was elected as a Member of the Executive Committee of the Central Council on 17.10.2011. Later, she was also elected as Vice-President of the Central Council for Ayurveda on 06.09.2012.

13. But, unfortunately, the appointment of the 4th respondent as a member of the faculty of Ayurveda in the 3rd respondent University was itself only for a period of three years, from 19.03.2010 to 18.03.2013. Since the election of a person u/s 3(1)(b) of the Act is actually from amongst the members of the faculty of a University, the continuance of such person as a member of the faculty was a pre-requisite for continuance as the elected member under that category.

14. Therefore, the President of the Central Council issued a proceeding dated 18.06.2013, pointing out that since the appointment of the 4th respondent as the member of the faculty of Ayurveda in the University expired on 18.03.2013, her continuance as an elected member of the Central Council may not be permissible. Challenging the said communication and contending that her election was for a period upto 15.09.2014 and that the same cannot be disturbed, the 4th respondent filed a writ petition in W.P. No. 18520 of 2013. But, during the pendency of the writ petition, the 3rd respondent University again reappointed the 4th respondent as a member of the faculty for a period of three years from 12.07.2013 to 11.07.2016. But, in the meantime, the Central Government issued a Notification, dated 13.08.2013, declaring that the 4th respondent is deemed to have vacated the seat, since there was a gap of more

than three months from the date of expiry of her earlier appointment as faculty and the date of her reappointment as a faculty.

15. In view of the Notification issued by the Central Government declaring the membership of the 4th respondent to have been vacated, the 3rd respondent University announced a fresh election on 21.11.2013 for electing one of the members of the faculty u/s 3(1)(b). Immediately after the announcement of the elections by the 3rd respondent University, one person by name Dr. Jayashankar filed a writ petition in W.P. No. 31232 of 2013 to restrain the 4th respondent from contesting in the elections on the ground of certain allegations. Though this Court did not grant any interim order in the said writ petition, the results were not declared.

16. However, the 4th respondent herself resigned from the faculty of the third respondent University on 21.02.2014. Therefore, the issue relating to the election of the 4th respondent to the Central Council from the second category u/s 3(1)(b) was put to rest at that.

17. Though the aforesaid controversy was put to rest by the 4th respondent herself resigning from the faculty of the University on account of certain obvious reasons, a new controversy was created soon. Within 10 days of the resignation of the 4th respondent from the faculty of the 3rd respondent University, the Central Government issued a Notification on 03.03.2014, nominating the 4th respondent under the third category in terms of Section 3(1)(c). It appears that the nomination was made by the Central Government under the third category on 28.02.2014, within one week of her resignation from the faculty.

18. On 14.03.2014, the petitioner herein filed the above public interest litigation on the file of this Court, seeking a declaration that the nomination made by the Central Government under the Notification dated 03.03.2014 was illegal and void. The writ petition came up before this Court for the first time on 18.03.2014. In view of the urgency expressed and also in view of the fact that the election of the President and Vice-Presidents of the Central Council was scheduled to be held soon, this Court ordered notice to the 4th respondent returnable by 26.03.2014. Insofar as the respondents 1 and 2 are concerned, Central Government Standing Council took notice. The 3rd respondent University also took notice through their Standing Counsel. No interim order was granted on the first date, namely, 18.03.2014.

19. It appears that in the meantime yet another writ petition was moved before the Principal Bench of this Court by somebody else (not the present writ petitioner) in W.P. No. 8071/2014. It is learnt that in the said writ petition a blanket interim stay was originally granted on 18.03.2014, but the same was later modified permitting the elections to go on. However, the publication of the results was directed to be kept in abeyance.

20. Since it was brought to our notice that an interim order to the above effect has been passed by a learned Judge on the file of the Principal Bench, we also

passed an order on 26.03.2014, directing that the results of the election to the post of President, Vice-Presidents, etc. shall not be declared, till the next date of hearing, namely 03.04.2014.

21. Thereafter, the writ petition came up for hearing on 03.04.2014 and the pleadings in the case got completed. Therefore, the case was adjourned to 15.04.2014 for hearing, at the request and convenience of all the Senior counsel and the interim order was extended till then. On 15.04.2014 and on 16.04.2014, the main writ petition itself was argued at length by all the learned counsel appearing for all the parties.

22. One of the points raised at the time of arguments was that the method of nomination of persons allegedly having special knowledge or practical experience was left to the arbitrary exercise of power of the Central Government u/s 3(1)(c) of the Act. Therefore, we requested Mr. P. Wilson, learned Additional Solicitor General to produce the file relating to the nomination of the 4th respondent made by the Central Government. We also requested him to clarify as to what kind of a procedure is adopted for choosing a person for nomination and as to how the special knowledge or practical experience of persons nominated u/s 3(1)(c) are determined. The learned Additional Solicitor General could not answer these questions and he requested us to reserve orders, with an undertaking that the file will be circulated on or before 25.04.2014. Believing the said representation, we reserved orders on 16.04.2014. But the files were not circulated till 25.04.2014. The summer recess for the court was to begin from May 1 and hence we listed the matter on 29.04.2014 just to ask the learned Additional Solicitor General whether he would produce the files at all. But, the Central Government Standing Counsel sought time and hence we posted the matter on 30-4-2014, which was the last working day for the court. On that day the counsel representing the Additional Solicitor General, expressed inability to produce the file. Therefore, left with no alternative, we closed the matter on 30.04.2014, reserving our verdict. This Court also closed for Summer Vacation on 30.04.2014 and it reopened on 02.06.2014. Even till date, the files are not circulated. Therefore, we proceed to pass orders on the basis of the available records.

23. The nomination of the 4th respondent made by the Central Government is assailed primarily on two grounds, namely, (a) that the claim made by the 4th respondent about her credentials was patently false and hence a person of such a nature could not have been nominated by the Central Government u/s 3(1)(c) of the Act; and (b) that Section 3(1)(c) confers a power which is unbridled and not regulated by any guidelines, leaving scope for the Government to nominate any person they want.

24. The writ petition is opposed by the Central Council as well as the 4th respondent, tooth and nail on the ground of maintainability. The objections with regard to maintainability are 3 fold. They are:-

(i) According to the respondents, the writ petitioner is none else than the alter ego of the former President of the Central Council who is inimically opposed to the 4th respondent and that the petitioner is fighting a shadow litigation.

(ii) The Principal Bench had already dismissed a writ petition in W.P. No. 11408/2014 filed by one Mr. R. Satish Kumar against the nomination of the 4th respondent, even at the admission stage. Therefore, the respondents contend that the said order having been passed by a Bench of coordinate jurisdiction has to be followed by us.

(iii) A writ of declaration is not the appropriate writ in such cases and hence the prayer is misconceived and not maintainable.

We shall now deal with each of these objections.

Motivated writ petition

25. According to the 4th respondent, the former President of the Council has a score to settle with her and he is instigating and setting up persons one after another to file writ petitions. It is contended by the 4th respondent that this writ petition was first filed and when the petitioner failed to get an exparte interim order, another person moved the Principal Bench and obtained an interim order. Thereafter yet another person filed a PIL and the same came to be dismissed by the Principal Bench. Therefore, the 4th respondent claims that this writ petition filed by a dubious person whose credentials are doubtful, should be thrown out.

26. But we do not think that we can sustain the above objection. The respondents have failed to establish as to how the petitioner in this writ petition is connected with the 2 writ petitioners before the Principal Bench. Though the present writ petition is not actually couched as one for the issue of a writ of quo-warranto, the principles governing a writ of quo-warranto would equally apply to cases of this nature. It is now well settled that in a writ of quo-warranto the Court is concerned about the eligibility of the candidates with reference to statutory provisions and the question of locus standi pales into insignificance. Drawing a similar analogy it should be pointed out that the respondents cannot question the locus standi of the petitioner merely because someone else filed a similar writ petition before the Principal Bench. In any case the respondents have failed to show the relationship or connection between the former President of the Council and the petitioner herein.

27. In support of their contention that a public interest litigation at the instance of a person who is trying to settle scores with the opponent is not maintainable, the learned counsel for the 4th respondent relies upon the decision of the Supreme Court in T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, . In that case, a question arose as to whether a huge extent of land leased out by the State of Chhattisgarh to a company for setting up of a coal washery was a part of forest land or not. The allotment was challenged by one Deepak Agarwal in a public interest litigation. It was opposed by the company on

the ground that the writ petition was filed by a competitor of the lessee company, operating in the area and having a monopoly. In other words, the PIL was allegedly instigated by a rival company. It is in that context the Supreme Court observed in paragraphs 23 and 26 of the report that however genuine a cause brought before a Court by a public interest litigant may be, the Court has to decline its examination at the behest of a person whose bona fides and credentials are in doubt.

28. But, in the same case, the Supreme Court carved out an exception by holding that despite the doubtful character of a public interest litigant, the Court may still examine an issue having regard to the serious nature of the public cause and likely public injury by appointing an amicus curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant.

29. In the instant case, the allegation of mala fides is thrown by the 4th respondent against the petitioner on a very vague plea that he was set-up by the former president of the Central Council by name Ved Prakash Tyagi. The tenure of Ved Prakash Tyagi as the president of the Central Council was itself mired in several controversies. But, it does not mean that the present writ petition is filed at his behest. No link between the petitioner and Ved Prakash Tyagi has been established by the 4th respondent for us to follow the decision of the Supreme Court cited above. Therefore, the first limb of the objection relating to maintainability is rejected.

Dismissal of a similar writ petition

30. The second limb of objection of the respondents to the maintainability of the writ petition is on the basis of the dismissal of a similar writ petition by the Principal Bench. But it is seen from the order of the Principal Bench that W.P. No. 11408/2014 filed by somebody else, was dismissed by the Principal Bench on the impression as though it was a public interest litigation in a service matter. Unfortunately, the petitioner in that case before the Principal Bench had wrongly projected his case as though he was challenging in a public interest litigation, the appointment of the 4th respondent to the post of Lecturer on the ground that she did not fulfil the qualifications required for the post. In fact, the entire order of the Division Bench dismissing the writ petition in limine, at the stage of admission, is very short and it could be reproduced. Hence it is extracted as follows:

This writ petition has been filed by way of public interest litigation challenging the notification issued by the first respondent dated 03.03.2014, by which, the fourth respondent was nominated u/s 3(1)(c) of the Indian Medicine Central Council Act as a member of the Central Council of Indian Medicine.

2. The petitioner, before approaching this Court, made a representation to respondents 1 and 2 stating that the practitioners in the State of Tamil Nadu will have to be given an opportunity instead of giving to fourth respondent, who has

already a member of the Central Council of Indian Medicine. Since the said representation was not considered, the present writ petition has been filed.

3. We do not find any merit in this writ petition. The writ petition has been filed on mere surmises. Even though an averment has been made that the fourth respondent submitted a false declaration, there is no material in support of the same. Further more, the issue raised would come under the purview of the service jurisprudence and therefore, no public interest litigation would lie. There is no law, which prohibits a person being nominated for a second time. In such view of the matter, we do not find any merit in this writ petition.

4. Accordingly, the writ petition is dismissed. No costs.

31. It will be clear from the order of the Principal Bench extracted above (i) that the petitioner herein was not a party to the writ petition in W.P. No. 11408 of 2014; (ii) that the Division Bench thought that the issue raised in the writ petition fell within the purview of service jurisprudence and hence no public interest litigation would lie; and (iii) that the grievance of the petitioner in that writ petition was completely different as seen from Paragraph 2 of the order of the Division Bench, where it is stated that the State of Tamil Nadu had to be given one more representation in the Central Council. Therefore, we fail to understand as to how the order dated 22.04.20104 passed in a writ petition filed by someone else in W.P. No. 11408 of 2014 would make the present writ petition not maintainable in law.

32. It is needless to point out that the issue raised in this writ petition does not fall within the ambit of service jurisprudence. Neither the 4th respondent nor the writ petitioner is seeking appointment or promotion to any post. What is questioned in the writ petition is a nomination of the 4th respondent to a regulatory body, namely, the Central Council of Indian Medicine. We have already indicated that the Central Council comprises of three categories of persons, one elected from amongst the members of the profession, second elected from amongst the faculty members of Universities and the third, those nominated by the Central Government. Neither the election under the first two categories nor the nomination under the third category is equivalent to appointment or promotion to any post. A nomination to a body like the Medical Council or the Bar council of India or Nursing Council of India or the Dental Council of India, is not a service matter. Nominations of members to such councils do not fall under the purview of service jurisprudence. Therefore, the dismissal of the writ petition filed by another person (R. Satish Kumar) on the wrong impression as though it is a service matter, cannot make the present writ petition not maintainable.

33. The reliance placed by the respondents on the decision of the Supreme court In Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, , may not be of any help to them. In that case, the Supreme Court considered the question of maintainability of a public interest litigation in service matters, except by way of a writ of quo warranto. But, unfortunately for the respondents, the case on hand

is not a PIL in service matters. As we have pointed out, the petitioner is not challenging the appointment of the 4th respondent to any post in the civil Services of the State or Central Government. What is challenged in this writ petition is only a nomination of the 4th respondent to the Central Council for Indian Medicine. Therefore, this matter is not a service matter at all. By the order impugned in the writ petition, the 4th respondent has not been appointed either to civil post or to the civil services of the Central Government. Today, the 4th respondent, in case she is removed by the very same Central Government, cannot go to the Central Administrative Tribunal, since her appointment will not be a service matter within the definition of Section 3(q) of the Administrative Tribunals Act, 1985. Therefore, the principles laid down in *Hari Bansh Lal* on the question of maintainability of public interest litigation in relation to service matters does not apply.

34. As a matter of fact, a similar argument was advanced in *State of Punjab Vs. Salil Sabhlok and Others*, when the appointment of a person as the Chairman of the Public Service Commission was challenged. While rejecting the argument that it was a public interest litigation in a service matter, the Supreme Court referred to Section 3(q) of the Administrative Tribunals Act, 1985 (as we have done in this case) and held in paragraphs 73 and 74 of the report that the appointment to the post of Chairperson or a Member of the Service Commission is not a service matter. In Paragraphs 79, the Supreme Court indicated that to describe the appointment to a Constitutional Post, either generically or even specifically, as a service matter would be most inappropriate, to say the least.

35. Though we are not dealing with a Constitutional post in this case, we are not dealing with appointment to any post at all, either in the civil services of the State or the Centre. Therefore, the contention that a public interest litigation does not lie in a service matter is completely fallacious.

Prayer misconceived:

36. The third limb of the objection with regard to the maintainability of the writ petition is that the petitioner has sought a wrong relief. The petitioner has come up with a writ petition seeking the issue of a writ of declaration, which, according to the respondents is thoroughly misconceived.

37. Contending that a person who fails to seek the appropriate relief is not entitled to the relief, Mr. V.T. Gopalan, learned Senior Counsel, relies upon the decision of the Supreme Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, .

38. What happened in *Prabodh Verma* case was that two Ordinances issued by the Uttar Pradesh Government were challenged in a group of writ petitions on the file of the Allahabad High Court. A Division Bench of the Allahabad High Court held the provisions of the Ordinances to be violative of Articles 14 and 16(1) of the Constitution. When the matter was taken to the Supreme Court, at the instance of persons whose services were terminated in pursuance of the

judgment of the High Court, the Supreme Court pointed out in paragraph 29 of the report that there was a defect in one of the main reliefs sought for. Though what was challenged were 2 Ordinances, the writ petitioners had sought for a writ of certiorari. Since a writ of certiorari can never be issued to call for the records or papers and proceedings of an Act or Ordinance for quashing the Ordinances, the Supreme Court held that the Court could not have decided the writ petition, without first pointing out the defect to the counsel and allowing him to rectify the defect.

39. But, we do not think that the above decision is of any assistance to the respondents. The petitioner herein has not sought the issue of a writ of certiorari nor are we concerned about the validity of an Ordinance in this case. In this case, the petitioner could have asked for a writ of certiorari or a quo warranto. But, the petitioner has asked for a writ of declaration. We do not think that in matters of public interest, this distinction is of any significance.

40. As rightly contended by Mr. V. Selvaraj, learned counsel for the petitioner, the power of the High Court under Article 226 of the Constitution has been held to be very wide by the Supreme Court in several cases. In the *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, , an industrial dispute was referred by the State of Punjab to the Labour Court. The Presiding Officer passed an award and the same came to be challenged by way of a writ petition. In the challenge to the award, the management raised a plea that the Presiding Officer was not qualified to hold the post of a Judge of the Labour Court and that therefore the award was without jurisdiction. The writ petition was allowed by a Division Bench of the High Court. When the matter was taken to the Supreme Court by the State of Haryana, the Supreme Court was concerned with the question as to whether the person who passed the award was qualified to be appointed as a Judge of the Labour Court or not.

41. Noting that the Presiding Officer was impleaded as a party to the writ petition, the Supreme Court held in paragraph 9 of the report that the challenge to the appointment of the Presiding Officer having been made by way of a writ petition under Article 226 to which the concerned person was impleaded, the challenge was made directly in a substantive proceeding and not collaterally. When it was argued that the prayer in the writ petition was not for setting aside the appointment of the Presiding Officer, the Supreme Court had no difficulty in rejecting the said contention on the following lines.

10. The mere circumstance that the 1st respondent did not in so many words ask for the writ of quo warranto cannot justify the argument that the appointment was being challenged collaterally in a proceeding taken to challenge the award. Considering the averments in the writ petition, it seems to us clear that the main and real attack on the award was the ineligibility of Shri Gupa to occupy the post of a Judge of the Labour Court, in the discharge of whose functions the award was rendered by him. The relief of certiorari asked for by the writ petition was certainly inappropriate but by clause (c) of paragraph 16, the High Court was

invited to issue such other suitable writ, order or direction as it deemed fit and proper in the circumstances of the case. There is no magic in the use of a formula. The facts necessary for challenging Shri Gupta's appointment are stated clearly in the writ petition and the challenge to his appointment is expressly made on the ground that he was not qualified to hold the post of a Judge of the Labour Court.

The observation of the supreme Court that there is no magic in the use of a formula for drafting the relief portion of the petition is worth recalling.

42. As a matter of fact, the Supreme Court had an occasion to consider an identical question in a more recent decision rendered in *State of Punjab Vs. Salil Sabhlok and Others*, , to which we have made a reference in one of the earlier paragraphs. The said case arose out of the decision of a Division Bench of the Punjab and Haryana High Court. A practising Advocate moved a public interest litigation under Article 226 of the Constitution before the Division Bench of the Punjab and Haryana High Court praying for a mandamus to direct the State Government to frame Regulations governing the conditions of service and appointment of the Chairman and Members of the Public Service Commission, as envisaged in Article 318 of the Constitution and also for restraining the State Government from appointing a named individual as the Chairman, on the ground that he did not satisfy the parameters of integrity, impartiality and independence. The High Court constituted a Full Bench to which three questions were referred. The Full Bench, by order dated 17.08.2011, laid down a procedure to be followed by the State, as part of the decision making process for appointment of Members and Chairman of the Public Service Commission. After laying down the procedure, the Full Bench sent the writ petition back to the Division Bench to consider the question as to whether the appointment of the named individual by the State was correct or not. The Division Bench set aside the appointment. Aggrieved by the same, the State as well as the individual whose appointment was set aside went before the Supreme Court by way of Special Leave Petitions.

43. On the question as to what type of a remedy a person aggrieved in such circumstances could seek, the Supreme Court referred to all the decisions starting from *R.K. Jain* and ending up with *P.J. Thomas*. Interestingly, the contention of Mr. V.T. Gopalan, learned senior counsel for the second respondent with regard to the maintainability of a writ of declaration in such matters, stands squarely answered by the Supreme Court in paragraphs 89 to 92. For the purpose of easy reference, they are extracted as follows:

89. However, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such cases. Way back, in *T.C. Basappa Vs. T. Nagappa and Another*, , it was said: (AIR p. 443, para 6)

6. The language used in Article 32 and 226 of our Constitution is very wide and

the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of "habeas corpus, mandamus, quo warranto, prohibition and certiorari" as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges.

90. More recently, such a writ was issued by this Court in *Shri Kumar Padma Prasad Vs. Union of India and others*, when this Court declared that Mr. K.N. Srivastava was not qualified to be appointed as a Judge of the Gauhati High Court even after a warrant for his appointment was issued by the President under his hand and seal. This Court, therefore, directed: (SCC p. 457, para 41)

41. As a consequence, we quash his appointment as a Judge of the Gauhati High Court. We direct the Union of India and other respondents present before us not to administer oath or affirmation under Article 219 of the Constitution of India to K.N. Srivastava. We further restrain K.N. Srivastava from making and subscribing an oath or affirmation in terms of Article 219 of the Constitution of India and assuming office of the Judge of the High Court.

91. Similarly, in *N. Kannadasan Vs. Ajoy Khose and Others*, , this Court held that Justice N. Kannadasan (retired) was ineligible to hold the post of the President of the State Consumer Redressal Forum. It was then concluded: (SCC p. 68, para 163)

163.... (ii) The superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose.

92. Finally and even more recently, in *Centre for PIL and Another Vs. Union of India (UOI) and Another*, , the recommendation of a High-Powered Committee recommending the appointment of Mr. P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the Central Vigilance Commission Act, 2003 was held to be non est in law and his appointment as the Central Vigilance commissioner was quashed. This Court opined; (SCC p. 25, para 53)

53. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration.

44. Therefore, the law on the point is now well settled by the decision in *State of Punjab vs. Salil Sabhlok*. Hence the prayer for the issue of a writ of declaration, cannot be said to be misconceived or not maintainable.

Merits of The Case

45. Having settled the issue of maintainability, we will now take-up the two primary grounds on which the nomination of the 4th respondent is opposed. The first ground of attack is that the 4th respondent actually misrepresented her qualifications and secured appointment and such misrepresentation actually continued to influence the respondents while nominating her to the Central Council.

46. Even according to the 4th respondent, she completed B.A.M.S., Degree Course in 1998 and joined Sairam Ayurveda College, as Lecturer, on 02.08.1999 and subsequently got registered as a practitioner of the System of Indian Medicine on 30.08.1999. She gained admission to M.D. Course in the year 2001 and completed the same from Karnataka during the period 2001-2004. After completing M.D. course, she rejoined the college on 01.10.2004. These are facts which are admitted by the 4th respondent herself in paragraphs 17 to 19 of the counter affidavit filed by her. As a matter of fact, the 4th respondent passed M.D. Course only in September, 2005. But, even according to the 4th respondent, the college in which she was appointed as a Lecturer on 02.08.1999, got permission from the State Government only under G.O.Ms. No. 462, Health and Family Welfare Department, dated 27.10.1999. A perusal of Paragraph 8 of the counter affidavit of the 4th respondent would show that the State Government's permission came on 27.10.1999, only after which an inspection was conducted by the Central Council. Thereafter, approval for the starting the course was issued by the Central Council only in 2001-2002 and classes commenced for the first year for B.A.M.S., for the first time only on 16.10.2001. Within two months of the commencement of the classes, for the first time in Sairam Ayurveda College, the 4th respondent got admission to the M.D. Course in an institution in Karnataka in December, 2001 itself. According to the 4th respondent, the college permitted her to draw 80% of the salary and rejoined the college on 01.10.2004. She passed M.D. Course in September, 2005.

47. From the above admitted facts, the following things become clear, namely, (i) that the 4th respondent claims to have been appointed as a Lecturer on 02.08.1999 in a College which got the State Government's permission only subsequently on 27.10.1999 and the recognition of the Central Council only in 2001-2002; (ii) that in other words, the 4th respondent could not have carried out any teaching assignment from 02.08.1999 (the date of appointment) till 16.10.2011 when the classes commenced for the first time, after recognition was granted by the Central council; (iii) that within two months of commencement of the college, the 4th respondent went on leave from December, 2001 till September, 2004 and rejoined the college only on 01.10.2004.

48. Therefore, it is clear that the claim of the 4th respondent as though she was in the faculty of a college, was nothing but a make believe affair. The fourth respondent attempts to white wash this aspect by claiming as though she was engaged in the preparatory work for the establishment of the college and that therefore the period from the date of her appointment namely 02.08.1999 upto

the date of recognition granted by the Central Council in October, 2001 is to be counted as period of service.

49. Apart from the tenability of the claim of the 4th respondent that she rendered service as Lecturer from 02.08.1999 till 16.10.2001, by merely getting engaged in the preparatory work of the establishment of the college, there is also one more issue here. Till September, 2005, the 4th respondent had only an undergraduate degree and not a post-graduate degree. But, a perusal of the credentials submitted by the 4th respondent to the Central council would show that she was promoted to the post of Reader with effect from 20.08.2005. In other words, the petitioner, who was only an under-graduate, not only got appointment as Lecturer on 02.08.1999 but also got promotion as Reader with effect from 20.08.2005, without holding a post-graduate degree, completely in violation of the Regulations. A post-graduate degree is essential both for the post of Reader and for the post of Lecturer. What is more important is that the 4th respondent got appointed on 02.08.1999 by misrepresenting as though she held an M.D. Degree in Ayurveda even in 1999. The letter of appointment issued to the 4th respondent on 20.07.1999 shows her qualification to be M.D. in Ayurveda. This is perhaps the reason why she was promoted as Reader on 20.08.2005, even without an M.D. Degree.

50. The fact that she was appointed as Lecturer on 02.08.1999 and promoted as Reader on 20.08.2005 and that she passed M.D. Degree only in September, 2005 are all admitted by the 4th respondent herself. A tabulation given by the 4th respondent in the declaration form filed by her with the Central Council shows that these are facts admitted by her. Hence the tabulation given by the 4th respondent herself to the Central Council is extracted as follows:

7. Qualifications:

Qualification

College

University

Year

Registration No. with date of Passing

Name of the state Medical Council

B.A.M.S.

Dr.M.G.RVenkatramana

The T.N. Medical University, Chennai

1998

AA26766, 30/08/1999

Tamilnadu Board of

Indian

Medicine

M.D./M.S Ayurveda, (Kavachikitsa)

G.M.Ayurveda College, Chennai-4

RGUHS, Bengaluru .

2005

AA26766

Tamilnadu Board of

Indian

Medicine

Ph.D

Nil

Note: Subject be furnished within brackets after scoring out whichever is not applicable.

8. Details of the teaching experience in Chronological order:

Designation

Department

Name of Institution

From

DD/MM/YY

To

DD/MM/YY

Total Experience in

years & months

DEMONSTRA

TOR/ TUTOR

LECTURER/ ASST.PROFE SSOR

Roga Vigyanam Ayurveda

Sri Sai Ram Medical

College & Research

Centre

2.8.99

19.08.2005

6 yrs

READER/ ASSOCIATE PROFESSOR

Roga Vigyanam Ayurveda

Sri Sai Ram Medical

College & Research

Centre

20.08.2005

30.05.2009

3 yrs & 9 mths

PROFESSOR

Roga Vigyanam Ayurveda

Sri Sai Ram Medical

College & Research

Centre

1.6.09

Till Date

3 yrs & 7 mths

Total Experience

13 yrs & 3 mths

51. As a matter of fact, the then president of the Central Council of Indian Medicine had sent a communication, dated 11.05.2013, to the Tamil Nadu Dr. M.G.R. Medical University pointing out (i) that her appointment on 02.08.1999 was invalid, since her registration with the Tamil Nadu Board itself happened only on 30.08.1999; (ii) that as per the 1989 Regulations, the 4th respondent became eligible to be appointed as Lecturer only in September, 2005, after completion of post-graduation; and (iii) that the 4th respondent had claimed to be a Professor from 01.06.2009, though she would become eligible for the post as per the Regulations only in 2015. Since the then president of the Central Council Mr. Ved Prakash Tyagi himself got into a controversy with regard to various irregularities,

the 4th respondent claims that the present writ petition is instigated by the then president Mr. Ved Prakash Tyagi. But, no material is placed on record to show that the present writ petitioner is a henchman of Ved Prakash Tyagi. In any case, the appointment of the 4th respondent as Lecturer at a time when the college did not have any recognition and at a time when she did not have the requisite qualifications shows that all was not well with her appointment. Complicating the matters further, she got promoted as Reader much before acquiring a post-graduate degree. Till October, 2004, when she re-joined the college after completion of the post-graduate course, the only experience that the 4th respondent had, fell under two categories, namely (i) preparatory work for establishment of the college from 02.08.1999 till 16.10.2001 and (ii) teaching experience just for 2 months from 16.10.2001 till December, 2001. Therefore, for a full period of five years from August, 1999 till October, 2004, the 4th respondent hardly taught any subject for more than two months in the college to gain to the post of Reader.

52. We are not concerned here, either with the appointment of the 4th respondent as Lecturer or with her promotion as a Reader. But, we are concerned about the nomination of such a person by the Central Government u/s 3(1)(c). As we have pointed out earlier, section 3(1)(c) mandates the Central Government to nominate a person having special knowledge or practical experience. Special knowledge and experience in manipulating academic qualifications and gaining appointment as a Lecturer even before the establishment of a college and securing promotion to the post of Reader even before acquiring a post-graduate degree, are not what are contemplated by section 3(1)(c).

53. The 4th respondent has made a lot of claims in Paragraph No. 4 of the counter affidavit, containing details about the offices and posts that she held, the research presentations made by her, both at the national and at the international levels, the honours and awards conferred upon her, the publications made by her and other activities. We do not think that we would go into them nor are we entitled.

54. Atleast for the purpose of satisfying this Court, if the Central Government had produced the file relating to the nomination of the 4th respondent, we could have seen whether there was a subjective satisfaction on the part of the Government about the special knowledge or practical experience that the 4th respondent claims to have had. As has always been held, we are neither concerned about the suitability of the 4th respondent nor are we concerned about the final decision of the Central Government to nominate her. We are concerned about the decision making process that was adopted by the Central Government in nominating the 4th respondent, as a person with special knowledge or practical and experience, as stipulated in section 3(1)(c).

55. Mr. P. Wilson, learned Additional Solicitor General, stated, in response to a specific query made by us that nominations u/s 3(1)(c) are made by the Minister

concerned on the basis of the resume of the persons concerned. In other words, there are no rules or guidelines that regulate the power of the Government to choose persons to be nominated. The power to nominate and that too upto 30% of the total strength covered by the first 2 categories, seems to be unbridled and uncontrolled. Therefore, today, the Government can consider any person as one with special knowledge or practical experience and nominate him or her to the Council. This is nothing but an arbitrary power left to the whims and fancies of the individuals.

56. We do not know whether (i) the appointment of the 4th respondent to a college even before the grant of recognition to the college; (ii) the appointment of the 4th respondent to the post of Lecturer, without a postgraduate degree; (iii) the promotion of the 4th respondent as Reader even before she could complete her post-graduate degree; and (iv) her misleading claim at the time of appointment in July 1999 as though she held a post-graduate degree, were placed in the proper perspective before the Government when they labelled the 4th respondent as a person with special knowledge or practical experience. Due to the failure of the Central Government to place the file before us, we are unable to see whether the above crucial facts were taken into account by the Central Government or not.

57. As we have pointed out in the first portion of this order, the Central Council for Indian Medicine is conferred with enormous powers, both in the matter of grant of recognition for the establishment of new colleges or for the commencement of new courses and in the matter of regulating the profession itself. At the cost of repetition, it should be pointed out that the Central Council is vested with powers (i) to prescribe standards of medical education; (ii) to prescribe standards of professional conduct for the practitioners; and (iii) to advice the Central Government on the question of grant of approval either for establishing a new college or for introducing a new course in an existing institution.

58. It is such a power that led to a serious crisis in the Medical Council of India in the year 2010. We can take judicial notice of the fact that after one former President of the Medical Council of India was arrested by CBI while taking illegal gratification from a medical college, his certificate of registration was cancelled by the Council and the entire council was dissolved. But he contested for the post of member of the Senate of Gujarat University and got elected and he sought election to the Council from that constituency. Therefore, one could have expected the Central Government to be very cautious in exercising the power u/s 3(1)(c) to nominate members to the Council.

59. Today, the jurisprudence in relation to appointment or nomination to such high offices has moved from individual virtuosity to institutional virtuosity. The Apex Court has indicated that nominations to high offices should be done carefully in order to preserve the institutional integrity. An individual, lacking in integrity, can never preserve the institutional integrity.

60. It is contended by the learned counsel for the 4th respondent that the appointment of the 4th respondent as well as her promotion were all approved by the Central Council and that once her qualifications as well as appointment/promotion are approved they cannot be reopened. But, unfortunately, the above contention of the learned counsel for the 4th respondent loses sight of one important aspect. As we have repeatedly pointed out, the petitioner has not come up with a writ petition challenging the appointment or promotion of the 4th respondent. If that was the case, we would have dismissed the writ petition long ago on the ground that an expert body, namely, the Central Council, had considered all qualifications to be adequate and that therefore we would not interfere with such an opinion of an expert body. But, in this case, we are concerned about the nomination made by the Central Government of a person, whose credentials have now come under scanner, to a regulatory body which is wielding enormous power.

61. As we have pointed out elsewhere, the 4th respondent was first elected from amongst the faculty of the University, way-back in 2010. She subsequently got elected as a vice-president. A person whose qualifications came under cloud and who got the benefit of the approval of qualifications by the very same regulatory body to which she got elected, first as a member and then as a vice-president, could not have been nominated by the Central Government. If the 4th respondent had been elected under any of the categories stipulated u/s 3(i)(a) or 3(1)(b), the questions raised by the writ petitioner would have actually become insignificant. These questions have assumed importance only due to the fact that she had been nominated by the Central Government as a person with special knowledge or practical experience. Therefore, we are compelled to test whether such a person, whose individual integrity is under cloud, could preserve the institutional integrity of the Central Council or not.

62. In *Vineet Narain and Others Vs. Union of India (UOI) and Another*, as pointed out by the Supreme Court in the first paragraph, the primary question that arose in the first instance was far less significant than the one that ultimately came to be tested. At the initial stage of the litigation, the Supreme Court was concerned only with the scope of judicial review in the matter of activating the investigative process which is under the control of the executive. But, ultimately, the case developed awareness of the need for probity in public life and it provided a mode of enforcement of accountability in public life, as enunciated in Paragraph 1 of the decision.

63. On the standards to be set-up in public life, the Supreme Court made a reference to a Report of Lord Nolan, released in 1995 in England. Lord Nolan's report recommended a code of conduct for all public bodies, incorporating seven principles, namely, selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These seven principles, as rightly contended by Mr. V. Selvaraj, learned counsel for the petitioner, are very much needed for a regulatory body like the Central Council. Therefore, it is necessary that this Court

takes the litigation beyond the nitty-gritty of pure technicalities.

64. Mr. P. Wilson, learned Additional Solicitor General, placed reliance upon the decision of the Supreme Court in *R.K. Jain Vs. Union of India and Others*, . In that case, what was in issue was the validity of the appointment of the President of the Customs, Excise and God Control Appellate Tribunal. By a majority, the supreme Court held that the Court cannot sit in judgment over the wisdom of the Central Government in the choice of the person to be appointed as president, so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. The Court held that it cannot interfere with the appointment of the 3rd respondent therein merely on the basis of his poor track record or because of adverse reports on account of which his appointment as a High Court Judge did not materialise.

65. But, with great respect, we think that the law has travelled a long course from *R.K. Jain* upto *P.J. Thomas*. In *Centre for PIL and Another Vs. Union of India (UOI) and Another*, , the appointment of *P.J. Thomas* as Chief Vigilance Commissioner was in question. He was actually selected for appointment by a High powered Committee, comprising of the Prime Minister, Home Minister and the Leader of the Opposition. When the Government pointed out that they were satisfied about the candidate's personal integrity, the Supreme Court made it clear that the High Powered Committee must actually take into consideration the question of institutional competency and that institutional integrity is the primary consideration for the appointment Chief Vigilance Commissioner. Therefore, when a question relating to the nomination of a person to a regulatory body, such as the one on hand, is raised, the Court cannot simply wash away its power under Article 226. This is especially so after what had happened in the Medical Council of India.

66. Even in *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, , which followed the decision in *R.K. Jain*, what was in question was only the appointment of a person as Managing Director of State Water Supply Board. Cases which relate to appointment of persons to certain posts would stand certainly on a different footing than cases where the Government nominates a person to a regulatory body, such as the Medical Council of India or the Central Council of Indian Medicine. In cases of appointment to posts, the Government retains both administrative as well as disciplinary control over the appointees. But, the nomination of a person as a member of a regulatory body which wields enormous powers cannot be equated to a mere appointment. The Government exercises no administrative or disciplinary control over such nominees. Therefore, the respondents cannot draw inspiration from the decision in *Srinivasa Reddy*.

67. In *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, , relied upon by Mr. V.T. Gopalan, learned Senior Counsel for the Central Council, the appointment of a person as the Advocate General of Uttarakhand came to be challenged in the High Court of Uttaranchal. A Division Bench of the High Court

of Uttaranchal entertained the petition and directed the State Government to take a decision on the issue raised within 15 days. The Supreme Court stayed the said order of the High Court. Thereafter, leave was granted and the Supreme Court took-up the matter for consideration, after a gap of almost 10 years. While deciding the case, the Supreme Court pointed out in paragraph 161 the need to exercise caution in entertaining public interest litigations.

68. It is true that time has come to check the menace of unscrupulous persons trying to settle personal scores under the guise of public interest litigation. But, at the same time, our experience shows that when there is a huge cry for protecting institutions, which wield enormous powers and act as regulatory bodies of certain professions, the Court has social and constitutional obligation to see that at least the basic parameters are satisfied.

69. If we have a look at the Regulations framed by the Central Council of Indian Medicine, it could be seen that the 4th respondent could not have fulfilled these parameters. The Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1989 were issued and published on 05.08.1989 in the Gazette of India. They were issued by the Central Council in exercise of the power conferred by Clause (i) and (j) of Section 36 of the Indian Medicine Central Council Act, 1970. These Regulations came into effect from the First July, 1989, at least 10 years before the appointment of the 4th respondent as a Lecturer. Regulation 14 of those Regulations stipulates the qualifications and experience for teaching staff. This Regulation 14 is divided into three parts. The first part deals with essential qualifications for appointment of teaching staff, the second deals with experience and the third deals with desirable qualifications. The essential qualifications as prescribed in Regulation 14(i) are:

- (i) a degree in Ayurveda;
- (ii) a post-graduate qualification in the subject or speciality concerned; and
- (iii) adequate knowledge in Sanskrit .

It is important to note that these qualifications are prescribed as essential for all the posts. They are not confined under Regulation 14(i) to any particular post, even in the 1989 Regulations before they were amended in 2005 and thereafter.

70. Regulation 14(ii) stipulates the experience qualifications as follows:

- (i) for the post of Professor, total teaching experience of 10 years, out of which five years should be as Reader/Associate Professor, or 10 years of experience as Lecturer in the concerned subject whenever the posts of Reader/Associate Professor do not exist;
- (ii) for the post of Reader, total teaching experience of five years out of which three years should be as Lecturer in the subject concerned;
- (iii) for the post of Lecturer, no teaching experience is necessary;

(iv) for the post of Principal, the qualifications and experience prescribed for the post of Professor shall be considered as essential.

71. Interestingly, the note under Regulation 14 contains a table and it prescribes that if post-graduates in certain subjects indicated in Column-1 of the table are not available, post-graduates in the disciplines indicated in Column-2 shall be considered as equivalent. If we again get back to the credentials of the 4th respondent, the following facts will be clear:

(a) The 4th respondent was issued with an appointment order by the institution concerned on 02.08.1999, when she was just a degree holder and when she had not even registered herself as a practitioner of Ayurveda. More than that, the college which appointed her had not even obtained permission of the State Government at that time. The recognition for the college itself came only in 2001, two years after the alleged appointment of the 4th respondent.

(b) The letter of appointment of the 4th respondent describes the 4th respondent as a person with M.D. qualification in Ayurveda. There is no explanation as to how and why the 4th respondent was described as a postgraduate in 1999, when she had not even joined the post-graduation course.

(c) It is admitted by the 4th respondent herself that from date of her appointment on 02.08.1999 till October, 2001, she was only engaged in the preparatory work for establishment of the college. The recognition for the college was given by the Council only for the Academic Year 2001-2002 and the classes commenced on 16.10.2001.

(d) Hence, the actual teaching experience of the 4th respondent could have commenced only on 16.10.2001. This experience lasted for a mere two months till December, 2001 when she went on study leave to pursue her post-graduation in a college in Karnataka.

(e) From December, 2001 till October, 2004, the 4th respondent did not have any teaching experience, but was pursuing her post-graduation. But to create a mirage as though she was teaching, the college appears to have paid 80% of salary to her during her full time course of study in Karnataka. After completion of post-graduation, she rejoined the college on 01.10.2004. She acquired P.G. Qualification in September, 2005.

(f) Despite the fact that the 4th respondent acquired post-graduate qualification only in September, 2005 and despite the fact that from the date of her appointment on 02.08.1999 upto the date of her acquiring P.G. Degree in September, 2005, she had a teaching experience of just 14 months (from October to December, 2001 and from October, 2004 to September, 2005).

(g) But, the 4th respondent was promoted as Reader/Associate Professor on 20.08.2005 itself, much before the declaration of her successful completion of the post-graduate course in September, 2005. Thereafter, within three years and nine months, she was also promoted as Professor on 01.06.2009.

(h) As on 01.06.2009 when she was promoted as Professor, her actual teaching experience was for a period of 13 months as Lecturer and three years and nine months as Reader/Associate Professor. But, in the Declaration given by the 4th respondent to the Central Council, she claimed to have had teaching experience of six years as Lecturer. The Table given by her in the Declaration Form has been extracted by us in a previous paragraph.

72. The 4th respondent has not indicated in her counter affidavit as to how and why she was described as a person with M.D. qualification in the letter of appointment issued by the College way back in July, 1999. On the question of non-fulfilment of the eligibility criteria, as per the 1989 Regulations, the 4th respondent has stated something very interesting in paragraph 18 of her counter. She has stated that in those days there were no post-graduates and that therefore 1989 Regulations were not enforced, strictly. According to her, the Regulations came to be enforced strictly only after the incorporation of Section 13-C in the Act.

73. The above explanation may be alright for the continuation of the 4th respondent as a faculty in the college. But it is hardly a justification for the Central Government to treat her as a person with special knowledge and experience so as to be nominated to the Central Council.

74. As we have pointed out earlier, section 3(1)(c) merely speaks about "special knowledge or practical experience". There are no guidelines to regulate the manner in which the Government may exercise its power to assess the special knowledge or practical experience of a person. Consequently, the power u/s 3(1)(c) is actually unbridled and uncontrolled. As we have indicated earlier, we made a pointed query to the learned Additional Solicitor General as to the procedure adopted for making nominations u/s 3(1)(c). The learned Additional Solicitor General submitted that on the basis of applications made by individuals directly to the Minister concerned, nominations are made. After promising to produce the file, the learned Additional Solicitor General did not produce the file, atleast for us to satisfy ourselves that the decision making process for nominating the 4th respondent was not vitiated by arbitrariness.

75. The total number of membership of the Central Council is not indicated in the Act. But, Section 3(1) prescribes three categories of members, one elected from amongst the practitioners of each of the branches of Indian Medicine, another elected from amongst the faculties in each of those disciplines from each of the Universities and the third, nominees by the Central Government of not more than 30% of the total number of members elected under the first two categories. Therefore, it is clear that 1/3rd of the membership of the Central Council is occupied by the nominees of the Central Government and they, as a group, can ultimately decide the manner in which the Central Council functions and set standards. It is in this circumstance that the question as to who is selected by the Central Government for the nomination assumes greater significance. Going by what had already happened to the Medical Council of India, the Court cannot

shut its eyes to the method of nomination adopted by the Central Government to such an important body, whose institutional integrity determines the level of professional integrity of the members of the Board of Indian Medicine.

76. Therefore, we are of the view that the Central Government should be directed to review the nomination of the 4th respondent to the Central Council, in the light of the observations made herein. If the Central Government, after review, still feels that the 4th respondent can be the saviour of the Central Council of Indian Medicine, it is up to them to reiterate their decision, in which event, we will restrain ourselves from exercising the power of judicial review.

77. Therefore, in fine, the writ petition is allowed, the impugned Notification nominating the 4th respondent is declared as illegal and we direct the 1st respondent Union of India to reconsider its decision in the light of the above observations and pass appropriate orders, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.