

K.B.Nagur M.D(Ayu) vs Union Of India on 24 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1774, 2012 AIR SCW 2196, 2012 (3) AIR BOM R 734, (2011) 3 CAL HN 601, (2012) 2 SCALE 792, (2012) 3 ALL WC 2396, (2012) 2 CAL LJ 73, (2012) 1 CURCC 165, 2012 (4) SCC 483, (2012) 2 ESC 173, (2012) 2 JCR 119 (SC), (2012) 113 ALLINDCAS 142 (SC), (2011) 2 CAL LJ 558, (2012) 3 MAD LW 292, AIR 2012 SC (CIV) 1229, 2012 (2) KLT SN 11 (SC), 2012 (93) ALR SOC 3 (SC)

Author: Swatanter Kumar

Bench: Swatanter Kumar, A.K. Patnaik, Chief Justice

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 33 OF 2009

K.B. Nagur M.D. (Ayu.)

... Appellant

Versus

Union of India

... Respondent

WITH

I.A. NOS. 1, 3, 4, 6, 7, 8, 9, 10 AND 11

AND

WRIT PETITION (CIVIL) NO. 249 OF 2011

TRANSFER PETITION (CIVIL) NO. 736 OF 2011

TRANSFER PETITION (CIVIL) NO. 737 OF 2011

TRANSFER PETITION (CIVIL) NOS. 738-739 OF 2011

J U D G M E N T

Swatanter Kumar, J.

1. The Central Council of Indian Medicine (for short 'the Central Council') is a statutory body, constituted in terms of Section 3 of the Indian Medicine Central Council Act, 1970 (for short 'the Act'). Section 4 of the Act mandates that election under clause (a) or clause (b) of sub-Section (1) of Section 3 of the Act shall be conducted by the Central Government in accordance with the rules as may be made in this behalf.

Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final. Sub-section (1)(a) of Section 3 provides that the Central Council shall consist of such number of members, not exceeding five, as may be determined by the Central Government in accordance with the provisions of the First Schedule of the Act for each of the Ayurveda, Siddha and Unani systems of medicine, from each State, in which a State Register of the Indian Medicine is maintained, to be elected from amongst themselves, by the persons enrolled on that Register as registered practitioners of the respective systems.

Section 3(1)(b) of the Act states that one member each of the Ayurveda, Siddha and Unani systems of medicine from each University were to be elected from amongst themselves by the members of the Faculty or Department of the respective system of medicine of that University. The Central Government could also nominate such number of members, not exceeding thirty percent of the total members elected, under the above mentioned clauses (a) and (b) to the Central Council, from amongst persons having special knowledge or practical experience in respect of Indian medicine, in accordance with Section 3(1)(c) of the Act. These elected members are to elect their President, to be known as President of the Central Council and a Vice-President for each of the systems of medicine.

2. This elected Central Council, so constituted, is to discharge various functions and duties as contemplated under the provisions of the Act, which include the grant of recognition to medical colleges/courses, maintenance of education standards, appointment of Inspectors, conduct and supervision of examinations, and even the withdrawal of recognition, if necessary. A register is to be maintained of the persons possessing requisite qualification in the type of medicine which the member is eligible to practice and who have been registered by the State Board and which register

has to be updated with regard to the qualification attained by members of the respective professions subsequently.

3. As is evident from the above narrated provisions, the Central Council discharges very significant and important functions which would affect not only education in these three systems but even their practice and treatment of thousands of patients under these systems. The statute places an obligation upon the Central Government to hold these elections and ensure that the Central Council works smoothly and in accordance with the provisions of the Act. Section 7 of the Act refers to the tenure that an elected member is entitled to enjoy, upon his election to the Central Council. This Section deals with the term of the Office of the President, Vice-

President and the members of the Central Council. The term of office for all these persons is five years from the date of election or nomination, as the case may be, or until a successor has been duly elected or nominated, whichever is longer. The latter part of this Section caused serious impediment in the proper functioning of the Central Council primarily for two reasons : (a) the Central Government did not take appropriate steps to hold fresh elections and (b) the persons who were elected and were interested in continuing as such, took advantage of this provision and continued in office far beyond five years as nobody was duly elected to replace them.

4. The petitioner is an Ayurvedic doctor and holds the degree of Ayurvedic Medicine, namely BAMS, has done his post graduation MD (Ayurvedic) degree subsequently. The petitioner claims that he held and still holds various offices in different organizations dealing with Ayurveda system of medicine. He claims to be the General Secretary of the Medical Association of India and member of the Governing Body of All India Ayurvedic Congress Committee, New Delhi and Indian Association of Blood Bank, Delhi. His aim is to ensure proper functioning of the Central Council, which has not been properly constituted and for which elections have not been held for the last 20-25 years. The petitioner, having failed to achieve any results at the hands of the Central Government or the Central Council, despite the fact that he was holding various offices directly connected with the functioning of the Central Council, filed a petition under Article 32 of the Constitution of India, 1950 (hereafter, 'the Constitution') with the following prayers :

"(a) An appropriate writ, order or direction directing the Union of India to hold elections to the Central Council of Indian Medicines and to constitute the same in accordance with law;

(b) further direct the Union of India to fill up the posts of any member who has completed five years within one month;

(c) Strike down and quash the last clause in section 7 of Indian Medicine Central Council Act, 1970 reading as "or until his successor shall have been duly elected or nominated, whichever is longer" as contrary to the very Act, unconstitutional and undemocratic and violative of Articles 14 and 16 of the Constitution of India."

5. Obvious from the above prayers is that the petitioner, firstly, wants a direction to the Union of India to discharge its statutory duty in terms of Section 3 of the Act, to fill up the membership of the Governing Body of the Central Council with regard to the members who have completed the term of five years within the stipulated period and secondly, the striking down of provision of Section 7 of the Act as unconstitutional, undemocratic and violative of Articles 14 and 16 of the Constitution. It is the contention of the petitioner that the elected members of the Central Council are adopting delaying tactics and even invoking the jurisdiction of the High Courts to stop the holding of elections or the declaration of result of the elections wherever held, notwithstanding the fact that there is an alternative remedy available to them of filing an election petition. The inaction on the part of the Government borders on complicity and with the passage of time vested interests have developed. There is a specific averment in the petition that the Union of India and even the members of the Central Council are not evincing any interest in the functioning of the Central Council and a few unelected members, whose term expired long back, are squatting for an inordinately long period as being erstwhile elected members of the Central Council with the aid of language of Section 7 of the Act. To contend that the delay is prejudicial to the working of the Central Council and is also opposed to the spirit of Section 3 of the Act, they rely on the decision of this Court in the case of Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Others [(2006) 8 SCC 352], which held that the Election Commission should take steps by following due process of law, but that too should be done in a timely manner and in no circumstances, shall such elections be delayed, so as to cause gross violation of mandatory provisions contained in Articles 243-U of the Constitution. This buttresses their submission that timeliness in conduct of elections is mandatory.

6. Lastly, challenge has been raised to the following portion of Section 7 of the Act as unconstitutional, violative of Articles 14 and 16 of the Constitution:-

" or until his successor shall have been duly elected or nominated, whichever is longer"

7. First and foremost, we will deal with the contention of the provision being ultra vires of Articles 14 and 16 of the Constitution of India, raised on behalf of the petitioner.

Article 14 guarantees equality before law whereas Article 16 talks of equal opportunities in matters of public employment.

This concept of equality has to be patently infringed by a provision before that provision or any part thereof, can be declared as unconstitutional. The mere fact that there is some inconvenience arising from the language of a provision and its due implementation, cannot be a ground for declaring a provision violative of fundamental rights. The impugned part of Section 7 of the Act is intended to ensure that there is no vacuum in the membership of the Central Council. The term, as prescribed under Section 7 of the Act, is five years.

Elections are expected to be held within that period of five years to ensure that immediately after expiry of the specific term, the members holding the office quit and the newly elected members assume the charge. However, there can be situations where the elections in the entire country or in

any part thereof cannot be held within the prescribed time and for valid reasons. It may even be because of the situation that is created by the people who are holding the office of the members of the Central Council for their personal ends. In such cases also, the elections may be delayed. It is the former situation which is intended to be protected by the challenged words of Section 7 of the Act. The legislative intent is clear that there cannot be a vacuum in the working of a statutory body and it cannot be rendered non-existent even for a short period by lapse of membership term or otherwise.

Thus, to provide a safeguard for the interregnum period, of the earlier members of the Central Council vacating their office and newly elected members assuming their office, the provisions of Section 7 have been enacted by the Legislature.

8. Still another aspect is that presumption of constitutionality is always in favour of a legislation, unless the contrary is shown. Furthermore, a Legislature, in enacting a law, operates on a presumption, in law and practice, both, that all other forums and entities constituted under one or other Act would, in their functioning, act in accordance with law and expeditiously. As it is a settled precept in the application of economic principles, that all other things will remain the same i.e., *ceteris paribus*, similarly, for the proper interpretation and examination of a provision of a statute, all bodies must be presumed to act effectively and in accordance with law.

9. A statute is construed so as to make it effective and operative as per the principle expressed in *ut res valeat potius quam pereat*. There is, therefore, a presumption that the Legislature does not exceed its jurisdiction and the burden of establishing that the Act is not within the competence of Legislature or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vagaries.

10. Here, we may also notice that there are two rules, of most general application, in construing a written instrument which are *pari materia*, applicable to statutes as well. First, if possible, the written instrument shall be interpreted in light of the above mechanism and secondly, such a meaning shall be given to it, as may carry out and effectuate, to the fullest extent, the intention of the parties or the framers of law. Of course, such interpretation will be subject to the limitations of uniformity in the meaning given to such expressions etc.

11. It is also a settled and deeply rooted canon of constitutional jurisprudence, that in the process of constitutional adjudication, the courts ought not to pass decisions on questions of constitutionality unless such adjudication is unavoidable. In this sense, the courts have followed a policy of strict necessity in disposing of a constitutional issue. In dealing with the issues of constitutionality, the courts are slow to embark upon an unnecessary, wide or general enquiry and should confine their decision as far as may be reasonably practicable, within the narrow limits required on the facts of a case. From the above discussion, it is clear that question of constitutionality of a provision is a matter which the courts would venture to examine only for valid, proper and sustainable grounds. We do not see that the provisions of Section 7 of the Act, or any part thereof, suffer from any legal infirmity, excessive legislative power or violate any legal right of any person, including the petitioner, much less a constitutional right.

Keeping the principle of strict necessity in mind, the courts do not venture to examine the constitutional validity of a provision and even strike down such provisions, if they are constitutional and a Court does so only if the situation created by such legislation is irremediable or unredeemable. None of these circumstances exist in the present case.

12. In fact, it is not necessary for us to deliberate on this issue at any greater length to notice that in a case under Regulation 23 of the Dental Council (Election) Regulations, 1952, where it was provided that the President shall, no later than 60 days before the date of occurrence of vacancy/vacancies, forward a notice by registered post to the Registrar of each University concerned, requesting him to hold an election not later than the date specified in the notice.

These regulations are framed under the Dentists Act, 1948.

Sections 6 and 7 of that Act deal with the tenure and election of the President, Vice President and the Members of the Dental Council of India. Section 6(1) of the Dentists Act further provides that, subject to the provisions of that Section, an elected or a nominated member would hold the office for a term of five years from the date of his election or nomination, or until his successor has been duly elected or nominated, whichever was longer. The language of that Section is *pari materia* with that of Section 7 of the Act. Challenge was raised to the constitutional validity of Section 6(1) of the Dentists Act, read with Regulation 23 of the Dental Council (Election) Regulations, 1952, framed thereunder. A Constitution Bench of this Court repelled the said challenge in the case of Dental Council of India and Anr. v. Dr. H.R. Prem Sachdeva & Ors.

(1999) 8 SCC 471 and held as under:-

"7. A conjoint reading of the various provisions of the Act and the Regulations referred to above go to show that the term of office of the members of the Council is five years from the date of the election or nomination, as the case may be. Section 6(1), however, also provides that a nominated or elected member, after the expiry of the term, may continue "until his successor has been duly elected or nominated, whichever is longer". The expression "whichever is longer" does suggest the continuation after the expiry of the term. Can it, however, be construed to mean that if the authorities fail to act as per clauses (a) to (f) of Section 3, the member concerned can continue to remain in office till perpetuity? In our opinion that could not be the intention of the law-makers. Regulation 23 (*supra*) does give an indication of what we have said above.

8. A reasonable interpretation of the provisions of the Act and the Regulations would be that elections/nominations to the Council should normally be held/made once in five years. However, if for some valid reasons the elections cannot be held during the term of five years, the same should be held within a reasonable time thereafter and the continuance in office of the elected/nominated members should not go on for perpetuity. The continuance in office, after the expiry of the term, should only be a stopgap arrangement to avoid a vacuum. The obligation to nominate/hold elections is

of various authorities obliged to elect/nominate members to the Council under clauses (a) to (f). The Act and the Regulations are silent about the period during which elections/nominations should be made/held as also about the consequences of not holding the elections or making nominations within the five-year term or soon thereafter and this lacuna gives rise to unnecessary litigation. We hope that the authorities concerned shall take appropriate measures by amending the provisions of the statute or the Regulations or frame appropriate rules so that the ambiguity regarding the maximum period, after the expiry of the five-year term during which election/nomination should be held/made is removed."

13. For the reasons recorded above, we follow the view expressed by the Constitution Bench. Therefore, we have no hesitation in repelling the challenge raised by the petitioner regarding the constitutionality of Section 7 of the Act.

14. Now, we shall proceed to deal with the other contention, that the Central Government is liable to be directed to hold the elections to the Central Council, as well as to promptly fill up the vacancies occurring in the Central Council due to efflux of time. This relief, to a large extent, has become infructuous. During the pendency of this writ petition, various orders had been passed by this Court, directing the Central Government as well as the Central Council to conduct elections in accordance with the provisions of the Act. On 3rd July, 2010, both the Central Council and the Union of India had agreed to complete the election process within a period of six months from that date. It took some more time to complete the process, but when the matter came up before us for hearing on 18th July, 2011, and on subsequent dates, we were informed that elections to the Central Council have been completed in all the States.

15. The election process in regard to Siddha system of medicine in the States of Andhra Pradesh, Himachal Pradesh and Jammu & Kashmir had not been completed, though elected candidates under the Unani and Ayurvedic systems had been notified. This was because there were no Siddha practitioners in those states. In all other States, the election process in regard to the three medicine systems i.e., Ayurveda, Unani and Siddha had been completed and the elected candidates duly notified.

16. It was also pointed out before us that the Central Government had not made its nomination in terms of Section 3(c) of the Act, under all the three systems of medicine.

17. We may notice that this petition has been rendered infructuous, though to a limited extent. Section 3 of the Act imposes a statutory obligation upon the Central Government to hold elections to the Central Council, in accordance with the statutory provisions, which we have discussed above.

Furthermore, the Central Government is responsible for nominating such number of members not exceeding 30 per cent of the total members elected under Sections 3(1)(a) and 3(1)(b) of the Act to the Central Council. In other words, the Central Government has a major role to play in the constitution, establishment and carrying on of activities by the Central Council. This is an onerous and significant duty. We cannot understand any reason whatsoever for the Central Government not

to perform its statutory duties, particularly when it concerns with the systems of medicine catering to a country of one billion people. The Court would take judicial notice of the fact that a large number of people depend upon these systems of medicine for treatment of various diseases.

The standards of education as well as the professionalism in practice of medicine in these fields is bound to suffer a setback, if the Central Government fails to exercise its powers and discharge its functions and duties in accordance with law.

As already indicated, the Central Council exercises supervisory, administrative and regulatory powers in relation to education and practice of all these three systems. If the Central Government wishes to exercise such control over statutory bodies discharging important and diverse functions in the field of medicine, then it is undoubtedly expected of the Central Government to discharge its functions and duties without failure and on time. It cannot justify its conduct in unduly delaying the proper constitution of such bodies in accordance with the provisions of the statutes and create faux pas which shall prejudicially affect all concerned, including the people at large.

18. We are conscious of the fact that this Court has to adopt a purely judicial approach. The Constitution and the Rule of Law are the only supreme powers in any democracy and no higher duty rests upon this Court, than to enforce, by its decree, the will of the Legislature, as expressed in a statute, unless such statute is plainly and unmistakably in violation of the Constitution or Rule of Law.

19. In the case of Kishansing Tomar (supra), this Court while dealing with the question of revision of electoral rolls by the State Election Commission, noticed that the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (9) of Article 243-U of the Constitution and not yield to situations that may be created by vested interests to postpone elections beyond the stipulated time. The State Election Commission shall take steps to prepare the electoral rolls, by following due process of law, but that too, should be done in a timely manner and in no circumstances, shall the elections be delayed so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution.

Further, while drawing a distinction between severe man-made calamities such as rioting, breakdown of law and order or natural calamities, which could distract the authorities from holding elections to the Municipality and other reasons for delay, this Court noted that the former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. This Court laid significant emphasis on the independence of the State Election Commission and expected all other authorities to fully cooperate, and in default, granted liberty to the State Election Commission to approach the High Court and/or the Supreme Court, as the case may be for relief/directions. However, no final or time-bound directions were issued, in the petition above-referred, because election to the Ahmedabad Municipal Corporation in that case had already been held in the meanwhile.

20. Statutory or constitutional independence is a pre-

requisite to the proper functioning of such statutory bodies.

Their appropriate constitution, in accordance with the provisions of the statute is mandatory. All concerned, including the Central and State Governments have the onus to discharge their duties and functions effectively and expeditiously, in coordination and within the time specified.

No Court can permit any authority, much less the Central or State Government to frustrate the statutory requirements of a provision and also the very object of an Act.

21. The language of Section 7 of the Act is intended to provide for a situation which is interregnum by its very existence. Whatever be the methods adopted, by whichever agency including the Government, to extend beyond a regular term the tenure of members, would not only be impermissible in law, but would also be illegal.

22. 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. 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.

23. 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.

24. 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.

25. 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.

26. During the pendency of this writ petition, another writ petition being Writ Petition (Civil) No. 249 of 2011, was filed with identical prayers. In view of this judgment, that writ petition has been rendered infructuous and is liable to be dismissed as such.

27. I.A. No. 8 is an application for intervention in the present writ petition, by one Dr. Vinod Kumar Chauhan. I.A. No. 9 is an application by the same party, with the prayer that the election to Central Council, held from the State of Uttarakhand be set aside and that fresh selection process be ordered. I.A. No. 9 is dismissed, with the liberty to that petitioner to approach the court of competent jurisdiction, seeking appropriate relief and in accordance with law.

28. In view of the order of I.A. No. 9, I.A. No. 8 does not survive and is dismissed as such.

29. Transfer Petition (Civil) No. 736 of 2011 is also dismissed, with liberty to the petitioner to pursue his remedy, if the cause of action survives, before the concerned High Court.

30. All Transfer Petitions and Interlocutory Applications for impleadment are hereby dismissed. Other applications do not survive for consideration.

31. Before we part with this judgment, we would like to place on record our appreciation for the valuable and able assistance rendered by the learned ASG and all counsel and assisting counsel appearing in the present PIL.

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CJI.

[S.H. Kapadia],J.

[A.K. Patnaik],J.

[Swatanter Kumar] New Delhi;

February 24, 2012